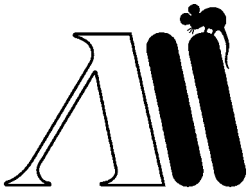
UDK/UDC 94(05) ISSN 1318-0185



Zgodovinsko društvo za južno Primorsko - Koper
Società storica del Litorale - Capodistria

# ACTA HISTRIAE
# 22, 2014, 3

KOPER 2014

ISSN 1318-0185 UDK/UDC 94(05) Letnik 22, leto 2014, številka 3

**Odgovorni urednik/** ***Direttore responsabile/ Editor in Chief:*** Darko Darovec

**Uredniški odbor/** ***Comitato di redazione/ Board of Editors:*** Gorazd Bajc, Furio Bianco (IT), Flavij Bonin, Dragica Čeč, Lovorka Čoralić (HR), Darko Darovec, Marco Fincardi (IT), Darko Friš, Aleksej Kalc, Borut Klabjan, John Martin (USA), Robert Matijašić (HR), Darja Mihelič, Edward Muir (USA), Egon Pelikan, Luciano Pezzolo (IT), Jože Pirjevec, Claudio Povolo (IT), Vida Rožac Darovec, Andrej Studen, Marta Verginella, Salvator Žitko

**Urednik/** ***Redattore/ Editor:*** Gorazd Bajc

**Prevodi/** ***Traduzioni/ Translations:*** Quality Constructs Ltd (sl./angl.), Irena Lampe (sl./it.), Angelika Ergaver (sl./angl.)

**Lektorji/** ***Supervisione/ Language Editor:*** Quality Constructs Ltd (angl.), Irena Lampe (it.)

**Stavek/** ***Composizione/ Typesetting:*** Grafis trade d.o.o.

**Izdajatelj/** ***Editore/ Published by:*** Zgodovinsko društvo za južno Primorsko / Società storica del Litorale©

**Sedež/** ***Sede/Address:*** Zgodovinsko društvo za južno Primorsko, SI-6000 Koper-Capodistria, Kreljeva 3 / Via Krelj 3, tel.: +386 5 6273-296; fax: +386 5 6273-296; e-mail: actahistriae@gmail.com; www.zdjp.si

**Tisk/** ***Stampa/Print:*** Grafis trade d.o.o.

***Naklada/Tiratura/Copies:*** 300 izvodov/copie/copies

**Finančna podpora/** ***Supporto finanziario/ Financially supported by:*** Javna agencija za raziskovalno dejavnost Republike Slovenije / Slovenian Research Agency

**Slika na naslovnici/** ***Foto di copertina/ Picture on the cover:*** *Immixtio manuum*. Miniature des Archives Départementales de Perpignan représentant un hommage médiéval. From Wikimedia Commons, the free media repository. File: Hommage au Moyen Age - miniature.jpg

Redakcija te številke je bila zaključena 24. oktobra 2014.

Revija Acta Histriae je vključena v naslednje podatkovne baze / Gli articoli pubblicati in questa rivista sono inclusi nei seguenti indici di citazione / Articles appearing in this journal are abstracted and indexed in: Thomson Reuters: Social Sciences Citation Index (SSCI), Social Scisearch, Arts and Humanities Citation Index (A&HCI), Journal Citation Reports / Social Sciences Edition (USA); IBZ, Internationale Bibliographie der Zeitschriftenliteratur (GER); International Bibliography of the Social Sciences (IBSS) (UK); Referativnyi Zhurnal Viniti (RUS); European Reference Index for the Humanities (ERIH); Elsevier B. V.: SCOPUS (NL)

# VSEBINA / *INDICE GENERALE* / *CONTENTS*

Received: 2014-01-14
Original scientific article
UDC 347.961:94(497.472)

# *CUM LAMPULO MANTELLI.* THE RITUAL OF NOTARIAL INVESTITURE: EXAMPLE FROM ISTRIA

*Darko DAROVEC*
Ca' Foscari University of Venice, Department of Humanities, Dorsoduro 3484/d, 30123 Venice, Italy
Institut of Nova revija for Humanities, Gospodinjska 8, 1000 Ljubljana, Slovenia
e-mail: darovec.darko@gmail.com

*ABSTRACT*

*Based on the study of several documented testimonials concerning the dispute between the inhabitants of Piran and the Capodistrian bishop in 1201, that also include statements describing the investiture of the notary, this article uses the comparative and (re)interpretative method to study the ritual of notarial investiture as it was exercised from the 12th century onwards in the area of the upper Adriatic and in the neighbouring Italian territories.*

*The study is not only focused on the question of the notarial investiture but also ventures comparatively into other secular social spheres of the European medieval investiture rituals and states, showing that the rituals were conducted in accordance with the unified, three-part inner structure as described by Galbert of Brugge (1127):* homage, fides, investiture. *Although the investiture ceremonies for special social spheres differed one from another with regard to symbolic gestures, objects and words (phrases) and were transformed in accordance to social needs, the inner structure of the ritual was invariable whether it concerned the investitures of emperors, kings, vassals, knights, notaries or functionaries of the other social institutions that were rapidly beginning to take shape especially from the 13thcentury onwards; furthermore, the structure is also present in the judicial sphere. The origins of the medieval ritual are manifested in the ubiquitous divine transcendence whose door was flung wide open during the Carolingian-Ottonian period (8th-11th centuries) whereas the cultural roots of the ritual extend backwards into archaic communities.*

*The study also indicates the role and the significance of notaries in the administration of governmental organs and especially in the formation of the governmental structures of autonomous cities, characteristically reflected in the investiture ritual. It was the mere investiture ritual, as it was developed from 12th century onwards, based on knights and notarial rituals, that opened the pathway towards the investitures in other social fields, especially in free vocations (*artes liberales*). The right to be invested was later also to be spread amongst the "common" subjects.*

*Keywords: investiture, notary, ritual, Middle Ages, Istria, Italy, Europe*

# *CUM LAMPULO MANTELLI*. IL RITO DELL'INVESTITURA NOTARILE: L'ESEMPIO DELL'ISTRIA

*SINTESI*

*Sulla base dell'analisi di numerose testimonianze in merito alle diatribe, accesesi nel 1201, tra piranesi e il vescovo di Capodistria – si tratta di documenti che contengono anche riferimenti all'investitura dei notai – l'articolo esamina con metodo comparativo e (re)interpretativo il rito dell'investitura dei notai, così come si svolgeva dal XII sino a tutto il XVI secolo almeno, nell'area dell'Adriatico settentrionale e nelle regioni italiane limitrofe.*

*Lo studio non si concentra esclusivamente sulla questione dell'investitura dei notai ma analizza, in modo comparativo, anche altri ambiti secolari della società, concernenti i riti dell'investitura medievale in Europa, e rileva come i riti si svolgessero in conformità alla struttura interna unitaria composta da tre fasi, come descritto già dal Galbert di Bruges (1127):* homagium, fides, investitura*. Benché le cerimonie dell'investitura nei singoli settori della società si distinguessero fra di loro nei gesti simbolici, negli oggetti e nelle parole e si modificassero a seconda delle esigenze sociali, la struttura interna del rituale rimaneva invariata tanto nel caso dell'investitura di imperatori, quanto nell'investitura di re, di vassalli, di cavalieri, di notai e di altre figure istituzionali della società, in rapido sviluppo soprattutto dal XIII secolo. Una struttura interna che si rinviene, del resto, anche in ambito giuridico. L'originalità del rituale medievale si può notare nell'onnipresente trascendenza divina che è un portato dell'epoca carolingia-ottoniana (dall'VIII all'XI secolo), mentre le radici culturali risalgono alle comunità arcaiche.*

*Ma lo studio rivela anche il ruolo e l'importanza dei notai nell'amministrazione degli organi di potere e in particolare nella creazione di strutture governative locali autonome, circostanza che si manifesta in modo specifico nel rituale dell'investitura. Ed è proprio quest'ultimo, così come sviluppatosi dal XII secolo in poi, prendendo a modello il rituale dei cavalieri e dei notai, a spianare la strada all'investitura anche in altri settori della società, in particolare in quello delle libere professioni* (artes liberales). *Il diritto d'investitura si diffuse così anche fra i sudditi »comuni«.*

*Parole chiave: investitura, notariato, rito, Medioevo, Istria, Italia, Europa*

## INTRODUCTION

The Piranian document detailing the dispute between Capodistrian bishop and the inhabitants of Piran in 1201[1] concerning the olive oil tithe has already experienced several interpretations, also regarding the investiture of the notaries, but so far this question has not been addressed from the point of view of the symbolic ritual ceremony of the investiture of the notaries.[2] Therefore, the focus of this discussion will be to study several documented testimonials from 1201 concerning the investiture of the Piranian notary Dominic and the comparative (re)interpretation of the ritual ceremony of the notarial investiture over a longer period of time, from the end of the 12th century to at least the end of the 16th century in Istria and neighboring Italian regions.

The study demonstrates the role and the significance that the notaries had in administration of governmental organs and especially in designing autonomous urban governmental structures, which is also authentically reflected throughout the investiture ceremony. The investiture ritual that started to develop in the 12th century, based precisely on knightly and notarial ceremonies, opened a doorway to the investitures for other social classes, especially for the independent vocations (*artes liberales*).

Investiture thus descended among the "common" subjects. Its phenomenon initiated a process that could be described as the development of the state administration and the legal possibility for founding of enterprises. The study offers a hypothesis that the ceremony of the medieval investiture in its fundamental structure demonstrates a unified form for all types of investitures, and that the form itself is based on the marital ceremony, according to Roman law, which still appears to be enrooted in many social spheres nowadays.

## RITUAL AS MEDIA AND LAW

Firstly, it is necessary to point out that the rituals do not only mark religious ceremonies, but that the ritual itself and the ritual ceremony appear also as a part of a normative act or as the normative act itself. This act represents a social agreement, an action that is apprehended and acknowledged in all its aspects; a recognition and an affirmation of a particular social role, whether that be religious or secular (comp. classical work by Durkheim, 1995; Gluckman, 1962). After all, let us bear in mind the numerous rituals that today's society invokes (Grimes, 2006); therefore, when discussing these rituals, we can only agree with the findings of the edited book *Rites of Power* that "all societies are ordered and governed by 'master fictions' (divine right, equality for all) which make political hierarchy appear natural; that political rhetoric includes nonverbal communication

1 These are the documents from number 11 to 65, published in »Chartularium Piranense«. Racolta dei documenti medievali di Pirano, ed. by C. De Franceschi, vol. I, 1062–1300, Parenzo 1924 (further: CHART. PIR./I). Comp. Rožac, Pucer, 2010.

2 Morteani, 1896–1897, 249–265; Mihelič, 2001; Darovec, 2007; Zabbia, 2013. Acta Histriae has also published some discussions on the topic of the notary in the Adriatic area (Grbavac, 2008, 2011, 2013; Faggion, 2008, 2013; Darovec, 2010; Marković, 2010; Mihelič, 2011a; Boarin, 2013; Borgna, 2013), but the question of the notarial investiture ritual has not been addressed thus far.

(royal portraits, statistics on crop yields); and that common rhetoric can mean different things to various segments of a culture" (Wilentz, 1999).

Despite this fact, the majority of the investigators of Medieval and Modern Age rituals almost unanimously confirm[3] that rituals cannot be easily defined. Even Althoff firmly states that "Any attempt to define ritual by bringing together the various opinions of scholars in behavioral, ethnic, religious, social-psychological, or other studies on the constitutive elements of ritual is bound to fail." (Althoff, 2002, 71). However, this excellent investigator of medieval rituals continues almost in the same sentence: "We talk about rituals when actions, or rather chains of actions, of a complex nature are repeated by actors in certain circumstances in the same or similar ways, and, if this happens deliberately, with the conscious goal of familiarity. In the minds of both actors and spectators, an ideal type of ritual exists that takes on a material form that is easily recognized in its various concrete manifestations. Actors and spectators act in the consciousness of being bound to a given scheme, which does not, however, prevent the ritual from having the desired effect. Many other supposed characteristics of ritual must be qualified with the restriction 'most of the time' or 'often.' For example, rituals are usually arranged ceremoniously; they frequently serve to acknowledge the social order, and often they serve the purpose of commemoration or confirmation — or both." (Althoff, 2002, 72).

Furthermore, he states that the rituals "constantly reconstitute themselves anew, and even groups or movements that have set out under the banner of antiritualism soon create their own forms of ritual communication." (Althoff, 2002, 73). Although "Religion is usually dominated by ritual, there is a multitude of rituals in the secular sphere, for example, in public communication". Rituals occur in politics, law, and the everyday intercourse of people and groups. Escalations of conflict were ritualized. Changes and innovations in the social order also were announced by such actions, for example, by the ritual of investiture[4] or by rituals for ending conflict and making peace. The new situation was expressed in a very demonstrative way through actions such as taking a common meal, doing homage, or presenting gifts (comp. Althoff, 2002, 73–74). Ritual is public communication, is media; but it is also law. The study of rituals is therefore precisely of fundamental significance for creating an awareness about different historical and social processes as they reflect values, norms, mentalities and social imaginations.

Unfortunately, medieval documents record only a few scattered interpretations of symbolic rituals containing only a few detailed descriptions of the investiture ceremony. This implies that a study of the notarial investiture ritual will require a comparative approach; by composing the fragments of the mosaic that will enable us to understand the

3 In last few years in the field of study of medieval rituals some cogent works were made in circle of Gerd Althoff (2003), who in several edited books managed to collect the leading German and American investigators of this field, which makes these publications exceptional bibliographical sources. I would also like to note a work of Edward Muir (2005), who also serves us with an exceptional enlistment of mainly American bibliography about studies of the rituals, for our discussion I would also like to expose a book, edited by Wilents (1999).

4 Probably the most important referential work about the ritual of medieval investiture, along with Le Goff's (1985), is Keller's article (1993).

process, we will need to place these fragments into a general social context with reference to the operating methods of the medieval institutions. In examining the case of notarial investiture, it will be necessary to refer to knowledge about the time period, customs, mentalities and, in this particular case, also concerning the leading events of the time – the advancement of the (particularly Italian) cities, especially following the victory of the Lombard League against Frederick Barbarossa (1176). At that time, the structure of the three social orders of feudalism (comp. Duby, 1985) received a new important cast member: cities. To comprehend the social processes and the strategies that the new actor used to fight for his place in the social formation of that time, we also need to consider the general social, cultural and environmental circumstances and to make short retrospective into the time period, when the social imagination of the Christian World was formed.

*Representation of the tripartite social order of the Middle Ages – oratores «those who pray» (cleric), bellatores «those who fight» (knight), and laboratories «those who work» (workman: peasant, worker, member of the lower middle class); book illustration France XIII century. Wikimedia Commons. File: Cleric-Knight-Workman.jpg*

Regardless of the relatively long period of establishment of the ecclesiastical institutions, Christianity was a break point in the development of mankind; it was an invention which established a consciousness of the one and only and the perfect God, the Creation; as a consequence, the attitude towards Nature and human beings changed: we are all equal before God, which forms a foundation for equality of rights. Only Otherworldly and Earthly pair determined the earthly missions that were divided amongst the called (clergy) and the laics; meanwhile, asceticism and redemption for past sins and devout life for salvation in the afterlife became religious ideals.

Unusually, after centuries of turmoil, civil and religious wars, everyday risks of being attacked by plundering and general social uncertainty? At a time when the law of the mighty, but quarrelsome, envious and especially fallible gods prevailed and began to reflect itself in the society?

These too were the social foundations for the enforcement of Christianity, a movement that initially had no governmental tendencies, but was rather based on local self-government. The Church had only started to form its "governmental" ideological mindset from antiquity onwards, which enabled a gradual consolidation of power and a decisive influence that its hierarchy would increasingly have over the secular government. It was precisely the priests who had the mission to invent the social order. The spread of Christianity throughout the Roman Empire in the 4th century is not merely a political or spiritual question, a consequence of Constantine's conversion and the missionary enthusiasm of Christians who were since then supported by the public authorities. At the beginning of the 4th century, Christianity was spread especially amongst the middle and the lower social classes in the cities and had hardly yet touched the peasant crowds and the aristocracy. Nevertheless, the economic decline and the development of bureaucracy led to the strengthening of these *middle and lower urban classes,* where Christianity had already had a strong influence. The enforcement of Christianity enabled the Christian breakthrough (comp. Le Goff, 1985, 247).

Since nothing existed between God and the Earth, the priests (first Jesus, then the disciples, bishops and ministers) became the link between God and earthly life, they were God's representatives amongst the people. This connection was established with a blessing. [5]

On the other hand, new forms of secular authority began to emerge whose ceremonies were still mostly structured around the antique ceremony tradition of the adventus ritual (comp. Warner, 2001), characteristic of the Christian rulers of late empire and also of the

5 Thomas Aquinas in the 13th century was still able to state that: *Quod vero quinto proponitur, quod solemniter instituitur archidiaconus vel plebanus, quia investitur per anulum vel aliquid huiusmodi, omnino ridiculosum est. Ista enim est solemnitas magis similis civilibus solemnitatibus (secundum quas aliqui investiuntur de feudo per baculum vel per anulum) quam solemnitatibus Ecclesiae, quae in quadam consecratione vel benedictione consistunt*. (Liber de perfectione spiritualis vitae: "The fifth argument, viz., that an archdeacon or parish priest, is solemnly appointed, because he is invested with a ring, or some other symbol of the sort, is absolutely ridiculous. This investiture resembles certain civil ceremonies, whereby men when invested with a fief are presented with a scepter or ring, rather than the rites of the Church, which consist in a solemn blessing or consecration."). (http://dhspriory.org/thomas/PerfectVitaeSpir.htm#5). In this way, Aquinas, by precisely separating the two types of investiture and their respective rituals, opens the ideological path for secular investitures.

early Christianity within the ritual of consecration of the ecclesiastical dignitaries. When Saint Augustine merged the antique Latin culture with Christianity, he laid the foundations of an authentic Christian culture, which stands on two pillars, on the antique *artes liberales* and on the Holy Bible; his special attention was directed towards the question of the language. This is not surprising. In its primary meaning, Christianity is the faith of the Word. Its teachings concern the incarnation of God's Word. However, Christian loquacity has a completely different meaning than the pagan: its mission is to announce the Truth of the Christ. Additionally, every Christian must first become a prayer and then a preacher. Saint Augustine also indicates the fundamental difference between the signs (*signa*) and objects (*res*), which became the basis for all medieval symbolic theories. Christ multiplied all types of signs; however, God too often sends signs to the people; the miracles are signs and all of Creation must to testify concerning a sign of God's greatness to all men.

*The Anointing of David, from the Paris Psalter, 10th century (Bibliothèque Nationale, Paris). Wikimedia Commons, the free media repository. File: Paris psaulter gr139 fol3v.jpg*

The medieval sacramental theology was based on the sacrament as "the sign of the sacred object": if the Christian sacrament is a sign, the entire classical interpretation of the sign is thus demolished or surpassed. Hoverer, no sacramentary act consists only of gestures, but is accompanied by words, and objects that "signify" the mediation of God's mercy (comp. Schmitt, 2000, 85–89).

The antique tradition regarding gestures in the liturgic texts and also in all ecclesiastical literature of the early middle ages reached an impasse for some centuries; however, at the end of the 8th century the antique language and cultural patterns were revived to be used by a very different ideology and perception of the role of government. (comp. Schmitt, 2000, 74–101). This is most visible in the rituals of consecration and coronation of the kings and emperors, which were given special attention by the Carolingian and later the Ottonian codifications. The new ritual gesture of anointing of King Pipin, executed in 751 by St. Boniface, which was repeated in 754 by Pope Stephen II, had extremely important consequences. With introduction of the chrismation to the consecration of kings and later emperors, their unique and sacred characters were accentuated and equated with the chrismation that St. Remy of Reims used to christen Clovis when he converted to Christianity in 496.

The chrismation was executed with heavenly oil, supposedly brought from heaven by a dove of the Holy Spirit. The same magical oil, kept in a sacred ampule, was supposedly used for the consecration of French kings (Schmitt, 2000, 127). Following this act, the Church succeeded in infiltrating into the sphere of the coronation of the kings and emperors, whereas earlier it was the Church officials, including the Pope, who were confirmed by secular authority. Since the coronation of Charles the Great as the Holy Roman Emperor on Christmas in the year of 800 in Rome by Pope Leon III, the popes began to enthrone the Christian rulers. This also enabled the complete establishment of an important concept in the secular sphere – namely that everything, including secular authority, is given by God, who communicates his will directly through his mediators, using many different signs and objects.

Since the second half of the 11th century, the so-called Gregorian reform established a basic differentiation between the clergy and the laics in the catholic society. The specifics of both parts of the social body and the dignity of their operations were also acknowledged for the laics. The gestures and the ceremonies then became both the means and the sign of social differentiation: the contrasts to the priestly gestures were the knightly gestures that were most representative for the lay nobility that competed with the high ranking clergy for the leading role in the medieval society. But, as we shall see, it was precisely the ritual gestures and the ceremonies of the investiture of the notaries, the knights of *the pen and inkwell* (*penna et calamario*), that enabled notaries (and judges) together with all associated notarial institutions to rise above and to establish themselves as the "Third Estate" between the nobility and the clergy in the time of the advancement of the cities in the 11th and the 12th centuries, and to become the foundation of urban administrative and economic life.

Being aware of the fundamental contaminations of the ecclesiastical ceremonies and the ceremonies of the nobility, it is precisely through the institution of the notary that we

are able to demonstrate how and by what means the rituality of the ceremony influenced the establishment of the city government, as the Third Estate, between the sacred and the secular of that time. The cities not only followed this process but also helped to co-create it, especially if we consider the important influence of schools and universities on the formation of the scholastic moral theology; that probably emerged in the cities and

*Frederick I, Holy Roman Emperor as crusader. Miniature from a manuscript from 1188, Vatican Library. Wikimedia Commons, the free media repository. File: Barbarossa.jpg*

in many ways moulded social imagination over the following centuries (comp. Flasch, 1988; Southern, 1995–2001). The fact that the first urban schools were established primarily to educate notaries and judges, schools that resulted in the "renaissance" of Roman law in the 12th century and fundamentally influenced the rediscovery of the classical works of the antiquity.

In Italy, where there was no local ruling dynasty, Roman law, despite the invasion of the Langobards and spiritual collapse, never entirely died out. Pavia, the capital of Lombardian kingdom, was also the centre of jurisdiction and, since the 8th century, attracted students from all parts of the Western Europe. In Ravenna too, the old capital of Romagna, the study of Roman law never ceased. Towards the end of the 11th century, however, the great teacher Irnerius founded a school in Bologna, that overshone all the others. According to Gracian, its interpreters (glostatores) of the civil and the canon law were much sought-after. This formed a professional basis for the leading role of Bologna in the development of education (first university in 1150) and the development of the institution of the notary. Since 1214, a written collection of rules for the education of the notaries (Rainerius da Perugia: *Liber formularius*) already existed in Bologna; this is even before the collecting and codification of city statutes had begun. After only five years, a special book (*Matricola*) came in use, to record the notaries, who had already been given imperial notarial privilege and were obligated to undergo courses at the city's authorities, otherwise they were not permitted to operate in their vocation, neither within the specific city nor on its territory. Along with the education of the notaries, Rainero also emphasises the significance of the investiture. student, but he did not provide us with any detailed description. However, one of his students, Bencivenne, already mentions in the middle of the 13th century the sceptre that was used by Bolognian podestà to appoint the notary Johannes – a typical characteristic for feudal investiture ceremonies (Ferrara, 1977, 79). But notaries would not have been notaries if they had not written their rules down, in which a Bolognese notary Rolandino de Passageri was the most successful (comp. Tamba, 2002), as he wrote an extensive work *Summa Totius Artis Notariae* between 1255 and 1273 in which he gives detail instructions for the investiture ceremony (Rolandino, 1546, 144–146)[6], which was apparently established in praxis, although the documents in the first instance provide us with meagre information. Since the middle of the 14th century and throughout the 15th century we record more detailed descriptions of the notarial investitures, which evidently followed the secular investitures of the medieval period. It is important to stress that the cities, with their representatives, the podestates, evidently within their common law, first fought for the right to appoint the notaries and did so in the public name.

6 This work was published in printed form in 1546 in Venice; a reprint with short introduction was published in 1977 with support of the Italian National Council of Notaries (Consiglio Nazionale del Notariato). However, by studying substantially extensive literature, which I also cite in this article, I realized that the authors, who conducted more or less in depth research upon cases of notarial investiture, did not consider the Rolandino's instructions about the notarial investiture ceremony in their discussions, accept for Airaldi, who briefly mentioned it in a footnote: "Le formule per le nomine notarili comitali si rifanno, sostanzialmente, a Rolandino de Passeggeri" (Airaldi, 1974, 320), although we were warned on this already by Du Cange (1733, 3, 1536).

To comprehend this process, or at least its basic characteristics, we will have to take a look at the chronological sequence of the development of the institution of the notary and the ritual ceremonies of the investitures.

## THE ORIGINS OF THE NOTARIAL LEGISLATURE

According to Pratesi (1983, 764), the times for the development of a notary practice came not earlier than with the Franconian era. During these times a notary was given, within the framework of prescribed legal stipulations, a relative autonomy, since a notary's signature already assured the necessary public confidence to a document.

With the conquest of the Lombard state (774), the Franconians took over many characteristics of the Lombard law as well and incorporated it, together with the Germanic and Roman law, into their legislation.

The common characteristic of the Franconian law was its striving toward the centralization of the state. This is evident from the structural complexity of the Franconian hierarchic feudal system. This direction was also taken in regulating the office of a notary, which was elevated to one of the central administrative institutions.

The first known Franconian ordinance which refers to the office of a notary goes back to the year 781 when the sovereign ordered his counts that *notaries* had to write down their legal acts (MGH. CRF. I, 190). Charles the Great cemented the role of a notary even further with the ordinance from 803 where he stated that both judges *(skabini*) and lawyers (trustees, probably for lay properties in this case; comp. Costamagna, 1975, 182) had to be nominated. In individual places they were nominated by envoys (*missi*) between a count and the central authority (Amelotti, 1975, 115). In addition to notaries being made equal to *skabini* and lawyers, we can also attribute to this ordinance the beginnings of the legal arrangement of the state of authority, in the name of which notaries eventually made credible appearances at all of the legal acts.

The role of the middlemen between the local notability and the central authority was entrusted in the name of a sovereign to an emperor's or king's envoys (*missi*) and paladin counts (*comes palatinus*), that is, to court judges of Franconian kings who, on recommendation of a bishop, abbot, count or other notability, nominated a notary.

An important ordinance that also signified a new step toward a more autonomous role of a notary was Lotar's chapter from the year 832 concerning a notary's oath not to falsify documents ("*quod nullum scriptum falsum faciant*"; MGH. CRF, II, 62), which also imposed legal responsibility upon notaries.

A notary's activity was at first limited to a territory which was under his superior's authority. Later on a notary was allowed, with the permission of a master who had jurisdiction, to perform his duties also in other regions but, of course, only under condition he had a notary privilege.

With such measures, the Franconian sovereigns wanted to centralize a service of a notary and subject it exclusively to their own authority. However, in the time when feudal estates began crumbling (after the 10$^{th}$ century) and with the development of commerce and crafts and the raise of townships connected with such a development, the rights of

bestowing notary privileges expanded also to other holders of authority. Paladin counts though, at least formally, preserved this duty for a long period of time as, for instance, in the Venetian Republic until the year 1612 when the Republic itself took over this right (LEGGI, 1683, 139).


*Charlemagne, flanked by two popes, Gelasisus I. and Gregory I., is crowned. From the sacramentary of Charles the bald, manuscript of c. 870. Wikimedia Commons, the free media repository. File:Couronnement d'un prince - Sacramentaire de Charles le Chauve Lat1141 f2v.jpg*

At first the Church did not give up the privilege of nominating notaries ("*potestas faciendi notarios*"), the privilege that was as early as in Roman times given to its highest hierarchical members; a notary was nominated by the Roman Pope's authority, "*notarii auctoritate sacri Lateranensis palatii*".

The privilege of granting the notary's authority was later given also to other notabilities, as for instance, to the patriarchs of Aquileia (*Gregorii marchionis Istrie Carniole notarius*), to the Venetian Republic (*ducali Venetiarum auctoritate notarius*), to bishops and, finally, to cities (*notarius civitatis*). In towns, a Great Council chose a notary upon the proposal of the Minor Council; the duration of a notary's employment was determined by a special contract (Stipišić, 1985, 162).

In spite of legislation, the stating of authority in whose name a notary wrote a legal act was not consistently enforced. At the beginning of the 9th century in particular, notaries were tied to their master (a count, bishop, etc.) and to his territory. Only later when notaries, with the permission of a certain master, were allowed to perform their duties also in his territory and with a gradual secularization[7] of the institution of the notary office, it became appropriate to state authority who granted notary privilege to a notary. In the 9th century, according to Costamagna's research (1975, 197), notaries "*Domini Imperatoris*", "*Domini Regis*" or "*Sacri Palatii*" were signed on as recording clerks only on about 10% of (preserved) private documents. However, at the end of the 9th century and in the 10th century a new qualification appears among the recording clerks of private deeds. A "*iudex et notarius*" or "*notarius et iudex*" was a title that was used from the second half of the 10th century on and became, in addition to "*notarius publicus*" and "*notarius et iudex ordinaries*", very common in the communal life as well.

Special schools for both existed even in the Franconian era since Lotar's capitular from the year 825 mentions seats of the following schools: Pavia, Ivrea, Turin, Cremona, Florence, Verona, Vicenza, Cividale (Costamagna, 1975, 196). Frequently *index et notarius* appeared together with a recording clerk with the same title, on documents only as witnesses clearly in order to ratify the validity of them. This joining of titles in one person also contributed to a greater assertion of a notary role; at the beginning of the 11th century, there are only about 10% of "common" notaries, with "*notaries and judges*" prevailing to a great extent. [8]

In that period, most notaries signed themselves as notaries of individual "*civitas*" or "*castrum*". This is evident from the signature of deacon and notary Gregorius on the document of a contract between Koper and Venice from the year 932 (*Ego Georgius dyacono et notarius per consensu populorum scripsi atque firmaui)*, when specifically with "I" (*Ego*)[9] a role of a notary is pronounced, and also from the fact, which we learn from

7 In Istria, the first lay notary, Iohannes, appears in Porec in 1030, while in Koper the lay notary Basilius operates in 1072 (De Vergottini, 1924, 77).

8 This question concerned mainly Genuardi (1914) and Ebner (1979, 85–140, especially p. 123), an extensive commentary also Costamagna (1975, 187 and 197–201) and Pratesi (1983, 763–765).

9 The form is later on used regularly on all notary documents, but it is present already on the Roman tabelliones (Costamagna, 1975, 212).

a deed from the following year (933), that it was drawn up by the city notary of Koper ("*Ego Georgius diaconus et notarius de civitate Justinopolim*").[10]

It is also interesting that none of the known northwestern Istrian notaries up to the end of the 12th century declared himself to be a notary of an emperor, pope or another lower authority – something that became a custom from the middle of the 13th century, although only as a city notary or a notary without an attribute.[11]

It appears, though, that initially a notary authority had no greater value if granted by an emperor or pope. For example, the notary of Piran, Rantulfus, was in the year 1230, "only" a city notary, five years later the emperor's, while in the year 1238 he declared himself a notary of the patriarch of Aquileia, Bertoldo (1218–1251). This indicates both the increased influence of the patriarchs of Aquileia also in the execution of notary activities in Istria and the former unobligatory citing of authority and the equality of the notaries of the towns and emperors. Only from this period on, the Istrian notaries declared themselves most frequently to be patriarch's notaries.

Most of the notaries used their established concluding formula more or less without changes during the time of their activity. Notary Facina, for instance, as a rule signed himself under the written act as "*Ego presbiter Facina auctoritate incliti domini Gregorii Istrie atque Carniole marchionis notarius, hiis omnibus interfui, rogatus scripsi et roboravi*" (CHART. PIR./I, n. 110, 112, 111a,); on three documents he added to his signature: "ecclesie Piranensis" (CHART. PIR./I, 137, 145) or "ecclesie Pirani" (CHART. PIR./I, 111b), on one just "Piranensis" (CHART. PIR./I, 104), and on one with essentially not different "*supradictis omibus interfui*…" (CHART. PIR./I, 103), which is a common sign indicating that he wrote a certain legal act at the request of the persons present. Then in the year 1261, Facina wrote a document at the request of a commune consul, something he made a point of with insertion "… *et de mandatu dominorum consulum scripsi et roboravi*" (CHART. PIR./I, 104).

At the same time, the notaries of Istria also indicate the then diverse ethnic image of the towns discussed, which was not characteristic of notaries only. Prevalent are German names, followed by Latin and Italian names; there are also three Slavic names (Vitalis filius Menesclavi, Sclavionus de Pirano and Sclavono de Bilono) (Comp. Darovec, 1994, 223–228, Supplement 2).

## PRIVILEGES OF NOTARIES

After the rights of bestowing notary privileges were passed to lower holders of authority in the empire, some towns attained imperial privileges of nominating notaries as, for instance, Pavia in the year 1191, Genoa in 1210, Lucca in 1369, etc. In other towns,

10 Comp. CDI ad. annum.

11 In other Istrian towns, as well, notaries did not begin declaring themselves as the emperor's or pope's notaries until the beginning of the 13th century – as, for instance, the Poreč notary Jordanes in 1202 (CDI, ad a.-), while a Poreč notary signed himself in 1191 still as "*Ego Adam Diaconus et Notarius de Civitate Parentine*" (CDI, ad a.). It was similar in Pula, while in Trieste we find the first emperor's notary, a priest Andreas, also in 1202 (CDI, ad a.-).

*Otto II, Holy Roman Emperor. Wikimedia Commons, the free media repository. File: Otto II. (HRR).jpg*

notaries were nominated by local Palatine Counts, while some, in accordance with the development of the commune autonomy and independent town offices that assured credibility and legal safety, attained this jurisdiction independent of the central authority (Pertile, 1902, 295–297; Ferrara, 1977, 56–57; Pini 2002, 1–20).

Even though emperors granted to northwestern Istrian towns rather broad privileges from the 10th century on, there is no concrete evidence of them granting rights to nominate notaries. However, a frequently vague form of the imperial diplomas with which towns were allowed to govern according to the local law and customs (such was a privilege of the Emperor Oton I from the year 968 that was appointed also by his son Otto II in 974 (CDI, ad a.-); this privilege allows, in addition to the above mentioned, the people of Koper and Piran to defend themselves in their territory with their own army and that they themselves interrogate in legal affairs) may indicate that towns had certain jurisdiction in at least appointing town notaries. This is especially true if we corroborate the Leicht's (1910, 186)[12] argumentation that as far as the Istrian office of a notary is concerned, it is about the Byzantine tradition of city scribes (*scribae civitatis*) or Roman *eksceptorii*. These were described already by Bresslau (1889), who used as an example Ravenna and southern Italic notaries as public servants who had absolute control over documents that originated in the city to the point that even church scribes had to offer their documents for examination and validation by the communal chancellors before publishing them. We can assume from the above mentioned that in these "*ius familiaris*" and "*consuetudines*", two terms that were used for the common law in privileges, notaries had their place as well. This is perhaps best illustrated by two known 10th century notaries from Koper, Georgius and Rotepertus, who declared to be notaries of the city of Koper.[13]

The question of what authority, beside the city authority, granted notary privileges to notaries was obviously addressed by the contemporaries. There are at least three documents that attest to this. Due to a conflict between the bishop of Koper and the abbess of the convent of St. Maria in Aquileia, they interrogated in front of arbiters many witnesses, among them also those who were to confirm that certain notaries had a necessary privilege for practicing this profession, most likely because of documents in the subject of the conflict. The priest Johannes from Koper testified under oath that Likofred and Almerik had been and still were (Koper; author's comment) notaries *(tabelliones*) from many years ago till that very day. When asked how he knew this, he answered that he was present at St. Maria's …when they were granted the office of a notary by the border count Bertoldo (Kos, 1928, V, n. 9).

We hear similar testimonies about a conflict between the inhabitants of Piran and the bishop of Koper, Aldigherius. The conflict was caused by the olive oil tithe when the bishop of Koper apparently wanted to appropriate the Piranese olive oil tithe that was granted to the Piran chapter. With an accusation that the priests of Piran sided with the inhabitants of Piran and instigated them against him, the bishop Aldigherius excommunicated the priests and attempted to gain a profitable olive oil tithe in this manner. The inhabitants of Piran were so badly affected by this act that they fought together with their God's representatives in the name of justice against the bishop of Koper. The conflict lasted a good four years, from March 1201 till October 1205 (comp. CHART. PIR./I n.

12 Comp. Kos, 1956; Vilfan, Otorepec, 1962.

13 *Ego Georgius diaconus et notarius de civitate Justinopolim…; Ego Rotepertus, dyaconus et notarius huius civitatis Justinopolim*… (CDI, CHART. PIR. and Kos, *ad annum* 933, 977).

11–65), and included several interventions by Pope Inocente III and was unfolding in front of several arbitration courts from Venice, Trieste, Muggia, Padua to Ferrara, where it was resolved on behalf of the people of Piran. While the conflict lasted, both parties clang to all possible means in attempt to prove their rights.

On 14th December 1201 (CHART. PIR./I, n. 22), during one of the first interrogations, the bishop of Koper already questioned the validity of authorization that was issued on 16th July 1201 by notary Dominicus of Piran to Iusto de Bona and Paponi de Ioane; the two were elected by the will of the clergy and the entire population of Piran to be the authorized representatives in the conflict with the bishop of Koper (CHART. PIR./I, n. 14). The bishop further raised objections to the authorization given to deacon Artuicum, who had been selected by the clergy of Piran to be their advocate with the pope's envoys at the respective conflict and whose authorization was also written by the notary Dominicus (CHART. PIR./I, n. 17) on 1st December 1201.

The bishop of Koper objected Artuicum's jurisdiction in performing a notary profession using the argument that Artuicum had not been appointed by a competent authority and, thus, his authorizations were invalid. He claimed the same about the mediation of the representatives of Piran at the pope's envoys (the bishop of Torcelano, Leonardo, and the leader of the Grado Church, Stefano). However, a number of witnesses, with presbyter Venerius among them, asserted that "…Dominicus is considered to be a notary in the castle of Piran. All of his documents about various contracts and other things and all of his testaments have validity in the town of Piran." Additionally, Venerius testified that "he was present when Dominicus took an oath of a notary in presence of Count Bertold, who was given the authority from the bishop of Freising and the bishop from the emperor." (Kos[14], 1928, V, n. 250)

Undoubtedly interesting for our question is a further testimony of Venerius, which refers to the very ritual of bestowing a notary privilege. Venerius claimed that Bertold inaugurated Dominicus as a notary with a brim of his coat[15] in front of *Porta Domus*, in the presence of the people of Piran, the town's head Alberico and other town dignitaries (CHART. PIR./I, n. 22:23/7).

The ritual was similarly described by Odolricus de Ripaldo, except that he mentioned a fur coat[16] instead of a coat, while Petro de Imena saw a glove with which Bertold confirmed Dominicus as a notary.[17] As Iohannes Ostiarius swore, this happened about half a year earlier (CHART. PIR./I, n. 22:25/20).

Even a greater doubt about the regularity of installing a notary rises with a witness of the bishop of Koper, presbyter Peter, who said "…under oath that it is not possible to say whether Dominicus is a notary or not. Bertold, who supposedly appointed him as a notary, has no such rights." (Kos, 1928, V, n. 250; comp. CHART. PIR./I, n. 23: 32/19).

---

14 M. Kos, who edited (1928), after his father's notes, the fifth book of *Gradivo za zgodovino Slovencev v srednjem veku* (Material for the history of Slovenes in the Middle Ages), placed the event before the year 1216.

15 *Et dictus comes investivit dictum Dominicum de tabellionatu cum lampulo mantelli*,…(CHART. PIR./I, n. 22, 23/6; comp. Lex. Lat., 639).

16 *Et dicit quod fuit investitus per lampulum pellium Bertoldi*. (CHART. PIR./I, n. 22: 29/3).

17 *Dicit tamen quod investivit eum Bertoldus cum ciroteca*. (CHART. PIR./I, n. 22: 28/20).

*Piran, at the end of the 16th century, a detail of Domenico Tintoretto's painting (PMSMP, photo D. Podgornik).*

In fact, it is hard to establish which Bertold is being talked about. There was a Bertold of Andechs (comp. Mihelič, 2011b) who as margrave ruled Istria at the time. However, it is most unlikely that this is the same Bertold as the one in the Piran case, for as a margrave he would not have been given the privilege of granting the office of a notary from the Freising bishop and even less so from Meinhard, a count of Gorizia, who is mentioned by some of the witnesses (Walterius candelarius) as a mediator between the bishop of Freising and Count Bertold (of Piran) at bestowing such a privilege (CHART. PIR./I, n. 22).

The other Piranese witnesses also testifies that Bertold was given the privilege of installing notaries from the bishop of Freising, but their statements are not in agreement in defining the title of his function in Piran. For most of them, he is just a count, for others a count of Piran[18], for some a count of the territory and place[19] and Venerius is perhaps

18 Tiso iudex de Pirano (CHART. PIR./I, n. 22: 26/9).

19 Albinus de Donada:"…*Bertoldo comite terre, et de loco*,…" (CHART. PIR./I, n. 23: 31/28).

again the most exact by stating that the podestà of the place is in the name of the bishop of Freising[20]. Even though the first podestà of Piran is, in the sense of the commune administration, mentioned already in 1192 (CHART. PIR./I., LXV; comp. Benussi, 1924), in this case it is probably still all about "only" a substitute of bishops of Freising who received from the Istrian margrave, Udarlik Weimeier, Piran and Novigrad in 1062 (CDI, ad a.-). In the year 1201 then, the bishops still had the right of bestowing a notary privilege in Piran, which was transferred in the mid-12th century to the counts of Gorizia. Some historians agree with Kandler's opinion that the previously mentioned Bertold was some kind of a town count (*burgravio* in Italian, from the German *Burggraf*) (Morteani, 1886, 11).

The hearings of the arbitrary court concerning the conflict about the olive oil tithe indicate that in the preceding time it was apparently sufficient for notaries to be appointed by the town community.

Public confidence was not questioned as far as documents of two Koper notaries, Almericus and Licofredus, are concerned, because they were confirmed by margrave Bertold. However, the investiture of the Piran notary, Dominicus, remained doubtful since he was installed by count Bertold. The development of events concerning the olive oil tithe, though, indicates that later on the notary's authority was no longer questioned, which means that the "town count" Bertold also validly enjoyed the right of nominating notaries or the solemn fact that the notary was affirmed/acknowledged by city community, was enough that his acts had public confidence (Zabbia 2013, 206–210).

It is evident from this event, which took place in the neighboring Italian lands as well, that the right of granting a notary privilege also gradually spread to lower bearers of authority, first on paladin counts, bishops and eventually even to lower officials. The latter at first received an attestation on notary nomination from the emperor (*imperiali auctoritate*), pope (*auctoritate sacri Lateranensis palatii*) or their emissaries and later on this right became hereditary. With the development of a commune life, however, this right could be transferred to the commune as well (Pertile 1902, 295–297; Ferrara 1977, 56–57; Pini 2002, 1–20).

It appears, though, that until the right of nomination was in Venetian Republic centralized in 1612[21], this function was executed in Venetian Istria by the emperor's or pope's substitutes, i.e. paladin counts (*Sacri Romani Imperii comites palatini, Sacri Lateranensis Palacii comites palatini, Sacri Lateranensis Palacii et aule imperialis comites palatini*; comp. Airaldi, 1974), who were given the authority to appoint notaries. These substitutes were at the same time also town noblemen, which meant that a town gained competent persons who had the right of nominating notaries. Such was the case with the first known Koper paladin counts from the Carli family who received this honor in the mid-14th century. This right was hereditary and was, together with the title of a count, transferred to descendants.

We have a similar case in Pula, where the city codes of law issued in the 14th century and some document from 1292 state that a family from Pula (Castropola) received from

20 "…*comite Bertoldo, qui est potestas illius loci per episcopum de Freisengo*,…" (CHART. PIR./I, n. 22: 23/3).

21 Comp. for Republic of Venice Pedani Fabris (1996), for Rome Lombardo (2012, 254–259).

the patriarchs of Aquileia (Benussi, 1923, 340) a privilege of nominating notaries (*tabellionatum*) and that no one may practice this profession in town or its surrounding unless he was previously introduced by one of this family's members before the town assembly (*arengo*) and, thus, appointed to perform this duty. No private document was valid, either, unless corroborated (*roborata*) by one of the members (Pertile, 1902, 296).

A similar practice of issuing a notary privilege existed in Koper in the second half of the 16th century. This is evident from a privilege, written in the year 1574 in front of witnesses, a noble *(nobilis*) Johannes Baptista Gavardo and Sir (*dominus*) Vincenzo Metelli (a citizen and inhabitant of Koper) in the Koper city square (*Platea Communis*) by Koper notary Aloysio Grisoni. It was then that Petrus, the son of a Koper *portulano*[22], Sir Antonio Rosano, requested from the nobleman Sir (*nobilis vir dominus*) Aloysio Verzi, a worthy paladin count, to be given a notary privilege. His request was granted, but only after he swore by the holy gospel that he would perform duties of a notary profession loyally and honestly. After the event was announced via the city crier (*praeco*) in the city square, Peter was able to start his employ[23].

After a college of notaries (*Collegio dei Nodari*) was finally founded in Koper in 1598, the college took over the duty of verification and nomination of notaries and, as indicated in a surviving record book from this institution, notaries were verified and nominated there for all of the towns of Venetian Istria[24]. In the college, a special examining body was nominated, which verified candidates for notaries. In addition to a Venetian podestà, the examining body was made up of the head of the college – *prior*[25] – both *vicedomini*[26] (in the college they appear as *assesorii*) and four college members.

Here the question of who verified the abilities of a candidate prior to it presents itself. We know that this person had to be qualified in the skill of writing and grammar above all, but he also needed to be knowledgeable in law, at least the law written in city statutes.

The closest known notary school was founded at the beginning of the 14th century in Cividale. However, most likely only masters, who then taught their future colleagues, came out of it. The shortest way to achieve a notary privilege was most certainly in apprenticing with one of the already active "master" notaries in city and priority was, thus, given to sons and closest relatives of a notary. The people of Piran, however, were not always fortunate in choosing their "imported" notaries, which even cost one of them his right hand. What made this event even more disgraceful was the fact that notary Michael de Parma, an inhabitant of Venice, was also *magister*, that is, a notary master. In 1330 he was convicted of forging some documents and sentenced to having his right hand cut off,

22 At least from the first half of the 14th century on, the Venetians appointed special officials for controlling imports and exports from the Koper ports at the Gate of St. Michael (approximately where today's civil port is located, which was the most important port at the time), at Izola's Gate and in Bosedraga, *portulani* were located. Comp. SENATO MISTI, 1888, 2. 6. 1342, 18. 12. 1345, 3. 1. m.v. 1348, 15. 9. 1357 etc.

23 AST. AAMC, bob. 108, 41; Majer 1904, 74.

24 AST. AAMC. Libri dei Consigli, Libro Consigli dei Nodari 1598–1737, bob. 709 (Majer, 1904, n. 567).

25 The first known prior of the Koper college of notaries was Francesco del Tacco, who was upon his death in 1614 replaced by Piero Vida (AST. AAMC, bob. 709, f. 206/7; Majer, 1904, n. 567).

26 About vicedomini comp. Darovec, 2010.

which was at the time a punishment for such an offense that was foreseen in almost all of the city statutes in the near and far surroundings (STAT. PIR., II/28). It is not known if the punishment was actually carried out, since we know of this event only from the testament of the convict (CHART. PIR./II, 71), who wished to protect his conscience against consequences, since such a "bloody" punishment frequently led to deadly results.

## THE RITUAL OF NOTARIAL INVESTITURE

Especially in comparison to the investiture of knight, the formation of the notary investiture ritual has been given little attention so far in studies. But evidently knight investiture rituals were soon followed by their notarial counterpart: perhaps we could take a risk with a hypothesis that notarial investiture rituals developed in parallel to knights' investiture rituals or even before them. We have to consider that Carl the Great codified oaths for notaries, who at the time were clerics, and by their oath ordinated them into their own order.

We must not overlook juridical function (»*iudex et notarius*« or »*notarius et iudex*«), which was executed by notaries at least from the 9th century onwards, as presented in the chapter *The origins of the notarial legislature*. Primarily, notaries were clerics or, more precisely, monks. Monasteries were then educational institutions, which enabled all social classes to receive an education and to attain to corresponding administrative offices, based on the education level achieved. Only monks were educated in writing, grammar, theology, law and other proficiencies.

Throughout this time it was precisely the notaries who were the faithful recorders and administrators of all ritual activities.[27] Not only did these monastic notaries appropriate to themselves the role of expounders/interpreters and owners of collective memory but also a primal status in directing social relations, moral, values. Among the people of early middle ages, clerics performed the function of leaders and ideological interpreters; therefore, we can justly conclude that they performed readings of rituals (Le Goff 1985, 384), an analysis of which phenomenon is excellently presented in Schmitt's (2000, 33–100) and Duby's (1985) works.

What role and significance was attributed to notaries is evident from the ritual of notarial investiture; just as with the bestowing of honours on a count or a knight, notaries had to accept the investiture by kneeling down before their honour giver, but instead of a sword, they accepted it "with a feather and inkwell" (*cum penna et calamario*). In accepting this investiture, a notary had to take an oath of loyalty, honesty and knowledge. He attained the latter by attending an acknowledged grammar or judicial school for at least one year. The knowledge of notary skill was then appointed by an experienced notary, a prior of a notary corporation (collegiate) or a teacher at one of the notary schools, widespread in the 13th century after the establishment of universities in Italy.

27 In picture *Immixtio manuum* from 9th century is notary between two actants.

Indeed, the case of the already mentioned investiture of the Piranian notary Dominic in 1201 testifies to one of the oldest summary descriptions of notarial investiture ritual. The seemingly unusual statement that "*dictus comes investivit dictum Dominicum de tabellionatu cum lampulo mantelli*", meaning that he was invested with a verge (thread?) of the coat, does not correspond with established ritual of investiture of notaries with pen and inkwell (*cum penna et calamario*), which is frequently mentioned from the end of the 13th century. In point 82 of 99 described investiture rituals, Du Cange in the 18th century still refers to the ritual of notary investiture as "*Cum penna et calamario*" (Du Cange, 1733, 3, 1536). Yet, according to accessible sources, another part of the ceremony was also a slap (*alapa*), given to the notary candidate during the ritual ceremony. [28]

If in the document dated in 1201 the Piranian notary Dominic is invested "*cum lampulo mantelli*" and such a case is not to be found in later periods, this does not necessarily signify that up until then the investiture did not proceed according to customary ritual. However, it testifies to the gradual formation of the ritual of notarial investiture since the end of 12th century, when medieval rituals of so-called investiture bestowal for all crucial areas of social life were formed.

Since the end of the 13th century, there was just one specific act that was frequently mentioned in the documents of the notarial investitures, "… *cum penna et callamario legitime investivit*…" (comp. Airaldi, 1974, 243–249), followed by declarations of duties and competences that followed from the oath, which are a component of the concluding act of investiture, i.e. the legal-normative content of the instrument – notarial privilege. For notarial investitures there are some descriptions from the second half of the 13th century; however, it is from the second half of the 14th century that the more detailed descriptions start to appear. But the notaries had established their investiture ritual a long time before that. The pen and the inkwell are in fact the symbols of investiture for priests, especially for monks and certainly for those who also performed notarial duties.

At this point we will take Bologna as an example once again. Following Rainerius' demand in 1219 for notaries to have a public investiture ritual, along with their instrument, in the middle of 13th century, Bencivenne, most likely a Ranierius' student, reports that "Bolonian podestà formally appointed a notary with scepter (*baculo*), held in his hands."[29] However, the sceptre mentioned (*baculo*) can be in our case understood in a broader sense of a symbolic investiture object or an act, similar to expression of *festuca* (switch, straw), which signified a transmission of authority and property, as explained by Du Cange in his article on investiture.[30]

28 For comparison of notarial investiture procedures, see studies and documents in: Someda 1956, 42–43; Corbo, 1972; Airaldi, 1974, 178–315; Petti Balbi, 1974, 17–33; Brunettin, 2004, 221; Tilatti, 2006, 135–136; Darovec, 2007; Lombardo, 2012, 241–259; Zabbia, 2013, 210–213.

29 … *dictus potestas de arte ac officio tabellionatus ipsum Iohannem sua auctoritate et communis Firmi cum quodam baculo quem habebat in manu solempniter investivit ... libere hoc officium exercendi* (Ferrara, 1997, 79). Ferrara assumes it was a novelty in process of communal notarial investiture.

30 Du Cange, 1733, 1521: "… Addebatur hisce symbolis, *festuca* quae interdum fustis dicitur, *baculus, virga*, & c. cujus traditione, dominium rei pariter translatum crederetur: cum *baculus ac virga*, domini in suos ac res suas jus & potestatem denotet …" about *festuca* as symbolic element of making a contract, i.e.

*A detail of a painting, "A Twelve-Year-Old Jesus Among Teachers" (oil on canvass, 282 x 240 cm). Strunjan (commune of Piran), a parish church of "Mary's Visitation" (16th century). There are clearly discernible: a traditionally hooded notary, books, scroll of parchment, inkwell and feather (photo: D. Podgornik, 1994).*

Was the sceptre (*baculo*) even then a pen and inkwell? Most probably: In 1266 Perugia the podestà of that time had already invested notary *cum penna et calamario* (Lombardo, 2012, 241), following Du Cange's statement that even Rolandino (middle of 13th century) in his *Summa Notariae* states that notaries are being appointed "*cum penna et calamario*"[31].

Thus Rolandino serves us with an instructional description of the notarial investiture ceremony in his work: *Summa Totius Artis Notariae* (1255–1273):

*Priuilegium creandorum notariorum ab aliquo authoritatem habente concessum.*
*Rubrica.*
*De imperialis plenitudine potestatis in egregios viro's Comites de Panico: iccirco creandorum tabellionum iurisdictio emanauit, vt eiusdem iurisdictionis gratiam imperij refunderent in subiectos. Ea propter ex indulto eis super hoc ab imperiali culmine*

investiture, as well as possibilities about withdrawal from personal obligation of contract cancellation, *exfestucatio*, *comp.* Le Goff, 1985, 411–418.

31 Du Cange 1733, 3, 1536: *Cum Penna et Calamario investitos Tabeliones observat Rollandinus in Summa Notariae cap. 5. extremo; quod etiam habetur in Constituzione Ruperti Imp. an. 1401, apud Goldast. tom. 1. pag. 382*. (comp. Rolandino, 1546, 144v.–146v.).

*priuilegio speciali, ut in eodem euidentius continetur: Vir nobilis dominus An. Comes de Panico. An. Boetii publicum & auctenticum tabellionem creauit, & fecit, ipsum que flexis genibus deuote suscipientem de arte ac officio tabellionatus publice operando tam in instrumentis & vltimis voluntatibus, & quibuscunque iudiciorum actis autentice conscribendis, quod in omnibus & singu. faciendis, quae ad officium dictum spectant per omnes terras & loca, quae Romanum profitentur imperium, cum penna, & calamario legitime inuestiuit.*

*Qui An. ipsi domino Comiti uice & nomine Imperij Romani recipienti corporale praestans fidelitatis debite sacramentum, iurauit etiam ad sancta dei euangelia, tam instrumenta publica quod priuata, vltimas voluntates, & quaecunque iudiciorum acta, & omnia & singu. quae ex debito ipsius officij facienda occurrerint conscribenda iuste, pure, ac fideliter omni simulatione, falsitate, & dolo remotis scribet, leget, & faciet, & scripturas illas quas in publicam debuerit formam redigere, in membranis, et non in chartis abrasis legaliter conscribet.*

*Necnon sententias & dicta testium quousque publicata fuerint & aperta, sub secreto fideliter retinebit.*

*Et omnia recte faciet. Quae ad idem officium pertinebunt.*

Let us briefly sum up the main elements of the investiture.[32] The palatine counts have the jurisdiction to appoint the notaries in the name of the Emperor,[33] but candidates must prior demonstrate adequate knowledge. The ceremony itself is proceeded as follows: the notarial candidate (*scholaro*) kneeling humbly (*flexis genibus deuote suscipientem*) appeals to the palatine count to be appointed in the vocation and into the office of the notary (*de arte ac officio tabellionatus publice*), in order to be able to issue valid documents for all areas of the Roman Empire, using the inkwell and pen to lawfully invested him (*cum penna, & calamario legitime inuestiuit*), after the candidate had sworn his loyalty to the palatine count, with a pressing firmly on the Bible (*recipienti corporale praestans fidelitatis debite sacramentum, iurauit etiam ad sancta dei euangelia*), and had given a verbal oath to faithfully, honestly and lawfully operate in his vocation. After this act, the present notary writes down the investiture document and hands it to the newly invested notary.

32 Rolandino adds a substantially extensive commentary to this rule, in which he also defines the oath of the notary, given to God, Jesus Christ and the Holy Spirit, to the Virgin Maria (*semper virginem Mariam*), *& per quatuor euangelia quae in manibus meis tene,* to the Archangels Michael and Gabriel; furthermore, it is also interesting that he refers to the Emperor Justinian and even to the Emperess Theodora, obviously as a model of good rule (*seruitium me seruaturum sacratissimis meis dominis Iustiniano & Theodorae eius coniugi occasione traditae mihi ab eorum pietate administrationis*) (Rolandino, 1546, 145).

33 It is explained in the commentary that the notaries, invested by the palatine counts, have to sign their documents in the name of the imperial authority (*Ego P. V. imperiali auctoritate notarius*), whereas if the notary is invested by the pope, their reference is *Ego P. authoritate sedis apostolicae notarius*. When the notary is invested by the city, he is allowed to lawfully operate in his vocation only within that city's territory (Rolandino, 1546, 145).

*Panel of Saint Michael, detail. Master of Soriguerola, late 13th century. Museu Nacional d'Art de Catalunya. Wikimedia Commons. File: Taula soriguerola-detall.jpg*

As the text itself testifies, the written custom of investiture had by then already been established. In this light, the question certainly emerges whether this custom was established and preserved only in Bologna or also elsewhere. It seems that the second assumption has more validity; this will be demonstrated in following examples.

We are familiar with some examples of records of investiture of the Istrian notaries in service of the Patriarchs of Aquileia from 1292, 1293, 1326 and 1337. The source from 1292 already reports that Bonifacio of the late (del fu) Ottone came from Pola to Udine under escort of two fellow townsmen as witnesses, and that after he declared the customary oath, the patriarch of Aquileia Raimondo della Torre invested him as a notary with "inkwell and pen"[34]. The following year in Cividale del Friuli a Capodistrian Michele de Lugnani,

34 1292 July 10, Udine. *Die X intrante iulio; in castro Utini, in nova sala palacii patriarcalis; presentibus nobili viro domino Musca de la Ture potestate, Albrico filio quondam domini Pencii et Antonio civibus Polensibus, Acino de Oçino et aliis. Reverendus in Christo pater et dominus R(aymundus) patriarcha officium tabelionatus Bonifacio nato quondam domini Ottonis de Pola commisit eumque de illo quodam* calamario

after declaring his oath, was also named a notary and handed a pen and an inkwell (*penna et calamario*). More details are documented in a document from 1326, when Giovanni Stumulo from Muggia came to Udine in escort of the notary of Muggia, probably his teacher, he was invested by the Partiarch's vicar "cum penna et pugilari", but after he had been proven capable of operating in his vocation and having sworn upon the Bible. The ceremony is even more clearly described in a document from 1337. A Capodistrian Cristoforo, in escort of some of his fellow townsmen, knelt in front of the Patriarch of Aquileia and swore to use the parchment, to compose the documents and to keep the confidentiality about their content correctly and without falsification, then the Patriarch "c*um penna et calamario legittime investivit*" him (Brunettin, 2004, 221). At the end of the ceremony the notary Gubertino from Novara, who was present, composed a document for Cristoforo detailing his notarial privilege, which also contained a pressed seal of the Patriarch (comp. Zabbia, 2013, 211–212).

*Church of the Holy Saviour, west transept: the archangel Gabriel. Cyr Manuel Evgenikos, 14th century. Wikimedia Commons. File: Glise du Saint-Sauveur, transept ouest l'archange Gabriel. Géorgie, Tsalendjikha.jpg*

et penna manu propria investivit*, recepto ab eo fidelitatis debito iuramenti quod in talibus recipi consuevit, ut illud et ea que ad ipsum officium spectare noscuntur fideliter exequatur.* (Pani, 2009, 223–224)

In continuation we will present a description of a notarial investiture in Friuli from 1396, as recorded in Someda (1956, 42–43).

A person who wished to be nominated for the role of notary presented himself to a Palatine Count and, before witnesses, asked humbly to be invested into this duty. If the request was granted, the count appointed him a notary in the following manner: "He installed him with a tablet and a feather that he held in his hands, and slapped him as a warning."[35]

Then it was explained to him what acts exactly he was entitled to draw up his instruments for to attain a character of being public: contracts, court papers, testaments and other instruments and deeds.

The swearing-in then followed: "I swear by the Holy Gospel that I will perform the duties of a notary justly, clearly, faithfully and lawfully. I will not draw up false papers or false documents; I will not falsify old instruments or exchange individual phrases. I will do no harm to the rights of churches, hospices, orphans, widows and other wretched persons but instead protect and defend them within my power. I swear loyalty to the Holy Empire, to the Palatine Count and to everyone in his entourage. If it comes to my attention that anyone has opposed the Palatine Count or attempted to take away his jurisdiction, I commit myself to defend him with all my power and inform him about this either in writing or orally." (Someda, 1956, 43).

After this procedure, the Palatine Count ordered the notary (usually a master-teacher of the notarial candidate), – they were, apart from the public, always present during the ritual and at this type of ceremony they had a combined role of administrator and legal expert – to write down an act of investiture.

Still more cases of the notarial investitures can be traced in the appended table, where, based on collected preserved inscriptions about the notarial investiture, the main phases of the ritual, as it was developed in the middle ages, are exposed. These cases of the investitures from Istria, Friuli, Bologna, Genova, Perugia and Rome confirm that the ritual, as written down by Rolandino, was in praxis over a wider territory and was in use until the end of the middle ages, regardless of whether the appointer was the trustee of the emperor, the pope or the city. Although the ritual ceremonies indicate that there are some variations to this procedure, the structure of the ritual is invariable.

Although Rolandino does not mention the slap within the investiture ceremony, it was obviously preserved in praxis, since it symbolizes the judicial investiture gesture. On the other hand, these cases also hold reference to investitures of notaries and judges, who are invested "cum penna et calamario", which gives these symbolic gesture and objects the value of investiture symbols for notaries as well as for the judges: perhaps the most illustrative case of this is Tiziano's depiction of the holy and the profane love, amor, in the sense of medieval charity (*caritas*), the deep inner spiritual love, that was also ascribed as a virtue of the secular judicial authority, that is expressed in this picture by holding the investiture objects "*penna et calamario*" in his left hand.

35 "*… per pugilar:m et penna:m quos in sua mano tenebat eidem alapa : in signum memoriae inferendo investivit*" (Someda, 1956, 42).

*Sacred and Profane Love (Italian: Amor Sacro e Amor Profano, also called Venus and the Bride) – detail; oil painting by Titian, circa 1514. Wikimedia Commons. File: Tiziano - Amor Sacro y Amor Profano (Galería Borghese, Roma, 1514).jpg*

## THE INVESTITURE RITUAL STRUCTURE

Studies of medieval rituals clearly show that these types of investitures were a part of a broader concept of standardised ritual. The latter was formed according to the secular rituals of the ruler's inauguration, which shows an evolutionary mixture of symbolic ritual gestures, rooted in ancient profane and religious rituals, which were, especially from the Carolingian-Ottonian period onwards, imbued with Christian symbolism. Along with the enthronement of rulers and vassals, the ritual ceremony of notary investiture can be compared to the ritual of investiture of knights, as it is accessible in sources from the 12th century onwards and which has so far been given a lot of attention in literature.[36]

Characteristic of medieval investitures is the presence of public or a witness' representative on the public's behalf. The ritual itself was certainly designed for the public, as its key function is bestowing the public services, offices; therefore, the formal ceremony was not only an act of appointment to a position but also an act of formal announcement of the appointment to a certain position or office, of enactment of (godly) missionary, as the process of investiture was ideologically interpreted and successfully established by medieval Christian theocracy.

Le Goff (1985, 387–394) summarises the entire ceremony of investiture as it was illustrated in beginning of 12th century by Galbert of Brugge, a notary, a monk and chronicler, who differentiated three phases of symbolic ceremony of entry into vassal relationship, as it was distinguished and obviously also perceived by the people of the Middle Ages:[37]

1. *Homage* (a bow, acceptance of faith, (god's) gift)
2. *Fides* (faith, loyalty, trust, oath)
3. *Investiture* (concluding act)

It should be stressed that within the ceremony, three categories of symbolic elements were used: words, gestures and objects.

36 That the methodological basis that the ceremonial forms of medieval institutions followed can only be explained by comparing similar or related rituals was already established by Le Goff (1985, 399). Besides this and Schmitt's (2000) study, it is relevant to mention a thorough analysis of the ritual gesture of the Kiss of Peace of Petkov (2003) and an article about the specifics of homage of Roach (2012), all using numerous referential bibliography. Different interpretations or images of knight investitures are also accessible on the World Wide Web, e.g. *Investitura a cavaliere* (https://www.youtube.com/watch?v=yA8Th-qqgR0; 27.04.2014). About the history of chivalry comp. Flori, 1998.

37 Here we could also compare the excellent work of Duby (1985) on concept of the trinity of that period; specifically p. 353–359. At the same time a comparison with the roots of three-partial Indo-European ideology imposes itself, as it was researched by Dumezil (1958).

*Immixtio manuum. Miniature from Archive in Perpignan (France), shows medieval homage, a notary in the middle, who is recording the ritual. Wikimedia Commons. File:Hommage_au_Moyen_Age_-_miniature.jpg.*

The first phase: *homage*.[38] Usually this consists of two acts, the first of which is verbal. This usually consists of a statement, an oath that expresses the will of the intercessor, to become man of the Lord, the same way as a new Christian at a christening, either with his own tongue or that of a godfather replies to God, who, with the mediation of the priest, asks the candidate: "Do you wish to become a Christian?", he answer: "I do". In this way, the intercessor makes an oath, which purports to be universal; yet, from the first stage, indicates that refers to his Lord. The second act complements the first phase of entry into vassalage: it is *immixtio manuum* – the vassal sets his clasped hands between the palms of his Lord, who covers the vassal's hands with his own. It is a gesture of meeting, mutual contract. In *immixitio manuum,* it is clear that the surrounding hands belong to a person who has a higher position, it expresses a symbolic gesture of the submission of vassal to the Lord; on the other hand, the lord's gesture holds a promise of help, protection and a higher strength/ power that manifests itself in this promise. The oldest documents about the vassalage cer-

38 Gift, as the elementary gesture, value and norm in establishing social ties as early as in primal and antique societies, was excellently presented by Mauss (1932/24) in his essay The Gift.

*Dextera Domini. The hand as an isolated motif. Fresco from Sant Climent de Taüll, Catalonia. Wikimedia Commons. File: Hand gottes.jpg*

emony dating from the first half of the 7th century describe this hand ritual (Le Goff, 1985, 389, 403, 453). Considering that the ritual consists of reciprocal gestures, it is important to stress one of the great chapters of medieval and universal symbolism: hand symbolism. In the Roman legal tradition and terminology *manus* is one of the expressions for *potestas*, authority, especially as one of the main attributes of *pater familias*. The symbolism of the hand, especially the hand of God the Father, created by the Carolingian and Ottonian theocracy which followed, has received a lot of attention from Schmitt (2000, 101–146), who states that at that time antique language and cultural patterns re-emerged to serve very different ideologies and perceptions of authority, when the hand of God the Father, firstly through iconography, becomes a symbol of the Otherworldly and Earthly God's presence.

The concluding gesture of homage is at the same time the passage to the second phase: an oath of faith or fidelity. In most cases it is sworn on a religious object, e.g. a Bible or relics. In the oath there is an explicitly expressed personal bond with the appointer, a guarantee for which bond is given by Church authority, which it always succeeded in establishing, at least on a symbolic level through the ritual (comp. Le Goff, 1985, 451).

The oath in the case of the investiture of knights and notaries was expanded during the 12th century. The emphasis was on morality and justice in the performance of service; a morality and justice that can only be thought about given appropriate education.

*Vassal's oath: Roland's oath to Charlemagne, who invested him with the sword Durendal (a late medieval manuscript miniature). Wikimedia Commons. File: Rolandfealty.jpg*

After the oath, a concluding act follows – the investiture. Depending on the type of investiture, this is also performed in various ways but always using three categories of symbolic elements: words, gestures and objects. In feudal-vassal ritual, the enclosing gesture – the kiss of peace – that seals the contract of the oath is extremely powerful (comp. Petkov, 2003).

Symbolic investiture objects can be canonic, religious or profane. Du Cange lists 99 symbolic objects; Le Goff, on the other hand, classifies them into three categories: social-economical, social-cultural and social-vocational symbols, the latter classification includes also the pen and inkwell (*cum penna et calamario*), which is awarded to spiritual vocations (Le Goff, 1985, 396–397).[39]

Appointment in the notarial investiture ceremony concludes by giving the pen and inkwell and with a slap (*alapa*), a ritual gesture, accepted by the candidate as a perpetual

39 Worthy of note are the lists of investiture objects and titles in Le Goff, 1985, 455–460, one based on M. Thévenin from Merovingian-Carolian era, the other from Du Cange.

*King of France John II, also called the Good (Jean le Bon, 1350 – 1364) appointing his knights, Bibliothèque Nationale de France, Richelieu, Manuscrits Français, Grandes chroniques de France, Paris, XIVe / XVe siècles, GNU Free Documentation License.*

reminder of the missionary role of the notarial vocation; in case of the investiture of the Piranian notary, this gesture is equally represented by appointment with a part of the clothing. The gesture is known from the Roman ceremonial tradition, which was used for the liberation of a slave: e.g. a Roman praetorian touched a slave with a blade of grass (*festuca*), switch or with a part of clothing when he gave a slave his freedom; equally, a slap in the face (*alapa*) in the Roman tradition signified a gesture made by the master when freeing a slave, a gesture which also implied a duty of personal responsibility for the former slave's own actions and can be also interpreted as a (re)establishment of free vocations (*artes liberales*).

A slap shows similarities with instalment of knights, who, as ritual gesture, received a blow on the apex (fr. *colée*); whereas vassals were given a kiss (*osculum*), exchanged by the appointer and appointee (Le Goff, 1985, 391–392).[40]

Although a slap thus preserves some antique symbolic messages, the hand symbolism was given a new meaning in medieval Christian ceremonies: it is always a God's hand that expresses the relationship between the appointer and appointee (comp. Schmitt, 2000, 101–146).

Through ritual is shown idealised social imagination, behavioural patterns, norms, values, moral, legality are also formed, because the rite is order, law: in the society of that time, lawfulness was upheld with ritual ceremonials, especially in churches, on city squares and other public places (although only in front of a few witnesses), which always had a characteristic of public proclamation about the authority holders or institutions. Rituals therefore played a role of medium or communication with public (comp. Althoff et al., 2002).

Rituals were also formed in the monasteries; this shows a specific social structure, a specific symbolic cluster, formed between the 7th and 9th centuries (Le Goff 1985, 432), and is traced not only in vassal investitures but also in those of knights and notaries. As explained by (monk and notary) Galbert from Brugge in 1127, there are three phases of ritual: *homage, faith, investiture*. Within these phases of individual investiture, only objects and gestures are different: the ideological framework remains the same. But the objects and gestures also change with time and varying social requirements. When Schmitt explains the story from Ebbon's evangelion (first half of the 9th century, Northern France) about depiction of the evangelist Matthew, patron saint of (administrative) clerks, the writer of the first apostolic gospel. Schmidt explains the interpretation of the scribe's vocation of that time, their missionary function: through the evangelist's body, a communication is being established between objects he holds and lines that are prolonged into scenery. An angel, God's emissary, also a symbol of evangelist Matthew, can transmit a message through an entangled path to a text, written in a book or on a scroll. Unforced communication between God, set between the bent feather (*penna*), soaked into inkwell (*calamario*), and parchment scroll, curved in the opposite direction, is held in angelic hands, who represents a revelation of God's Word and does not submit itself to rules of human authority. The evangelist Matthew writes with his pen in a book, which is still unwritten, the pages are blank. Only when he reaches for the pen in the inkwell, through which an angel communicates, will the pages be written. The angel is a witness, an inspiratory and mediator between God and the evangelist (comp. Schmitt, 2000, 111).

Thereafter a route to consecration into a vocation were opened to the notaries.

The depiction of the evangelist Matthew is parallel to depictions of the investiture of rulers in Carolingian era, when an obvious upgrade of medieval rituals began to take place. However, I would not refer to it as feudal-vassal, as it is commonly addressed, but institutional ritual.

40 As stated by Galbert from Brugge (1127), "after his hands are clasped in hands of the lord, who holds them in his palm, they unite with a kiss" (Le Goff, 1985, 391).

*Evangelist Matthew while writing a Gospel, when communication with an angel is established. From the 9th century Ebbo Gospels in the Municipal Library, Épernay, France, Bibl. mun., ms. 0001, f. 018v-019. Wikimedia Commons. File: Saint_Matthew2.jpg.*

The investitures are not transmissions of the lord's property to a vassal but a contract, which establishes a hierarchy of rights and duties (Le Goff, 1985, 409). Namely, with ritualisation, institutions were established; from the 11th century onwards those were knights as well as notaries. This is probably the most clearly represented by the monk Adalberon from Laon in 1027, one of the most visible representatives of the establishment or, better yet, an expansion of a tripartite and trifunctional schema of society (comp. Duby, 1985): "*Bellatores* are established along with *oratores* and *laboratores* not only by their military role but also with institutions, with trumps, with symbols" (Le Goff, 1985, 427).

The end of the 10th and the beginning of the 11th century comprises a period of the so-called ecclesiastical peace movement; the legal-administrative structure was transformed due to social changes, again, with the structure provided by monks. It is not hard to hypothesise that the very monks-notaries who selected their investiture symbol – the pen and inkwell – by establishing codified law, which was given its theoretical and practical bases by (especially Bolonian) notaries, were also responsible for ritual in investiture ceremonial of notaries, which expanded as a norm throughout European continent in the centuries that followed.

Important changes in terms of the role of notary were certainly the rise of cities and formation of the first schools and, afterwards, in the 12th century, universities, which enabled the possibility to attain education in the broadest circle of subjects, in case they were gifted with special abilities, chosen for performing a missionary according to God's grace.

The towns were also, as much as or even more than feudal estates, in need of efficient administrative apparatus, which was undoubtedly ensured only by the notaries.

An important novelty in cities, firstly in Bologna, was the obligation of communal supervision in testing the knowledge of notarial candidates (comp. Ferrara, 1977).

Therefore in Bologna in 1220s and 1230s numerous provisions were confirmed to establish education and especially the final exam commission (*officium examinationis*) for notarial candidates, who were primarily communal judges and notaries. Only after having successfully passed the test the candidate was able to request an investiture, whether first communal or, if needed, also imperial or papal. If the notary already had an adequate written privilege (*instrumentum*) or his investment was confirmed by witnesses, he still had to take an exam in front of communal clerks if he wanted to be inscribed into a book of communal notaries (*Matricola*), which was established just in 1219 (Ferrara, 1977, 66, 78). Only after inscription into Matricola were the notaries able to practice their vocation in a city and in its surrounding territory.

For Bologna it is known that the commune invested notaries at least in the 12th century, although no imperial or papal privilege is known to give the commune such right as is known for Pavia and Genoa (comp. Ferrara, 1977, 77). Moreover, Emperor Frederic prohibited the bestowal of notarial privileges in 1225 in a feud with Bolonians. The Bolonians did not respect the prohibition and with their written statutory provisions even more precisely defined notarial service and especially the competences of the commune in investitures.

The legitimacy of rebellion was augmented with written law, based on the work of legal theories, mostly notaries and judges, as still seen in Raineri's and Rolandino's sig-

nature[41], and based on an important novelty: the organisation of education and exam. In similar fashion to the candidate for knightship having to practice his military skills and educate himself for his vocation,[42] the notarial candidate had to be educated in writing, grammar, law etc. and pass the test, before he requested an investiture.

The towns played an important role in issuing instruments because with this the notarial investitures were codified and this custom was consolidated and legalised. This is also shown by the fact that the notarial signatures with titles *imperiali auctoritate notarius, Sacri palatii notarius, marchionis notarius, civitatis notarius*, etc. began to appear as late as in 1220s; before that, the notaries were signed on the instruments as notaries or they were affirmed as such by the community.[43]

Besides confirming the appointer and thereafter also the territorial range of notarial jurisdiction, the signatures of the notary set on instruments testify about the unification of the form of investment because the notaries were signed on each issued instrument with a title given at investiture.

## AMENDMENTS OF THE RITUAL IN THE 13TH CENTURY

Based on the above stated, we can hypothesise that the investiture ritual in the 12th century was not entirely the same as that of 13th century although is clear that it followed the same basic investiture ritual structure in both eras: *homage, fides, investiture*. Also under the influence of cities and their (administrative and legislative) needs, the ritual was slightly modified with ritual symbolic gestures or objects.

In any case there are numerous testimonials at the end of 13th century that confirm that the sceptre was established as symbolic object of pen and inkwell in notary investiture procedures.[44]

This symbolic investiture object was located primarily in the domain of monks (in imaginary image of first evangelist, who wrote down the God's word), as is testified in already mentioned depiction of evangelist Matthew in Ebbon's gospel (first half of the 9th century)[45] and symbolises the acceptance of a profane gift, a homage, for the operation of a vocation; therefore, the object is presented in all phases of the ritual and given to the appointee as investiture object only at the end of the ceremony.

But while the pen and inkwell were established as symbolic objects (*baculo*) of the notarial investiture ritual, a slap (*alapa*), given by palatine counts as well as lavretan

41 Even at the end of the 15th century, with a single ritual were invested notaries and judges (comp. Airaldi, 1974).

42 For example, Chrétien de Troyes at the beginning of the Story of the Grail (c. 1181) describes the learning of the young knight Perceval (comp. Schmitt, 2000, 227–229).

43 Comp. Darovec, 1994, Supplement 1 and 2. Notary in Istria in this context shows a completely parallel development with Italian regions, while in Dalmatia followed with a delay (comp. Bettarini, 2013, 2014).

44 Comp. Zabbia, 2013, 211; otherwise, the notarial investiture ceremonials mention table and/or scroll of parchment (instrument) or some other socially-vocational symbol (e.g. *pendulo*) as symbolic objects along with pen and inkwell, besides those objects a ring and even a hat (*berretto*) are also mentioned. (comp. Corbo, 1972, 367; Lombardo, 2012, 241–259).

45 Imagery of gospel writer Mathew with an angel was depicted by numerous artists in various periods. comp. http://en.wikipedia.org/wiki/Matthew_the_Apostle.


*A miniature of St. Matthew in the Coronation Gospels presented by King Athelstan to Christ Church Priory. The manuscript is Carolingian in origin. British Library MS Cotton Tiberius A ii. Wikimedia Commons. File: Coronation Gospels Athelstan Saint Matthew.jpg*

*Enthronement of the Dukes of Carinthia. Leopold von Wien (1340–1385). Österreichische Chronik von den 95 Herrschaften. Bern, Burgerbibliothek Cod. A 45, p. 133. Wikimedia Commons. File: Kaernten herzogeinsetzung.jpg*

knights and city podestas, remained in use as investiture gesture in case of notaries. This was a symbolic gesture of god's gift and consecration.

The box on the ear or slap that has obviously been preserved in the investiture ritual of the notaries, at least as recently as the 17th century, was previously seen primarily as a symbol of the judicial function that the notaries fulfilled, especially from the 11th century onwards. In addition to the notaries-judges, juridical tasks were also performed by knights. The investiture gesture of the slap on the cheek or on the crown of the head is also characteristic of their function.

Let us examine an interesting case in which a free peasant appoints a Duke. From a fairly precise description of the solemn investiture of the Duke of Carinthia, Meinhard of Tyrol on September 1st of 1286, written by John of Viktring around 1342, who was the abbot (1312–1345) of the Cistercian monastery in Viktring near Klagenfurt, we discover that the investiture ceremony of the Duke of Carinthia was concluded when a free Slavic peasant, as an appointer, gave the duke a light slap on the cheek and thereby appointed him to be a just judge.[46]

46 There are several versions of the description of the investiture ceremony of the Duke of Carinthia, the first one dates in 1275; this ritual also spiked the interest of a French political theoretic, J. Bodin: Les six livres de la republique (Paris 1576), his book and this ritual are believed to have influenced also T. Jefferson, one

With the establishment of notaries and the solemnisation of notarial praxis from the 13th century onwards, a written document (instrument) was frequently used as part of the concluding act. The instrument was soon thereafter represented merely as one of the symbols at other investitures (comp. Le Goff 1985, 414). Along with an instrument – written privilege – an additional investiture gesture was added in the form of *kiss of peace* (Corbo, 1972, 366–368; Petti Balbi, 1974, 19–21; Lombardo, 2012, 241–259), a gesture that was obviously established in the majority of investiture rituals and used to symbolise acceptance into a family. This gesture has an extremely important role in ritual of institution of *vengeance* (*vindicta, vendetta, feud, fehde, faida, osveta, maščevanje, gjakmarrja*). It signifies the end of hostility and (blood) revenge among feuding parties, acceptance into a family and/or formation of extended family with marriages between descendants of former feuding parties, which should guarantee long-lasting (perpetual) peace.[47]

The example of investiture of the Piranian notary Dominic undoubtedly shows a strong presence of investiture ritual in collective imaginary because all witnesses were able to recognise the ritual and concluding (public) gesture. In this document from 1201, we can decode the ritual procedure, based on written testimonials. To sum up (*see chapter Privileges of notaries*): Presbyter Venerius, the first witness, assures that the notary Dominicus swore in the presence of the people of Piran, in front of *Porta Domus*, and in the presence of gastaldus Albericus and other town magnates, when Bertold inaugurated him to the status of notary, with the verge-thread of a (army) coat: "*cum lampulo mantelli*". Other witness, Odolricus de Ripaldo confirms the stated but mentions the verge-thread of a fur coat – "*per lampulum pellium"* as investiture object, while the third witness, Pietro de Imena, observed a glove "*ciroteca",* with which Bertold appointed Dominic to the office of notary. (CHART. PIR./I, no. 22:23/7). All three witnesses mention a profane investiture object. Taking into consideration that a glove was used to give a gentle slap on the cheek within the investiture ceremony, we can justly set a hypothesis that in investiture ritual the count-podestà Bertold used the exposed part of clothing with which to give him a gentle slap on the cheek. This provides us with both the investiture object and investiture gesture. Although the testimonials about investiture object differ, we have it all here: public oath, which follows an intercession, and at the end an object and a gesture: *homage, fides* and *investiture*.

We can agree with Le Goff's statement that the sequence of actions and gestures – *homage, fides* and *investiture* – consists of a "compulsory connect and set symbolic ritual. A question emerges whether one of the reasons for descriptions of rituals being summary does not lie in the more or less conscious wish to show, without digressions, that the essential acts took place in all phases?" (Le Goff, 1985, 406). "Investiture along with homage and faith composes a whole, which is legally (and symbolically) impossible to separate" (Le Goff, 1985, 417).

---

of the authors of the American Declaration of Independence. The most complex work about this topic is still Grafenauer's (1952).

47 On the role of notaries as mediators in disputes comp. Marcarelli (2014) and Povolo (2014).

*Saint Matthew (Mstislavovo Evangelie: Мстиславово Евангелие (Евангелие Апракос). Миниатюра - Евангелист Матфей) (ca. 1110). Wikimedia Commons. File: Saint Matthew (Mstislavovo Evangelie).jpg*

In his study on the symbolic rituals of vassalage, Le Goff classifies socio-cultural symbols, which mostly consisted of established symbolic gestures, into two main subgroups: physical gestures, amongst which he places touches or slaps with a hand, and gestures with clothes, in which a physical contact is initiated with a glove, hat, cape etc. (Le Goff, 1985, 397). This signifies that the Piranian notary was, even with the verge-

thread of a (military) cape, assigned in accordance to a valid normative ritual, anchored in the collective imagination of the Piranians of that time.

The public gesture of notarial investiture was recognised by the ancient gesture of *festuca*, which illustrates some of then local and/or chronological specifics of the gradual transformation of the notary investiture ritual.

While the pen and inkwell also emerge as investiture objects towards the end of 13th century in the investiture of Istrian notaries (Zabbia, 2013, 210–213), in 1325, Piran Bertaldo, son of Ioannis Cossa de Pirano, was still invested into his feudal lordship with a verge-thread of a tunic "*cum lanchis suarum tunicarum*" (CHART. PIR. II/b, 306/5); however, in 1328, Savarinus and Meynardus, were invested into a feudal lordship as they knelt with the verge-thread of a cape, "*cum lanco sui epithogii stantes genibus flexis legittime investivit*". (CHART. PIR. II/f, 182/18).[48] It seems, however, that this was the case of local customary symbolic objects and gestures of ritual investiture.

We can conclude that, in 1201, the Piranian notary Dominic was invested according to established symbolic ritual: *homage, fides*, and *investiture*. However, we can only state that the investiture objects and gestures were of a general investiture character, as they were locally formed for feudal investitures. Surely, Dominic was not yet given a instrument, a privilege, with witnesses in the town/community testifying to the legitimacy of his office. Neither is there any indication that the notarial candidate Dominic passed any type of test. However, at that period, the content of an oath assured the knowledge needed. In substantially precise testimonials, we cannot trace any other symbolic ritual object or gesture, except for oath and verge-thread of the cape.

Nonetheless the document testifies about something else as well: about the investiture of podestà in the name of a town/community. Namely, whereas the authority of Count Bertold was questionable in Dominic's investiture, the authority of Bertold as count-podestà, thus town chief, is undoubted. This is evident especially if we precisely follow the testimonial of presbyter Venerius when he says that: "Dominic is known as a notary in Piranian castle. All his instruments about different contracts and other issues and all his testaments have validity in town of Piran" and adds "that he was present, when Dominic swore in front of Count Bertold, who in this town was a podestà in the name of the bishop of Freising, who was given the authority by the Emperor, as well as in front of town gestald and inhabitants of the town."[49]

The document testifies to the meaning of town communities, also smaller ones, with castle statuses, that fought for the right of appointment of notaries, although with jurisdiction only within the town's territory. We can see also that Dominic from Piran in 1201 was not addressed with other titles, which means that he was of profane origin. The core of

48 Comp. LEX LAT., *epithogium*, 413, *lampulum, lanchus*, 639–640. Language root for *lancus* is *lancea*, a spear, a lance; in any case a pointy object.

49 "… *tabellio est et pro tabellione habetur in Castro Pirano, et omnia instrumenta eius que ipse facit super contractibus et aliis negociis et testamenta autentica habetur in Castro Pirani; et hic testis fuit presens ubi et quando dictus Dominicus fecit iuramentum tabellionatus coram comite Bertoldo, qui est potestatem illius loci per episcopum de Frisengo, qui habuit hanc potestatem ab imperatore, et coram gastaldione et populo terre*." (CHART. PIR. I, n. 22)

*"San Matteo". Painting of Giovanni Ambrogio Figino, ca. 1580, in the chapel of the church of San Raffaele in Milano. Wikimedia Commons. File: Giovanni Ambrogio Figino San Matteo.jpg*

medieval investiture ritual, as it was formed from the middle of 12th century, lay precisely in this. The right of investiture was also spread amongst common subjects.

Whereas by the year 1000, besides kings, only bishops and counts could pride themselves in consecration into an order; thus, in an office (*offitio*), in missionary authority, which was imparted by will of Christ, with social changes, with the gradual end of the

process of feudal fragmentation, with the so-called peace movement, with crusades, with the rise of cities and economic development, followed by changes of the value system, the former tasks and duties of kings were suddenly imposed on all who were chosen by Lancelot (around 1220): these were "those who were of greater value. Those who were tall and strong and beautiful and kind and loyal and brave and fearless. Those who had a heart and body full of goodness […]". But this initiative was no longer given by God but rather by the people; chivalry was not formed upon the creator's decision but was rather a consequence of social contract – "perfect desacralisation" (comp. Duby, 1985, 366).

The Church selected its knights, warriors, protectors (of community), clerks, who were grasping for military power, and notaries for legislative clerks, those who were able to "give concrete answers to all, who wanted to protect their interests, to not using arms, but law", as Irnerio stated (about 1050 – about 1130), first amongst glossators (Bellomo, 2011, 71).

This was followed also by the ritual.

## CONCLUSIONS

We have demonstrated how the investitures of rulers, knights and notaries followed a schema of trinity (*homage, fides, investiture*) that was formed at least from the Carolingian-Ottonian renaissance onwards; how within each of these phases, ancient gestures and symbols acquired a new meaning, which was mirrored within ritual structure in communication with God. In *homage*, an exchange of gifts takes place; the selection and acceptance of missionary purpose, God's missionary; in *fides* there is an oath given to the appointer, but is primarily given to God; *investiture* is transmission of jurisdiction – but godly jurisdiction. Even when a slap forms part of the investiture ritual, it was given through a mediator to the appointee by God's hand. Therefore, although the majority of investiture symbolic objects and gestures have a profane character, the ritual structure was Christianised before the 12th century.

Thus the formed rite was a basic structure for 13th century ritual but with an expansion of legitimate institution holders, primarily knights and notaries; later also other vocations, that were organised into different brotherhoods (*confraternite*) and guilds; the selection of specific symbolic objects and gestures widened: no wonder, everyone wanted to (or had to) have their own symbols, their own saints, similar to different symbols and gestures of numerous monastic orders, especially since the end of the 11th century. This satisfied symbolic interpretations of clergy, who wore a mark of canonical ideology (comp. Schmitt, 2000, 161, 230).

Therefore, in Le Goff's opinion (1985, 451), on first glance, the ritual of investiture of knights and notaries became completely Christianized as late as in 13th century; in this view, Le Goff is confirmed by Schmitt (2000, 230). But Schmitt's study shows clear chronological development of the medieval ritual, especially based on different preserved texts and

*The evangelist Matthew and the angel. Rembrandt, 1661. La Galerie du temps, Louvre-Lens. Wikimedia Commons. File: The Evangelist Matthew Inspired by an Angel.jpg*

iconographic material (mostly from monastic collections).[50] Therefore, based on the stated argument, I disagree with Le Goff's opinion perhaps in only one point, when he states that

50 It is interesting that especially angloamerican humanities, which has substantially extensive studies on rituality at its disposal, seldomly cites Le Goff's work (1985), Schmitt's work (2000) is, on the other hand, almost entirely overlooked (comp. Bibliography in Muir (2005, 12–14); Roach (2012) in his recent cogent article on homage also cites Le Goff, but not Schmitt.

feudal-vassal investiture has nothing in common with the investiture of knights, which was supposedly already completely Christianized. (Le Goff 1985, 384, 451 et pass.).

The Christianisation of symbolic investiture objects and gestures was more intense than before; more emphasis was given on education and moral demands, which is evident from the oath, but the three-part structure of the investiture ritual has not changed. In case of notaries, the pen and inkwell came to the fore as symbolic objects, the symbol of the evangelist Matthew, through whom God's consecration with all symbolic repertoires was interposed to notaries. A slap was, at least from 9th century onwards, simultaneously a symbol of juridical authority and a Christianised gesture in a sense of God's (earthly) hand. This symbolic gesture usually appears in equivalent meaning to antique *festuca*, a twig, switch, as the custom was obviously preserved as late as in 13th century Piran.

In 13th century two important completions of notary investiture rituals occurred: instrument and symbolic object: *penna et calamario*. The oath, which was written in the instrument, has the flavour of new era, which was only established in the 13th century: education and new social and moral demands. The professional symbolic objects, *penna et calamario,* are also completely of profane nature and yet packed with symbolic interpretation of canonical ideology. New institutions, especially knights and notaries, later new nobility, needed to be ideologically located by religion.

Whereas for feudal investitures, for old nobility, an appointment into feudal estate through a mediator was still in force, their (feudal) lords, the bearers of the new institutions, were appointed with symbolic objects. This was designed to stress God's special mission, which is not transmitted just thorough person but through objects of their vocation. A missionary is therefore a public good, part of a common cultural heritage; it is earthly, profane and based on the success of an individual, yet at the same time a part of Creation. "The ritual, as it is possible to imagine, based on sources, is a compromise between military aristocracy and canonical hierarchy", finds Schmitt (2000, 230), but we cannot forget, however, the crucial socio-economic role of cities. The cities were precisely that which, comprising the institution of the notary, including a rich monastic heritage, enabled a legal framework for their existence and activity. When discussing medieval investiture rituals, we cannot talk about feudal ceremonials or even compare them with other, but rather always bare in mind the appointment into a profession, an office (*officio*), into an institution, which is a holder of a particular administrative and governmental competences; otherwise we could characterize each professional appointment nowadays as a feudal investiture.

Another tendency in rituals and consequentially in medieval society should be pointed out. Symbolic object *penna et calamario*, represents for notaries an entry – acceptance into (professional) family. Chivalrous life is also entirely concentrated around family (comp. Duby, 1985, 363–365). In the notarial investiture ritual we see the gradual implementation of an additional concluding gesture: the *kiss of peace*.[51] This gesture was also

51 The kiss of peace (*osculum pacis*) is not to be confused with *osculum*, a kiss given in feudal-vassal ritual, which, as late as in 12th century signified a passage from *homage* to *fides*, affirmation of accepted gift, a request to enter a family, and concludes a gesture of *immixtio manuum*.

established in the legislative ritual of the institution of vengeance (*vindicta*), as a concluding ritual gesture that leads to brotherhood, into a family and thereby into perpetual peace. The ceremonialisation of the institution of revenge displays a tripartite structure: a *homage*, *fides* and *investiture* – a concluding act.

In accordance with the ritual, individual members of feuding parties, following the conclusion of peace, entered into an actual relationship of mutual matrimony. The ritual also included a possibility of dissolution of the contract, i.e. *exfestucatio*, which has already been examined by Bloch (1968). A more detailed study of the problem of medieval ritual might offer more answers to questions of dispute settlement in the then society, especially about its organisation, performance, imaginary and mentality (comp. Althoff, 1997; Brown, 2011, 135-163).

In this way, brotherhood and brotherhoods (*confraternite*) became a synonym for peaceful dispute resolution and administrative structural reforms. Brotherhoods followed knights and notaries in becoming new institutions, new means of social organisation and division of labour[52]. With the ritual, they follow a basic structure of medieval ritual, distinguishing themselves from one another with various (characteristic) symbolic objects and gestures (comp. Muir, 2005).

The structure of ritual was therefore present in all profane social structures. If we agree with Le Goff's interesting hypothesis, that the *ritual of marriage*, according to the then valid Roman law[53], was the basis for a symbolic cluster of profane medieval investiture rites (Le Goff, 1985, 432, 449, 451, 455), we can also illuminate how deeply present the medieval investiture ritual is in our everyday life.

The medieval profane Christian ritual is surely original; it was gradually formed with its basic structure traceable from at least the 7th century onwards with *immixtio manuum* and the (probably additionally added) kiss (*osculum*). This originality is shown also in Christian art, its originality being based precisely on the fact "that God's transcendence was introduced in figurative depictions: this characteristic was extremely powerfully expressed between the 8th and 11th centuries" (Schmitt, 2000, 111).

By forming, expanding and complementing a concept, in accordance with social changes, notaries surely also contributed to this since they were present in the majority of ceremonial enactments as scripters, administrators and legal experts. In their oath they also had to swear that they would respect the written as well as the customary law (*de iura et consuetudine*), even if that meant … *cum lampulo mantelli*.

52 For istrian confraternitas comp. Darovec, Bonin, 2011.

53 About the reception of Roman inheritance law in the medieval Piran comp. Kambič, 2010.

*Table of some cases of notarial investitures*

| | 1201 | med-dle of 13. cent. | Ro-lan-dino[1] | 1266 | 1292 | 1293 | 1326 | 1337 | 1350 | 1366 | 1383 | 1396 | 1416 | 1455 | 1458 | 1473 | 1479 | 1525 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| HOMMAGE | * | | | | | | | | *2 | | | * | *3 | *4 | *5 | | *6 | * |
| flexis genibus | | | *7 | | | | | *8 | *9 | *10 | *11 | | | *12 | | *13 | *14 | |
| FIDES | *15 | | | | *16 | *17 | | | | | | * | | | *18 | *19 | *20 | *21 |
| evangelia | | | *22 | | | | *23 | *24 | *25 | *26 | *27 | | *28 | | | | *29 | |
| INVESTITURE | | | | | | | | | | | | | | | | | | |
| lampulo mantelli | *30 | | | | | | | | | | | | | | | | | |
| baculo | | *31 | | | | | | | | | | | | | | | | |
| penna et calamario | | | *32 | *33 | *34 | *35 | *36 | *37 | *38 | *39 | *40 | *41 | *42 | *43 | *44 | *45 | *46 | *47 |
| alapa | | | | | | | | | | *48 | | *49 | | *50 | *51 | | *52 | |
| osculum pacis | | | | | | | | | | | | | *53 | | *54 | | | |
| berretto | | | | | | | | | | | | | | | | *55 | | *56 |
| instrumentum | | * | *57 | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * |
| appointer | pod. | pod. | p. c. | pod. | patr. | patr. | patr. | patr. | pod. | pod. | p. c.[58] | p. c. | p. c. | p. c. | p. c. | lat.c.[59] | lat.c.[60] | p. c.[61] |
| locality | Piran | Bolo-gna | Bolo-gna | Peru-gia | Udi-ne | Civi-dale | Udi-ne | Aqui-leia | Ge-nova | Ge-nova | Ge-nova | Friuli | Roma | Pe-rugia | Roma | Roma | Geno-va | Roma |

Legend: pod. = podestà; p. c. = palatin count; patr. = patriarch; lat. c. = lateranensis count

1 Summa Totius *Artis Notariae* (1255-1273), ed. Venezia 1546, 144v.-146v.
2 cum instantia humilitet suplicantes se per dictum dominum potestatem ad officium tabelionatus seu notarie promoveri (Petti Balbi, 1974, 31).
3 humiliter supplicavit (Lombardo, 2012, 381).
4 et benedixit sibi signo crucis et alia faciendo que in simili actu conveniunt et fieri debent et solent secundum stilum comitum palatinorum (Abbondanza, 1973, doc. 49; Lombardo, 2012, 243).
5 fuisse et esse licteratum et perhitum in gramaticalibus et ydoneum ad exercitium notariatus exercendum, facta per eum diligenti examinatione, et ipsum bene meritum etc. (Corbo, 1972, 370).
6 humili petitione, requisitione et supplicatione (Airaldi, 1974, 292).

7 flexis genibus deuote suscipientem de arte ac officio tabellionatus (Rolandino, 1546, 144v.).
8 flexis genibus decote suscipientem (Brunettin, 2004, 221).
9 flexis genibus existens (Petti Balbi, 1974, 31).
10 flexis genibus requirentem, publicum et autenticum notarium et tabelionem creavit et fecit (Petti Balbi, 1974, 32).
11 flexis genibus devote suscipientem (Airaldi, 1974, 245).
12 et dicendum sibi surge: ser Francisce, et sta pedibus tuis (Abbondanza, 1973, doc. 49; Lombardo, 2012, 243).
13 flexis genibus (Lombardo, 2012, 394).
14 flexis genibus humiliter requirentem (Airaldi, 1974, 292).
15 dictus Dominicus fecit iuramentum tabellionatus coram comite Bertoldo, … et coram gastaldione et populo terre.« (CHART./I, n. 22, 23/2).
16 recepto ab eo fidelitatis debito iuramenti quod in talibus recipi consuevit (Pani, 2009, 224).
17 recepto ab eo iuramento quod in talibus recipi consuevit (Pani, 2009, 336).
18 promisit et convenit (Corbo, 1972, 370).
19 quanto fidelis sit sibi et Sancte Matri Ecclesie et de fidelitate exercendo ipsum officii notariatus (Lombardo, 2012, 394).
20 fidelitatis et obedientie debite Sacro Romano Imperio et successive dicto domino comitti et successoribus suis in manibus eiusdem domini comitis prestitit iuramentum (Airaldi, 1974, 293).
21 ut moris est (Lombardo, 2012, 254).
22 recipienti corporale praestans fidelitatis debite sacramentum, iurauit etiam ad sancta dei euangelia (Rolandino, 1546, 145).
23 tactis sacrosantis scripturis, corporale prestitit iuramentum … solitum et debitum iuramentum notarie (Tilatti, 2006, 135).
24 corporale prestans debitum fidelitatis sacramentum, iuravit ad sancta Dei evangelia (Brunettin, 2004, 221).
25 iuravit ad sancta Dey evangelia, corporaliter tactis Scripturis (Petti Balbi, 1974, 31).
26 prestitit fidelitatis debite sacramentum nec non iuravit ad sancta Dei evangelia (Petti Balbi, 1974, 33).
27 prestitit fidelitatis debite iuramentum, nec non iuravit ad sancta Dei Evangelia, corporaliter tactis Scripturis (Airaldi, 1974, 245).
28 giuramento sulle sacre scritture (Lombardo, 2012, 244).
29 Et sic iuravit ad sancta Dei Evangelia, tactis corporaliter Scripturis (Airaldi, 1974, 293).
30 Et dictus comes investivit dictum Dominicum de tabellionatu cum lampulo mantelli, et hoc fuit in triblo de Porta Domus, presentibus Alberico gastaldione, et pluribus aliis (CHART./I, n. 22, 23/6-10).
31 Bencivenne: cum quodam baculo quem habebat in manu solempniter investivit (Ferrara, 1979, 79).
32 cum penna, & calamario legitime inuestiuit (Rolandino, 1546, 144v.).
33 con il calamaio e la penna (Abbondanza, 1973, doc. 36; Lombardo, 2012, 241).
34 quodam calamario et panna manu propria investivit (Pani, 2009, 224).
35 quodam calamario et penna manu propria investivit (Pani, 2009, 336).
36 cum pena et pugilari, que in sua manu tenebat (Tilatti, 2006, 135).
37 cum penna et calamario legittime investivit (Brunettin, 2004, 221).
38 per pugilaris et calami traditionem (Petti Balbi, 1974, 20).
39 cum penna et callamario … quos propriis tenebat in manibus (Petti Balbi, 1974, 33).
40 cum pena et calamario legitime investivit (Airaldi, 1974, 245).
41 per pugilar:m et penna:m quos in sua mano tenebat (Someda, 1956, 42).

42 per pennam, penniferum et callamare (Lombardo, 2012, 244).
43 dando sibi insignia tabellionatus, videlicet calamum peniferum (Abbondanza, 1973, doc. 49; Lombardo, 2012, 243).
44 investiendo eum de calamo, callamare et pendulo (Corbo, 1972, 370).
45 investivit de dicto officio et exercitio per cartam, calamare et pennam (Lombardo, 2012, 247).
46 per penne et calamarii ad manus eius tradditionem de dicto notariatus et tabellionatus et iudicatus offitio, ut moris est, legiptimi investivit (Airaldi, 1974, 282).
47 cum carta, penna et calamaio (Lombardo, 2012, 253).
48 in signum recordationis perpetue de premissis, super massilam sinistram dedit unam alipam (Petti Balbi, 1974, 20).
49 eidem alapa:in signum memoriae inferendo investivit (Someda, 1956, 42).
50 et deinde alapam (Abbondanza, 1973, doc. 49; Lombardo, 2012, 243).
51 percutiendo eumdem quadam albata in facie (Corbo, 1972, 370; cfr. Lombardo, 2012, 243).
52 Qui quidem dominus Demetrius, comes antedictus, ad perpetuam rei memoriam premissorum eidem Iacobo super eius massilam sinistram dedit alapam unam (Airaldi, 1974, 293).
53 osculum pacis (Lombardo, 2012, 244).
54 de inde eum ad osculum pacis recipiendo etc. (Corbo, 1972, 370).
55 et per birrectum, quam cartam, calamare et pennam in manibus dicti Petri Antonii consignavit et birrectum in eius capite imposuit dicendo eidem: esto fidelis notarius apostolicus de cetero valeas conficere quecumque instromenta et pubblicas scripturas omni meliori modo et cetera. (Lombardo, 2012, 394).
56 l'imposizione del beretto (Lombardo, 2012, 253).
57 vnum alium notarium, & ei mandant quod de praedicta cautione cum iuramenti praestatione publicum conficiat instrumentum … Dicitur … Comes creat & facit talem notarium … de officio tabellionatus inuestit … ponitur promissio & iuramentum notarij ad officium tabellionatus exercendum electi vsque in finem instrumenti (Rolandino, 1546, 144v.).
58 Sacri Romani Imperii comites palatini (Airaldi, 1974, 251).
59 comite pallatino apostolico (Lombardo, 2012, 394).
60 Sacri Lateranensis Palatii comitibus palatinis (Airaldi, 1974, 292). Sacri Lateranensis Palacii et aule imperialis comes palatinus (Airaldi, 1974, 286).
61 Ego creo te, iuxta auctoritatem mihi concessam per sanctissimum dominum nostrum, in notarium apostolicum omni meliori modo (Lombardo, 2012, 254).

# *CUM LAMPULO MANTELLI.* OBRED PODELJEVANJA NOTARSKEGA PRIVILEGIJA: PRIMER IZ ISTRE

*Darko DAROVEC*

Univerza Ca'Foscari Benetke, Oddelek za humanistiko, Dorsoduro 3484/d, 30123 Benetke, Italija

Inštitut Nove revije, zavod za humanistiko, Gospodinjska 8, 1000 Ljubljana, Slovenija

e-mail: darovec.darko@gmail.com

*POVZETEK*

*Na podlagi preučitve več dokumentov pričevanj o sporu med Pirančani in koprskim škofom iz leta 1201, ki vsebujejo tudi navedbe o investituri notarja, je v članku s komparativno in (re)interpretativno metodo preučen obred investiture notarjev, kot se je odvijal od 12. do vsaj 16. stoletja na območju zgornjega Jadrana in v sosednjih italijanskih deželah.*

*Študija se ne osredotoča zgolj na vprašanje investiture notarjev, temveč primerjalno posega tudi na druga posvetna družbena področja evropskih srednjeveških investiturnih obredov ter ugotavlja, da so se obredi odvijali skladno z enotno notranjo tridelno strukturo, kot jo je opisal že Galbert iz Bruggeja (1127):* homagij, fides, investitura*. Čeprav so se investiturne svečanosti za posamezna družbena področja v simbolnih gestah, predmetih in besedah medsebojno razlikovale in se skladno z družbenimi potrebami tudi preoblikovale, pa je enaka notranja struktura obredja veljala tako za investiture cesarjev, kraljev, vazalov, vitezov, notarjev in drugih družbenih institucij, ki so se pospešeno oblikovale zlasti od 13. stoletja, prisotna pa je tudi na področju pravosodja. Izvirnost srednjeveškega obredja se kaže v vseprisotni božji transcendenci, ki ji je vrata na stežaj odprla karolinško-otonska doba (8.–11. stoletje), medtem ko kulturne korenine obredja segajo v arhaične skupnosti. Kaže, da je osnovna struktura srednjeveškega obredja slonela na obredu poroke po rimskem pravu, torej na ideji družine, ki je kot osnova razširjene skupnosti v ospredju ideološke podstati krščanstva.*

*Študija pokaže še vlogo in pomen notarjev pri administriranju oblastnih organov ter še zlasti pri oblikovanju mestnih avtonomnih oblastnih struktur, kar se svojstveno zrcali tudi skozi obredje investiture. Prav obredje investiture, kot se je razvilo od 12. stoletja dalje na podlagi viteškega in notarskega rituala, je odprlo pot investituram tudi na druga družbena področja, zlasti svobodnih poklicev (*artes liberales*). Pravica do investiture se je tako tedaj razširila tudi med »navadne« podložnike.*

*Ključne besede: investitura, notariat, obred, srednji vek, Istra, Italija, Evropa*

SOURCES & BIBLIOGRAPHY:

**Abbondanza, R. (1973):** Il notariato a Perugia. Mostra documentaria e iconografica per il XVI congresso nazionale del notariato. Fonti e strumenti per la storia del notariato italiano. Roma, Consiglio Nazionale del Notariato.

**Airaldi, G. (1974):** Studi e documenti su Genova e l'Oltremare. Genova, Bordighera, Istituto Internazionale di Studi Liguri.

**Althoff, G. (1997):** Spielregeln in der Politik im Mittelalter. Kommunikation in Frieden und Fehde. Darmstadt, Wissenschaftliche Buchgesellschaft.

**Althoff, G. (2002):** The Variability of Rituals in the Middle Ages. In: Althoff et al. (2002), 71–87.

**Althoff**, **G., Fried, J., & P. J. Geary (2002):** Medieval Concepts of the Past: Ritual, Memory, Historiography. Washington, German Historical Institute, Cambridge University Press.

**Amelotti, M. (1975):** L'Età Romana. In: Amelotti, M. & G. Costamagna: Alle origini del Notariato italiano. Roma, Consiglio Nazionale del Notariato, 1–144.

**AST. AAMC** – Archivio di Stato di Trieste. Antico Archivio Municipale di Capodistria / Ancient Koper Municipal Archives, Inventory after Majer (1904).

**Bellomo, M. (2011):** L'Europa del diritto comune. Roma, Il Cigno G. G. Edizioni, (IX ed.).

**Benussi, B. (1923):** Pola nelle sue istituzioni municipali sino al 1797. Venezia, Deputazione di Storia Patria.

**Benussi, B. (1924):** L'Istria nei suoi due millenni di storia. Trieste, G. Caprin.

**Bettarini, F. (2013):** Il notariato dalmata e la "Santa Intrada". In: Israel U. & O.-J. Schmitt (eds.): Venezia e Dalmazia. Roma, Viella, 111–149.

**Bettarini, F. (2014):** Per un censimento dei notai dalmati. La Rivista Dalmatica, CXI, 13–26

**Bloch, M. (1968):** La Société féodale. Paris, Eds. Albin Michel.

**Boarin, A. (2013):** "Negozio di religione" di Antonello Grotto, notaio vicentino (1606–1609). Acta Histriae, 21, 1–2, 107–116.

**Borgna, R. (2013):** Contratti agrari, usura ed aspetti del credito nelle fonti notarili di una comunità rurale della Terraferma Veneta (Sarnico, 1694–1695). Acta Histriae, 21, 1–2, 117–132.

**Brown, W. C. (2011):** Violence in Medieval Europe. Harlow, Pearson Education Limited.

**Bresslau, H. (1958):** Handbuch der Urkundenlehre für Deutschland und Italien, II. Leipzig, 1889, 1912, 1915, 1931. Berlin, W. de Gruyter.

**Brunettin, G. (2004):** Gubertino e i suoi registri di cancelleria patriarcale conservati presso la Guarneriana di San Daniele del Friuli (1335, 1337, 1340–1341–1342). Studi sul Trecento in Friuli. San Daniele del Friuli, Biblioteca Guarneriana.

**Buc, Ph. (2002):** Text and Ritual in Ninth-Century Culture. In: Althoff et al. (2002), 123–138.

**CDI -** Codice Diplomatico Istriano. Ed. by P. Kandler. Trieste, Lloyd Trieste (reprint), 1986.

**CHART. PIR.** - Chartularium Piranense. Raccolta dei documenti medievali di Pirano. Ed. by Cam. De Franceschi, Atti e Memorie della Società Istriana di Archeologia e Storia Patria, 36 (1924), 43–47 (1931–35), 50 (1938).

**Corbo, A. M. (1972):** Ancora di una «datio penne et calamari». Rassegna degli Archivi di Stato, 32, 2, 366–371.

**Costamagna, G. (1975):** L'Alto Medioevo. In: Amelotti, M. & G. Costamagna: Alle origini del Notariato italiano. Roma, Consiglio Nazionale del Notariato, 151–314.

**Darovec, D. (1994):** Notarjeva javna vera. Notarji in vicedomini v Kopru, Izoli in Piranu v obdobju Beneške republike. Knjižnica Annales 7. Koper, Zgodovinsko društvo za južno Primorsko.

**Darovec, D. (2007):** Piranska oljčna desetina in vprašanje notarjeve javne vere v Istri v visokem srednjem veku. In: Budak, N. (ed.): Sacerdotes, iudices, notarii…: posrednici među društvenim skupinama / Sacerdotes, iudices, notarii…: mediators among social groups. Poreč, Pučko otvoreno učilište, Zavičajni muzej Poreštine, 91–98.

**Darovec, D. (2010):** Ruolo dei vicedomini istriani nella redazione degli atti notarili in rapporto ad uffici affini dell'area adriatica. Acta Histriae, 18, 4, 789–822.

**Darovec, D. & Z. Bonin (2011):** The financial operations of urban and rural confraternities in the Koper area as revealed by reports from church and state officials between the 16th and 18th centuries. Annales, Ser. hist. sociol., 21, 2, 461–500.

**De Vergottini, G. (1924):** Lineamenti storici della costituzione politica dell'Istria durante il Medio Evo, I-II. Roma, Società istriana di archeologia e storia patria.

**Du Cange, C. (1733):** Glossarium ad scriptores mediae et infimae Latinitatis, Parisiis: sub oliva Caroli Osmont, 1733–1736, Tomus tertius: [E-K]. kol. 1520–1538.

**Duby, G. (1985):** Trije redi ali imaginarij fevdalizma, Ljubljana, Studia humanitatis, (slov. edicija: prev. Gregor Moder, orig. Les trois ordres ou l'imaginaire du féodalisme, Paris, Éditions Gallimard, 1978.).

**Dumezil, G. (1958):** L'Idéologie tripartie des Indo-Européens. Bruxelles, Latomus.

**Durkheim, E. (1995):** The Elementary Forms of Religious Life. Translated and with an introduction by Karen E. Fields. New York, The Free Press.

**Ebner, P. (1979):** Economia e società nel Cilento medievale, I. Roma, Edizioni di storia e letteratura.

**Faggion, L. (2008):** Il notaio, la società e la mediazione in età moderna nelle storiografie francese e italiana: un confronto. Acta Histriae, 16, 4, 527–544.

**Faggion, L. (2013):** La pacificazione e il notaio nel vicariato di Valdagno nel secondo cinquecento. Acta Histriae, 21, 1–2, 93–106.

**Ferrara, R. (1977):** *Licentia exercendi* ed esame di notariato a Bologna nel secolo XIII. In: Notariato medievale bolognese II. Roma, Consiglio nazionale del notariato, 47–120.

**Flasch, K. (1988):** Das philosohische Denken in Mittelalter. Reclam, Stuutgart.

**Flori, J. (1998):** Chevaliers et chevalerie au Moyen Age. Collection «La vie Quotidienne». Paris, Hachette.

**Genuardi, L. (1914):** La presenza del giudice nei contratti privati italiani dell'alto Medio Evo. Annali del Seminario giuridico della R. Università di Palermo, III, 37–100.

**Gluckman, M. (ed.) (1962):** Essays on the Ritual of Social Relations. Manchester, University Press.

**Grafenauer, B. (1952):** Ustoličevanje koroških vojvod in država karantanskih Slovencev : Die Kärntner Herzogseinsetzung und der Staat der Karantanerslawen. Ljubljana, Slovenska akademija znanosti in umetnosti.

**Grbavac, B. (2008):** Notari kao posrednici između Italije i Dalmacije – studije, službe, seobe između dvije obale Jadrana. Acta Histriae, 16, 4, 503–526.

**Grbavac, B. (2011):** Svjedočanstvo o stvarnosti ili fikcija: zadarski notari između formulara i prakse. Acta Histriae, 19, 3, 393–406.

**Grbavac, B. (2013):** Oporuka i inventar splitskog notara Jakova pok. Ubertina de Pugliensibus iz Piacenze. Prilog proučavanju splitskog notarijata. Acta Histriae, 21,1–2, 75–92.

**Grimes, R. L. (2006):** Rite out of Place: Ritual, Media, and the Arts. New York, Oxford University Press.

**Kambič, M. (2010):** Dednopravni položaj hčera po statutih piranskega komuna – recepcija ali kontinuiteta rimskega prava. Acta Histriae, 18, 4, 769–788.

**Keller, H. (1993):** Die Investitur. Ein Beitrag zum Problem der 'Staatssymbolik' im Hochmittelalter. Frühmittelalterliche Studien, 27, 51–86.

**Kos, F. (1902–1915):** Gradivo za zgodovino Slovencev v srednjem veku, I–IV. Ljubljana, Leonova družba.

**Kos, M. (1928):** Gradivo za zgodovino Slovencev v srednjem veku, V. Ljubljana, Leonova družba.

**Kos, M. (1956):** Aus der Geschichte der mittelalterlichen Urkunde Istriens – Studien zur älteren Geschichte Osteuropas, I: Festschrift H. F. Schmidt. Wiener Archiv für Gesch. des Slawentums u. Osteuropas, II, Graz, 49–62.

**Le Goff, J. (1985):** Za drugačen srednji vek. Simbolno obredje vazalstva. (orig. Pour un autre Moyen Âge. Le rituel symbolique de la vassalité (1965). Paris, Edition Gallimard, 1977). Ljubljana, Studia humanitatis, 383–461.

**LEGGI**, Decreti e Terminazioni del Ser.mo Magg.r Cons.o etc., Concernenti il buon gouerno dell'Istria. Valerio Da Riva, Pod.tà e Cap.o di Capodistria, 1683.

**Leicht, P. S. (1910):** Note ai documenti istriani di diritto privato dei secoli IX–XII. In: Miscellanea di studi in onore di Attilio Hortis. Trieste, G. Caprin, 179–201.

**LEX LAT.** - Lexicon Latinitatis Medii Aevi Iugoslaviae, I–III. Zagabriae, Editio Instituti historici Academiae scientiarum et artium Slavorum meridionalium, 1973.

**Lombardo, M. L. (2012):** Il notaio romano tra sovranità pontificia e autonomia comunale (secoli XIV–XVI). Milano, Giuffrè.

**Majer, F. (1904):** Inventario dell'Antico Archivio Municipale di Capodistria. Capodistria, Tip. Cobol-Priora.

**Marcarelli, M. (2014):** Il terzo nei riti di mediazione e di pace nel Friuli del Cinquecento. Acta Histriae, 22, 2, 225–240.

**Marković, S. (2010):** Notarijati medievalnih komuna crnogorskog primorja. Odrazi antičkog nasljeđa, autonomnosti urbaniteta i humanističkog univerzalizma. Acta Histriae, 18, 4, 823–846.

**Mauss, M. (1923–1924):** Essai sur le don. Forme et raison de l'échange dans les sociétés archaïques. Année Sociologique, seconde série. (slov. edicija: Esej o daru in drugi spisi. Ljubljana, Studia humanitatis, 1996, prev. Zoja Skušek).

**MGH. CRF** - Monumenta Germaniae Historica. Capitularia regum Francorum. 1. 1883 (1994), 2. 1890–1897 (2001). München, Monumenta Germaniae Historica.

**Mihelič, D. (2001):** Piransko olje in koprska škofija: začetek 13. stoletja. Acta Histriae, 9, 2, 311–320.

**Mihelič, D. (2011a):** Piranski notar Dominik Petenarij – pričevalec časa. Acta Histriae, 19, 4, 645–658.

**Mihelič, D. (2011b):** Prilog proučavanju zemljoposjedničke strukture srednjovjekovne Istre (s naglaskom na posjedu Freisinške biskupije). Vjesnik Istarskog arhiva, 18, 345–361.

**Morteani, L. (1886):** Notizie storiche della città di Pirano. Trieste, Stab. tip. di L. Herrmanstorfer.

**Morteani, L. (1896–1897):** Sulla lite per la decima dell'olio tra i vescovi di Capodistria ed il clero e popolo piranese. Archeografo Triestino, n.s., 21, 249–265.

**Muir, E. (2005):** Ritual in early modern Europe. Cambridge, Cambridge University Press.

**Pani, L. (ed.) (2009):** I quaderni di Gualtiero da Cividale (1274–1275, 1291–1294). Fonti per la storia della Chiesa in Friuli. Serie medievale, 9. Roma, Udine, Istituto storico italiano per il medioevo, Istituto Pio Paschini.

**Pedani Fabris, M. P. (1996):** *Veneta auctoritate notarius*: storia del notariato veneziano, 1514–1797. Milano, Giuffrè.

**Pertile, A. (1894–1902):** Storia del diritto italiano dalla caduta dell'Impero Romano alla codificazione, VI/I. Torino, Unione Tipografico-Editrice.

**Petkov, K. (2003):** The Kiss of Peace. Ritual, Self, and Society in the High and Late Medieval West. Leiden, Boston, Brill.

**Petti Balbi, G. (1974):** L'investitura e le "vacature" nel collegio notarile di Genova. Archivi e Cultura, 8, 17–33.

**Pini, A. I. (2002):** Bologna nel suo secolo d'oro: da «comune aristocratico» a «repubblica di notai». In: Tamba, G. (ed.), 2002, 1–20.

**Povolo, C. (2014):** La terza parte. Tra liturgie di violenza e liturgie di pace: mediatori, arbitri, pacieri, giudici. Acta Histriae, 22, 1, 1–16.

**Pratesi, A. (1983):** Appunti per una storia dell'evoluzione del notariato. In: Studi in onore di Leopoldo Sandri. Roma, [s.n.], 759–772.

**Roach, L. (2012):** Submission an Homage: Feudo-Vassalic Bonds and the Settlement of Disputes in Ottonian Germany. History, The Journal of the Historical Association, 355–379.

**Rolandino, R. (1546):** *Summa Totius Artis Notariae*. Venezia, [s.n.]. (Ristampa anastatica a cura del Consiglio Nazionale del Notariato. Bologna, Arnaldo Forni Editore, 1977).

**Rožac, M. & A. Pucer (2010):** Piranske notarske pergamentne listine, I. del, Predbeneško obdobje 1173–1283, 1. zvezek 1173–1212. Koper, Pokrajinski arhiv Koper.

**Schmitt, J.-C. (2000):** Geste v srednjem veku (La Raison des Gestes dans l'Occident médiéval, Paris, Edition Gallimard, 1969). Ljubljana, Studia humanitatis.

**SENATO MISTI**. Parti (deliberazioni, decreti) del Senato veneto, attinenti all'Istria (1332–1440). Atti e Memorie della Società Istriana di Archeologia e Storia Patria, 3–6, 1887–1890.

**Someda De Marco, P. (1958):** Notariato friulano (Prefazione di Tiziano Tessitori). Udine, Arti Grafiche Friulane.

**Southern, R. W. (1995–2001):** Scholastic Humanism and the Unification of Europe. 2 tom. Blackwell, Oxford u.a.

**STAT. PIR.** - Statut Piranskega komuna od 13. do 17. stoletja / Gli statuti del comune di Pirano dal XIII al XVII secolo. Pahor, M., Šumrada, J. (eds.). Ljubljana, SAZU, 1987.

**Stipišić, J. (1985):** Pomoćne povijesne znanosti u teorici i praksi. Zagreb, Školska knjiga.

**Tamba, G. (ed.) (2002):** Rolandino e l'ars notaria da Bologna all'Europa. Atti del convegno internazionale di studi storici sulla figura e l'opera di Rolandino: organizzato dal Consiglio notarile di Bologna sotto l'egida del Consiglio nazionale del notariato, Bologna, città europea della cultura, 9–10 ottobre 2000. Milano, Giuffrè.

**Tilatti, A. (2006):** I protocolli di Gabriele da Cremona: notaio della Curia patriarcale di Aquileia (1324–1336, 1334, 1350). Roma, Istituto storico italiano per il Medio Evo.

**Vilfan, S. & B. Otorepec (1962):** Les archives notariales en Yougoslavie. Archivum, XII, 105–120.

**Warner, D. A. (2001):** Ritual and Memory in the Ottonian Reich: The Ceremony of *Adventus*. Speculum, 76, 255–283.

**Wilentz, S. (ed.) (1999):** Rites of Power: Symbolism, Ritual, and Politics since the Middle Ages. Pennsylvania, University of Pennsylvania Press.

**Zabbia, M. (2013):** L'investitura notarile e la validità degli instrumenta alle soglie del Duecento. Il caso del notaio Domenico da Pirano. Scrineum Rivista, 10, 191–214.

Received: 2013-12-03
Original scientific article
UDK 929.7Natalis(497.16Bar)"14"

# „PER DISCHARIGO DELLA CONSCIENCIA": TESTAMENTARNI ODRAZI MEDIEVALNOG IMAGINARIJA BARSKOG PATRICIJSKOG RODA NATALIS (NALIS)

*Savo MARKOVIĆ*
Barska plovidba AD Bar, 85000 Bar, Obala 13. Jula bb, Crna Gora
e-mail: markovics@t-com.me

*IZVOD*

*Analizom neobjavljene testamentarne građe iz Državnog arhiva u Dubrovniku, rekonstruišu se genealogija i životopisi pripadnika barskog patricijskog roda Natalis (Nalis, Nale) u XV vijeku, a njegovih ostalih ogranaka i familija na osnovu drugih arhivskih spisa i istoriografije. Medievalni predlošci sadrže fragmentaran, ali slojevit imaginarij i kompleksnu istorijsku pozadinu koji su determinisali viši društveni sloj na jugu istočnog Jadrana. Istaknuti u društvenom životu Bara i Dubrovnika Quattrocenta, Nale svjedoče o smjernicama onovremenih ekonomskih kretanja, integrativnim pravnim i kulturnim tradicijama, odražavajući i duhovne fundamente evropskog Sredozemlja.*

*Ključne riječi: Bar, Natalis (Nalis), patricijat, testament, crkvene institucije, nasljeđe*

# „PER DISCHARIGO DELLA CONSCIENCIA": RIFLESSIONI TESTAMENTARIE DELL' IMMAGINARIO MEDIEVALE DI LIGNAGGIO PATRIZIO NATALIS (NALIS) D'ANTIVARI

*SINTESI*

*Analizzando le fonti testamentarie inedite dall'Archivio di Stato di Ragusa, lo scopo del documento di ricerca è quello di ricostruire la genealogia e le biografie dei membri del lignaggio patrizio Natalis (Nalis, Nale) d'Antivari nel XV secolo, così come, sul base di altre scritture e della storiografia, la sua ascendenza, famiglie, rampolli e discendenti. Documenti medievali stanno rendendo immaginario frammentato, eppure stratificato e complesso sfondo storico, che ha determinato la classe sociale superiore sul sud della costa orientale dell'Adriatico. Prominente nella vita sociale d'Antivari e di Ragusa nel Quattrocento, la famiglia Natalis è testimone delle direzioni di movimento economico di quel tempo, delle tradizioni giuridiche e culturali integrative, riflettendo anche i fondamenti spirituali del Mediterraneo europeo.*

*Parole chiave: Antivari, Natalis (Nalis), patriziato, testamento, istituzioni ecclesiastiche, patrimonio*

## UVOD

Stari grad Bar svakim svojim kamenom emanira atmosferu kontinuiranog prisustva istorije; nestalnošću sjenki koje odražavaju njegove ruine reflektuje ustreptalost svjetovnih nadahnuća i preokupacija, duhovnih poleta i religijskih strasti, a povučenošću i zatvorenošću u svoje zidine, njihovu tegotnu dokučivost. Tek se vibrantnim probojima prošlosti, sačuvanim arhivskim spisima, omogući uvid u svu složenost srednjovjekovnih političkih događaja i multivalentnu kulturu koji su ga obilježavali, pri čemu je posebno procesima njegovog etničkog prekomponovanja neophodno pristupiti s interdisciplinarnog polazišta.

Barski rod *Natalis* (*Nalis, Nale*), istovremeno pripadnik patricijskog staleža jedne od najjužnijih istočnojadranskih komuna i udionik uglednog građanstva Dubrovačke Republike, otuda sačuvanim istorijskim tragom, odslikava odnosne društvene zajednice, ali i znatno šire prostore.

## NAJRANIJI POMENI I ETIMOLOŠKO PORIJEKLO PREZIMENA

U istorijskim spisima iz XIV–XV v. ovaj barski rod se bilježi u oblicima *Natus, Nati, Nale, Nalle, Nalis* (Jireček, 1904b, 48). Na osnovu arhivskih podataka, još je Konstantin Jireček *Nale* ubrojio među „istaknute" (Jireček, 1962, 113), odnosno „glavne porodice u opštini" (Jireček, 1923a, 18; Jireček, 1923b, 102).

Etimološko porijeklo prezimena, patronimika nastalog od ličnog imena, u literaturi je navedeno, ishodi od latinskog pridjeva *natalis(e),* imenice *natalis(is),* sa značenjem rođen, rodni, odnosno od mn. m. roda *natales(ium)* – rod, stalež; izvedenica od *natus,* odgovara „čeljadetu koje se rodilo na *Božić*" (Skok, 1972, 505).

Natalis, biskup Salone, bilježi se u pismima pape Grgura I (590–604.); takođe, 1199. g. u Ulcinju je biskup bio Natalis (Jireček, 1904b, 48). Da je prezime moglo nastati od patronimika, svjedoči prijevod ličnog imena Baranina Boža, u zadarskom arhivskom zapisu iz 1385. g.: „*Natalis dictus Bochxa quondam Stephanini de Antibaro*" (Petricioli, 1982, 29–30, 38). Kanonik, „*diaconus et notarius*" u Baru 1307. i 1311. g. bio je *Natalis Belucii*.[1] *Nale de Miros* iz Bara se pominje 1326. g (Jireček, 1904b, 48). Ivan i Nikola, Markovi sinovi, zajedno sa Natalom iz Bara, prekršili su dubrovačke odredbe šaljući štofove i pozlaćeni fustanj, a zanemarujući carinu, te su kažnjeni 1423. g. po normi od 25% od trgovačke robe (Hrabak, 1999, 192). *Nataly* iz Bara se u Mlecima pominje 1445. g (Imhaus, 1997, 540). „*Agnesina uxor Natalis"* iz Bara je 1487. g. bila žiteljka venecijanskog predjela *S. Justine*.[2]

Među tvorevinama koje su nastale otpadanjem krajnjih glasova, uz čuvanje naglašenog sloga, K. Jireček navodi i da je „*Nale* (gen. Nalis), Nallius in Antivari, Cattaro und Ragusa aus Natalis" (Jireček, 1902, 69). Uz konstataciju da je „*Nale Kurzform für*

1 „*Natali Belcici"*; *„Belucij"* (Thallóczy, Jireček, Sufflay, 1913, 178, 180; Jireček, 1904a, 213).

2 U testamentu sastavljenom navedene godine, za izvršitelja istog određuje svojeg supruga (ASVE, NT, b. 877, br. 700, 31. XII 1487.). Na podacima iz Državnog Arhiva Venecije zahvaljujem dr. sc. Lovorki Čoralić.

*Natalis*", ističe da je *Nale* i deminutiv (Jireček, 1904c, 45; Jireček 1904b, 48; Jireček, 1962, 313).

Prema mlet. *Nal*, kao hipokoristik je u Dubrovniku bilježen oblik *Nale*, dok je staromletačka varijanta *Nadal* (Skok, 1972, 505). „*Zorzi de Nadal de Antivari"* je u Veneciji sačinio testament 2. avgusta 1430. g (ASVE, NT, 734, br. 96). *„Nadalinus filio Nicolai d'Antibaro de confinio s. Maria Formosa"* u Veneciji, testamentom od 11. maja 1501. za izvršiteljku izjave svoje posljednje volje određuje ženu *Franceschinu*, kćerku ser Antonija Benedictija *de Curzola* (ASVE, NT, 960, br. 620). Petar Skok precizira da je *Nale* slovensko ime, hipokoristik od milja za *Natalis* (Skok, 1928, 10, 29).

Na rani način bilježenja prezimena, kao i na poslovnu aktivnost pripadnika barskog roda ukazuje trag koji je ostavio *Theodoro Nicole de Natus*. On je, zaduživši se 2. marta 1334. kod Mlečanina Francisca Scarpaçia[3] za 600 perpera, 8. juna 1336. godine položio određeni iznos u depozit Dubrovčaninu Martolu de Sorço (Ćuk, 1986, 225). *Theodorus, f. qu. Nicole de Nati* je opet, 31. maja 1336., na četiri mjeseca pozajmio 300 perpera od Nicoletta Baldelle, Venecijanca koji je kreditirao dubrovačke, a posebno kotorske trgovce, s kojima se vjerovatno i poslovno udruživao.[4] *Theodorus Nicole de Nati de Antibaro* (1336.) se u odnosu na varijantu bilježenja prezimena - *Nati* - etimološkim tumačenjem povezuje s vlastitim imenom *Natta*, ali i s talijanskim imenom *Nato*, hipokoristikom za *Donato*.[5]

Već na osnovu podataka iz prve polovine XIV vijeka, evidentna je upućenost barskih trgovaca na Dubrovnik. Među onima koji su - u literaturi se pretpostavljalo 1380. g. - poslovali u Dubrovniku i stvarali uslove za sticanje tamošnjeg civiteta, bio je i Baranin „*Nalješković"*. Ukoliko nije riječ o genealoškom odstupanju od drugih izvora, možda je potomku tog iseljenika, februara 1417. g., dodijeljeno dubrovačko građanstvo (up. Mijušković, 1961, 103, 114; Pešorda Vardić, 2012, 33, 41). Još Ivan Marković navodi da su članovi odnosne porodice istovremeno uživali građanstvo Bara i Dubrovnika (Marković, 1902, 4).

K. Jireček je uz to istakao da je barska porodica Nale „ansässig auch in Ragusa, aber verschiedenen von den Ragusaner Nale" (Jireček, 1904c, 45) te da je *Nalescovich*, *Naliescovich,* sl. Nalješković, dubrovačka trgovačka porodica od XIV do XVI v.[6] Jedan

3 *Francisco Scarpaçio*, mletački trgovac čije su poslovne transakcije od Venecije, preko Dubrovnika, Kotora, Bara i Srbije dopirale do Aleksandrije, boravio je u Dubrovniku vjerovatno od kraja dvadesetih ili početka tridesetih godina XIV v., do prerane smrti od kuge, 1348. g. Iz Venecije je dopremao tkanine, a od Dubrovčana i Kotorana kupovao srebro, kože i bakar. U Kotoru je povremeno boravio od 1330. do 1337. g. Pored Kotorana, njegovi dužnici su bili i Barani; poznato je 7 njegovih kreditnih ugovora s Baranima (Ćuk, 1986, 153, 223–225).

4 *Nicoletto Baldella* je stanovao u Dubrovniku, ali je zbog poslova povremeno boravio i od 1331. do 1337. g. radio u Kotoru. Novembra 1331. dvojica trgovaca iz Milana su ga postavili za svojeg zastupnika, a od januara 1332. bio je prokurator i faktor kuće Bollani u Kotoru. Kotorani koji su se kod njega zaduživali, najčešće su odlazili da trguju u Srbiju. Baldella je trgovao voskom, srebrom, bakrom i kožama (Ćuk, 1986, 70, 112, 155, 225).

5 Dovodeći *Natta* u vezu sa *Natalis*, K. Jireček opet upućuje i na "*L. Pinario L. f. Gal Nattae*" iz Abellinuma u Samniumu (Jireček, 1904b, 48; Jireček, 1904c, 45; Jireček, 1962, 313).

6 U Dubrovniku se oko 1280. g. bilježi *Nalescus de Paleologo*, 1303. g. patricij *Nale de Sorento*, a *Nallius, Nale q. Junii de Dersa* oko 1325. g. Dalje uzmorjem, u Splitu je u XV v. plemićka porodica *Natalis, de Natalibus*; *Natalis* je od X do XIII v. često u Istri, Trstu, Veneciji, Apuliji (Jireček, 1904b, 3, 48; Jireček, 1904c, 45).

od najjačih i najuticajnijih rodova kasnog srednjeg vijeka koji je u Dubrovniku pripadao uglednoj građanskoj bratovštini antunina, prezime izvodi od rodonačelnika Nala (Nalješka) s Cresa, koji je u taj grad stigao oko 1310. g (Pešorda Vardić, 2012, 41, 99). Njegov potomak Marin je 1428. g., određujući punoljetnost za sinove Boža (Natala), Tadiju, Grgoča i Dobruška u dobi od 24 godine, odredio da oni tek tada mogu preuzeti svoj dio nasljeđa (Pešorda Vardić, 2012, 114).

Dubrovački sveštenik Mihovil Natalis bio je mrkanski biskup od 1436. do 1456. g., a dominikanac Augustinus Nalius (Nallius, Nalješković) Ragusinus bio je 1514–1525/27. biskup Trebinjsko-Mrkanjske biskupije. Dominikanac Ivan Krstitelj Natalis, pjesnik i književnik (rođ. oko 1610.), bio je stonski biskup 1683–1687. g (Krasić, 1997, 116, 174, 175).

Ruža Ćuk prisutnost potomaka barskih iseljenika u Dubrovniku, shodno arhivskim izvorima, okončava s 1519. godinom (Ćuk, 1999, 165).

Kod etimološkog tumačenja imena *Nalješko* i prezimena *Nalješković* dovodi se u sumnju da li potiču od *Nale*; ističe se mogućnost ukrštanja dva imena različitog porijekla: mlet. *Nalesco* od *Natalis* i deminutiva na *–ko* od *Nalêza* (od *nalêzti*), „nahod" (Skok, 1972, 505). Književnik i naučnik Nikola Nalješković (oko 1500/08. – 1587.) u talijanskim se izdanjima svojih djela preziva (*di*) *Nale*; Viktor Besali iz Bara,[7] slaveći njegov astronomski naučni prinos 1579. g., sonet posvećuje „*a Nicolò Nale da Ragusa*" (Marković, 2006, 276).

Osim sličnosti po etimološkom porijeklu prezimena, istovjetnih ili bilježenih shodnim varijantama, na osnovu raspoloživih podataka ne može se tvrditi da postoji povezanost barskog roda i pripadnika porodica iz bližih primorskih gradova. Kao patricijska, pominje se porodica *Nale* u Kotoru (Heyer Von Rosenfeld, 1873, VI, 63). Tamo se inače u XIV–XV v. bilježi više osoba određenih s *Nale, Natalinus, Nadalinus* (Jireček, 1904b, 48). U XVII v., posebno se pominje porodica *Natali* (*Natalius*, Natalić) u Dubrovniku. *Natali*, „*Ragusini cives*": „*nach dem Jahre 1667 neu aufgenommen Adels-Geschlechter*";[8] „*Ein nach Ragusa eingewandertes italienisches Geschlecht*" (Heyer Von Rosenfeld, 1873, VI, XI, XVI).

Prema interpretaciji podataka iz 1629/33. g., u barske patricijske porodice ubrajali su se Borisi, Goetići, Natali, Nasachi, Pasquali i Samueli - ukupno njih šest (Zamputti, 1963, 404, 406, 408). Međutim, shodno razmatranim dokumentima, ne može se s većom vjerovatnošću tvrditi da se kod Natalija radi o novovjekovnoj opstojnosti kasnosrednjovjekovnog roda; u Baru je u XVII vijeku poznat samo *Signor Nicolo Natali* (Zamputti, 1963, 406).

---

7 Doselivši se iz Bara u Dubrovnik 1580. g., porodica *Bessagli* (Besali, *Besaleo*) je posljednja koja je unijeta u *Vlajkijevu genealogiju antunina* (izuzetno preciznu zbirku antuninskih rodoslovlja - *Descrizione delle Origini e Genealogie dei cittadini Ragusei*), nakon čega se može zaključiti da je bio zatvoren krug prvobitnih, kasnosrednjovjekovnih pripadnika te bratovštine (Marković, 2006, 267–268; Pešorda Vardić, 2012, 33, 42, 71). Nakon katastrofalnog potresa, glasanjem 1668. g., u antunine je agregiran i Stjepan Vituša, vjerovatno porijeklom iz Bara. Na tragu svjetovnog prilagođavanja mendikantskog načina života, „komunalizacije hospitala" i drugih karitativnih ciljeva, kao i korporativnih interesa, sekundarna elita grada, sloj građanstva koji je „zakasnio" ući u vlastelu, svoje je udruživanje otpočeo osnivanjem bratovštine sv. Duha i sv. Spasitelja svijeta 1348. g., koja se zatim 1432. ujedinila s bratovštinom sv. Petra i sv. Antuna (Pešorda Vardić, 2012, 13, 14, 15, 17, 18, 20, 25).

8 Jakov Mata Božova (oko 1600–1685.), porijekom s ostrva Lopuda, ubrzo je nakon potresa, 30. jula 1667. g. primljen u dubrovački vlasteoski krug, plativši za prijem 1.000 ugarskih zlatnika (Vekarić, 2012b, 72).

*Bar, katedrala sv. Đura (Đorđa), XVI st. 3D rekonstrukcija: Mag. Herwig Stieber*

BARSKI KANONIK IVAN NALE (*Johannes Nalle*; *Zuane de Nale*); PROKURATOR NADBISKUPA I KAPTOLA, KOMUNALNI NOTAR, XIV–XV v.

Katedralni kaptol Bara, čija su ovlašćenja bila određena crkvenim pravom, a prava i obaveze kanonika vjerovatno statutarnim regulama, posebno se u izvorima iz XIV i prve polovine XV vijeka javlja kao referentna crkvena ustanova mnogih Barana, koji su joj zavještali značajne legate. Osvrtom na susjedni Kotor, u kojem je kaptol zasebno institucionalizovan svakako u X v., od kada započinje njegovo formiranje kao zajednice kanonika sve do potkraj XII v. (Gulin, 2003, 80, 92), može se pretpostaviti i da je barski kaptol rano utemeljen. Kotorski Zbor kanonika kaptola se, pred papinskim poslanikom i građanima, već 1200. g. bilježi u vezi sa uređenjem nekih javnih poslova.[9] Kaptol je mogao imati dvanaest kanonika s dva glavna dostojanstva *arhiđakona* i *arhiprezvitera*, kao i veći proj *prezvitera*, koji su činili pomoćni red unutar crkve (Gulin, 2003, 81, 87). Dok je kanonikat svešteniku obezbjeđivao mjesto u kaptolskom zboru, različito po položaju i obavezama, prebenda je bila materijalna osnovica njegove egzistencije (Jerković, 2012, 3). Kaptolski popis vlastelinstava i posjeda, *montaneum*, mogao je sadržati detalje o tome ko ih je darovao, naznaku površine, vrste kulture i kolonatskih odnosa, a kanonici su mogli sastaviti popise dobara

9 Tom prilikom se bilježi „*Micha archidiaconus cum suo capitulo ibi existens*", dok je odnosnu ispravu sastavio član kaptolske zajednice: „*Ego autem Junius presbyter et consilii notarius*..."; Junije će sa službom opštinskog notara nastaviti od 1217. g. (Gulin, 2003, 80).

svojih prebendi, čime bi ovakva dokumentacija bila oblik vođenja administracije pojednih crkvenih posjeda (Ančić, 1997, 131). Brojni kaptolski posjedi, zemlje i vinogradi, davani su pojedincima na obrađivanje, a oni su kaptolu plaćali ugovorenu godišnju desetinu - pored onih od misa, pogreba, zavjeta i sl. - poseban izvor prihoda kaptolske menze (Gulin, 2003, 86, 88). Svešteničkі kolegijum koji je pomagao[10] nadbiskupu u reprezentaciji i službi u liturgijskom i sakralnom životu dijeceze, svojom je djelatnošću uticao i na njenu pravnu kulturu. Kanonici su se o trošku kaptola slali na studije teologije i crkvenog prava u Italiju (uticaj bolonjske[11] jurisprudencije posebno je bio značajan za karijeru u kaptolu), drugi su se obrazovali u kaptolskoj ili katedralnoj školi (koju je, prema odredbi Trećeg lateranskog koncila iz 1179. g., morala imati svaka katedrala), a znanje koje su sticali dolazilo je do izražaja u notarskim poslovima. Pojedini prezviteri ili đakoni su,[12] osim svojih redovnih zaduženja unutar katedralne crkve, obavljali službu notara za potrebe opštine ili kaptola (Gulin, 2003, 81, 90). Katedralni ili kolegijalni kaptol odnosno samostan koji je posjedovao društveno prihvaćeno i verifikovano pravo svjedočenja u različitim javnim i privatnim pravnim transakcijama, formulisao ga je i registrovao ovjerenim dokumentom, čime je ono zadobijalo težinu javnog pravnog čina (Ančić, 2005, 15). Pri sastavljanju, pisanju i izdavanju autentičnih svjedočanstava i prijepisa originalnih dokumenata u istorijski prijelomnom, predmletačkom razdoblju, posebno se bilježe kanonici.

Kanonici, koji se i u Baru pojavljuju u ulozi zakletih opštinskih notara, memorišući javne i privatno-pravne akte, svjedočili su i o ispravnosti sprovedenog postupka i istinitosti navedenih obavijesti. Pripadnici klera kao pisari isprava u potpisima nisu isticali samo svoj duhovni položaj, već su koristili notarsku formulu i oznaku notara, što ih je distingviralo u odnosu na najraniju praksu, kada su duhovnici sastavljali dokumente prvenstveno zato što su bili najobrazovaniji ljudi u gradu (Grbavac, 2008, 508). Djelokrug poslova koje su obavljali notari i predstavnici crkvenih institucija nije u medievistici podrobnije elaboriran, mada oskudni podaci u slučaju odnosne prakse u Baru indiciraju određenu sraslost. Kaptoli su kao „vjerodostojna mjesta" (*loca credibilia*) mogli imati jakog takmaca u instituciji javnog bilježnika, uklopljenoj u organizaciju komunalne vlasti, pri čemu je u literaturi isticano da je djelovanje kaptola bilo usmjereno na registrovanje poslova usmjerenih na teritoriju izvan gradskog distrikta.[13]

10 Nadzor nad kaptolskim prihodima, pa i poslovima koji su se ticali bogoslužja i zamjenjivanja biskupa u njegovoj odsutnosti, u Kotoru je imao vikar biskupa Tomazija, arhiđakon Petar Saranni (Gulin, 2003, 86).

11 U Bologni se sve do 1360. godine predavalo samo opšte i crkveno pravo, kada je papa Inocent IV (1352–1362.) pravnom fakultetu dodao i teološki (Krasić, 2004, 127). Bolonjska *alma mater* je stekla ozbiljnog konkurenta u univerzitetu u Padovi i njegovim pravnim studijama, gdje su morali studirati i studenti s dalmatinskih i istarskih područja koja su u XV v. pala pod mletačku vlast, ako su htjeli da im titula posluži za sticanje neke državne službe (Lonza, 2010, 39).

12 U svojstvu opštinskog notara, đakon Miha de Gigna piše 19. juna 1255. dokument u kojem *Capitulum Catarensis ecclesiae* donosi neke odredbe u vezi sa prijemom sveštenika, a 26. decembra 1257. g., on, kao zakleti notar, sastavlja ispravu o prijateljstvu Dubrovnika i Kotora, „*cum signo eiusdem assueto, quam presentem paginam nostre comunitatis sigillo fecimus comuniri*". Prezviter Abanin se 1322/23. g., u funkciji komunalnog kancelara, pojavljuje uz zakletog notara kotorske opštine (Gulin, 2003, 81, 82).

13 M. Ančić upozorava na nedostatnost argumentacije u tekstovima na osnovu kojih su se tvrdnje o djelovanju „vjerodostojnih mjesta" dalje preuzimale i širile u literaturi (Ančić, 2005, 16).

Urbana oligarhija je vjerovatno dominantno karakterisala katedralni kaptol Bara. Tako je i *presbyter Johannes Nalle*, svjedoče poznati arhivski spisi, između 1394. i 1402. g. bio kanonik barske katedrale sv. Đura. Metodom analogije s najbližim krajevima i komparativnom analizom, tako bi indicirala i odluka dubrovačkog Senata iz 1442. godine, kojim je bilo propisano da samo patriciji smiju biti članovi kaptola (ali je i dotada bilo pravilo s malo izuzetaka),[14] dok odudara praksa kakva je postojala u Kotoru.[15] Papinski delegat je 1337. g. sudio Kotoru što je načinio statut prema kojem Kotoranin ne može biti njegov biskup i što je grad raznio biskupova dobra; prepreke koje je stvorio gradski statut su vjerovatno stvarale značajnije smetnje i za sam kaptol kanonika (Gulin, 2003, 83). Na najširem evropskom području, u Lisabonu su pripadnici istaknutih porodica ulazili u kaptol tek nakon konsolidacije pozicija u lokalnoj administraciji, dok je kaptol Toleda inkorporirao članove svih gradskih društvenih slojeva te su vjerovatno i drugi medievalni kaptoli na Iberijskom poluostrvu bili slika grada (Vilar, 2007, 15). Dok su nadbiskupi težili jednakosti članova kaptola, u komunalnoj mreži personalnih odnosa i zavisnosti mikro-populacije, strategija društvenog uzdizanja, karijere i sticanja bogatstva zasnivala se na perpetuaciji organizacije, uloga i veza (Vilar, 2007, 3), duboko utemeljenih u tradicijama roda i snazi porodične imovine.

Nosioci odnosnih funkcija u visokom kleru bili su ključne osobe u životu grada i tek bi sistematska prozopografska istraživanja rasvijetlila njihove životne trajektorije. Njihovu visoku intelektualnu pozicioniranost, integrisanost u život komune i uživanje velikog društvenog ugleda potvrđuje preuzimanje zastupanja u različitim poslovima (Grbavac, 2008, 517, 519, 522). Otkad je Petar Saranni 1326. preuzeo funkciju arhiđakona crkve sv. Tripuna, on se sa svojim kaptolom kanonika vrlo često navodi u zapisima kotorskih notara do 1336. g., u vezi sa davanjem („iznajmljivanjem zauvijek") crkvenih zemalja i kuća raznim licima, primanjem novčanih prihoda od zakupa, davanjem desetine, kao punomoćnik u sudskim parnicama s kotorskim klericima (Gulin, 2003, 83–85). Osim navedenog, Veliko vijeće Kotora je aprila 1416. i 1417. g. donijelo odluku da se na testamente mora platiti i 3% poreza u korist popravki ili gradnje crkve sv. Tripuna, koji će primiti arhiđakoni i prokuratori iste katedrale (Gulin, 2003, 88). Baraninu Ivanu Nale, prokuratoru barskog nadbiskupa Marina, kanonika i kaptola, kao i ratačkom opatu Buciju, bilo je 1399. povjereno da urede uslove i način vraćanja relikvija barske katedrale (Thallóczy, Jireček, Sufflay, 1913, 174–175; Valentini, 1968, 230). Njihovo se djelovanje trebalo odnositi na dubrovačko područje, gdje su relikvije „*ecclesie sancti Georgii"* dospjele kao

14 Dubrovački kanonici koji su zabilježeni kao studenti prava pripadali su patricijskom rodu, ali nisu ulazili u tijela državne vlasti. Oni su pokazivali najviše interesa za sticanje pravničke titule, odlazeći na studije većinom kad su već raspolagali unosnim prihodima, s postignutim položajem u crkvenoj hijerarhiji i društvu. Za njih se može reći da su činili visoko obrazovanu crkvenu elitu, koja je mogla djelovati pri uređivanju imovinskih interesa Crkve i u sporovima koje je vodio biskupski sud (Lonza, 2008, 126–127; Lonza, 2010, 36).

15 Papa Ivan XXII je pismom od 12. decembra 1328. g. dozvolio kotorskom biskupu Sergiju da unutar svoje crkve može slobodno podijeliti crkvene beneficije koje je posjedovao prilikom proglašenja za biskupa, onim sposobnim osobama koje to zaslužuju; među njima se navode kanonici kotorskog kaptola, po zvanju arhiđakon i arhiprezviter (Gulin, 2003, 82).

zalog, koji je vrijednošću i značenjem zasigurno premašivao dug od 120 dukata, zbog kojeg su napustile nadbiskupsko sjedište.[16]

U izvoru iz 1394. g. je zabilježeno da je „*presbiter Johannes Nale canonicus maioris ecclesie Antibarensis publicus iuratus notarius Antibarensis*" redigovao testament Mare *Curiace*, sastavljen 1377. g. Navod da je Ivan Nale zakleti notar indicira odstustvo intitulacije kakvu su mogli donijeti papinsko ovlašćenje, odnosno završene studije na univerzitetima u Bologni ili Padovi.[17] Nale je iz katastika vođenog od strane zakletog vicenotara - *„Francisci Comi olim dicte civitatis vicenotarii*" – odnosni testament, kako ga je od riječi do riječi našao i zabilježio, upodobio formi javne isprave, koju je tako zadobio 12. aprila navedene godine, druge indikcije.[18] Javni akti zadobijali su jemstvo autentičnosti unošenjem u katastik – registar notarskih spisa komune - na osnovu čega se mogao prepisati, odnosno izdati prijepis određenog dokumenta. Spis iz 1394. je potom, radi veće obaveznosti svih, ovjeren uobičajenim znakom, a potvrdili su ga kao svjedoci prisutni predstavnici barskih vlasti: zakleti sudija i auditor.[19]

Dokument od 22. juna 1402. g., opravosnažen opštinskim pismom i pečatom, takođe naglašava funkciju kanonika Ivana kao zakletog bilježnika komune Bara: „*canonici et iurati notarii communis Antibari... autenticato per litteras communis Antibari sigillo dicti communis sigillatis...*" (Valentini, 1968, 230; Jireček, 1904a, 213). Iako će kaptol tokom XV i XVI v. biti vjerovatno oblikovan na istovjetan način (up. Gulin, 2003, 89), predmletačka praksa angažovanja domaćih notara brzo će se, laicizacijom te službe, gasiti.[20]

Gotovo pola stoljeća kasnije, svojeg se strica u Dubrovniku prisjeća Nikola Marinov Nale, ističući u testamentu iz 1451. g. da dubrovačkoj bratovštini sveštenika ostavlja 20 perpera, pod uslovom da njega, njegovu ženu i majku, u nju upišu „*et mio barba prete Zuane de Nale, canonico de San Zorzi de Antiveri*." Bratime dubrovačke bratovštine sveštenika Zuaneov sinovac je obavezivao „*che ogni anno fazano comemoracion de tutti*" (DAD, TN, 14, f. 192r).

16 U Baru, kao i Kotoru, u kaptolu je djelovao i kanonik *sacrista*, običan član zajednice koji je stajao na čelu katedralne sakristije; u Kotoru su, u dogovoru s biskupom i kaptolom, sakristu birali u Veliko vijeće. Unutar katedralne riznice su se, uz Relikvijar, crkvene i privatne dragocjenosti, u katastiku čuvale važne gradske i privatne isprave, povlastice, ugovori i testamenti. Čuvanje relikvija i katastika sv. Tripuna bilo je statutom povjereno trima uglednim osobama, dvojici svjetovnjaka i jednom svešteniku, nazvanim *thesaurarii*, koje je najprije birala narodna skupština, a zatim Malo vijeće (Gulin, 2003, 89). Tri dubrovačka katedralna zastupnika koji su se brinuli o Relikvijaru, shodno dokumentu iz 1251. bili su plemići, od kojih dvojica svjetovnjaci, a treći kanonik koji je djelovao u službi svjetovnih vlasti; iz te je vrste prokuratora nastala služba rizničara (Lonza, 2012, 10). Rizničari su preuzeli staranje oko riznice – čuvanje svetačkih relikvija ključnih za identitet zajednice, ali i blaga pravne prirode – najvažnijih isprava i povlastica dubrovačke komune (Lonza, 2012, 13; Janeković Römer, 1999, 369–373).

17 *Don Dominichus Capsenta* (*Capseta, Casseta*), kanonik crkve sv. Petra u Baru, određen je 1433. g. kao „*imperiali auctoritate judex ordinarius et publicus notarius et cancellarius communis Antibari"* (Jireček, 1904a, 213).

18 DAD, TN, sv. 8, ff. 59v-60r. Snimke dokumenata iz Državnog arhiva u Dubrovniku i transkripciju iz TN, 17, ff. 95v-96r, ustupila mi je prof. dr. sc. Nella Lonza, na čemu joj, kao i na revidiranju transkripcije iz TN, 14, ff. 192r-194r i značajnim savjetima i sugestijama, najljepše zahvaljujem.

19 O funkciji auditora i sličnih službenika u to vrijeme na istočnom Jadranu up. Darovec, 2010.

20 Nadiranje notara stranaca uticaće na isključivanje pripadnika domaćeg klera iz javnog notarijata, tako da su u zadarskoj komuni od tridesetih godina XIV v. do početka XV v. od ukupno šezdeset četiri notara djelovala samo petorica domaćih i pedeset tri strana notara (Grbavac, 2008, 510).

*Stari grad Bar: ruševine franjevačkog samostana sv. Nikole i crnogorska zastava na Citadeli (Dudva, 2011, Creative Commons).*

## NIKOLA MARINOV NALIS, ISTAKNUTI DUBROVAČKI ANTUNIN; UGLEDNI TRGOVAC XV VIJEKA (*Nicolaus Marini de Nale de Antibaro*, XIV v. – 1451. g.)

Migracijski usmjereni na Dubrovnik i ranije, Barani se posebno potkraj XIV vijeka, u vrijeme najveće ekonomske konjunkture, iseljavaju u to čvorište apeninskih i balkanskih ekonomskih puteva (Pešorda Vardić, 2012, 44, 45). U vezi s useljavanjima i podnosiocima molbi, iz Dalmacije i iz „bilo kojeg drugog stranog kraja", 1395. g. je donijeta odredba kojom se ovlašćenja Malog vijeća[21] u dodjeljivanju građanstva još više smanjuju i prenose na Veliko vijeće (Pešorda Vardić, 2012, 83). Sprovođenje te odredbe potvrđuje primjer Nikole Marinovog Nale iz Bara, rodonačelnika antuninskog roda Nalis;[22] raspravljajući o

21 Odredbom iz 1364. g. normirana je praksa po kojoj je za dodjeljivanje građanstva bilo zaduženo Malo vijeće, ali je, najviše zbog ekonomske konkurencije, nosećih trgovinskih i carinskih privilegija, izuzeta njegova nadležnost ponajprije u pogledu plemića iz Kotora, Bara i Ulcinja, osim ako se ne bi preselili i živjeli u Dubrovniku sa svojim porodicama (Pešorda Vardić, 2012, 83).

22 U cilju distinkcije roda barskog plemićkog porijekla od drugog dubrovačkog antuninskog roda, prihvaćen je način bilježenja koji je korišten u: Pešorda Vardić, 2012 (Vidi: Pešorda Vardić, 2012, 83).

njegovom slučaju, Malo vijeće, koje je i dalje odlučivalo o prijemu „Slovena" u građanstvo, izuzetih iz nadležnosti Velikog vijeća, zaključilo je da njegovu molbu treba proslijediti Velikom vijeću (Pešorda Vardić, 2012, 83). Veliko vijeće je zahtjev Nikole Nalisa pozitivno riješilo, proglasivši ga „našim dubrovačkim građaninom" (Pešorda Vardić, 2012, 83). U istoriografiji se ističe da je *Nicolo* (1435.), *Nicola* (1438.), *Nicolaus Marini de Nale de Antibaro* (Bošković, 1962, 269; Ćuk, 1999, 192) – koji se bavio trgovačkim poslovima u Dubrovniku - 16. februara 1417. g. dobio dubrovačko građanstvo[23] (Mijušković, 1961, 103, 114). Iseljavanje iz Bara, koje se vezuje za 1380. g., potvrđuju to genealoške analize Nenada Vekarića i u slučajevima nekih drugih antunina, ukazuje na odstupanja stvarno mogućeg vremena i dolaska u Dubrovnik navedenog u *Vlajkijevoj genealogiji antunina* (Pešorda Vardić, 2012, 33), navodeći na pomisao da se radi o ocu Nikole Nalisa.

O Nikolinom ocu nisu poznati podrobniji podaci, osim po bilježenju u oporuci sačinjenoj 16. februara 1451. g., kada se navodi da je bio upisan u dubrovačku bratovštinu sveštenika, koja obavlja godišnje komemoracije za njegovu dušu. Samo nekoliko godina kasnije, 1459. g., Nikolin sin Jeronim određuje legat za duše svojih roditelja: „*per l'anima dello patre mio et della matre mia yperperi 10*" (DAD, TN, 17, f. 96r). Na porodičnu tradiciju mogla bi međutim indicirati imena Nikolinog sina i sinovca, navedenog trgovca iz tridesetih godina XIV vijeka - *Theodorus, f. qu. Nicole de Nati,* kao i ime stanovnika Bara u XVII v. Plemićki status drugoga grada nije donosio i dubrovačko vlasteostvo, ali je, uz stečeni imetak, imao značajnu ulogu u stvaranju kolektivne memorije antunina (Pešorda Vardić, 2012, 110).

Makar 19 dubrovačkih kasnosrednjovjekovnih antuninskih rodova (16%) poticalo je iz Kotora (9), Bara (7),[24] Ulcinja (2) i Risna (1) (Pešorda Vardić, 2012, 38, 40–43). Nikolina društvena afirmacija u Dubrovniku ogleda se u dužnostima koje su mu povjeravane u bratovštini uglednih i bogatih trgovaca, još prije ujedinjenja. Samo šest godina nakon prijema u dubrovačko građanstvo, 1423., Nalis je postao gastald bratovštine Sv. Petra i Sv. Antuna: vjerovatno jedan od upravitelja, čija je služba trajala godinu dana (up. Pešorda Vardić, 2012, 21, 148). Nikola Marinov Nale se ponovo 1428. g. pominje kao gastald bratovštine, član užeg i vodećeg, izvršnog tijela uprave. Upravitelji su se posebno brinuli o imovini bratovštine i o imovnom stanju porodica njenih preminulih članova, o nadzoru nad prikupljenim novcem, o držanju misa i održavanju crkava, podnoseći finansijski izvještaj novoizabranima na kraju svojeg mandata (Pešorda Vardić, 2012, 21, 22, 145, 148). Sposobniji i ambiciozniji članovi bratovštine postajali su tako bliži stvarnim polugama moći i uticaja, simbolično starajući privid „zamjenske političke hijerarhije" u odnosu na vlasteosku (Pešorda Vardić, 2012, 145, 149, 151).

---

23 DAD, *Acta Maioris Consilii*, 1, f. 63r to potvrđuje; zahvaljujem na podatku prof. dr. sc. Nelli Lonza (up. Pešorda Vardić, 2012, 83); R. Ćuk je međutim navela da je jedan član odnosne porodice dobio dubrovačko građanstvo 17. januara 1417. g. Tog dana Veliko vijeće nije zasijedalo.

24 Pitanja vjerodostojnosti genealoških konstrukcija i konačnosti evidentiranih brojki otvaraju i istraživanja I. Mahnken u odnosu na rod Bokša (Mahnken, 1960, 28; Pešorda Vardić, 2012, 14, 44), u vezi sa kojim još K. Jireček navodi: „sein Sohn Georg oder Zore de B. 1369–1399 war Protovestiar des Königs von Bosnien" (Jireček, 1904c, 8). Kamenar u Dubrovniku, *Bocssa de Antivari, Bossa de Antibari, Bochsa,* Bogšić, pominje se u razdoblju 1335–1369. g (Bošković, 1962, 245, 250, 265).

Nikola Marinov Nale je, prije opsežnijih podataka koje donosi njegov testament, evidentiran u nekoliko istorijskih izvora koji rasvjetljavaju njegovo poslovanje. Baranin Mihajlo Menčev je 6. novembra 1431. primio od svojeg ortaka Nikole *Nalješkovića* iz Dubrovnika (preseljenog iz Bara) 333 dukata, da tim novcem ode u Srebrenicu i kupi srebra, zadržavajući polovinu dobiti (Hrabak, 1999, 178). Nikola je zatim, 1449. g., zajedno s braćom Stjepanom i Pavlom[25] Luccari zakupio kuću, s dvije radnje (*stacon*) ispod, klupom za trgovanje ispred i prostorijama za stanovanje iznad, na Placi - sjevernoj strani današnjeg Straduna (Libri domorum, 2007, I, 272). Na blisku poslovnu povezanost, vjerovatno u obliku trgovačkog društva te na odnos povjerenja s dubrovačkim plemićima Luccari upućuje i Nikolina oporuka, za jednog od čijih izvršitelja i tutora nasljednika „*de menor etade*" biva određen *Ser Stefano de Luchari*.[26]

Testament *Nicole Marini de Nale de Antibaro*, sastavljen i deponovan na čuvanje u notarskoj kancelariji u Dubrovniku, kako je potvrđeno od strane sudije g. Damjana Menče[27] i notara g. *Johannes*-a *de Uguzonionis*,[28] otvoren je 13. marta 1451. godine (DAD, TN, 14, f. 192r).

U izjavi svoje posljednje volje, koja započinje zazivanjem Isusa Hrista i sv. Marije, *Nicola Marini de Nale,* ne želeći umrijeti bez testamenta, a brinući se za spas svoje duše, navodi da ga sastavlja i uređuje bolestan tijelom, ali zdrave svijesti i intelekta. Smatrajući da je ljudska fragilnost podvrgnuta nepredvidivoj smrti, imajući na umu da ništa nije sigurnije od smrti i manje izvjesno od smrtnog časa, posebno se prisjeća one evanđeoske izreke koja kaže „*estote parati quia nescitis diem neque horam*".

Zavještalac upućuje na iskaz iz Evanđelja, implicirajući Matejeve poruke iz *Vulgate*; 24,44: „*Ideoque et vos estote parati, quia, qua nescitis hora, Filius hominis venturus est.*"; Mt 25,13: „*Vigilate itaque, quia nescitis diem neque horam*." U maniru formule, gotovo je svaki testament citirao odnosnu poruku iz Evanđelja, koja je bila geslo srednjovjekovnog čovjeka (Janeković Römer, 1994, 13).

U pripremama za dobru smrt i dolazak pred Božji sud, često je podjećano na shodne biblijske citate. Sličnim riječima, upućujući na nemar smrtnika u odnosu na vlastito spasenje, opominju i poruke iz Evanđelja po Luki 12,36: *„Vigilate itaque omni tempore orantes ut digni habeamini fugere ista omia quae futura sunt et stare ante Filium hominis."*; Lk 12,40: „*Et vos estote parati, quia qua hora non putatis, Filius hominis venit."*; kao i po Marku 13,33: *„videte, vigilate et orate nescitis enim quando tempus sit"* (Llorenç i Blat, 2012, 62).

25 Pavao Nikolin Luccari (oko 1420. – 1484.), oženjen oko 1449. g. djevojkom iz roda Sorgo, imao je tri sina. Lukarevići su pripadali istoj rodovskoj cjelini s Gundulićima (Vekarić, 2012a, 324–326).

26 Testament je objavljen marta 1451., dok braća Luccari bez Nalisa odnosni ugovor obnavljaju 1454. g., iste godine zakupljujući na suprotnoj strani Straduna još jedan dućan s kućom (Libri domorum, 2007, I, 274).

27 Damjan Ivanov Menče-Vlahović (oko 1390. – 1476.), oko 1423. g. oženjen djevojkom iz roda Goče, imao je četiri sina. Stekao je posjede u Ošlju, Lovornom i u Mrcinama. Poznat kao pisac, više puta je bio dubrovački knez (Vekarić, 2012b, 52–53).

28 *Ser Johannes de Uguzonibus de Arimino*, Ivan iz Riminija, građanin Padove, bio je dubrovački kancelar od 1440. do 1454. g. Rukopisao je najstariju knjigu koja čini *Specchio del Maggior Consiglio* i dopunio registar (skupni indeks, koji upućuje na tačno mjesto na kojem se pojedini pojam javlja i obrađuje) zbirke *Liber Viridis* (Jireček, 1904a, 194–195; Lonza, 2008, 122).

Hrišćanska priprema obredima za dobru smrt osiguravala je srećan ishod strašnog prijelaza; upravo sredinom XV v. pojavljuje se *Ars moriendi*, uvodi se ritual i sve u vezi s umiranjem i pokopom, uključujući testament, milostinju i molitve postaje propisano.[29] Eshatološki strah od posljednjeg suda i predstave vjernika formirane pod uticajem propovjedničkih redova,[30] posebno su uticali na razapetost između vjerskog opravdanja svojeg poziva i mogućnosti spasenja duše (Janeković Römer, 1994, 5, 7). Upravo je jedan od epitropa i izvršitelja Nikolinog testamenta, *Benedetto de Cotrul* (koji je u bratovštinu antunina upisan oko 1435. g.), nailazeći na zapreke etičke prirode, držao da nije dovoljna iskrena vjera i čašćenje Boga, već da treba žuditi i za znanjem o spasenju, te crkvenim zakonima koje valja poštovati.[31] Barska poveznica u slučaju Benka Kotrulja svakako nije zanemariva; *Stanus Hiliich* (Stano Ilić), koji se prije formalnog prijema u dubrovačko građanstvo (1388.) bavio trgovinom tkaninama u Prištini, svoju kćerku Nikoletu[32] udao je 1413. za Jakova,[33] Benediktovog oca.[34]

29 Rukopisnih *Artes* ima 234, a s izumom štamparstva njihova je popularnost rasla, utičući intenzivnije na predstave o smrti i umiranju, o čemu su ljudi slušali preko propovijedi (Janeković Römer, 1994, 5–6).

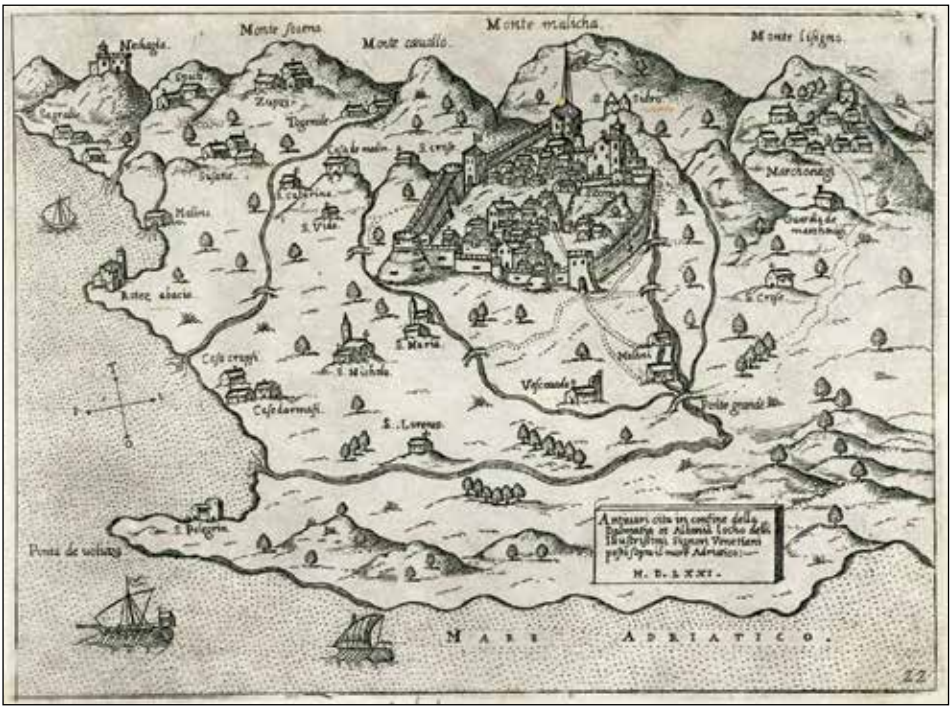
30 „Huc tendit parabola : q. d. Ne simile quid tunc vobis contingat, ne excludamini cælestibus nuptiis, & à me sponso reprobemini, *vigilate,* id est, estote parati, prudenter & tempestivè prospicite vobis de oleo charitatis sinceræque pietatis, tempori vobis parate bonorum operum commeatum. ... *Nescitis diem neque horam, non modo ultimi illius temporis,* ait Augustinus serm. 22. de verbis Domini, *quo venturus est sponsus, sed suæ quisque dormitionis diem & horam nescit. Quisquis autem paratus est usque ad somnum, id est, usque ad mortem quæ omnibus debetur, paratus invenietur etiam cùm illa vox media nocte sonuerit, qua omnes evigilaturi sumus :* quemadmodum & è diverso, quisquis in morte imparatus fuerit, etiam tunc imparatus invenietur. Semper ergo extremum diem debemus metuere, quem numquam possumus prævidere : *nam qui pœnitenti veniam spopondit, peccanti diem crastinum non promisit*" (Lucas, 1712, 421).

31 Benedikt Kotruljević je posebno bio opterećen moralnim zahtjevom za vraćanje dugova. Prema njegovom savjetu, svaki dug dužnik mora ubilježiti u poslovnu knjigu, kako bi zapis isključio iskušenje poricanja i izbjegavanje povrata (Janeković Römer, 1994, 5, 7; Pešorda Vardić, 2012, 66).

32 Nikoleta Kotrulj se u svojem testamentu sjetila svih unuka, oslovljavajuči ih deminutivima, ostavljajući svakoj po neki legat (Pešorda Vardić, 2012, 138)

33 Jakov Kotrulj (kojem se djed doselio iz Kotora u Dubrovnik oko 1350. g.) oženio se za Nikoletu Ilić dvije godine nakon smrti svojeg oca Ruska, poznatog dubrovačkog kreditora. Istakavši se najprije u nabavci žita, Dubrovčanima je 1429. g. isposlovao trgovinske povlastice po zemljama kraljice Ivane II, kao i pravo imenovanja konzula u Kraljevini Siciliji, udarivši temelje razgranatoj konzularnoj mreži u južnoj Italiji. Poznat je i po dovođenju napuljskih graditelja Onofrija Jordanovog de la Cava i Andreucia de Bulbito, majstora zaslužnih za izgradnju dubrovačkog vodovoda. U trenutku smrti, 1436. g., zajedno s braćom imao je posjede u Župi, Stonu, na Pelješcu, u Primorju i Konavlima, kuće u Dubrovniku, a novac i u Italiji. Njegovu diplomatsku karijeru (kao i poslovanje sa stričevima) nastavio je sin Benko, koji se vezao za dvor aragonskog kralja Alfonsa V i radio na uspostavljanju konzulata u Napulju (Pešorda Vardić, 2012, 41, 45, 59, 91, 114, 116, 119, 164–165, 190).

34 Utemeljitelj antuninskog roda Stano (Stanetić) u Dubrovniku je zakletvu Malom vijeću položio aprila 1388. Kćerku Nikoletu je prilikom udaje za Jakova Kotrulja opremio izdašnim mirazom od 1.000 perpera i 150 unci zlata, a nije štedio ni na mirazima ostalih kćeri: Franuše, Maruše i Anuhle - koje su prosječno u brak unijele 600 perpera i oko 100 unci zlata. Porodica Stana Ilijinog se čvrsto povezala s Kotruljima udajom dviju njegovih kćeri za dvojicu sinova Ruska Kotrulja. Stano je posjede u Baru zadržao dugo po preseljenju u Dubrovnik, prodavši tek 1423. i 1438. svoju zidanu i jednu manju kuću, brojne posjede i maslinjak. Benedikt Kotrulj u svojem djelu *Libro del arte dela mercatura* navodi da mu je djed Stano imao 96 godina, što bi značilo da je rođen oko 1362. g. Patronim Ilić je u Dubrovniku bio u upotrebi do zadnje četvrtine XV v., ali je u trećoj generaciji prevladalo rodovsko prezime Stano (Miruša, kći Frana de Stano, 1497.), koje je i uneseno u rodoslov (Pešorda Vardić, 2012, 45, 90–91, 99, 100, 140).




*G. F. Camocio, "Isole famose…": Bar 1571.*

Nikola Nalis na početku svoje oporuke zavješta legat dubrovačkoj katedrali sv. Marije Velike, koji za desetinu i prvinu određuje na 3 perpera. Bratovštini sveštenika[35] u Dubrovniku ostavlja 20 perpera, s uslovom da su obavezni da njega i njegovu ženu Nikoletu, kao i njegovu majku Mariju i njegovog barbu, sveštenika Zuanea de Nale, kanonika „*de San Zorzi de Antiveri*", upišu u njihovu bratovštinu. Takođe, bratimi su bili dužni da svake godine učine komemoraciju svima, kao što čine njegovom ocu, koji je bio upisan u navedenu bratovštinu.

Ostavio je zatim legat da se pošalje jedan sveštenik sv. Nikoli u Bariju za njegovu i dušu njegove žene Nikolete, određujući da mu se za navedeni put da 20 perpera. Takođe, izrazio je želju da se jedan sveštenik pošalje u Rim za njegovu i duše njegovih preminulih i da mu se za taj put da 30 perpera. Osim toga, ukazujući na izuzetak od duhovnog zajedništva, naveo je da želi da se još jedan sveštenik pošalje u Rim za dušu njegove žene Nikolete i da se onome ko bude išao na put isto tako da 30 perpera.

35 Premda su glavni članovi i upravitelji bratovštine bili sveštenici i klerici uopšte, u nju su se mogli upisati i svjetovnjaci, postajući tako dionicima „duhovnih njezinih blagodati." Nastavši 1393. g. u svrhu bogoljubnog podsticanja i materijalnog podupiranja nižeg sveštenstva, bratovština je proširujući dobrotvorne zadatke, već krajem XIV v. utemeljila i bolnicu za uboge (Vojinović, 1899, VIII–IX).

Potom je ostavio legat od 20 perpera don Nikoli Pavličeviću, za četiri para misa sv. Grgura za njegovu i dušu njegove žene, kao i za duše njihovih preminulih. Don *Zohanne*-u[36] iz sv. Stjepana[37] ostavio je legat od 12 perpera, na ime duga za mise koje je održao za njegove mrtve. Testator je pomenutom don Ivanu zatim zavještao 20 perpera, da održi četiri para gregorijanskih misa za njegovu i dušu njegove žene Nikolete, kao i za duše njihovih preminulih. Izdvajanje pojedinih svještenika možda sugeriše na njihovu duhovnu ulogu ispovjednika. Takođe je ostavio iznos od 20 perpera sv. Franju u Dubrovniku, za mise za njegovu i dušu njegove žene Nikolete, kao i za duše njihovih mrtvih.

Shodno testamentu, Nikola Nalis je u kući držao poslugu. Ostavio je da se učini obračun za vrijeme dok je u njegovoj kući boravila djevojka Vukna te da joj se za razdoblje službe od preko 13 godina isplati kako se inače prema običajima plaća sluškinjama (DAD, TN, 14, f. 192v). S obzirom da su se sluškinje odijevale skromno, u odjeću od jednostavnijih tkanina,[38] uz navedeno, izrazio je želju da joj se sašiju dvije suknje od grubog vicentinskog platna,[39] od uzoraka koje se nalaze u butigi (magazinu), boje koje bude htjela - a to za dušu onoga čiji je novac (up. Ladić, 2002, 18–21). Ukoliko Nalis nije bio suknar (lat. *drapparius,* tal. *drappiere*)[40] u gradu u kojem se potkraj XIV v. nalazila bojadisaonica, a od 1417. g. manufaktura sukna,[41] sigurno je, između ostalog, trgovao tekstilima. Da je raspolagao znatnim novčanim sredstvima, odražavajući i društveni status antunina, svjedoči ulaganje iz 1429. od 12.304 perpera u trgovačko društvo; iste je godine 2.000 dukata uložio u zajedničku koleganciju, koja je trebala trgovati tkaninama, srebrom i voskom po Bosni (Pešorda Vardić, 2012, 161).

U testamentu se Nikola zatim osvrće na svoje sinove: Antonija i njegovu braću, obavezujući ih da se postaraju da se napravi jedan drveni tabernakul za crkvu sv. Katarine, iznad oltara Nikole *de Miossa*.[42] *Tabernakul* odnosno *svetohranište* označava ormarić u koji se

36 Zasigurno je riječ o Baraninu. Don *Dimitrio Radachovich* iz Bara, rođak poznatog zlatara, u svojem je testamentu marta 1445. odredio: „*Fazo mey pitropi don Zoan de Antivari, capelano de Santo Stefano*..." (DAD, TN, 13, f. 211v). Na dan smrti, 28. avgusta 1454. godine, *dom Johannes de Menze de Giuro* je ponovo naveden kao kapelan sv. Stjepana, u dubrovačkoj Pustijerni (DAD, TN, 15, f. 115r).

37 Prema predanju koje je zapisao anonim, a prenosi Ragnina, crkvu sv. Stjepana je u IX st. darovala kraljica Margarita, udovica bosanskog kralja Stjepana: „*feze asai beni a la dita Gjexia; et deteno cjave de quele Reliquie che erano, ma ella ha portato più Reliquie, et ha adobato la dita Gjexia de Sancto Stefano*" (Annales Ragusini, 1883, 17). Bogata relikvijama, crkva sv. Stjepana je predstavljala jedno od najznačajnijih dubrovačkih svetilišta.

38 Sluškinje su nosile košulje, pamučne gornje haljine, kapice i marame. U kuhinji su nosile lanene i pamučne kapice, marame, grube košulje i haljine od fustanja, najčešće u plavoj – azurnoj, plavetnoj i tamnoplavoj boji (Janeković Römer, 2013, 7).

39 *Cauezo*, m. - grubo platno (Fabijanec, 2003, 124).

40 Izvorna definicija suknara zabilježena je 1300. g. u Arrasu: „*nul ne soit comptés pour drapier se il ne se melle de faire ou faire faire draperie*" (Fabijanec, 2003, 95).

41 U XV v. u Dubrovniku je istovremeno radilo 3–5 bojadisaonica, u kojima se obojeno sukno obično pralo, rastezalo i sušilo. Radonice su građene u predrađima i u okolini grada – u Rijeci Dubrovačkoj, Gružu i Šumetu; pripadale su komuni ili privatnim udruženjima (jedan od najaktivnijih ulagača kapitala, koji je pokrenuo veliku suknarsku radionicu, bio je Jakov Kotruljević). Glavno „industrijsko" predgrađe Dubrovnika bile su Pile (Manančikova, 1977, 344, 351; Pešorda Vardić, 2012, 190).

42 Poznata je trgovačka knjiga Nikole Miosa (1571/81–1586.), zasigurno potomka pomenutog; Miošić je živio i radio u Veneciji i njegova poslovna knjiga je bila posebno obilježena: „*Quaderno A. del amministrazione*

odlaže piksida ili ciborij s posvećenim hostijama. Obično se prekriva zavjesom, podsjećajući na pravi šator, od čega i potiče izvorno značenje odnosne riječi (Badurina, 2006, 587).[43]

Za odnosnu svrhu Nikola Marinov Nalis odredio je od 10 do 15 perpera, koliko bude trebalo. Uz to, njegov legat, osim što sadrži obavještenje o odnosnom oltaru, s istorijsko-umjetničkog aspekta saopštava i podatak u vezi s njegovim izgledom. Testament kod riječi „*altare*" sadrži naznaku kojom se upućuje na marginu, gdje se precizira da se nalazi „sa strane brda" i da izgledom treba da podsjeća na onaj nad oltarom u franjevačkoj crkvi.[44] Crkva sv. Katarine se pominje 1348. g., kada je Teodora de Vetrano darovala dominikancima, a Buna de Pabora joj ostavila legat za izradu slike. Od 1365. g. pominju se uz nju rekluze. Uz crkvu je 1438/39. živio i muški pustinjak. Smještena izvan gradskih zidina, nalazila se u blizini Vrata sv. Jakova.[45]

Pri izvršenju takve raspodjele navedene ostavštine, Nikola je istakao da ne želi da se troši novac iz dućana,[46] već da se prodaju tkanine i odjeća koji su pripadali njegovoj ženi Nikoleti, tj.: tri nove suknje, dvije *mostovaliere*[47] i jedna od *grane*,[48] nova grimizna[49]

---

*di Nicolo Miossa stabilito in Venezia, dell' anno 1571."* (Tadić, 1961, 1174; Janeković Römer, 2006, 2–3; Janeković Römer, 2009, 40).

43 Svetohranište, koje je rađeno za određeni oltar, moglo je npr. biti pozlaćeno.

44 „*El qual e da ladi de monte a quel modo como e fatto a San Francescho sovra lo altar*" (DAD, TN, 14, f. 192v.).

45 Crkva je, vjerovatno s okolnim zdanjima, srušena 1463. g., kad su dubrovačke vlasti strahovale od turske opsade. Za podatke zahvaljujem prof. dr. sc. Nelli Lonza.

46 Začetnik sociološke stratifikacije u teoriji arhitekture, talijanski teoretičar arhitekture Leon Battista Alberti, čija su odnosna djela nastala oko 1442/45. g., pažnju usmjerava na položaj dućana u gradu, dok se Kotrulj, koji se s Albertijevim djelima mogao upoznati za vrijeme školovanja u Italiji i koji je *Knjigu o vještini trgovanja* dovršio 1458. g., u opisu kuće „savršenog trgovca" usredsređuje se i na spremište za robu. O liku onovremenog dubrovačkog trgovca piše Filip de Diversis, u opisu Dubrovnika iz 1440. g., navodeći u trećem dijelu (*O političkom uređenju Dubrovnika*) tri vrste trgovaca: „Najveći su oni koji posluju kupujući i prodajući zlato, srebro, olovo, vosak, žito, koralje, papar, tkanine te vuneni, svileni zlatom protkani i pamučni grimiz i sličnu robu velike vrijednosti. (...) Neprekinutim bavljenjem trgovinom dubrovački građani, kako vlastela tako i pučani, na čudesan se način bogate. (...) Gotovo je nevjerovatno izobilje novca, bilo da bih želio opisati riznicu republike, bilo velike imutke građana, vlastele i pučana" (Grujić, 2012, 43, 44, 48).

47 Od vune iz Montvilliersa (Montreuil), sa sjevera Francuske. Porijeklo sukna, na koje upućuje njegov opis, ukazuje na prvenstvo sjeverozapadne Evrope u njegovom kvalitetu; Flandrije, Brabanta i sjeveroistočne Francuske. Predindustrijska faza izrade sukna otpočela je upravo u XI v. u Flandriji. Italija je prednjačila u trgovini vunenim tkaninama, koje su nabavljane na sajmovima u Champagni, a mogle biti preprodavane npr. u Veneciji (Stipišić, 2000, 25; Fabijanec, 2003, 96).

48 Leksički derivat latinskog porijekla, doslovno označava zrna, referirajući na *Kermes vermilio*, insekta koji živi na mediteranskom hrastu, čije ženke i jaja, osušeni na suncu, liče na sjemenje ili žito. Iako je to glavna asocijacija, termin se *per se* ne može dovoditi u vezu samo s kermesom, jer cijela porodica *coccoidea* insekata nalikuje zrncima. Bojadisari su jasno razlikovali između grane i košenila, grimizne boje koja se dobijala od štitaste uši. Genovska pravila o bojenju iz 1466. razgraničavala su granu i *chremisi* (Eastaugh, Walsh, Chaplin, Siddall, 2008, 179). U srednjem vijeku talijanska grimizna i skrletna vila bojena kermesom nadilazi famu tyrskog purpura (grecizam: porfir), boje koja se izvlačila iz rogatog morskog puža. *Kermes*, od romanizma (šp. *alquermes*, port. *quermes*) arapskog porijekla *al-qirmiz* (grimiz je balkanski turcizam), preko pers. *kirm* (crv) < sanskrt. *krmi*, istoznačanica je za *crvak* ili *crvac*, idiome za „crvena bojila" (Lorger, 2011, 27, 30–31).

49 Kapa „*de morello de grana*" (DAD, TN, 14, f. 192v). Grâna – tkanje, „po svoj prilici crveno", grimiz; tal. homonim *grana* - zrnasto. „Određujemo da se roba sa svih strana što je Dubrovčani prevoze u Veneciju...

kapa „*de morello"*,[50] postavljena[51] svilom vrste cedata (*„cum cendato"*),[52] grimizna gornja dugačka haljina[53] s vjerovatno krznenom stranom („*de dossi de vari*"), kao i dva nova krznena odjevna predmeta.[54] Nisu li navedeni odjevni predmeti odudarali od hijerarhijski utvrđenih pravila odijevanja u Dubrovniku? Benko Kotrulj, koji je u Firencu izvozio „sostanze impiegate per tingere i tessuti di lusso",[55] kritikujući običaje odijevanja, ogorčeno primjećuje da su ljudi „*zloupotrijebili i izopačili svaku uglađenost i dostojanstvo"* (Pešorda Vardić, 2012, 182). Naglašavao je da su žene pri udaji trebale biti opremljene odjećom i ukrasima „*prema svom položaju*", a trgovci i građani su trebali biti obučeni skladno i umjereno, a ne u materijale, posebno grimizne boje, koji su bili pridržani za vladare i velikaše, „*tako da se ne razlikuju pučanin i vlastelin, trgovac i velikaš*" (Pešorda Vardić, 2012, 182–183).

Navedene stvari su se trebale prodati diskretno, posredstvom Nikoletinih sestara, kao i drugih, kako najbolje budu smatrali epitropi Nikolinog testamenta, koji će novac primiti i njime podmirivati navedena zavještanja.

Da bi rasteretio svoju savjest, Nikola je kazao da su on i njegov brat *Zuanne***,** koji su poslovali u *fraterni*, imovinskoj zajednici, dužni dati dubrovačkoj opštini za fraudulentne carine 240 perpera. Na osnovu toga, odredio je da želi i da ostavlja da njegov dio, tj. 120 perpera, bude isplaćen dubrovačkoj komuni po 15 perpera godišnje, do isplate u cjelosti te da se drugačije plaćanje ne može primiti. Dio njegovog brata Zuannea dubrovačkoj Sinjoriji treba biti izmiren *„dalli successori del mio fradello, como vora et sapera*".

---

ima vagati na debelu mletačku mjeru. ... grimiza i svile jedan tanki mletački miljar za jedan miljar..." - „... *grana et seta unum miliare Veneciarum subtile pro uno miliare*" - navodi se u dubrovačkom statutu (Lorger, 2011, 46–47). Crvena boja se mogla postići „granom" (skrlet), „gvadom" i „crvcem", čija je metalna živa i trajna boja bila otporna prema suncu i vlazi; dobijala se od živinog oksida u Bosni i Srbiji od 1437. g (Hrabak, 2005, 269). Crvac, *chermesin*, tumačen je kao cinabarit, ali izvori prije upućuju na materiju organskog porijekla, naziva izvedenog od biljnih ušiju skupljanih u junu „oko Ivandana". U Dubrovniku je najviše zadužnica s crvcem registrovano 1440. g (Voje, 2008, 102–104).

50 Od lat. *morum* - murva, označava purpurnu boju pigmenta koji se dobijao od insekata kermesa ili košenila, kroz postupak pripreme koji se zvao *cimatura*. Termin je identifikovan i kao karmin-crveni mineralni pigment, koji se upotrebljavao u fresko-slikarstvu. U izvorima iz XIV v., naziv je korišten za ljubičastu boju; u XV v. se odnosio na boju vune ili svile. Venecijanci su 1457. g. uveli nijansiranje suknenih traka da bi indicirali sredstva za bojenje korištena za posebne boje svile, s čime se u Genovi otpočelo 1466. g. te je *morello* svila opisivana kao „*morello sive violeto*" (Eastaugh, Walsh, Chaplin, Siddall, 2008, 294; Campbell, Dunkerton, Kirby, Monnas, 2001, 34).

51 *Cappa* je osim pokrivala za glavu, kao dio ženske odjeće označavala kratki ogrtač s kukuljicom za zimu ili kišu (Homa, 2004, 14).

52 Luksuzni odjevni predmeti mogli su biti pozlaćeni ili postavljeni svilom (*seda, çendato*), uz dodatke brojnih ukrasnih perli (Fabijanec, 2003, 98–99, 125).

53 Guarnazole su većinom bile od finih tkanina (Janeković Römer, 2013, 6). *Guarnacia*, f. – ogrtač, vunena kabanica, dugačka haljina (Fabijanec, 2003, 129).

54 Krznena odjeća, namijenjena hladnim danima, razlikovala se od kožuha, označavanih terminom *pellizoni*, koji su se mogli svrstati i u kućne potrepštine, jer se tako nazivalo i veliko krzno postavljeno suknom koje je služilo za pokrivanje kreveta, a koje se zimi koristilo za utopljavanje ukućana (Homa, 2004, 14).

55 Navodi se da je tamo izvozio „grandi partite di «chrèmisi», di «grana» e di «verzino»" (Boschetto, 2005, 699).

Nikola zatim određuje da njegova kćerka *Anucla* bude smještena u samostan sv. Marije *de Anzoli*[56] i da joj se, shodno mogućnostima, da „dumanjska dota". Zaređivanje kćeri u elitnom dubrovačkom građanstvu ipak nije bilo rašireno u mjeri kao kod vlastele (up. Janeković Römer, 1999, 202), kako zbog manje brojnosti antunina, tako i zbog njihovih znatnih ekonomskih mogućnosti (Pešorda Vardić, 2012, 132). Ukoliko u porodici nije bilo više kćeri, manja je bila vjerovatnost da će se neka od njih zarediti, a ni izbor supružnika, makar uz manji miraz, nije bio strogo omeđen kao kod vlastelinki (Pešorda Vardić, 2012, 132).

Testator je takođe naveo da ima na savjesti obavezu davanja Nikši *de Miosa* 328 perpera. Međutim, kako je pretrpio štetu u Prištini, *„in cason"* svojih starih dužnika,[57] s čime su upoznati braća Nikola i Jaketa Radulino,[58] neka bude prebijeno sa 340 perpera koji mu slijeduju kao obeštećenje, a treba da mu ih nadoknadi navedeni Nikša iz dijela koji se na njega odnosi iz troškova kolegancije.[59] Vjerovatno su u Prištini nad Nalisovom robom sprovedene represalije zbog dugova Nikše Mioše te se, kompenzirajući štetu, poravnava. Kada mu Nikša oprosti navedenih 328 perpera, a on njemu 340 perpera *„et la parte soa alla spesa predicta"*, Nikola zaključuje da se time stiče uslov da jedan drugom više ništa ne mogu tražiti.

U zajedničku kolegancију iz 1429. g., Nikoli Nalisu i Nikoli Radulino, koji je takođe uložio 2.000 dukata, pridružio se Luka Radosaljić sa 1.000 dukata (Pešorda Vardić, 2012, 161).

*Collegantia* je srodna kasnijoj *commendi* Sredozemnoga mora, ali ima više značaj kreditnog poslovanja (Brajković, 1975, 30). Institut kolegancije (od lat. *colligere* skupiti, združiti), preuzet u dalmatinske statute iz mletačkog prava, najpotpunije je regulisan upravo dubrovačkim statutarnim regulama. Radi ostvarivanja ekonomskog interesa tr-

56 Unutar dubrovačkih zidina je od kraja XIII v. postojala i crkva posvećena arhanđelu Mihajlu, podno današnjeg Stubišta uz Jezuite. Uz nju je bio samostan, nazivan „svetog Anđela", vjerovatno prvo benediktinski, koji je 1399. g. Nikoleta Gozze, udovica Lovra Vukasovića, obnovila za dominikanke. Titular tog monastičkog kompleksa bilježi se i u varijantama *sv. Mihajlo* i *sv. Marija od Anđela*. Godine 1505. stara bratovština sv. Mihajla seli se u crkvu tog samostana, koji su, s prigrađenom kapelom sv. Trojstva, srušeni u velikom potresu 1667. godine (Beritić, 1956, 76–77). U odnosnom samostanu su duhovnu asistenciju vršili dominikanci; Diversis navodi da postoji ženski samostan koji pripada redu patrijarha Dominika. Još je tokom života Nikole Nalisa zabilježeno više umjetničkih narudžbi za samostansku crkvu Gospe od Anđela. S predstavnicima samostana 15. septembra 1438. potpisali su ugovor za poliptih Ivan Ugrinović i Radoslav Vukčić, koji su trebali naslikati Bogorodicu u sredini, a sa strana sv. Vlaha, sv. Margaritu, sv. Mihaila i sv. Venerandu. Dumna *Nicoletta, priora monasterii Angelorum*, 13. januara 1447. g. je naručila od Radoslava Vukčića dvoredni poliptih - drvorezbarenu oltarnu palu s 14 polja. Lovro Dobričević se 10. februara 1448. obavezao da će za crkvu naslikati palu s 14 likova (Prijatelj Pavičić, 2011, 211–212).

57 Nikola navodi da je u Prištini pretrpio štetu, a tamo je i u Novo Brdo 1426. g. karavan vodio Petar Nikole Petrova Poça. Kod Uljara, njegov je karavan napalo osam Turaka; Petra su okovanog odveli u Prištinu, odakle je oslobođen tek kad im je isplaćeno 1.000 akči (Vekarić, 2012b, 173–176). Jedan je Poça 1459. g. bio epitrop testamenta Jeronima, sina Nikole Nalisa.

58 Jedan od dubrovačkih građana koji je 1430. g. imao obavezu čuvanja zaliva bio je Nikola Radulinović, koji je tada odmijenjen (Pešorda Vardić, 2012, 91). Moguće da se radi o bliskim srodnicima Marina Nikolina Radulovića, koji je u svoju poslovnu knjigu, uvezanu u štampanu kožu, pisanu prelijepim rukopisom, unosio sve što se ticalo njegovih poslova i imovine na kopnu i na brodu: isprave o prodaji, presude, odluke Vijeća umoljenih; posebno uz nju prilažući i isprave (Janeković Römer, 2006, 2).

59 Među statutima dalmatinske pravne regije, statut Dubrovnika kolegancију obrađuje u III i VII knjizi (13, 20, 46; 50, 51), a kotorski u glavi 70 (Pezelj, 2010, 829). Collegantiu poznaju i statuti Splita (1240.), Zadra (1305.), Paga (1433.) i Šibenika (XVI v.); (Brajković, 1975, 30).

govačkim udruživanjem u koleganciju, jedna strana je obezbjeđivala kapital u novcu ili robi, dok je druga njime trgovala.[60] Dužnik koji bi primio novac za trgovačko društvo ili na dobit uz rok za isplatu određen javnom ispravom, bio je obavezan u utvrđenom roku učiniti obračun dobiti ili gubitka (Pezelj, 2010, 828). Ukoliko tako ne bi postupio u predviđenom roku, bio je dužan da plati vlasniku novca cijelu glavnicu i dobit, ako je to proizlazilo iz ugovora.[61] Ulagač je uz pravo na povrat uloženog imao pravo na alikvotni dio dobiti, dok se ugovorno u većini slučajeva određivalo da kontrahenti u ovom obliku ortačkog društva, po grčkom uzoru, srazmjerno učestvuju u raspodjeli gubitaka i rizika od propasti kapitala usljed više sile (Pezelj, 2010, 828–829; Brajković, 1975, 30).

Dalje se u testamentu Nikola poziva na svoje poslovne knjige. Sistem vođenja dvostavnog knjigovodstva je nastao sredinom XIV v. u Genovi i Firenci (Fabijanec, 2002, 101). Pod uticajem mletačke prakse, Dubrovčani su moguće već krajem XIV v. vodili knjige po načelima dvostavnog knjigovodstva, a svakako od 1417. g., ubrzo nakon prvih mletačkih knjiga vođenih po tom sistemu (Janeković Römer, 2006, 1). Nadovezujući se na poslove bilježene u državnim registrima, ukazujući da je u njima zabilježen tek manji dio ukupnog poslovanja, takve knjige omogućuju rekonstruisanje aktivnosti odnosnih trgovaca, sadržeći podatke o količinama robe, njenoj kupovnoj i prodajnoj cijeni, detalje o vrijednostima valuta, mjeničnim poslovima, bankama, uslugama, carinama, daćama, transportu, trgovačkim rashodima i prihodima, poslovnim saradnicima, dugovima i potraživanjima, prokurama, prometu između Dubrovnika, Balkana i Italije (Janeković Römer, 2006, 2). Beno Kotruljević je 1458. g. prvi opisao pravila upisivanja na kontima dvostavnog knjigovodstva (Fabijanec, 2002, 101). U djelu *Libro del arte dela mercatura* opominjao je trgovce da treba da se služe „*perom, plemenitim i izvrsnim sredstvom*" i da vode poslove po knjizi, a ne po sjećanju (Pešorda Vardić, 2012, 162).

Svjedočeći računovodstvo testatora, sasvim moguće vođenog pod uticajem Kotruljevića, u signiranoj poslovnoj knjizi (kvaterni su označavani određenim znakom), navodi Nikola Nalis, nalazi se upisano nekoliko dužnika. Knjigu je, shodno uobičajenom podučavanju trgovačkoj praksi i osposobljavanju za generacijsko preuzimanje porodičnih poslova, vodio njegov sin Antonio (Antun). On je svojeručno u dnevnik računa – dnevni registar („*zornal*")[62] ubilježio dužnike na stranicama konta (*hartijama*) 103 do 200, koje obuhvataju razdoblje od januara do marta 1449. godine, što je unijeto u veliku trgovačku bilježnicu, odnosno glavnu poslovnu knjigu („*quaderno grande*"). Kotruljević je isticao da je za bolje poslovanje trgovcima neophodno da vode najmanje tri knjige: *glavnu knjigu, dnevnik* i *podsjetnik* (iz kojeg su se podaci prenosili u *dnevnik*), s još dvije pomoćne

60 Davalac kapitala (*iactator, socius stans, commendator*) je najčešće ostajao kod kuće, dok se *tractator, procertator, negotiator*, obavezivao da će povjerenim novcem ili robom poslovati u dobroj vjeri (Pezelj, 2010, 828–829). Prema odredbama drugih sredozemnih statuta, *collegantia* je bila jednostrani ugovor, jer je *socius stans* (član društva koji stoji prema riziku) davao kapital i snosio sav rizik, dok je *tractator* (ugovarač) samo obavljao poslove (Brajković, 1975, 30).

61 Kod dvostrane kolegancije, koja se javlja u statutarnim odredbama i u notarskim zapisima pod pojmom *societas*, novac su ulagale obije strane, pri čemu *tractator* u manjem iznosu, dok se dobit dijelila na pola. Rizik više sile redovno je snosio *jactator* (Pezelj, 2010, 829).

62 Računska knjiga – „*zornale*" (Fabijanec, 2002, 121).

knjige, jednom za *prepisivanje* računa koji se šalju van i za prepisivanje pisama te knjigom *bilansa*, u kojoj se utvrđuju rezultati poslovanja (Fabijanec, 2002, 102).

*Glavna knjiga*, uvezana, s označenim brojevima stranica i abecedarom, sadržala je dva stupca za upisivanje novčanih iznosa organizovanih tako da jedan služi kao predstubac, a drugi kao glavni stubac, s datumima iznad svake poslovne promjene (Fabijanec, 2002, 102). U tu knjigu konti su se upisivali prema nazivu i redosljedu kako su otvarani, dok su u *dnevnik* unošeni hronološkim redom svi poslovni događaji, u jednoj stavci, s datumima, opisima poslovnih dostignuća i nazivima konta glavne knjige (Fabijanec, 2002, 102).

Testator dalje određuje (DAD, TN, 14, f. 193r) da se od odnosnih dugovanja polovina isplati Nikši *de Miosa*, a da druga polovina pripadne njegovim nasljednicima, pod uslovom da se od toga isplati ostatak onoga što su Nikola i Nikša običavali plaćati *„ala epitropia de Pribissau de Radulin de quello me impresto et detto Pribissav per pagar Marcho de Stay.*"[63] Poslovna knjiga je mogla upućivati i na sudsku presudu, shodno kojoj je slijedila novčana isplata. S obzirom da su po osnovu zajedničkog ulaganja u poslovne operacije trgovačko društvo imali ostavilac Nikola Nalis, Nikša *de Miosa*, Nikola i Jaketa Radulin, kako proizlazi iz sentencije sastavljene u kancelariji, po tom su se osnovu naplatili od Marina *de Bizia*,[64] Nikole *Granzaricha* i Matije *de Lillo*, od svakoga ponaosob po 29 perpera i određeni novčani iznos preko toga.

Nikola i Jakov Radulino su u svoje trgovačko društvo 1429. uložili 3.500 dukata; navedeno je da je iste godine i Nikola Nalis investirao u trgovačka društva znatna novčana sredstva (Pešorda Vardić, 2012, 161). Mafeo je bio sin Lila, livca topova iz Apulije; u dubrovačkoj službi bio je od 1423. g.[65]

---

63 Prezime u varijanti *Stay,* referira, prema *Vlajkijevoj genealogiji antunina*, na dva dubrovačka roda; Staij, čiji se utemeljitelj preselio iz Bara u Dubrovnik oko 1400., i Stojković (Staij, Staijs), čiji je začetnik, također iz Bara, došao oko 1440. g. Posjednik brojnih nekretnina, Marko Staij je u seksteriju Sv. Marije od Kaštela kupio dvije manje kuće, jednu u ulici Sv. Marka, a 1450. g. neke kuće koje je potpuno srušio, napravio cisternu, nabavio kotlove i sve dao u najam. Kupio je zatim 1452. dvije stare kuće uz Dominikanski samostan, srušio ih i napravio sebi lijepu i raskošnu palatu. Jednospratni ljetnikovac s perivojem i arsenalom u Rijeci dubrovačkoj gradio mu je 1459. g. Marko Krivančić. U braku sa suprugom Anižulom međutim nije imao djece, pa je za svoje glavne nasljednike proglasio vanbračne sinove, Petra i Bernarda (Pešorda Vardić, 2012, 43, 134, 172, 173). U odnosnom razdoblju, posebno je bio aktivan trgovac Mihajlo Stai; često je sklapao trgovačka društva i raspolagao velikim kapitalom. S dva ortaka, avgusta 1453., sklopio je trgovačko društvo s ukupnim ulogom od 1.304 dukata, koje je bilo predviđeno da traje godinu dana, a zatim da ortaci posluju gdje žele, s tim da dobit ili eventualnu štetu dijele na jednake djelove (Ćuk, 2005, 245).

64 Jedan od Nikolinih poslovnih saradnika bio je *Marin de Bizia*, koji se pominje 1425. g., kada zajedno s Marinom Mislieriem i Giulianom Stefanovim iz Prata traži u najam na 5 godina, za godišnju najamninu od 80 perpera, dubrovačku opštinsku zgradu na Pilama, u kojoj je Firentinac Giorgio Gucci proizvodio staklo, da bi je pretvorili u bojadisaonicu (Pinelli, 2013, 69). Ugledni i bogati Marin, ostavši bez direktnih muških descendenata, pri ugovaranju braka svoje kćerke, ugradio je klauzulu po kojoj su svi potomci iz tog braka trebali da nose prezime Bizia. Porijeklom iz Cavtata, odakle su se doselili u Dubrovnik oko 1300. g., *Bizia* je bio jedan od najistaknutijih antuninskih rodova kasnog srednjeg vijeka. Uz pretežni, romanski oblik *Bizia*, upravo se rodonačelnik roda Radoslav, sin Stankov, u testamentu svoje žene pominje kao *de Biçia*, a u miraznom se ugovoru svoje nezakonite kćeri, 1382. g., tada već kao pokojni, bilježi s prezimenom *Bisich* (Pešorda Vardić, 2012, 40, 47, 100, 133).

65 Lilo je u dubrovačku službu primljen 1410. g. Nakon 1441., njegovi se potomci bilježe s prezimenom „Lilović" (Čaldarević, 1957, 10–11). Za upućivanje na navedene podatke zahvaljujem prof. dr. sc. Nelli Lonza.

Iz teksta oporuke se saznaje da je Nikola trgovao naoružanjem. Sređujući poslove i potraživanja, navodi da je od prodatog oružja i pancira (oklopa) pomenuti Nikša dobio svoj dio, a ukoliko to nije potvrđeno priznanicom, određuje da se za to pobrine *Ser Zoymo d'Antiveri*, jedan od dužnika kompanije, tako što će se dati za dug Pribisava Radulina[66] i drugih dužnika. Treba da se podmiri od strane prethodno navedenih, tj. od Marina *de Bizia*,[67] Granzaricha i Lilovicha, od pomenutog oružja i pancira, s priznanicama. Ukoliko je uistinu pridržan dio koji se odnosi na Nikolu i Jakšu *de Radulin* i s tim u vezi pokrenut spor, od Nikole Radulinova očekuje da će se dobiti 500 dukata i po hartiji 100 dukata preko toga, a od Jakete 100 dukata. A kada se Nikši *de Miosa* dodijeli njegov dio, potvrđen priznanicom, zavještalac Nikola određuje „*per discargo dela consciencia*", da mu 600 dukata i više od toga, koliko je Nikša *de Miosa* od njega imao više puta za svoje troškove i potrebe, malo po malo, s gašenjem kompanije, budu oprošteni.

Nikola zatim određuje svoje univerzalne nasljednike: sinove Antonija, Jeronima i Nikolu, kojima ostavlja sva svoja pokretna i nepokretna dobra, sva prava i potraživanja („*action*") koje ima u Dubrovniku i njegovom distriktu, a slično i u Baru i njegovom distriktu, a da ono što mu pripada i sljeduje na bilo koji način izvrše kako je gore navede-

66 Pribislav, Pripko Radulino (Radulinović), ugledni i vrlo imućni antunin, u svojem je testamentu registrovanom 1420. g. bratovštini ostavio 2 perpera; naveo je da njegovi sinovi imaju pravo na jednake djelove ostavštine, pod uslovom da se ne podijele dok najmlađi od njih ne napuni 25 godina. Za izvršitelje svoje posljednje volje, 1419. je odredio plemiće iz roda Grade (Pešorda Vardić, 2012, 115, 135, 153, 191, 228).

67 Marin *de Bizia*, Bičić, ima zapaženu ulogu i u dubrovačkoj crkvenoj povijesti. Obnova dominikanske provincije Dalmacije, koja je od 1380. objedinjavala sve samostane Reda od Istre do Drača, svoje je plodove počela da donosi s porastom broja reformisanih redovnika, posebno od tridesetih godina XV v. (Krasić, 1987, 185). Stoga je u ime dubrovačkih fratara krajem 1436. ili početkom 1437. zatraženo odobrenje za osnivanje samostana sv. Nikole, od vrhovnog poglavara Reda i od pape Eugena IV; papa je 14. marta 1437. izdao potrebno odobrenje (Krasić, 1987, 185–186, 196).

Dok su dubrovački redovnici očekivali odgovor iz Rima, po predaji se zbio neobičan događaj: imućni dubrovački građanin Marin Bičić, koji je u Gružu imao kuću okruženu vrtom, jedne je noći u snu iznad svoje kuće vidio svijetleći krst; probudviši se, nije se mogao osloboditi utiska koji je san u njemu izazvao te je razmišljao o njegovom značenju, zaključivši da Bog od njega traži da se tu sagradi crkva posvećena svetom Krstu; doznavši da dominikanci traže mjesto za novi samostan, ponudio im je zemljište i pomoć oko gradnje, ako prihvate crkvu koju bi on sagradio u svojem vrtu, pod uslovom da bude posvećena svetom Krstu (Krasić, 1987, 186).

Ubrzo je, darežljivošću Marina Bičića, u Gružu bio sagrađen samostan posvećen sv. Križu, što implicira da se od proljeća 1437., kada dominikanci još nisu imali određenu lokaciju za novi samostan, do 1439. g. moralo dogoditi nešto važno, što nije tek odraz pobožne legende: to potvrđuje i pismo senata Dubrovačke Republike generalu dominikanskog Reda Bartolomeju Texieru iz 1449. g., u kojem se navodi da je gruški samostan izgradio „naš dobar građanin imenom Marin Bičić, potaknut na to božanskim nadahnućem"; dubrovačka vlada za Marina Bičića navodi i da je „*fundator dicte ecclesie*" (Krasić, 1987, 186, 187). Crkva prilično prostranog samostana bila je sagrađena s glavnim oltarom okrenutim prema istoku; vjerovatno je od početka imala tri oltara: glavni, posvećen sv. Križu, lijevi od ulaza u crkvu sv. Obitelji, a desni sv. Vinka Ferrerskog (Krasić, 1987, 188). Prvu umjetničku sliku za nju je naručio njen graditelj Marin Bičić, u želji da u tom pogledu ne zaostane za drugim crkvama u Dubrovniku; jula 1446., od poznatog dubrovačkog slikara Ivana Ugrinovića naručio je sliku za njen glavni oltar, koja je, shodno ugovoru, morala biti izrađena pretežno zlatnom bojom po svim pravilima slikarskog umijeća i završena prije blagdana sv. Martina (11. novembra) iste godine; slika je završena na vrijeme, ali, kako je bila manja nego što je odgovaralo glavnom oltaru, Ugrinović ju je naredne godine morao produžiti (Krasić, 1987, 193). Svakako je već aprila 1439. prior samostana sv. Križa propovijedao korizmu u Dubrovniku (Krasić, 1987, 187).

no, s uslovom da se ne mogu podijeliti među sobom, niti na koji drugi način učiniti diobu dok najmlađi od njih ne navrši 20 godina.[68] Kada najmlađi navrši 20 godina, neka imaju slobodu da se podijele, ili da ostanu zajedno, kako budu željeli. Ukoliko bi neki od njih umro bez muških nasljednika, Nikola je istakao da želi da jedan dođe na mjesto drugog pri nasljeđivanju nepokretnosti, a u odnosu na pokretnosti neka svaki čini po svojoj volji. Ako bi neki od njih htio da ode u fratre, testator je odredio da onaj koji bi to želio ne može ostaviti svoj dio zavještanih mu dobara, osim ostaloj braći, izjavljujući nadalje (DAD, TN, 14, f. 193v) da ne želi da se na bilo kakav način, ili s bilo kakvom namjerom, prodaju, opterete, obavežu ili otuđe njegovi posjedi u Župi dubrovačkoj, Slanom, kao ni njegova dobra u Baru, već da se uvijek nasljeđuju od strane muških, a ne ženskih nasljednika.

Ukoliko bi se prekinula njegova i muška linija njegovih sukcesora, Nikola određuje da želi da njegovi epitropi, kada budu imali više ponuđača za kupovinu, „*senza pressa*" prodaju njegove posjede u Župi dubrovačkoj i Slanom, putem javnog nadmetanja, onome ko najviše bude dao. Zatim primjenjuje tipičnu dvosmjernu strategiju u raspodjeljivanju zavještanja *pro anima sua*. Želi da se utržak od prodaje odnosne imovine u iznosu od 100 dukata preda svešteničkoj bratovštini sa sjedištem u katedrali sv. Marije, za pjevanje misa za njegovu, duše njegovih mrtvih, kao i za dušu njegove žene *Nicolette*. Ređaju se zatim ostali legati *ad pias causas*. Sv. Dominiku za mise i sv. Franju u Dubrovniku ostavlja takođe po 100 dukata, kao i samostanu na Daksi, fratrima s Omble, fratrima u Slanom, samostanu u Stonu,[69] samostanu u Gružu;[70] sve za pjevanje misa, kako je gore navedeno.

---

68 U Firenci su muška djeca u prosjeku emancipovana sa 20 godina (Fabijanec, 2004, 89). Iste dobi su se i dubrovački vlastelini uključivali u Veliko vijeće. Toskanske gradske fraterne su se najčešće dijelile nekoliko godina nakon očeve smrti, a takva su domaćinstva duže opstajala tek ako je u njima bilo više maloljetne braće (Pešorda Vardić, 2012, 66, 116).

69 Franjevački samostan u Rijeci kod Dubrovnika, posvećen Pohođenju Prečiste Djevice Marije sv. Elizabeti, sagrađen je 1393. g. Krâj Rijeke Dubrovačke (tal. *Ombla*) imao je već 1123. g. samostan benediktinaca, a 1295. su njegova dobra pripojena kaptolu stolne crkve u Dubrovniku. Samostan franjevaca u Slanom izgrađen je 1399., a u Stonu 1347. g. Redovnici tih samostana su dolazili u Dubrovnik da prikupljaju milostinju; od 1463. su imali da vrše dušebrižništvo na isti način kao i redovnici bosanske Vikarije (Jurić, 1916, 2, 29, 34, 35, 41).

70 „*…in quodam loco nominato Gravosa, in quo multissime sunt nostrorum virorum domus perpulcherime apud civitatem nostrum, per quondam bonum vicem nostrum nomine Marinum de Bizia, divina profecto ispiratione motum, super quodam suo terreno boni precii et valoris, de licentia tamen apostolica inceptum fuerit edificari quodam monasterium sub vocabulo sancte Crucis ordinis sancti Dominici de observantia, …"* (Krasić, 1987, 186, 197–198). Pomenuti prior gruškog samostana odigrao je važnu diplomatsku ulogu i 1450/51. g., spriječivši uz pomoć pape Nikole V da herceg Stjepan Vukčić Kosača, koji je s jakom vojskom bio napao Dubrovnik u nastojanju da ga osvoji, dobije pomoć od talijanskih država kojima se bio obratio (Krasić, 1987, 187; Ančić, 2001, 114–115). Prioralni i reformisani, gruški samostan sv. Križa je tako i kod naroda i kod vlade Dubrovačke Republike sticao sve veći ugled, pruživši između 1467. i 1470. čak tri puta gostoprimstvo provincijalnoj skupštini dominikanske provincije Dalmacije (Krasić, 1987, 187, 189). Ovdje se značajno osvrnuti i na ulogu Barana u pomenutom sukobu, kada su Dubrovčani potražili pomoć na raznim stranama. Prema dubrovačkim hroničarima, Bar je Dubrovčanima poslao 500 kopljanika u pomoć, pod zapovjedništvom Marusca Maruschija. Jakov Lukarević prenosi navode iz Orbinijevog *Kraljevstva Slovena*, u kojem je zabilježeno da su Dubrovčani uz pojačanje iz Bara nasrnuli na neprijateljevu zemlju i nanijeli mu velike štete. Dok je Maruško boravio u Dubrovniku, neki vitez sa dvora Stjepana Vukčića Kosače ga je izazvao na dvoboj, a on je prihvatio izazov, pa kad se uhvatio s njime u koštac pred gradskim vratima Ploče, oduzeo mu je život gotovo na samom početku borbe. Dubrovački senat mu je zato iskazao

Odnosne testamentarne odredbe iskazuju promjene u hrišćanskom mentalitetu, do kojih je došlo u XIV i XV v., djelovanjem mendikantskih redova. Prihvatanje novih duhovnih strujanja posredstvom franjevaca, dominikanaca, klarisa, ali i laičkih bratovština, izražavano je sve snažnijim solidarisanjem i milosrđem prema siromašnima, odnosno favorizovanjem legata osobama na marginama društva i redovima koji su zagovarali „socijalno hrišćanstvo" (Ladić, 2000, 25; Ladić, 2002, 1–2, 4–5, 24).

U skladu s prethodnim, Nikola dalje ističe da želi da se samostanu dominikanki „*de Sancta Maria delli Anzeli*", u kojem će se, „*o viva o morta"*, naći njegova kćerka Anukla, da 200 dukata. Finansijsko zbrinjavanje kćerke dodatnim, ali manjim iznosom od onoga koji je mogao biti izdvojen za njen miraz, te umjesto matrimonijalne strategije rezolutna testamentarna odredba, kao da sugerišu težnju za sprečavanjem rasipanja stečenog imetka, koji će, davanjem prednosti muškim potomcima, ostati u rodu koji nosi Nikolino prezime.

Nikola zatim određuje da se od navedene novčane svote da 100 dukata don Nikoli Pavličeviću, ukoliko tada bude živ, za pjevanje misa kako je rečeno. Ukoliko međutim ne bude živ, neka se daju nekom drugom na njegovom mjestu, kako odrede epitropi zavještaočevog testamenta.

Od onoga što ostane od utrška od prodaje navedenih posjeda, Nikola želi da se opredijeli za udaju sirotih djevojaka iz puka, doličnog života („*de bona condition*"), kako se bolje bude činilo njegovim epitropima. Iako ukupne novčane svote i vrijednost Nikoline imovine nisu konačno utvrđeni zbog mnogo navedenih uslova, indikativno je da, samo od pomenutih svota u dukatima, 45% ostavlja crkvenim ustanovama.

Ukoliko bi bilo koja stvar nedostajala u sprovođenju takve raspodjele, Nikola je istakao da želi da se odnosni legati zadovolje svaki srazmjerno. Naglasio je zatim da želi i da trajno ostavlja „*a Ser Zoymo de Theodoro de Brizi*"[71] iz Bara i njegovim nasljedni-

velike počasti i bogato ga obdario (Orbini, 1999, 44, 445–446). Da su Barani pritekli i u ranijem razdoblju Dubrovniku u pomoć, svjedoči i *Chronica Ragusina Junii Restii*, u kojoj se navodi da su Dubrovčanima pojačanja s kojima je pripremao novu veliku ofanzivu protiv Radoslava Pavlovića otuda pristigla u julu 1430. godine (Fejić, 2008, 144).

71 Pripadnici barske vlasteoske porodice *Bricio, Britius* (Jireček, 1904c, 10) pominju se u izvorima od XIV do XVI v. Prezime se etimološki dovodi u vezu sa imenom keltskog porijekla - sv. Brikcija, Brcka; lat. *Brictius*, tal. Brizio, šp. Bricio (istog korijena je i ime keltske boginje vatre - Brigid) – patron sudija i svetac pokajanja, bio je nasljednik sv. Martina na biskupskoj stolici u Touru. U Umbriji je San Brizio patron dijela Spoleta. Posvećena mu je i čuvena Nova kapela u katedrali u Orvietu, čije su „*Storie degli Ultimi Giorni*" od 1447. slikali Beato Angelico i Benozzo Gozzoli, a 1499/1502. njeno pikturalno dekorisanje dovršio Luca Signorelli. Shodno razmatranim arhivskim izvorima i istoriografiji, poznato je nekoliko pripadnika navedene barske porodice, kod kojih je primjetna učestalost ličnog imena istovjetnog sv. Teodoru, patronu stare barske katedrale. Trgovac *Theodorus de Bricço* je zabilježen kao dužnik u kotorskom arhivskom izvoru od 14. jula 1333. g., kada se *Elia Çagurri de Antibaro* obavezao Luki Klimovom *de Dulcigno* da će mu za četiri mjeseca isplatiti dug koji mu je dugovalo nekoliko Barana (Kovijanić, 1973, 222). U sljedećem stoljeću će se trgovačka aktivnost pripadnika ove porodice odvijati i u Dubrovniku. Dubrovački građanin *„et habitator" Zanni de Piero Zupani de Antibari* držao je između 1424. i 1419. g. dvije radnje (*stacon*); jedna od njih bila je u kući s prostorom za stanovanje iznad i s klupom za trgovanje ispred (Libri domorum, 2007, I, 187, 207). Ivo Perov Župan 18. decembra 1427. postavlja za svoje punomoćnike „mudre ljude" Lovra *Sergii Rugi* i gospodina Junija *Teodori Brizii, „cives et habitatores Antibari*", da naplate ono što mu pripada od njegovih dužnika (DAD, DN, 26, 15, f. 159r; Hrabak, 1973, 258). Svakako je tada pomenut

cima i sukcesorima, kao znak ljubavi, veliku kuću[72] s okućnicom u Baru, uz uslov koji podrazumijeva prethodno utrnuće muške linije Nikole i njegovih nasljednika. Djelatan i u Dubrovniku, označen supstantivom kojim je naglašen njegov društveni ugled te zavičajno, možda je *Brizi* bio njegov blizak srodnik po ženskoj lozi. Kako je Nikola Nalis već istakao u testamentu, na što se upućuje i u istoriografiji (Ćuk, 1999, 162), poslove u gradu porijekla zavještaoca obavljali su prokuratori i faktori, sasvim izvjesno rođaci, udruženi u trgovačka društva, kao u talijanskim porodičnim zajednicama (Fabijanec, 2004, 90), brinući se o trgovačkim poslovima i o njegovoj imovini.

Sinovcu Nikoli Ivanovom („*Nicola de Zuanne*"), kazano je, Nikola ostavlja mlin za masline „*cum le casete*"[73] i vinograd na barskom mikrolokalitetu *Pradamos*. Nikolin otac *Zuanne* je s bratom trgovao u Dubrovniku. Vjerovatno je 1451. godine već bio preminuo te se zavještalac posebno osvrnuo na obavezu njegovih nasljednika prema dubrovačkoj komuni. Ukoliko bi sinovac Nikola umro bez muških potomaka, testator želi da ono što mu je namijenio trajno pripadne kanonicima sv. Đura u Baru (DAD, TN, 14, f. 194r), s tom da budu obavezni moliti Boga za duše „naših" mrtvih. Isto tako bi želio da kanonicima odnosne religiozne ustanove u rodnom gradu pripadnu svi ostali posjedi[74] koje ima u Baru, tj. masline i vinograd na lokalitetu *Tribian*, a to pod uslovom da je izumrla njegova muška nasljedna linija, kako je već rečeno. Realizacijom ove odredbe izjave Nikoline posljednje volje, barski katedralni kanonici bi se pojavili u ulozi idealnih posrednika u „računovodstvu onostranog", jer bi im, ostavljanjem imovine „*in perpetuo"*, bilo povjereno izvršavanje njegovog raspolaganja za spas duša koje su prešle u vječnost, te bi se sigurno brinuli da njegova vremenita dobra tome i služe (up. Lonza, 2012, 16–17, 24).

Za epitrope i izvršitelje svojeg testamenta, kao i za tutore njegovih maloljetnih nasljednika, Nikola je odredio pripadnike istaknutih dubrovačkih vlasteoskih rodova, ugledne antunine, kao i svojeg najstarijeg nasljednika; g. Marina Mihovog *de Bona*,[75] g.

jedan od primalaca legata Nikole Nalisa, čiji je otac *Theodorus Britius* 1429. g. bio gradski „*judex juratus*" (Marković, 1902, 198). Isti *Ser Zugno Bricio, Junius Bricij* je 19. maja 1443. zabilježen među „*nobel e savij homeni de Antibari*" (Šafarik, 1862, 74). *Pre Zuam Brizi* se bilježi u Baru 1501. g (Arkiv, 1863, 186, 208).

72 *„Domus magna"* bio je od značaja za identitet roda; „*casa grande*" je vjerovatno bila glavna, najljepša i najraskošnija porodična kuća, koje su imali običaj, uz druge nekretnine, pominjati bogati dubrovački trgovci (up. Pešorda Vardić, 2012, 172).

73 „Casèta, s. f. *Casuccia*, Casa piccola e vile, *Caserella; Casella; Caserellina*; *Casina; Casinina; Casuccina*; *Abitazioncella; Magioncella*, Piccola casa o magione – *Casolaraccio*, Casetta cadente" (Boerio, 1856, 144).

74 Ovim je legatom implicirana praksa koja je sasvim izvjesno postojala kod rizničara barske katedrale, koji su iznalazili zakupce, a prihode i izdatke od trajnih najmova vodili u knjigama (up. Lonza, 2012, 18–19).

75 Marin Mihočev Bona (oko 1385. – 1461.), upisan u bratovštinu antunina, oženio se oko 1418. vladikom iz roda Goçe; između 1443. i 1461. osam puta je bio dubrovački knez, na kojoj dužnosti ga je zatekla i smrt (Vekarić, 2012a, 99–100; Pešorda Vardić, 2012, 56).

Nikolu Petrova Gundula,[76] g. Stjepana Luccari,[77] Marina *de Brathcho*,[78] Nikolu Antunova *de Butcho*,[79] *Benedetta de Cotrul*[80] i sina Antonija (Antuna).

76 *Natal de Dobrich de Nale*, pučanin koji je trgovinom stekao veliki imetak, počeo je da gradi novu kuću 1428/29. g., ugledajući se na tri kuće u Crevljarskoj, danas ulici Od Puča: na kuću Antuna Butko (za okvire vrata stranja i dvorišta te za prozore iznad vrata), kuću Nikole Petrova Gondola (za razdjelni vijenac, dva saracenska prozora i triforu drugog sprata) i kuću Martola Zamagno (Grujić, 2012, 47, 50). Božo Dobrića Nalješković je 1450. g. trgovao vunom i u Barceloni (Bašić, 2006, 145).

77 Stjepan Nikolin Luccari (oko 1418. – 1479/85.), bio je 1468. godine u poslanstvu kod Isa-bega, sina skopskog namjesnika Isaka; 1469. je nosio dar od 5.000 dukata sultanu Mehmedu II, naknadu za slobodu trgovanja u Osmanskom Carstvu; 1477. je bio kod sandžakbega Paša-Jigita u Foči, a iste godine je bio i dubrovački knez. Oženjen oko 1443. vlastelinkom iz roda Zamagno, nije imao zakonitih potomaka (Vekarić, 2012a, 324–325).

78 Moguće da je riječ o sinu Luke Brajkova (*Lucha de Braicho, dictus del Bon*), uspješnog i bogatog trgovca, upisanog u matrikulu bratovštine antunina početkom 30-ih godina XV v., koji se međutim ne pominje u genealogiji porodice *Braichi* (Brajković). Oženjen antuninkom Marušom, kćerkom apotekara Giovannija Salimbenea doseljenog iz Venecije, Luka je kuću na Pustijerni 1426/28. gradio između kuća Luke Bona i Vuka Babalio (Grujić, 2012, 44, 45, 49).

79 Nikola Antunov *Butcho* (Putojević) je naredne, 1452. g., s Franom Stanovim Ilićem ugovorio brak za svoju kći Margaretu, s tim da je vrijeme za konzumaciju braka iznosilo 10 godina; kako ni nakon isteka tog roka Frano nije doveo Margaretu kući, morao je da pod prisilom djevojčinog oca izjavi da će je odvesti kući „*pro consumatione matrimonii*", što je bilo djelotvorno, jer su od 1464. živjeli zajedno. Gastald bratovštine antunina bio je 1460. g (Pešorda Vardić, 2012, 127, 148, 221). Nikolin otac Antoje, utemeljitelj roda, ugledni dubrovački građanin i kreditor prve četvrtine XV v., bio je član bratovštine antunina i njen gastald oko 1435. (kada je u nju upisan i Nikola). Stekavši imetak trgujući žitom, Antun je 1430. g. ugovorio da mu se na kući u Crevljarskoj ulici izvedu balkonate i prozori te šest saracenskih prozora kakvi su na prvom spratu kuće Sandalja Hranića, a svi drvodjeljski radovi kao što su u kući Luke Brajkova (Grujić, 2012, 44, 46, 50). Premda je posjedovao kuću u seksteriju Sv. Nikole, onu u seksteriju Sv. Vlaha je nazivao „*casa grande"*. Do smrti, 1436/37., redovno je imenovan za tutora, kako unutar kruga antunina, tako i običnim pučanima (Pešorda Vardić, 2012, 59, 66, 114, 161, 172).

80 Benedikt Kotruljević (Benko Kotruljić, Kotrulj), filozof, naučnik, trgovac, diplomata, pravnik, ekonomski pisac; humanist širokog obrazovanja i interesovanja, rođen je oko 1416., a preminuo oko 1469. g. Ponikao je u familiji koja je pripadala bratovštini antunina, a studirao u Italiji, odakle se 1436. vratio u Dubrovnik, preuzevši porodične trgovačke poslove. Stupio je 1443/44. u brak sa Nikoletom, kćerkom Nalka Dobrićeva Nalješkovića. Od 1444. g. češće je boravio u Barceloni, da bi od 1446. izvozio vunu iz Napulja i Foggie i 1452/54. iz Katalonije, naviše je prodajući u Dubrovniku i Veneciji. Zbog trgovine je boravio i u dubrovačkom, balkanskom zaleđu, na Siciliji i u Sjevernoj Africi. Bio je zakupac carine u Barletti. Godina 1448/53. bio je povjerenik Dubrovačke Republike u Napulju, gdje se preselio 1453. g. Oktobra 1452. preuzeo je tražbine Dubrovačke Republike od napuljskog kralja, a 1458. je imenovan za dubrovačkog konzula u Napuljskoj Kraljevini, kao i za napuljskog izaslanika u Dubrovniku. Na napuljskom dvoru je obavljao različite funkcije, kretao se u krugu humanista L. Valle, B. Facia, F. Bionda i dr., nastupajući i kao diplomatski predstavnik kraljeva Alfonsa i Ferdinanda. Predstavljao je značajnu političku i ekonomsku poveznicu Dubrovnika i Južne Italije. Pripisuju mu se spisi *De uxore ducenda* (O izboru supruge; rukopis posvećen porodičnoj problematici), *Della natura dei fiori* (O prirodi cvijeća), koji su izgubljeni, djelo iz 1458. g. *Libro de l' arte dela mercatura – Della mercatura et del mercante perfetto* (Knjiga o umijeću trgovanja), u kojem ističe marljivost, urednost, etiku rada i vođenja poslovnih knjiga te opis sredozemne obale (i Jadranskog zaliva) iz 1464.: *De navigatione* (O plovidbi). Njegov izuzetni doprinos svjetskoj ekonomskoj misli je ukazivanje na značaj dvostavnog knjigovodstva (*dupple partite*) kao neophodnog instrumenta analize trgovačkog poslovanja (Ćošković, 2009; Grujić, 2012, 44, 47, 48; Ćuk, 1999, 162; Kotrulj, 2009 - kritičko izdanje glavnog Kotruljevićevog djela, s opširnom uvodnom studijom, koje je uredila Zdenka Janeković Römer).

*Dio dovratnika s portala katedrale sv. Đura čija se simbolika dovodi u vezu sa sv. Matejem (Foto: S. Marković)*

Nikola Nalis posebno ističe *dućan* i njegove pripadnosti, određujući za njegovog jedinog upravitelja svojeg sina Antonija, koji će njime rukovoditi, upravljati i izdržavati famelju sve dok druga dvojica sinova - tada maloljetni - ne steknu pravnu sposobnost. Kada ostali sinovi postanu punoljetni i naslijede testatora, zasigurno će davati za mise za spas njegove duše, što indicira da se iza očinske odredbe nije krila samo ambicija rasta, ostavljanja svojeg imena i trajanja preko djece na ovom svijetu, već i milosti na drugom svijetu (Fabijanec, 2004, 94). Epitropi i tutori se neće moći miješati u upravljanje dućanom, jer Nikola naglašava: „*sopra questo incargo molto la consciencia*" navedenog Antuna - da

će željeti da dobro upravlja rečenim dućanom i dobro rukovodi domaćinstvom, razumno se odnoseći prema braći, obezbjeđujući im neophodno, kako bi poželio da njemu bude stvoreno - nadajući se u sinovljevu dobrotu da neće činiti drugačije.

Kotruljević je isticao da su djeca dužna da poštuju očev ugled,[81] a da im on pruža priliku da se obogate (Fabijanec, 2004, 94). U vezi s porodičnim krizama koje su mogle nastati neodgovornim zaduživanjem, nepromišljenim istupanjem ili nedovoljnom opreznošću sinova u trgovačkom svijetu, savjetovao je prijateljima da se u takvim situacijama ne uzrujavaju, prenoseći im riječi svojeg djeda Stana, koji je u dubokoj starosti izjavio: „*Unatoč različitim i bezbrojnim udarcima sudbine koje sam dočekao od svoje djece, nikad se nisam uznemirio niti ozlovoljio. I drugo, nikad se nisam digao od stola sit.*" Svakako su staloženost, odmjerenost i vedrina duha bili od pomoći u prevazilaženju takvih kriza (Pešorda Vardić, 2012, 139). U brizi za budućnost roda i imovine, u želji da patrimonij obezbijedi, perpetuira i uzdigne, *pater familias* nije oklijevao da iskaže eksplicitniji stav prema mogućoj sinovljevoj neposlušnosti (up. Janeković Römer, 1996, 27–28). Ukoliko bi Antonio postupao drugačije, u što je Nikola ipak izrazio nevjericu, prokleo bi ga. Podatak iz 1488. g. sugeriše da je upravo najmlađi testatorov sin nastavio porodičnu tradiciju; Nikola Nikšin Nale je tada zabilježen kao gastald bratovštine antunina (Pešorda Vardić, 2012, 148).

Zavještalac međutim, u trenutku sastavljanja testamenta, zaključuje: kada su zadovoljene sve prethodno navedene stvari i kada se konačno nađu pomenuti epitropi, ako bude izumrla muška nasljedna linija i rečena imovina bude prodata, neka svaki od njih dobije po jedan zlatni prsten vrijednosti 20 perpera.

Uz uobičajenu formulaciju „*quod quidem testamentum nullo testimonio rumpi possit*" (DAD, TN, 14, f. 194r) završava izjava posljednje volje bogatog dubrovačkog Baranina.

## JERONIM NIKOLIN NALE, REDOVNIK BENEDIKTINSKE OPATIJE SV. MARIJE NA MLJETU, XV v.

Nikolin sin Jeronim, koji se pominje u njegovom testamentu sastavljenom 1451. g., tada nije bio punoljetan. O Jeronimu i njegovom bratu Nikoli, osim najstarijeg brata i tutora Antonija, trebali su da se staraju ostali tutori. Indikativno je da je Nikola u izjavi svoje posljednje volje predvidio mogućnost da jedan od njegovih sinova može postati fratar. U slučaju da tako bude, odredio je da „*non possa testar la parte soa de li mie beni se non ali altri fratelli*" (DAD, TN, 14, f. 193r).

Krajem iste decenije, Nikolin sin Jeronim takođe sastavlja testament, u kojem je zavičajno određen s „*de Antivari*".

Vjerovatno je povodom ulaska u opatiju, opraštajući se od svjetovnog života, *Hieronymus Nicole Marini de Nale*, benediktinac sv. Marije na Mljetu, tamo sačinio svoju kratku oporuku.[82] O tome je 6. decembra 1459. godine dubrovački notarijat obavijestio

81 Isticao je da su na „dobrim mjestima" sinovi oca oslovljavali s „moj gospodine" ili čak „gospodaru" i nikada nisu izgovarali očevo ime (Pešorda Vardić, 2012, 112).

82 „Testamentum fratris Hieronymi Nicole Marini de Nale ordinis sancti Benedicti": „*Allo nome de Dio et della Vergene Maria 1459, a di 6 decembrio. Io Jeronimo de Nicola Marin de Nale de Antivari fazio lo mio*

mljetski opat Frano. Svjedoci izjave fra Jeronimove posljednje volje bili su vitez Mihajlo *de Bocignolo*, sudija,[83] i notar dubrovačke komune, *Bartholomeus de Sfondratis* iz Cremone.[84] Njegov testament je proglašen je 30. jula 1460. g. u Dubrovniku (DAD, TN, 17, f. 95v).

Na početku svojeg testamenta, *Jeronimo de Nicola Marin de Nale* iz Bara, u ime Boga i Djevice Marije ističe da je pri zdravom razumu, dobrog sjećanja i zdravlja. Zatim navodi da 1 perper, za desetinu i prvinu, ostavlja katedrali „*Sancta Maria Mazor de Ragusi"*. Za mise sv. Grgura, za duše svojeg oca i svoje majke, ostavio je 10 perpera. „*A Zivitcho spiziar*"[85] zavješta 4 perpera, a Matku *Pizurchovich*-u 3 perpera. Mljetskom opatu g. *Franciscus*-u ostavio je 50 perpera.

Ostalo od onog što mu je pripalo, a preostalo iz miraza njegove majke, u novcu i drugom, ostavlja „*alo monasterio de Sancta Maria de Meleda*" (DAD, TN, 17, f. 96r).

Jeronimova testamentarna odredba „*dela dota dela madre mia*", asocira na pravilo iz glave 206. kotorskog statuta, prema kojem kleriku majka ne može darovati nešto preko dijela iz razloga što je postao klerik, jer klerik treba „da ima toliko koliko svaki pojedinac od ostale braće" (SC, 2009, 235). Oporučna formulacija „*quello che paretrii* (!) *la parte mia dela dota dela madre mia*" indicira da je fra Jeronim dobio treći dio ostavine, odnosno mirazne imovine njegove majke Nikolete.[86]

S obzirom da u testamentu ne pominje svoju braću, a na tragu oporučne odredbe fra Jeronimovog oca Nikole, indikativno je da nije primijenjeno pravilo shodno onome propisanom u glavi 207. kotorskog statuta - *O onima koji stupaju u samostan ili neki monaški red.* Prema toj statutarnoj reguli, „ako više braće budu bez oca i majke punoljetni i jedan ili više njih među njima bude htio otići u samostan, odlučujemo da su vlasni da izdvoje svoj dio koji im pripada ili im sljeduje"(SC, 2009, 235). Uz restrikcije i prekluziju, statut

---

*ultimo testamento chon bona memoria e bona mente e sano del corpo. In prima lasso per dezima e primizia a Sancta Maria Mazor de Ragusi iperpero I. Item lasso per le messe para dui di san Gregorio per l'anima dello patre mio et della matre mia yperperi 10. Item lasso a Zivitcho spiziar iperperi 4. Item lasso a Matcho Pizurchovich iperperi 3. Item lasso a miser abbate de Meleda iperperi 50 che li daga la io veli a zu dito. Item lasso tuto quanto resto dela dota dela madre mia tanto deli denari quanto deli sazi (?) alo monasterio de Sancta Maria de Meleda quello che paretrii la parte mia dela dota dela madre mia. Item lasso li mii epitropi primo ser Trifon de Bonda, ser Piero Nicole de Poza, ser Nicola Biasio de Ragnigna. Quod quidem testamentum nullo testimonio rumpi possit"* (DAD, TN, 17, ff. 95v-96r).

83 Miho Marinov (Manatić, Manetić) *Bocinolo* (oko 1390. – 1466.), bio je 1430/60. vlasnik valjaonice sukna, 1435. je ugovarao izgradnju stûpā na posjedu u Zatonu, a 1453. bio jedan od nadstojnika radova na dubrovačkim zidinama; od 1444. do 1464. g. devet puta je bio dubrovački knez (Vekarić, 2012a, 77).

84 *Ser Bartholomeus de Sfondratis de Cremona*, plemić je koji je u razdoblju 1449–1504. služio dubrovačkoj državi kao kancelar i sekretar, bavio se i književnošću, pišući elegije i epistole. Dugogodišnje „*fidelis servicii*", pominje se i u drugim ulogama u društvenom životu Dubrovnika te od strane istaknutih humanista, kakav je bio *Franciscus Philelphus* (Jireček, 1904a, 195). Antuninska kancelarska dinastija Sfondrati utemeljena je njegovim brojnim potomstvom iz dva braka. U Sladeovoj hronici se navodi da je Bartolomej „*u veličanstvenom sprovodu pokopan u crkvi otaca dominikanaca"* (Pešorda Vardić, 2012, 125, 168–169).

85 Trgovina mirođijama (npr. šećerom, šafranom, tamjanom, kimom, đumbirom, klinčićem, paprom) bila je vrlo unosna, pokrećući nove smjerove putovanja (Mirkovich, 1943, 174–187). Profesije vezane uz upotrebu ili prodaju mirođija su: „*speciarius*" – apotekar, „*aromatorius*" – prodavač mirođija i „*apotecarius*" – vlasnik drogerije (Fabijanec, 2003, 101).

86 Shodno glavi 199. statuta Kotora, majka može za svoju dušu ostaviti do ¼ svojeg miraza (SC, 2009, 233).

Kotora u takvom slučaju određuje da su oni koji su stupili u samostan i u njemu ostali, u rasponu od jedne godine od stupanja u samostan ili od punoljetstva imali pravo da zatraže svoj dio nasljedstva (SC, 2009, 236). To se u slučaju ovog dubrovačkog Baranina, koji je sasvim izvjesno poštovao posljednju volju *pater familias*-a, nije dogodilo.

Na kraju testamenta, prije uobičajene odredbe o nepovredivosti javne isprave svjedočanstvima drugih, Jeronim Nale je imenovao njegove epitrope: g. Trifuna Bondu,[87] g. Petra Poçu[88] i g. Nikolu Vlahovog Ragninu.[89]

Iz perspektive onoga što je iskazao *Hieronymus*, okupiranost materijalnim vrijednostima, kojima je obilovala izjava posljednje volje pripadnika porodice Nalis prethodne generacije, iščezla je pred duhovnim uporištem benediktinskog monaha.

## SUTON JEDNE EPOHE: NICOLO NATALI, XVII v.

U Baru je, shodno dokumentu nastalom između 1629. i 1633. g., živio *Signor Nicolo Natali*. Zbog velikog vremenskog razmaka i neraspolaganja konkretnijim podacima, ne može se sa sigurnošću tvrditi da je pripadao patricijskom rodu Natalis (Nalis, Nale), ali se ta mogućnost svakako ne može isključiti. Indikativno je da se pominje među prežicima uglednih barskih porodica, čiji se broj, prvih decenija osmanske vlasti nad gradom, rapidno smanjivao. Vikar barskog nadbiskupa, *D. Pietro Samuelli*, izdanak jednog od najistaknutijih gradskih patricijskih rodova, ugovorio je Nikolinu ženidbu (Marković, 2009, 205). Međutim, upravo je konfliktni barski vikar ugovoreno ubrzo htio razvrgnuti, varajući i mladoženjinu i mladinu stranu, što je učinilo da se Natali nađe na strani barskih patricija Pasqualija, koji su bili u teškoj zavadi sa Samuellijem te da svjedoči protiv generalnog vikara (Zamputti, 1963, 406).

U sukobima potreba i mogućnosti osiromašenih nosilaca društvenih vrijednosti i identiteta, u srditostima skučene i tlačene hrišćanske zajednice, sahnuo je krajolik nekadašnjeg urbanog mentaliteta i nestajale posljednje vestigije jednog vremena.

## ZAKLJUČAK

Oblici reprezentacije sačuvani u fragmentarnim arhivskim svjedočanstvima stvarnosti, kulturnih i ideoloških obrazaca na kraju srednjovjekovlja, omogućuju pristup materijalima koji proširuje poznavanje i razumijevanje tog vremena, pokazujući kompleksnost promišljanja kojima su ljudi nastojali da protumače ovozemaljski svijet i onostrano.

Slojevitost imaginarija je polazište u interdisciplinarnom sagledavanju konstruisanih, zastarjelih istorijskih narativa, u kritičkoj i komparativnoj analizi, revidiranju i redefini-

87 Trifun (Tripko) Andrijin Bonda, rođen oko 1405., u razdoblju između 1455. i 1465. g. četiri puta je bio dubrovački knez. Umro je 1465. g. od kuge (Vekarić, 2012a, 137).

88 Dvojica savremenika mogli bi biti epitropi Jeronimovog testamenta; Petar Nikole Ivanova Poça (rođen oko 1410. – 1476.), koji je između 1455. i 1476. osam puta bio dubrovački knez, prije nego Petar Nikole Petrova Poça (rođen oko 1385.), koji je 1426., kako je prethodno navedeno, vodio karavan u Novo Brdo i Prištinu (Vekarić, 2012b, 173–176).

89 Nikola Vlahov Ragnina (oko 1427. – 1479.) bio je dubrovački knez 1477. g. (Vekarić, 2012b, 207–208).

sanju staleških i obilježja urbaniteta. Testamentarna ostavština je pri tome od primarnog značaja, time što na više diskurzivnih nivoa pruža mnoštvo činjenica kojima se potvrđuju vrijednosti, inklinacije i aspiracije društvene elite.

Temelj i ishodište u markiranju konteksta i rekognosciranju relevantnih repera ima jaka, kohezivna uloga pater familiasa. Ona je nametala lojalnost i disciplinu u porodici i rodu, koju ne bi mogla promijeniti emancipacija od očinskog autoriteta u imovinskoj zajednici. Sigurna vlasnička podloga omogućavala je komunikaciju na svim poljima, putovanja i poznanstva, razmjene mišljenja, znanja, ideja i kulturnih dobara, što je formiralo i obogaćivalo pripadnike različitih zajednica, ljude određenog prostora. Trgovački partneri kao bliski saradnici i ortaci u poslovnim poduhvatima s tkaninama, srebrom, oružjem i voskom, njihova životna dob, ukusi, potrebe i mogućnosti, nesumnjivo su bili ogledala domaćih, barskih preduzetnika. Mjesta na kojima su sarađivali nisu bila samo susretišta različitih kulturnih obrazaca, već i poveznice prožimanja etniciteta romanskih obilježja, staleških karakteristika plemstva. Otuda su istočnojadranski primorski gradovi, promišljeno obnavljajući, ali i ljubomorno čuvajući biološki i kulturološki kontinuitet svoje populacije, ostajali mjesta posredovanja sa vlastitim zaleđem, granice civilizacija i svjetova. Ipak, za razliku od Dubrovnika, grad Bar je kao manja sredina na limesu krupnih perturbacija pokazivao veću privrženost nasljeđu koje su utrli religiozna metropola i materijalno bogatstvo, stvoreni prije svega povezanošću sa slovenskim zaleđem. Od njega ga je od kasnog srednjeg vijeka dijelila sve veća kulturna i vjerska distanca, razlika koja će *intra moenia* nefleksibilno kulminirati „hipertrofiranim" katoličanstvom, simbolično navještavajući vlastito utrnuće.

Analizirajući podatke na individualnoj razini, istoriografija je propuštala da sistematski i sintetski projicira reflekse djelatnosti Barana u drugim sredinama na njihov zavičaj. Istaknuti u matičnom gradu, oni su se, donoseći znatan kapital, ali ostavljajući po strani političku participaciju, u veći grad hijerarhijski definisane društvene strukture integrisali na tada jedino mogućoj, staleškoj razini antunina. Umreženi karitativnim obzirima, grananjem poslovno-rodbinskih veza doprinosili su rađanju građanskog staleža. Proizvodnja sukna u Dubrovniku od kraja XIV v., trgovina tkaninama i ostalom robom koja se otuda širila balkanskim zaleđem, dopirući do Prištine, nije samo značila uticaj na kulturu odijevanja elite i onovremenu modu, luksuznim, ali i skromnijim kupcima dostupnim predmetima, već i intenziviranje trgovačkog prometa i prakse novim načinima poslovanja.

Potreba bilježenja trgovačkih transakcija nije se više zadovoljavala pečatom koji su obezbjeđivali kaptol ili komuna, već su tančine različitih poduhvata i oblika udruživanja, kakve su kolegancije, razlagane u više privatnih računovodstvenih kvaterna. Time se omogućavala bolja kontrola kredita i drugih poslova, podsticala matematička obrazovanost, ali i proračunatost; dvojno knjigovodstvo je uticalo na probitačnost, smatrajući se vjerodostojnim dokaznim sredstvom u regulisanju obaveza vlasnika. Ono je i značajan izvor saznanja pri istraživanju ekonomske istorije.

Da bi se izbjegla rastrošnost, spriječilo rasipanje stečenog bogatstva i pospješile djelotvornost poslovanja i mogućnost zarade, iz perspektive pojedinca je cijenjeno cjelishodnim uključivanje bližih i daljih rođaka u porodiče poduhvate. Opšta društvena ograničenja prevazilažena su preusmjeravanjem ekonomskih aktivnosti i promjenom modaliteta

održavanja bogatstva; posjedovanje nekretnina je impliciralo rentu kao način njihovog korištenja. Imetak je uticao na mentalitet, vrijednosti i način života vlasnika, utičući, da kao kriterij društvenog uspona i izdvajanja, trgovina ide u ravan s crkvenim zvanjima i uđe u kolektivnu svijest kasnosrednjovjekovnog čovjeka.

Međutim, takav je imaginarij unutar porodice, zavisno od osobenosti, autentičnosti i perspektive patrimonija, mogao implicirati shodnu bračnu strategiju ili škrtost hereditarnosti. Nikola Nalis, koji je u dubrovačku sredinu konačno integrisan najverovatnije sklapanjem braka, kada je u pitanju njegova kćerka na poseban je način doprinio istoriji „nevidljivih" žena, zavisnih o brizi drugih. Ipak, saosjećanje s perifernim društvenim grupacijama, kakve su predstavljale sirotice doličnog ponašanja ili dugogodišnje sluškinje, u smiraj života i uz strah od pakla, kojem je bila izložena fragilna merkantilistička etika, uvodilo je u nastojanje da se učini sve u cilju rasterećenja vlastite savjesti.

Konsolacijski eksplicitno navode se fraudulentne carine kao sastavni dio tekućih poslova, dok se značajni iznosi legata ostavljaju bratovštinama, prosjačkim redovima i sakralnim objektima, a zavještaoci pojavljuju kao darodavci liturgijskih predmeta kojima će se ukrašavati crkveni oltari. Pozicije koje su preci zauzimali u religioznim institucijama u matičnom gradu činile su da se one doživljavaju kao impostirani toposi, kojima će se zavještati velike novčane svote ili nekretnine. Pod moralnim pritiskom pobožnosti, koje su simbolizovali citati iz evanđelja, briga za vlastiti i zagrobni život najbližih iskazivala se oslobađanjem od grijeha nastojanjem skraćenja boravka u Čistilištu hodočašćima i misama. Buđenjem individualnosti, testamentarnim zavještanjima kao zalogama za budućnost, potencirana je prolaznost ovoga svijeta i anticipirana borba za spas vlastite duše.

## PRILOG I: TESTAMENT NIKOLE MARINOVA NALE IZ BARA [DAD, TN, sv. 14, ff. 192r-194r]

Testamentum Nicole Marini de Nale de Antibaro

*MCCCC°.LI. Indictione XIIII[a], die XIII martii. Ragusii. Hoc est testamentum*[90] *Nicole Marini de Nale de Antibaro noviter defuncti (alias* cancell*.) repertum in notaria comunis Ragusii, alias ibidem repositum ad salvandum cum aliis testamentis vivorum, iuxta mores civitatis, attestatum per Ser Damianum de Menze iudicem annuarium et Ser Johannem de Uguzonibus notarium comunis Ragusii testem ascriptum ipsi testamento. Cuius testamenti tenor sequitur et est talis videlicet.*

*Ihesus Christus, Maria, die XVI februarii 1451. Io Nicola Marini de Nale considerando la frazilita humana esser sotoposta a subiti casi della morte, et non esser la cossa piu certa dela morte et men certa del hora dela morte, e rocordandome de quel dicto evangelico che dise* estote parati quia nescitis diem neque horam*, non voiando manchar senza testamento, et proveder ala saluta de l'anima mia, avegna che infermo del corpo, tamen de bona mente e sano intelletto mio, fazo et ordino questo mio ultimo testamento. In prima lasso per decima et primicia a Sancta Maria Mazor in Ragusa yppr. 3. Item lasso ala fratiglia deli preti in Ragusa yppr. XX, cum questa condicion che siano tenuti scriverme in la detta fratiglia loro, et Nicoleta mia uxor, et mia madre Maria, et mio barba pre Zuane de Nale canonico de San Zorzi de Antiveri; et che ogni anno fazano comemoracion de tutti, come fano del mio padre, el qual e scritto in la fratiglia predetta.*

*Item lasso che sia mandato uno prete a San Nicola de Bari per anima mia e de Nicoleta mia donna, et abia ypr. XX per detto viazo. Item volo che sia mandato uno prete a Roma per anima mia e deli mie morti et abia per detto viazo ypr. XXX. Item voio anchora sia mandato uno altro prete a Roma per anima di Nicoleta mia dona, et habia chi andara per suo viazo ypr. XXX. Item lasso a don Nicola Paulicevich per dir quatro para di messe di San Gregol per anima mia e della donna mia et altri morti nostri yppr. XX. Item lasso a don Zohanne de San Stefano ypr. XII, li quali li son debito per messe ha ditto per mi. E di piu li lasso ypr. XX. per dir quatro para di messe di San Gregol per anima mia e de la mia dona Nicoleta, et de nostri morti. Item lasso a San Francescho in Ragusi per le messe per anima mia e de Nicoleta dona mia, e de nostri morti ypr. XX.*

*Item lasso ch'l sia fatta la raxon del tempo che e stata in caxa cum mi Vuchna mia fantescha che fin mio zuredo sia stata anni 13 et piu, et che sia pagata secondo la usanza se da ale fantesche. Et de piu voio li sia fatte doe gonelle de panno de Vicenza de li cauezi sono in botega, del color che la vora, et questo per anima de chi sono li denari. Item voio che Antonio cum li fratelli mie fioli siano tenuti e debiano far far uno tabernaculo a Sancta Catarina sovra lo altare /Λ/*[91] *de Nicola de Miossa de ligname, et che se spendano yppr. diese in quindexe, over cercha quanto montara, pocho piu o pocho mancho. Et per*

90 Na margini prve stranice testamenta su dva znaka: "*E - xtractum*"; "*Extractum*".

91 U oporuci je, na margini naspramno, pribilježeno: „*El qual e da ladi de monte a quel modo como e fatto a San Francescho sovra lo altar*".

*far tal distribucion deli lassi suprascripti, voio che non se tocha in li denari dela stazon, ma che se vendano li drapi et investidure che forno de Nicoleta dona mia, zoe tre gonelle nove, doe mostovaliere et una de grana, et la capa nova de morello de grana fodrata cum cendato, et lo guarnazol de grana fodrato de dossi de vari, et le doe pelize nove. Et che tal cosse se vendano tacitamente per mezo de le sorelle de la dona mia et altri, come meio parera ali mie epitropi. Et che li denari recevano li mie epitropi, et satisfazano li legati soprascripti deli detti denari. Et per dischario della consciencia mia digo che mi e Zuanne mio fradello dovemo dar al Comun de Ragusa per dohane fraudate siando nui in fraterna yppr. CCXL. Voio e lasso che la mia parte, zoe yppr. CXX, sia pagata al Comun de Ragusa a yppr XV al anno infina a intriego pagamento, et che altramente non se possa schoder. Et la parte de Zuanne mio fradello schoda la Signoria de Ragusa dalli successori del mio fradello como vora et sapera.*

*Item lasso che la mia fiola Anucla sia posta in monasterio de Anzoli et che li sia dato quello sera iusto segondo la possibilita.*

*Item, io me tegno in consciencia a dover dar a Nichsa de Miosa yppr CCCXXVIII. Ma perche o abuto de danno in Pristina in cason delli soi debitori antixi como sa de questo Nicola e Jachetta de Radulino, yppr. 340 de quello che tocha in mia parte a refarme et anche me die refar el detto Nichsa per la parte che li tocha della spesa della coleganza me fo fatto torto dela proferta, pertanto voio che vada un per altro. Et che il detto Nichsa me perdona li detti yppr 328, et io li perdono li detti yppr 340, et la parte soa alla spesa predicta, che lui non possa domandar a mi niente, ne io a lui. Et cossi lasso cum tal condicion. Anchora el sono alcuni debitori scritti in quaderno mio signato.* Λ. *et in zornal scritto per man de Antonio fiol mio a carta 103 da do de zenaro 1449 per fina a carta 200 adi 8 marzo in detto zornal, et e portado in quaderno grande, voio et ordeno che de quello che schodera la mita sia de Nichsa de Miosa per detto et l'altra mitade sia deli mie heredi cum questa condition che di questo se paghino lo resto dovemo dar io et Nichsa de Miosa ala epitropia de Pribissav de Radulin de quello me impresto et detto Pribissav per pagar Marcho de Stay. Apresso perche avessemo compagnia insiema io et Nichsa de Miosa, et Nichola et Jacheta de Radulin come apar per la sentencia scritta in canzelaria, et dapo della detta sententia schodessemo da Marin de Bizia yppr XXVIIII° et ... (grossi ?), et da Nicola Granzarich yppr. XXVIIII°, et... (grossi ?), et da Mathio de Lillo ypr 29 et ... (grossi ?). Et dele arme e panciere forno vendute lo deto Nichsa ha havuto la soa parte e si non e fatto per recevuto, voio et lasso che de quello se schodera da Ser Zoymo d'Antiveri, uno delli debitori della compagnia sia dia per lo debito de Pribissav de Radulin et de li altri debitori che se schodera che chadaun abia la soa parte. Et de quello fo scosso dali prenominati, zoe da Marin de Bizia et da Granzarich, et da Lilovich, et de le dette arme et panciere, chadauna delle parte faza per recevuta la parte soa. Si veramente che la parte spectante a Nicola et a Jacheta de Radulin sia retignuta et posta ala raxon dela sententia havemo sopra Nicola de Radulin de ducati 500, et de la carta e sopra liu de ducati cento. Et de la carta e sopra Jacheta simelmente de ducati 100. Et fazando Nichsa de Miosa per recevuto la parte soa sotto la sentencia come' detto, voio che per discargo dela consciencia mia che li ducati 600 et piu che esso Nixa de Miossa ha avuto da mi per le spese et soi bisogni in piu volte a pocho a pocho siando cessada la compagnia, tutti li sia perdonati.*

*Lasso mie heredi et successori Antonio, Jeronimo et Nicola mie fioli, ali quali lasso tuti mie beni mobili e stabili, e tute mie raxon et actioni et zo che ho a Ragusa et in lo suo distretto, e simelmente in Antivari et suo distretto, et che me apartien et pertignera per alcun modo satisfazano como e detto de sopra, cum questa condition che non se possano partir uno dal'altro, ne far parzogna per alcun modo in fina chel' menor non avera anni XX. Et vignado el menor ala eta de anni XX, sia poi in lor liberta a partirse o star insiema come vorano. Et morando alcun de loro senza heriedi masculi, voio che mora uno al'altro in fato dela succession deli beni stabili, ma del mobile et con questo mio voio che chadaun possa far la soa volonta. E se alcun de loro volesse andar frate, voio che colui che andara frate non possa testar la parte soa de li mie beni se non ali altri fratelli, dechiarando che io non voio che mai per alcun modo ne inzegno se possa vender, ne impegnar, ne obligar, ne alienar le possession mie de Breno, ne de Slano, ne li mei beni de Antivari, ma sempre vadano de herede in herede maschio, et non femenino.*

*Et cessando la linea maschulina mia et de mie heriedi, alora voio che li mie epitropi, quando haverano piu compratori senza pressa debiano vender le possession mie de Breno et de Slano al publico incanto a chi piu dara. E del retratto de tal possession voio che se dia ala fratiglia delli preti de Sancta Maria per cantar messe per anima mia et de mie morti e de la donna mia Nicoletta ducati cento. Et a San Domenego de Ragusa per le messe come detto altri ducati cento. Et a San Francescho similiter ducati cento, et al monastier de Daxa ducati cento, et ali frati de Umbla ducati cento, et ali frati de Slano ducati cento, et al monastier de Stagno ducati cento, et al monastier de Gravosa ducati cento, tutto per cantar messe como e detto de sopra. E simelmente voio che se diano al monastero de Sancta Maria delli Anzeli in lo qual sera mia fiola Anucla, o viva o morta, ducati CC. Item voio pur de li detti denari sia dato a don Nicola Pauliçevich siando alora vivo ducati cento per cantar le messe como e detto. Et non siando vivo, siano dati a uno altro in suo logo, a chi parera ali mie epitropi. Et de lo resto che avanzara del ritratto delle dette possession voio siano maritate povere donzelle de povolo de bona condicion a yppr cento per chadauna al piu segondo meio parera alli mie epitropi. Et se alcuna cossa manchasse a compimento de tal distribucion, voio se satisfaza li detti legati per rata a chadauno.*

*Et alora voio et lasso a Ser Zoymo de Theodoro de Brizi de Antivari et a soi heredi et successori in perpetuo per amor la casa grande cum lo casal in Antivari, intendando manchata sera la linea maschulina mia et de mie heredi. Et a Nicola de Zuanne mio nievo alora como e detto lasso lo molino dele olive cum le casete et la vigna de Pradamos, et morando lui senza heredi maschii, voio siano delli canonici de San Zorzi de Antivari in perpetuo, che quelli serano alora che pregano Dio per nostri morti. Et similiter voio siano alora delli canonici detti tutte altre possession ho in Antivari, zoe olivari et la vigna de Tribian, intendando tutto questo siando cessata la linea masculina, come e detto, e non avanti.*

*Item lasso li epitropi et executori de questo mio testamento, et tudori deli mie heriedi de menor etade, Ser Marin Mi. de Bona, Ser Nicola Po. de Gondola, Ser Stefano de Luchari, Marin de Brathcho, Nicola Anto. de Butcho, Benedetto de Cotrul, Antonio mio fiol.*

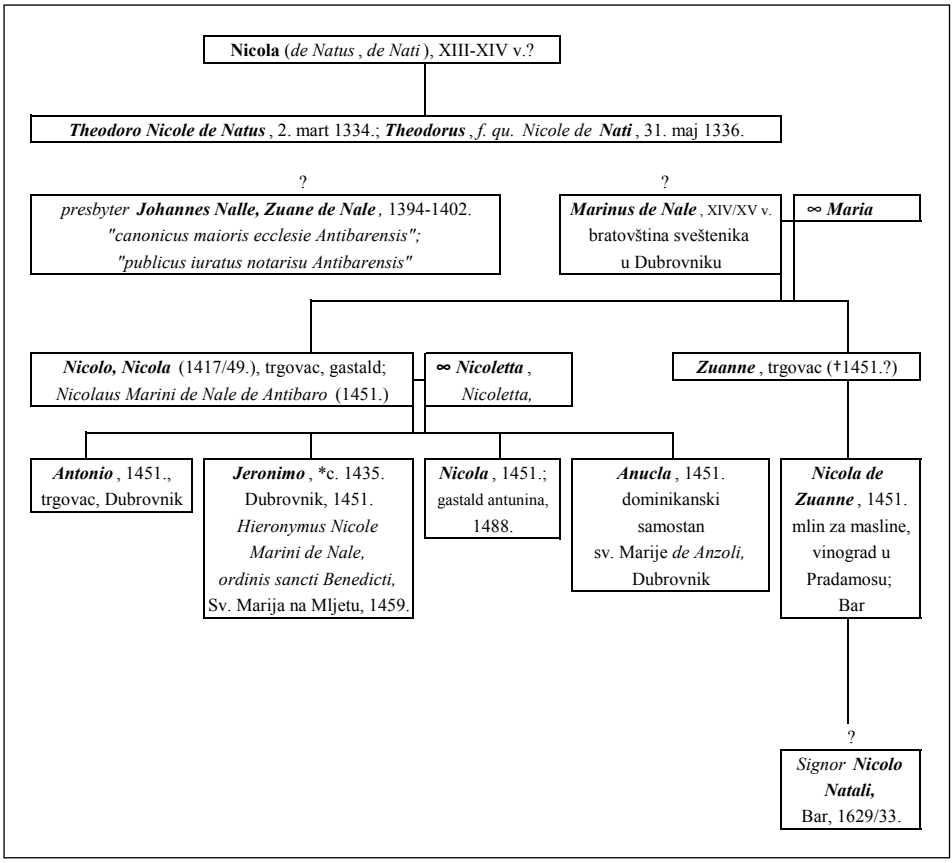
*E sopra el fatto della stazon e de quello apartien ala stazon, lasso solo governator Antonio mio fiol, in fina che li altri haverano la etade che lui la debia rezer et governar*

*e sostentar la fameia. Et che li epitropi et tudori non se possano impazar per essa, ma sopra questo incargo molto la consciencia del detto Antonio, che voia ben governar la detta stazon et rezer la casa, et render bona raxon ali fratelli, et farli lo dover a chadaun come voría fosse fato a lui e como spero in la sua bontade non fara altramente. Et fazando altramente, che non lo credo, voio che abia la mia maledicion.*

*Anchora voio che, satisfato che sera tute le predette cosse, zoe in ultimis quelli epitropi se troverano, alora abiano uno anello d'oro de yppr XX per chadauno quando manchasse la linea maschulina e fosse venduto, come e detto di sopra.*

*Quod quidem testamentum nullo testimonio rumpi possit.*

## PRILOG II: GENEALOGIJA RODA NATALIS (NALIS, NALE)



# „PER DISCHARIGO DELLA CONSCIENCIA": TESTAMENTARY REFLECTIONS OF MEDIEVAL IMAGERY OF THE PATRICIAN LINEAGE NATALIS (NALIS, NALE) FROM BAR

*Savo MARKOVIĆ*

Barska plovidba JSC Bar, 85000 Bar, Obala 13. Jula bb, Montenegro

e-mail: markovics@t-com.me

*SUMMARY*

*Analysing the unpublished testamentary source materials from the State Archive of Dubrovnik, the aim of the research paper is to reconstruct the genealogy and the biographies of the members of the patrician lineage Natalis (Nalis, Nale) from Bar in the 15th Century, as well as, on the basis of other records and historiography, their relating ancestry, offsets, families and descendants.*

*Medieval documents are enabling the widening of understanding of that period, rendering fragmented, yet stratified imagery of complex reflexions that tried to interpret reality and transcendence, showing the historic background that determined the upper social class on the south of eastern Adriatic coast. Such testamentary notarial acts are of paramount importance for interdisciplinary research, comparative analyses and criticism of constructed, obsolete historiographic narratives, for the redefinition of characteristics of urbanity and social elite, confirming on a several discursive levels, expressively, symbolically and iconically, its values, inclinations, and aspirations.*

*The starting point in marking of context and recognition of relevant indicators is a strong, cohesive role of pater familias. It imposed loyalty and discipline in the family and in kindred, which were not changed with the emancipation from paternal authority. Secure possession background was enabling the communication on many fields, travelling and encounters, exchange of knowledge, ideas and cultural goods, which were forming and enriching the members of various communities, the people of related area. Hence, the eastern Adriatic coastal towns, prudentially renewing and at the same time preserving the biologic, linguistic, and cultural continuity of indigenous population, were the places of mediation with its own hinterland, the borders of the civilizations and of the worlds.*

*Differently than Dubrovnik, the town of Bar, as a smaller community confining with significant perturbations, was showing more adherence to the heridity formed by the religious metropolis and rich material substratum acquired in time of closer conection with Slavic backing. In the late Middle Ages, the town was separated from it with evermore cultural and religious distance, creating the difference that* intra moenia *will inflexibly culminate with „hypertrophied" catholicity, symbolically announcing the own downfall.*

*Yet, the common social limitations were surmounted by redirecting the economic activities and the change of modalities of sustention of wealth. Analysing the data on the individual level, historiography omitted to project, systematically and synthetically, the homeland reflections of the activities of emigrants from Bar. Also, the positions that they were taking in ecclesiatical institutions of the hometown were imposing them as topoi of remembrance, to which will be bequeathed significant sums of money and the real estate.*

*Furthermore, depending on particularities, authenticity, and a prospective of the patrimony, such an imagery within the family might imply the marital strategy or hereditarian avarice. Confessingly explicit are the fraudulent customs, the integrative part of the running of business. Nevertheless, the compassion following the life appeasement and the fear of hell were introducing the endeavour to do everything in order to discharge the own conscience.*

*Prominent in the social life of Bar and Dubrovnik in* Quattrocento*, Natalis family is witnessing the guidelines of quondam economic motion, the integrative juridical and cultural traditions, reflecting also the spiritual fundamentals of European Mediterranean.*

*Key words: Bar, Natalis (Nalis), patriciate, testament, church institutions, heritage*

IZVORI I LITERATURA

**Annales Ragusini (1883):** Nodilo, S. (ur.): Annales Ragusini anonymi item Nycolai de Ragnina; Scriptores, I. Monumenta spectantia historiam Slavorum meridionalium, XIV. Zagrabiae, Academia scientiarum et artium Slavorum meridionalium (ed.), in taberna libraria L. Hartman (Kugli & Deutsch).

**Arkiv (1863):** Kukuljević Sakcinski, I. (ur.): Marina Sanuda Odnošaji skupnovlade mletačke prama južnim Slavenom; Rapporti della Republica Veneta coi Slavi meridionali. Brani tratti dei diarj manoscritti di Marino Sanudo. (continuazione.) 1501–1517. Arkiv za povjestnicu jugoslavensku, VI. U Mletcih, „Izdan troškom družtva za jugoslavensku povjestnicu i starine". U pečatnji Del Comercio.

**ASVE-NT -** Archivio di Stato di Venezia (ASVE), Notarile testamenti (NT).

**DAD-TN** - Državni arhiv u Dubrovniku (DAD), Testamenta notariae (TN), sv. 8, 13, 14, 15, 17.

**DAD-DN -** DAD, Diversa Notariae (DN), Ser. 26, br. 15.

**Libri domorum (2007):** Knjige nekretnina dubrovačke općine (13–18. st.) / Libri domorum et terrenorum communis Ragusii deliberatis ad affictum (sæc. XIII–XVIII). Benyovsky Latin, I., Zelić, D. (prir.). Zagreb, Dubrovnik, Posebna izdanja Zavoda za povijesne znanosti HAZU u Dubrovniku, 7/1, I–II.

**Orbini, M. (1999):** Kraljevstvo Slavena. Prev.: Husić, S.; prir. i napisao uvodnu studiju: Šanjek, F. Zagreb, Golden marketing.

**SC (2009):** Antović, J. (ur.): Statvta civitatis Cathari – Statut grada Kotora, II, prevod originala iz 1616. godine sa naučnim aparatom. Kotor, Državni arhiv Crne Gore.

**Šafarik, J. (1862):** Srbski istorijski spomenici mletačkog arhiva. Glasnik Društva srbske slovesnosti, XIV, Beograd, 1–232.

**Thallóczy, L., Jireček, C., Sufflay, E. (1913):** Acta et diplomata res Albaniae mediae aetatis illustrantia. Vol. I. Vindobonae, Typis Adolphi Holzhausen.

**Valentini, G. (1968):** Acta Albaniae iuridica. Beiträge zur Kenntnis Südesteuropas und des Nahen Orients, I. München, R. Trofenik.

**Zamputti, I. (1963):** Relacione mbi gjendjen e Shqipërisë veriore e të mesme në shekullin XVII, I (1610–1634). Burime dhe Materiale për historinë e Shqipërisë, 3. Tiranë, Universiteti Shtetëror, Instituti i Historisë dhe i Gjuhësisë.

**Ančić, M. (1997):** Srednjovjekovni montaneji. Starohrvatska prosvjeta*,* III, 24. Split, 127–148.

**Ančić, M. (2001):** Na rubu zapada: tri stoljeća srednjovjekovne Bosne. Zagreb, Dom i svijet.

**Ančić, M. (2005):** Splitski i Zadarski kaptol kao "vjerodostojna mjesta". Fontes: izvori za hrvatsku povijest, 11. Zagreb, 11–77.

**Badurina, A. (2006):** Leksikon ikonografije, liturgike i simbolike zapadnog kršćanstva, Badurina, A. (ur.); Uvod u ikonologiju / Ivančević, R. Zagreb, Kršćanska sadašnjost.

**Bašić, Đ. (2006):** Pomorstvo Dubrovnika od XII. do početka XX. stoljeća. Pomorski zbornik, 44, 1. Rijeka, 139–177.

**Beritić, L. (1956):** Ubikacija nestalih gradjevinskih spomenika u Dubrovniku. Dio I. Prilozi povijesti umjetnosti u Dalmaciji, 10. Split, 15–83.

**Brajković, V. (1975):** Collegantia. Pomorska enciklopedija, 2, Brajković, V (ur.). Zagreb, Jugoslavenski leksikografski zavod.

**Boerio, G. (1856):** Dizionario del dialetto veneziano. Seconda edizione aumentata e corretta, aggiuntovi l'indice italiano veneto. Venezia, premiata tipografia di Giovanni Cecchini edit.

**Boschetto, L. (2005):** Tra Firenze e Napoli. Nuove testimonianze sul mercante-umanista Benedetto Cotrugli e sul suo *Libro dell'arte di mercatura.* Archivio storico italiano, CLXIII, 606, IV. Firenze, 687–715.

**Bošković, Đ. (1962):** Stari Bar. Beograd, Savezni institut za zaštitu spomenika kulture.

**Campbell, L., Dunkerton, J., Kirby, J., Monnas, L. (2001):** Two Panels by Ercole de' Roberti and the Identification of *'veluto morello'*. National Gallery Technical Bulletin, 22, London, 29–41.

**Ćošković, P. (2009):** Kotruljević, Benedikt. U: Hrvatski biografski leksikon, Zagreb, Leksikografski zavod Miroslav Krleža. Http://hbl.lzmk.hr/clanak.aspx?id=250 (8. 8. 2013.).

**Ćuk, R. (1986):** Srbija i Venecija u XIII i XIV veku. Beograd, Istorijski institut, Prosveta.

**Ćuk, R. (1999):** Trgovci iz zetskih gradova u Dubrovniku i srpskim zemljama u srednjem veku. Srednjovjekovna istorija Crne Gore kao polje istraživanja, Zbornik radova sa okruglog stola Istorijskog instituta, 3. Podgorica: Istorijski institut RCG, 153–166.

**Ćuk, R. (2005):** Dubrovačka porodica Tributinić u srednjem veku. Istraživanja, 16. Novi Sad, 241–248.

**Čaldarević, V. (1957):** Kulturni lik Dubrovnika u XV. stoljeću. Dubrovnik 3/1–2. Dubrovnik, 1–22.

**Darovec, D. (2010):** Ruolo dei vicedomini istriani nella redazione degli atti notarili in rapporto ad uffici affini dell'area adriatica. Acta Histriae, 18, 4, 789–822.

**Eastaugh, N., Walsh, V., Chaplin, T., Siddall, R. (2008):** Pigment Compendium. A Dictionary and Optical Microscopy of Historical Pigments. Oxford, Elsevier Ltd.

**Fabijanec, S. F. (2002):** Bilanca (*rimanenze*) u glavnoj računovodskoj knjizi Ivana i Lukrecije Detrico (1520.–1533.). Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti Hrvatske akademije znanosti i umjetnosti, 20. Zagreb, 95–123.

**Fabijanec, S. F. (2003):** Dva trgovačka inventara kao pokazatelji ekonomskog i kulturnog života Zadra u XIV. stoljeću. Povijesni prilozi, 22, 25. Zagreb, 93–131.

**Fabijanec, S. F. (2004):** Društvena i kulturna uloga zadarskog trgovca u XIV. i XV. stoljeću. Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti Hrvatske akademije znanosti i umjetnosti, 22. Zagreb, 55–120.

**Fejić, N. (2008):** Jedan pogled na ratove Dubrovnika. Istorijski časopis, LVI. Beograd, 117–151.

**Grbavac, B. (2008)**: Notari kao posrednici između Italije i Dalmacije – studije, službe, seobe između dvije obale Jadrana. Acta Histriae, 16, 4. Koper, 503–526.

**Grujić, N. (2012):** Studio u dubrovačkim kućama prve polovice 15. stoljeća. Radovi Instituta za povijest umjetnosti, 36. Zagreb, 43–52.

**Gulin, A. (2003):** Srednjovjekovni Kotorski kaptol (*Capitulum ecclesiae Catarensis*). Stjepanu Antoljaku u čast, Zbornik, Kolanović, J. (ur.). Zagreb, Hrvatski državni arhiv, 77–93.

**Heyer Von Rosenfeld, C. G. F. (1873):** Wappenbuch Der Adel des Königreichs Dalmatien. Nürnberg, Verlag von Bauer und Raspe (Emil Küster.).

**Homa, S. (2004):** Kultura svakodnevice u srednjovjekovnom Zadru. Povijesni prilozi, 23, 27. Zagreb, 7–34.

**Hrabak, B. (1973):** Podgoričani trgovci XV, XVI i XVII veka prema kotorskoj i dubrovačkoj građi. Istorijski zapisi, XXVI, XXX, 3–4. Titograd, 255–270.

**Hrabak, B. (1999):** Privreda Bara u XIV i XV veku. Srednjovjekovna istorija Crne Gore kao polje istraživanja, Zbornik radova sa okruglog stola Istorijskog instituta, 3. Podgorica, Istorijski institut RCG, 167–197.

**Hrabak, B. (2005):** Obnova tekstilne radinosti u Dubrovniku u XVI veku. Istraživanja, 16. Novi Sad, 263–278.

**Imhaus, B. (1997):** Le minoranze orientali a Venezia 1300–1510. Roma, Il Veltro.

**Janeković Römer, Z. (1994):** Na razmeđi ovog i onog svijeta, Prožimanje pojavnog i transcendentnog u dubrovačkim oporukama kasnoga srednjeg vijeka. Otivm, 2 (3–4). Zagreb, 3–15.

**Janeković Römer, Z. (1996):** „Pro anima mea et predecessorum meorum". Death and the Family in Fifteenth-Century Dubrovnik. Medium Ævum Quotidianum, 35. Krems, 25–33.

**Janeković Römer, Z. (1999):** Okvir slobode. Dubrovačka vlastela između srednjovjekovlja i humanizma. Zagreb, Dubrovnik, Zavod za povijesne znanosti HAZU u Dubrovniku.

**Janeković Römer, Z. (2006):** Obiteljska knjiga Andrije Antojeva de Pozza (1569–1603). U: Jerše, S., Štih, P., Mihelič, D. (ur.): Med srednjo Evropo in Sredozemljem : Vojetov zbornik. Ljubljana, Založba ZRC; ZRC SAZU, 485–497; Https://bib.irb.hr/.../333767. Obiteljska_knjiga_Andrije_Antojeva_de_Pozza.doc, 1–13 (5. 11. 2013.).

**Janeković Römer, Z. (2009):** The family records of Andreas de Pozza from 1569–1603. Dubrovnik Annals, 13. Dubrovnik: 37–54.

**Janeković Römer, Z. (2013):** Udobni dom suknara Miihovila Petrovog: svakodnevica bogate građanske obitelji u anžuvinskom Zadru. U: Istarski povijesni bijenale, s temom „Domus, casa, habitatio...: kultura stanovanja na jadranskom prostoru", 5, Poreč 2011; Https://bib.irb.hr/.../640747.Udobni_dom_suknara _Mihovila_ Petrova.doc*, 1–19 (9–29), (13. 11. 2013.)*.

**Jerković, M (2012):** Načini stjecanja kanonikatâ zagrebačkog kaptola u 14. stoljeću. Croatica Christiana periodica, XXXVI, 70. Zagreb, 1–25.

**Jireček, C. (1902):** Die Romanen in den Städten Dalmatiens während des Mittelalters. Denkschriften der Kaiserlichen Akademie der Wissenschaften: Philosophisch-historische Klasse*,* XLVIII Band, III. Wien, 1–104 (167–270).

**Jireček, C. (1904a):** Die mittelalterliche Kanzlei der Ragusaner II. Archiv für Schlavische Philologie, XXVI. Berlin, 161–214.

**Jireček, C. (1904b):** Die Romanen in den Städten Dalmatiens während des Mittelalters. Denkschriften der Kaiserlichen Akademie der Wissenschaften: Philosophisch-historische Klasse*,* XLIX Band, II., I. Wien, 1–80.

**Jireček, C. (1904c):** Die Romanen in den Städten Dalmatiens während des Mittelalters. Denkschriften der Kaiserlichen Akademie der Wissenschaften: Philosophisch-historische Klasse*,* XLIX Band, III., II. Wien, 1–78 (92–169).

**Jireček, K. (1923a):** Istorija Srba*.* Knjiga II. (do 1537); preveo i dopunio Jovan Radonić. Beograd, Geca Kon.

**Jireček, K. (1923b):** Istorija Srba*.* Sv. III. (Kulturna istorija: I. deo); preveo i dopunio Jovan Radonić. Beograd, Geca Kon.

**Jireček, K. (1962):** Romani u gradovima Dalmacije tokom srednjega veka. Zbornik Konstantina Jirečeka, II. Beograd, Posebna izdanja SANU, knj. CCCVI, Odeljenje društvenih nauka, 42.

**Jurić, F. (1916):** Povjesno-opisni prikaz franjevačkog samostana u Dubrovačkoj Rijeci. Zagreb, Tiskara i litografija C. Albrechta.

**Kotrulj, B. (2009):** Benedikt Kotrulj, Libro del arte dela mercatura. Knjiga o vještini trgovanja, Janeković Römer, Z. (ur.). Zagreb, Dubrovnik, Zavod za povijesne znanosti Hrvatske akademije znanosti i umjetnosti u Dubrovniku, Hrvatski računovođa.

**Kovijanić, R. (1973):** Bar i Barani u kotorskim spomenicima XIV vijeka. Istorijski zapisi, XXVI, XXX, 3–4. Titograd, 219–232.

**Krasić, S. (1987):** Dominikanski samostan Sv. Križa u Gružu (1437–1987), Povijesni pregled. Croatica Christiana periodica, 11, 20. Zagreb, 184–199.

**Krasić, S. (1997):** Dominikanci, Povijest reda u hrvatskim krajevima. Zagreb, Nakladni zavod Globus.

**Krasić, S. (2004):** Počeci hrvatskoga visokog školstva u okviru ranih sveučilišnih gibanja u Europi. Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti Hrvatske akademije znanosti i umjetnosti, 22. Zagreb, 121–172.

**Ladić, Z. (2002):** O nekim oblicima brige za siromašne i marginalne pojedince i grupe u dalmatinskim komunama u kasnom srednjem vijeku. Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti Hrvatske akademije znanosti i umjetnosti, 20. Zagreb, 1–25.

**Ladić, Z. (2000):** Oporučni legati *pro anima* i *ad pias causas* u europskoj historiografiji. Usporedba s oporukama dalmatinskih komuna. Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti Hrvatske akademije znanosti i umjetnosti, 17. Zagreb, 17–29.

**Llorenç i Blat, J. (2012):** Sentències catòliques del diví poeta Dant (1545) de Jaume Ferrer de Blanes: edició crítica del text. Universitat de Girona. Http://dugi-doc.udg.edu:8080/handle/10256/7428 (11. 10. 2013.).

**Lonza, N. (2008):** Dubrovački patriciji pred izazovom prava (druga polovica 14. i 15. stoljeće). Acta Histriae, 16, 1–2. Koper, 117–136.

**Lonza, N. (2010):** Dubrovački studenti prava u kasnom srednjem vijeku. Anali Zavoda za povijesne znanosti HAZU u Dubrovniku, 48. Dubrovnik, 9–45.

**Lonza, N. (2012):** *Za spas duša, na dobrobit države:* Dubrovački rizničari i vremenita dobra za vječnu nabožnu svrhu (13–15. stoljeće). Knjiga rizničarskih najmova – Liber affictuum thesaurarie (1428–1547), (prir. Danko Zelić), Monumenta historica Ragusina, XII. Zagreb, Dubrovnik, Hrvatska akademija znanosti i umjetnosti, Zavod za povijesne znanosti u Dubrovniku, 9–24

**Lorger, S. (2011):** Kermes, crvac – i još neka crvena bojila. Anali Zavoda za povijesne znanosti HAZU u Dubrovniku, 49. Dubrovnik, 27–76.

**Lucas, F. (1712):** Commentarius in Sacro-Sancta Quatuor Iesu Christi Euangelia. Ut et reliqua, majorem ad S. Scripturæ lucem, opuscula omnia. Editio Altera: Cura & studio G.V.V. Antverpiae, Typis Christiani Vermey.

**Mahnken, I. (1960):** Dubrovački patricijat u XIV veku, I. Beograd, Srpska akademija nauka i umetnosti, posebna izdanja, 340.

**Manančikova P. N. (1977):** Rana manufaktura i socijalni aspekti povijesti zanatskog stanovništva Dubrovnika u XV i na početku XVI stoljeća. Radovi, 10. Zagreb, 341–356.

**Marković, I. (1902):** Dukljansko-barska metropolija. Zagreb, tisak Antuna Scholza.

**Marković, S. (2006):** Studia Antibarensia. Perast, Gospa od Škrpjela.

**Marković, S. (2009):** „*U kriposti suetoga posluxa*" – povijest barske patricijske familije Samuelis. Povijesni prilozi, 28, 37. Zagreb, 191–215.

**Mijušković, J. (1961):** Dodeljivanje dubrovačkog građanstva u srednjem veku. Glas SAN, CCXLVI, 9. Beograd, 89–127.

**Mirkovich, N. (1943):** Ragusa and the Portuguese Spice Trade. Slavonic and East European Review, American Series, 2, 1. Http://www.jstor.org/stable/3020140 (accessed: 04/11/2013), 174–187.

**Petricioli, I. (1982):** Prilog zadarskim graditeljima XIV i XV stoljeća. Radovi Filozofskog fakulteta u Zadru, Razdio društvenih znanosti 20(9)/1980–1981. Zadar, 29–42.

**Pešorda Vardić, Z. (2012):** U predvorju vlasti: dubrovački antunini u kasnom srednjem vijeku. Zagreb – Dubrovnik, Hrvatska akademija znanosti i umjetnosti, Zavod za povijesne znanosti u Dubrovniku, Hrvatski institut za povijest.

**Pezelj, V. (2010):** Pomorskopravne odredbe Paškog statuta iz 1433. Zbornik radova Pravnog fakulteta u Splitu, 47, 4. Split, 821–836.

**Pinelli, P. (2013):** Piero Pantella iz Piacenze i proizvodnja tkanina u Dubrovniku u prvoj polovici 15. stoljeća (s talijanskog prevela Nella Lonza). Anali Zavoda za povijesne znanosti HAZU u Dubrovniku, 51/1. Dubrovnik, 61–74.

**Prijatelj Pavičić, I. (2011):** Prilog poznavanju dubrovačkih molitvenika XV. stoljeća. Prilozi povijesti umjetnosti u Dalmaciji, 42, 1. Split, 205–249.

**Skok, P. (1928):** O simbiozi i nestanku starih Romana u Dalmaciji i na Primorju u svijetlu onomastike. Razprave SAZU, IV. Ljubljana, 1–42.

**Skok, P. (1972):** Etimologijski rječnik hrvatskoga ili srpskoga jezika, II. Zagreb, Jugoslavenska akademija znanosti i umjetnosti; pretisak 1988: Zagreb, JAZU, ČGP Delo, OOUR Globus, Izdavačka djelatnost.

**Stipišić, J. (2000):** Inventar dobara Mihovila suknara pokojnog Petra iz godine 1385. Zadar, Stalna izložba crkvene umjetnosti u Zadru.

**Tadić, J. (1961):** Les archives économiques de Raguse. Annales, Économies, Sociétés, Civilisations, 16, 6. Paris, 1168–1175.

**Vekarić, N. (2012a):** Vlastela grada Dubrovnika, 2, Vlasteoski rodovi (A – L). Zagreb, Dubrovnik, Hrvatska akademija znanosti i umjetnosti, Zavod za povijesne znanosti u Dubrovniku.

**Vekarić, N. (2012b):** Vlastela grada Dubrovnika, 3, Vlasteoski rodovi (M – Z). Zagreb, Dubrovnik, Hrvatska akademija znanosti i umjetnosti, Zavod za povijesne znanosti u Dubrovniku.

**Vilar, H. M. V. A. (2007):** Canons and Cities: Cathedral Chapters and Their Social Composition in Medieval Portugal. E-journal of Portuguese History, 5, 2. Porto, Providence, 1–19.

**Voje, I. (2008):** Prilog trgovini crvcem (chermesium) u srednjovekovnom Dubrovniku. Istorijski časopis, LVI. Beograd, 101–116.

**Vojnović, K. (1899):** Bratovštine i obrtne korporacije u Republici Dubrovačkoj, od konca XIII. do konca XVIII. vijeka. Monumenta historico-juridica Slavorum meridionalium, VII, I. Zagreb, Jugoslav. akademija znanosti i umjetnosti.

Received: 2014-02-12
Original scientific article
UDK 929:347.962(497.571Reka)“14“

# SUDAC KVIRIN SPINČIĆ IZ KASTVA, ISTAKNUTI GRAĐANIN KASTVA I RIJEKE IZ PRVE POLOVINE 15. STOLJEĆA

*Ozren KOSANOVIĆ*
Sveučilište u Rijeci, Filozofski fakultet, Odsjek za povijest, Sveučilišna avenija 4, 51000 Rijeka, Hrvatska
e-mail: ozren.kosanovic@gmail.com

*IZVLEČEK*

*Prispevek temelji na edini ohranjeni notarski knjigi iz 15. stoletja na območju Reke; tisti, ki je pripadala reškemu notarju in kanclerju Antonu de Rennu iz Modene. Avtor poda pregled poslovnih aktivnosti sodnika Kvirina Spinčića, uglednega meščana Kastva in Reke iz prve polovice 15. stoletja. Bil je relativno premožen, lastnik številnih nepremičnin, ukvarjal pa se je tudi z različnimi oblikami trgovanja. Avtor je analiziral njegovo kreditno trgovanje in dajanje posojil, da bi ponazoril njegov položaj med trgovci na severnem Jadranu. V prilogi je obsežnejši prikaz njegovega trgovanja z živino, tkaninami, usnjem, lesom in vinom, ki omogoča širši vpogled v njegove poslovne aktivnosti.*

*Ključne besede: sodnik Kvirin Spinčić, Kastav, Reka, Kvarner, 15. stoletje*

# IL GIUDICE KVIRIN SPINČIĆ DI CASTUA, EMINENTE CITTADINO DI CASTUA E FIUME DELLA PRIMA METTÀ DEL XV SECOLO

*SINTESI*

*Il quaderno notarile del notaio e cancelliere fiumano Antonio de Renno de Modena risulta l'unico quaderno notarile Fiumano del Quattrocento che si è conservato. Rappresenta una fonte importante per l’analisi delle vicende storiche di Fiume di quel periodo. L’autore presenta le attività commerciali del giudice Kvirin Spinčić, cittadino eminente di Castua e Fiume che visse nella prima metà del Quattrocento. Era benestante, proprietario di molti beni immobili e inoltre attivo nel commercio. Nel saggio vengono dapprima analizzati i suoi contatti commerciali, in seguito viene presentata l'estensione di queste sue attività, che includevano il commercio degli animali, il tessile, le pelli, il legno e il vino e ci forniscono una visione più ampia delle attività legate alla figura di Spinčić.*

*Parole chiave: giudice Kvirin Spinčić, Castua, Fiume, Quarnaro, Quattrocento*

## UVOD

Život i djelovanje kastavskog suca Kvirina Spinčića je jedna neopravdano neispisana tema iz kastavskog i riječkog srednjovjekovlja. Sačuvanih izvora za povijest Kastva i Rijeke u 15. stoljeću je malo. Zbog toga je za istraživanje nezaobilazna jedina sačuvana notarska knjiga iz tog perioda, ona riječkog notara i kancelara Antuna de Renna iz Modene. Pomoću toga izvora moguće je djelomično rekonstruirati biografiju i poslovne aktivnosti Kvirina i njegove obitelji. Ovo se prezime prvi puta spominje u Kastvu i Rijeci u prvoj polovini 15. stoljeća. Prezime se potom ustaljuje u izvorima za kastavsku povijest kao što je vidljivo i iz kapitula 58. Kastavskog zakona iz druge polovine 16. st., gdje se spominje vijećnik i sudac Petar Spinčić (Statut, 195; Munić, 1988a, 122). Nije istraženo formiranje prezimena odnosno dolazi li iz nadimka ili imena nekog lokaliteta. Prezimenom Spinčić usputno se bavio Darinko Munić obrađujući prezimena Kastavštine prema popisu kastavskog bilježnika (od 1738. kapetana) Jurja Vlaha 1723. godine (Munić, 1990, 13, 20, 46–47). Pri tome se nije dotaknuo nastanka pojedinih prezimena, iako je upozorio da su po mnogima neka naselja Kastavštine dobila ime. Naselje (selo) Spinčići nalazi se podno Kastva (Laginja, 1889, 52; Munić, 1988a, 122) te, koliko mi je poznato, nije utvrđeno kada se prvi puta u izvorima spominje. U suvremeno doba kroz ovo naselje prolazi cesta iz smjera Rijeke, a trasa joj prolazi podno Kastva prema naselju Jušići (općina Matulji), gdje se spaja na staru cestu za Trst.

U historiografiji se Kvirin Spinčić sporadično spominje (Fest, 1913, 59, 76), ali se pri tome ističe nekoliko njegovih poslova ili se daju ponešto pretjerane ocjene njegova djelovanja. Izgleda kako je prvi Ferdo Hauptmann ustvrdio za Kvirina kako je uzgajao „čitava stada ne samo ovaca i koza, nego i goveda, te je opskrbljivao mesom sve riječke mesare, a prodavao je stoku i u Istru sve do Kopra“ (Hauptmann, 1951, 37) što potom prihvaćaju drugi autori (Klen, 1988, 86; Žic, 2008, 168). Međutim, nije sačuvan niti jedan pisani trag o njegovu poslovanju s riječkim mesarima. Vrijedi i spomenuti kako se za ovaj period u izvorima može pronaći imena samo nekolicine mesara. Raspoloživi podaci svjedoče kako je Kvirin nedvojbeno bio osoba određena ugleda i bogatstva u Kastvu i Rijeci. Međutim, sistematsko istraživanje navoda u sačuvanim izvorima ne ide u prilog Hauptmannovoj generalizaciji o čemu će biti riječi nešto kasnije.

## POLITIKA VENECIJE PREMA TRGOVINI IZMEĐU NJEZINIH POSJEDA I RIJEKE U PRVOJ POLOVINI 15. STOLJEĆA

U historiografiji prevladava konsenzus oko zaključka kako je Venecija ograničavala samostalnu trgovinu i prijevoz robe između svojih posjeda u Dalmaciji i Istri te područja koja nisu bila u njezinoj vlasti (carinama, zabranama, i sl.) (usp. npr. Novak, 1965, 47–55; Šunjić, 1967, 232–240; Raukar, 1977a, 214–218; Raukar, 2007, 167–169; Fabijanec, 2007; Pov. Ven. 1, 610; Darovec, 2008, 278–283). Na Kvarneru je to bilo usmjereno prema primorskom obalnom pojasu posjeda grofova Walsee između Plomina i Rječine te posjedu knezova Frankapana u Vinodolu i Senju (Antoljak, 1954, 6–9; Raukar, 1977b, 246–248; Hrabak, 1991, 60–69). Venecija je tako štitila svoje ekonomske interese, ali su ograničenja bila uvjetovana i političkim prilikama u Italiji. Strogom kontrolom protoka

roba i sirovina nastojala je spriječiti neprijatelje u nabavci sirovina za ratne svrhe, poput primjerice željeza koje je iz Kranjske i Koruške preko Rijeke prevoženo u Ankonu, a zatim u druge talijanske gradove (Šumrada, 2005, 45–46). Da bi se te mjere uspješno provele Rijeka je ponekad bila i pod blokadom mletačkih brodova. Grof Reinprecht II. Walsee dogovorio je s duždom 1421. slobodniju međusobnu trgovinu (Kobler 2, 1896, 26; Fest, 1900, 11). Unatoč tome u periodu od 1420. do 1456. godine mletačke vlasti donijele su niz zabrana i ograničenja gradovima Istre i Dalmacije u trgovini s Rijekom. Pri tome su sačuvani tekstovi s poimeničim zabranama, ograničenjima i carinama dalmatinskim gradovima: Pažanima oko prodaje soli (1420., 1423. i 1424.) (Listine 8, 56, 126, 131, 269; Raukar, 1977b, 217; Raukar, 2007, 327), trgovine Šibenčana (1422.) (Listine 8, 171; Hrabak, 1991, 64), trgovine Zadrana (1423., 1437., 1438., 1439., 1456.) (Listine 8, 131, 241–242; Listine 9, 95, 110, 113; Listine 10, 80, 84; Antoljak, 1954, 6–9; Raukar, 1977b, 247; Hrabak, 1991, 60, 64) i dopuštenja ograničenog i kontroliranog uvoza razne robe Cresanima, Osoranima i Rabljanima (1452.) (Listine 9, 418, 428). Niz odluka bio je posvećen upravo ograničenjima uvoza i prijevoza željeza i druge robe iz Senja i Rijeke u dalmatinske gradove (1436.–1440.) (Listine 8, 130, 139; Antoljak, 1954, 7; Raukar, 1977b, 247). Sporazumom s grofom Reinprechtom IV. Walseeom moglo se 1442. mletačkim ili riječkim brodovima dopremati u grad raznovrsnu robu i životinje (npr. janjci) iz mletačke Istre i Dalmacije (Listine 9, 167; CDI 4, br. 1034, str. 1771; Antoljak, 1954, 8). Takva je odluka bila nastavak nekih ranijih mletačkih odluka vezanih uz izvoz poljoprivrednih proizvoda s njihovih posjeda. No, Mlečani su istovremeno ustrajali u zabrani slobodne trgovine između Ankone odnosno Marki (u sklopu Papinske države) sa Senjom i Rijekom. Sredinom stoljeća to se prvenstveno odnosilo na firentinsku trgovinu željezom i kožama, a 1455. je prošireno na blokadu takve trgovine na prostoru Jadrana (Listine 9, 432; Listine 10, 69). Takva je zabrana 1449. razumljiva budući da su Firenca i Venecija tada bile u ratu (Pov. Ven. 1, 302–303). Razumije se da je i Rijeka, poput ostalih gradova na Jadranu, imala vlastita ograničenja uvoza, primjerice vina.

U opisanim okolnostima treba promatrati poslove Kvirina Spinčića. Njegova se pomorska trgovina, mogla razviti onda kada su Mlečani uspostavili dobre odnose s gospodarima Rijeke, grofovima Walsee. Kao što pokazuju niže priloženi primjeri u dva zabilježena slučaja on opskrbljuje velikim pošiljkama vesala arsenal u Veneciji. Vjerojatno je s obzirom na tamošnju potražnju bilo i više sklopljenih poslova o uvozu vesala o kojima u Rijeci nije sačuvan pisani trag.

## IZ BIOGRAFIJE KVIRINA SPINČIĆA

Izvori ne pružaju podatak o godini rođenja i smrti Kvirina Spinčića iz Kastva (*Quirinus*, *Chirinus Spinçich*). Prvi puta se njegovo ime može pronaći u popisu svjedoka jedne oporuke u Kastvu iz mjeseca svibnja 1437. gdje je naveden kao *habitator Castue* (De Renno 1, 8). Do pred kraj 1441. nema spomena njegova imena, kada je ponovno naveden u istom statusu (De Renno 1, 255). Kao *civis Castue* zapisan je prvi puta 1447. godine (De Renno 3, 121). Izgleda kako je godišnje, barem od 1442. do 1449., obnašao čast suca u Kastvu, pa je opravdano zaključiti kako je građaninom postao ranije, možda do

kraja 30-ih godina 15. stoljeća (De Renno 1, 287, 410; De Renno 2, 30, 127; De Renno 3, 101, 121, 228, 285). Isprva se kao sudac navodi u notarevim zapisima sastavljenim u Kastvu, ali se kasnije kao takav javlja i u onima u Rijeci (nema sumnje da je i tada riječ o službi u Kastvu). Kao gastald kastavske bratovštine sv. Ivana navodi se 1441. godine (De Renno 1, 211). Prvi puta je naveden kao *habitator* Rijeke 1444., a kao *civis* 1446. godine te se od tada uglavnom navodi u tom svojstvu (De Renno 1, 389; De Renno 3, 113). U de Rennovoj notarskoj knjizi mnoge se pojedince nakon navođenja u svojstvu *civis*, sporadično navodi kao *habitator*. Nema zapisa o Kvirinovu primanju među kastavske ili riječke građane, ali se može pretpostaviti kako je bio građaninom oba grada (*terra*) i prije navedenih godina. Notar u njegovom slučaju zna koristi malo jedan, malo drugi termin, kako mu diktiraju okolnosti sastavljanja teksta. Uglavnom se to događa pri navođenju dva ili više svjedoka (*ambobus/omnibus habitatoribus dicte terre Fluminis*), od kojih svi nisu građani grada, vjerojatno zbog jednostavnosti i što kraćeg zapisa (npr. De Renno 3, 113–114, 117, 149; De Renno 4, 110). Nije poznato ime Kvirinova oca, majke i supruge. U izvorima se može pronaći navode o dvojici braće, Lovri i Petru te sinu Martinu (De Renno 3, 227, 326; De Renno 4, 101, 126, 147, 164; De Renno 5, 315, 320). Kvirinov brat Lovro spominje se kao *civis* Rijeke od 1455. godine (De Renno 5, 270). Sin Martin navodi se kao *habitator* 1448., a kao *civis* Rijeke od 1451. godine (De Renno 3, 203–204; De Renno 4, 102). Kvirin je sina Martina oslobodio svoje vlasti (*emancipatio*) posljednjeg dana mjeseca studenog 1456. godine (De Renno 5, 326–327). Ovaj rad nije mjesto za raspravljanje o pravnom aspektu toga čina, ali vrijedi istaknuti da je ovaj primjer važan za analizu srednjovjekovnog obiteljskog i nasljednog prava na Kvarneru. Naime, Lujo Margetić se analizirajući emancipaciju na Kvarneru oslanjao na Statut grada Rijeke iz 1530. godine te je iznio pretpostavke o sličnosti s običajem na Krku (Margetić, 1996, 148–149; Karbić, 2011, 118, usp. 122–123). Tekst o emancipaciji Kvirinova sina zapisan je prije statuta Rijeke te on potvrđuje da je L. Margetić u pravu. Naime, kao što je to bilo uobičajeno na Krku, u Rijeci je notar ispravu o emancipaciji sastavio pred predstavnicima vlasti i svjedocima (kapetan grada i dvojica sudaca).

Popisivanje nekretnina u vlasništvu Kvirina Spinčića nezahvalan je posao budući da nije sačuvan tekst njegove oporuke. Ipak, iz sporadičnih navoda, kao i ugovora o kupoprodaji zemlje može se zaključiti da je u okvirima Kastva i Rijeke bio u sloju dobrostojećih ljudi. Posjedovao je nekoliko kuća, manje i veće vrijednosti, od kojih je najvrednija bila jedna od 400 dukata. Neke od njih je zalagao pri sklapanju poslova, druge kupovao kako bi zaradio na preprodaji (De Renno 3, 149, 155; De Renno 4, 204, 217; De Renno 5, 425, 435, 530). Kupio je zemljište u Rijeci u blizini kaštela (*iuxta pallatium*) grofova Walsee, te ondje izgradio kuću u kojoj je živio. Nažalost nema podataka kada se to dogodilo i koliko je potrošeno (vjerojatno prije 1449.), ali 1458. je tražio da mu se plati odšteta, gdje je ta kuća bila jamstvo, u iznosu od 1000 dukata (De Renno 3, 281; De Renno 4, 110; De Renno 5, 375–376).[1] Spominju se razna njegova zemljišta - ograđena i neograđena, vrto-

1 U notarskoj knjizi postoji zapis iz 1449. kako notar sastavlja ispravu u kući Kirinova stanovanja. Ostaje otvoreno pitanje je li riječ o ovoj ili nekoj drugoj kući. *Pallatium* grofova Walsee je gradski kaštel srušen poč. 20. st. na čijem je mjestu izgrađena današnja zgrada općinskog suda i zatvora (Matejčić, 1990, 77–81).

vi, vinogradi, maslinici i pašnjaci na širem području Rijeke, Kastva i Lovrana (De Renno 3, 102, 113, 335; De Renno 4, 120, 217; De Renno 5, 299). Njegova trgovina (*statione*) u Rijeci vjerojatno je bila jedno od sjecišta poslovnog života grada. Brojni domaći ljudi i strani trgovci ondje su zalazili i u njegovoj prisutnosti sklapali pogodbe. Vjerojatno su to činili onda kada im je trebala privatnost kako se ne bi pročule pojedinosti iz njihovih poslovnih dogovora. Gradski notar i kancelar Antun de Renno u tim je slučajevima pozivan kako bi zapisao ugovor zainteresiranih strana. Iako je Rijeka tada bila relativno mala sredina, brojna naselja iz kojih potječu ljudi (Korčula, Drivenik, Lovran, Labin, Ljubljana i Fossombrone) koji su u njegovoj trgovini sklapali poslove djelomice ocrtavaju njezinu atraktivnost na prostoru Jadrana i njegovu zaleđu (De Renno 3, 203–204, 217, 262; De Renno 4, 104). Jedan od najvećih trgovaca iz Ljubljane, Pavao Dolničar, sklopio je posao velike vrijednosti (preko 1000 dukata) s frankapanskim vikarom Senja vitezom Nikolom de Barnisom u Kvirinovoj trgovini (De Renno 3, 217). U jednoj prilici ondje su se sastali suci i kapetan grada kako bi odlučivali o nekim pitanjima (De Renno 3, 248).

## POZNANSTVA I PUNOMOĆI

Kvirin Spinčić imao je velik broj opunomoćenika na širem područja Jadrana i njegova zaleđa. Oni su bili stanovnici Ankone, Pesara, Firence, Venecije, Kopra i Labina (De Renno 3, 117–118; De Renno 4, 149; De Renno 5, 262, 277, 291, 310, 358), što jasnije ocrtava područje njegova poslovnog djelovanja.

Imao je i poslovnih dogovora s knezovima Frankapanima. Kao pouzdanik kneza Stjepana II. pojavio se u nekom poslu trgovine drvnom građom (De Renno 5, 313), a izgleda kako je imao kontakte i s gospodarom Trsata, knezom Martinom.

## POSLOVI KVIRINA SPINČIĆA

Kako je navedeno Kvirin se spominje prvi puta 1437. godine. Vijesti o njegovim poslovima mogu se pronaći nešto kasnije, od 1443. godine. Iako je bio sudac te očigledno osoba određena ugleda u Kastvu i Rijeci nije niti jednom naveden kao profesionalni trgovac (*mercator*). Pa ipak, većina zapisa koji su sačuvani govore o njegovim aktivnostima koje bi se najbolje mogle opisati kao one trgovca. Nabavljao je, ugovarao proizvodnju i preprodavao raznovrsnu robu, a davao je i zajmove. Nije bio usamljen primjer budući da se u de Rennovoj notarskoj knjizi može pronaći niz pojedinaca, od sudaca do obrtnika, koji su mimo svojeg zanimanja djelovali na sličan način. U notarskoj se knjizi može pronaći zabilježbe od 1436. do 1465. (iako se u naslovu izdanja knjige navodi 1461. godina). Ipak, zapisi u knjizi nisu za sve godine jednako dobro sačuvani, primjerice početni dio knjige je propao, a za period od 1461. do 1465. sačuvani su zanemarivi dijelovi. Također vrijedi navesti kako nije za svaki mjesec, u rasponu spomenutih godina, sačuvan jednak broj zapisa u notarskoj knjizi. Primjerice, za mjesec rujan 1440. ubilježena su samo dva zapisa (De Renno 1, 191). No, Antun de Renno je izgleda uobičajeno djelovao u tom mjesecu, pa je tako sačuvana pergamena s dva zapisa. Jedan je datiran s zadnjim danom rujna, a drugi s 4. listopada 1440. godine (DAR-RI-IAS, br. 3). Uz to u gradu je u to vrijeme

možda djelovao još jedan notar, čija knjiga (bilježnica) nije sačuvana. Zbog navedenog, ovdje prikazan opseg njegove kreditne trgovine može biti samo djelomičan pregled.

Kvirinovo poslovanje nezaobilazno je kada se nastoji utvrditi njegovo mjesto u povijesti grada Rijeke. Pri tome je potrebno utvrditi opseg njegovog kreditnog trgovanja (33 kreditna ugovora, usp. tabelu 1.) koje se može pratiti od 1444. do 1456. godine. U ovome radu preuzete su klasifikacije takvog poslovanja o kojem su za dalmatinske gradove pisali Tomislav Raukar i Ignacij Voje (Voje, 2003, 49–50 i d.; Raukar, 2007, 277–279; usp. i Gestrin, 1965, 123–147). Većina zadužnica u Kvirinovu slučaju (26) ulazi u kategoriju gdje je on osigurao neku robu kupcima koji mu se obvezuju izvršiti isplatu u određenom vremenskom roku (usp. tu vrstu zadužnica kod T. Raukara, 2007, 277). U manjem broju slučajeva on je bio dužnik koji je za robu trebao osigurati novac (7). Kada je riječ o načinu isplate, prevladavaju slučajevi gdje je trebao dobiti ili dati dogovorenu novčanu svotu (29). Manji je broj slučajeva u kojima je u svojstvu kreditora trebao umjesto novca dobiti protuvrijednost u robi (4).

*Tabela 1. Kreditni ugovori Kvirina Spinčića*[2]

| Godina | Broj ugovora | Novčani iznos | | |
|---|---|---|---|---|
| | | Dukati | Libre | Soldi |
| 1444. | 4 | 59 | 120 | 2656 |
| 1445. | 2 | | 181 | 1130 |
| 1446. | 3 | 8 | | c. 7560 |
| 1447. | 2 | | 234 | 18 |
| 1449. | 4 | 37 | | 391 |
| 1450. | 2 | 84 | 138 | 16 |
| 1451. | 6 | 376 | 37 | 16800 |
| 1452. | 2 | 33 | | 759 |
| 1453. | 1 | 89 | | 14 |
| 1455. | 3 | 12 | 109,5 | 16 |
| 1456. | 2 | 5 d. i 8 maraka | 960 | |

Prema sačuvanim podacima za ovaj vid poslovanja njegovi ugovori nisu visokih vrijednosti, uzevši u obzir druge riječke trgovce, ali i one u Dalmaciji (Zadar, Split i Du-

2 De Renno 1, 334, 385, 410, 414 (1444.); De Renno 2, 6–7, 16, 53 (1445.), 86 (1446.); De Renno 3, 112, 121 (1446.), 157, 169 (1447.), 228–229, 264, 268, 274 (1449.), 322, 332–333 (1450.); De Renno 4, 91–93, 95, 104–105, 110 (1451.), 142, 149 (1452.), 208 (1453.); De Renno 5, 266, 273, 285 (1455.), 309, 317 (1456.).

brovnik) toga vremena koji raspolažu svotama od preko 500 ili 1000 dukata po ugovoru (usp. npr. Raukar, 1977, 265–268; Voje, 2003, 252–270; Raukar, 2007, 288–293). Za godinu 1451. je sačuvano najviše Kvirinovih ugovora (6) kojima je ukupna vrijednost 376 dukata, 37 libara i 16800 solida (preračunato preko 500 dukata). Pojedinačno njegovi ugovori, kada je kreditor, ne prelaze 84 dukata, a kada je dužnik 300 dukata (De Renno 3, 322; De Renno 4, 110). Ipak, treba imati na umu da je završetkom jedne parnice 1443. trebao za raznu robu (vesla i sl.) dobiti 476 dukata. U drugom je navratu potraživao čak 1000 dukata. Zbog takvih oskudnih i necjelovitih podataka treba biti oprezan u donošenju zaključaka. Budući da je sagradio kuću na zemljištu u blizini kaštela grofova Walsee u Rijeci, a koju je znao davati kao jamstvo pri poslovima većih vrijednosti, može se pretpostaviti da je bila riječ o vrijednoj građevini. Slijedom toga vjerojatno je bio među imućnijim građanima. Izgleda kako središnje mjesto u njegovoj poslovnoj aktivnosti zauzima prodaja vesala, stoke i koža. Pri tome posluje s pojedincima na Kvarneru, ali i iz daljeg riječkog zaleđa (od Like do Kranjske). U pogledu uvoza vina, obzirom na tri navoda i količinu ne može se donijeti pouzdan zaključak o njegovim vezama s Dalmacijom (spominju se Brač i Korčula).

## STOČNA TRGOVINA, ZAKUPI I JAMSTVA

Iz raspoloživih podataka za 13 godina o stočnoj trgovini mogu se donijeti samo djelomični zaključci. Kvirin Spinčić je očigledno imao dovoljno novca za nabavku žive krupne stoke iz šireg kopnenog prostora oko Rijeke od čega je nešto prodavao, ali i uzgajao. Manje životinje poput koza, ovaca ili svinja podjednako je uzgajao i prodavao. Iz jednog slučaja može se zamijetiti kako je bilo profitabilno stoku voditi prema Trstu (Bazovica) i ondje je prodavati. Analizom izvora smatram kako je prije citirana rečenica Ferde Hauptmanna previše optimistična. U usporedbi s dalmatinskim gradovima, Rijeka u 15. st. nije bila velik i bogat grad, iako se u historiografiji procjene kreću od 500 do 3000 stanovnika (Munić, 1998b, 51; Fest, 1913, 89). Uvidom u notarsku knjigu i istraživanje A. Festa mislim kako je procjena oko 2000 stanovnika relativno prihvatljiva. Ako je suditi prema raznim ugovorima, dogovorima, prosvjedima i sl. vezanim uz svinjogojstvo te odlukama gradskih vlasti po kojima je svatko mogao ubiti tuđu svinju koja se zatekne van imanja, njihov uzgoj je bio dovoljno razvijen za vlastite potrebe (De Renno 1, 18). Nesumnjivo je u bližoj okolini grada, na području Kastva, Veprinca i Lovrana bilo dovoljno uzgajivača ovaca i koza za što postoje nešto oskudniji podaci. Pri svemu ne treba smetnuti s uma uzgoj kokoši, kao ni ribarstvo (De Renno 1, 169; Hauptman, 1951, 36–37; Klen, 1988, 86). Zbog toga sam skloniji smatrati kako je Kvirin prodavao krupnu stoku, ali ondje gdje je mogao dobro zaraditi. Ta je zarada bila moguća u mjestima velike potražnje mesa, što Rijeka obzirom na broj stanovnika i vlastitu proizvodnju nije mogla biti. Mislim kako je u tom pogledu bio više usmjeren prema Trstu (što djelomice ide u pravcu teze F. Hauptmanna), odakle su onda drugi prekupci vršili preprodaju prema Veneciji i općenito Italiji (o Trstu kao središtu za preprodaju mesa, Gestrin, 1965, 171–174).

Kada je riječ o vrijednostima s kojima je Kvirin raspolagao pri kupovini, prodaji ili uzgoju životinja onda treba istaknuti kako je prema sačuvanim podacima najniža svota

od 20 libri godišnje što je dobivao ugovorom kojim je dao stado koza na čuvanje, dok je najviša svota od 960 libara koje je platio za kupovinu kastrata. Prvi sačuvani zapis o nekom poslu kojeg je Kvirin uopće sklopio je iz ožujka 1443. godine. Tada je zajednički s riječkim sucem Nikolom Mikolićem (*Nicolaus Micolich*) i Valentinom Jurlinovićem (*Valentinus Iurlinovich*) dogovorio isplatiti 143 zlatna dukata i 4 libre Mičlavu koji je djelovao u ime Vida Magrulina (*Vito Magrulino*), obojice iz Kočevja (*de Cuçeuia*). Novac je trebalo dati za kastrate samom Vidu ili sucu Ambroziju iz Bakra (*Ambrosio*) što je i učinjeno dva mjeseca kasnije. Istovremeno su Kvirin i Valentin posudili 132 dukata od Nikole da bi imali za jamstvo Jakovu Ratiču iz Kočevja (*Iacobus Rattich*) (De Renno 1, 300; Hauptmann, 1951, 38). U srpnju 1444. Kvirin je dogovorio unutar mjesec dana platiti 59 dukata Jurju Čiviću iz Otočca (*Georgio Çiuich*) za neke životinje, što je u roku i učinio (De Renno 1, 385). U Rijeci je pred mesnicom početkom prosinca 1444. Kvirin u prisutnosti svjedoka i gradskog suca prosvjedovao protiv Tomazina iz Krka (*Tomasino*). Potonji je kao jamac za Viçscha iz Pazina trebao dovesti svoju kravu na javnu dražbu. Kako se to nije dogodilo napravio je štetu od 3 dukata (De Renno 1, 418). Juraj Soidić iz Kastva (*Georgius Soidich*) dobio je od Kvirina početkom 1447. godine u najam od šest godina 102 koze (*animalia bellatina magna*) i četiri goniča za koje je trebao godišnje plaćati 20 libri. Po isteku ugovora trebao je vratiti životinje i goniče vlasniku (De Renno 3, 126). Sebastijan iz Buzeta obvezao se krajem svibnja 1447. u tri obroka izvršiti isplatu od 40 libri Valentinu Jurlinoviću za koze u vlastništvu Kvirina Spinčića (De Renno 3, 157). Kvirin je u srpnju 1449. na riječkom gradskom trgu u prisutnosti svjedoka i gradskog suca prosvjedovao protiv Conde iz Grobnika. Naime, Kvirin je za Condu jamčio Bartolu Matiuciju iz Ferma (*Bartolomeus Matiucij*) svojim konjem. Bartol je izvršio naplatu javnom dražbom toga konja, uslijed čega je Kvirin tražio da mu Conda plati odštetu i troškove u iznosu od 20 dukata (De Renno 3, 262). Pavao pok. Ivana Biskopiača iz Otočca (*Paulus condam Iohannis Bischopiach*) dogovorio je u kolovozu 1450. prodaju volova za 84 dukata koje mu je Kvirin nakon dva mjeseca isplatio (De Renno 3, 322). Iako nije precizirano, izgleda kako je sličan aranžman sklopljen u listopadu, na dan kada je izvršena spomenuta isplata, pri čemu je Kvirin tada dogovorio isplatu 128,5 dukata do svetkovine sv. Martina (De Renno 3, 325). Krajem kolovoza 1452. neki Stojan iz Velike (*Stoianus de Velicha*) prosvjedovao je pred riječkim sucima protiv Kvirina Spinčića. Naime, Stojan je vodio svojih 13 volova u Bazovicu (*Basgouiça*). Kvirin mu je izgleda povjerio svoja goveda da ih ondje proda. Pri tome je Kvirin bio spreman podmiriti daću u Rijeci, Lipi i Rupi, ali ne i drugdje, sve do Bazovice. Bez obzira na to, navodno je obećao pokriti troškove i štete Stojanu. Međutim, Stojan je već u Klani morao platiti daću za sve volove i goveda zbog čega je čitav predmet iznio pred riječke suce (De Renno 4, 140).[3] Pitanje daće u Klani predstavljalo je i kasnije problem za Kvirina. Tako je, prema zapisu iz srpnja 1453., pred riječkim kapetanom Andrijom iz Jame (kod Postojne) (*Andrea de Foramine*) i sucima te Klanjcima, županom Filipom i Jurjem Ptičijćem (*Georgius Ptchijch*), Franče iz Klane (*Françe*) uz pomoć svjedoka dokazivao kako Kvirin treba podmiriti klanjsku daću

3 Ako se promotori najizravnija trasa, onda je uz spomenuta mjesta, daću trebalo platiti u Staradu, Javorju, Materiji i vjerojatno još ponegdje do Trsta (Gestrin, 1965, 205).

za volove (De Renno 4, 179). Nakon dvije godine šutnje u notarskoj knjizi, u listopadu 1455., Kvirin je zaključio ugovor o društvu (*soceda*) s Jurjem Soidićem iz Kastva (*Georgio Soidich*). Povjerio mu je 22 koze i 9 kozlića, bika, 8 krava, 6 telaca i 2 junca na brigu da ih čuva na zemljištu koje je Kvirin od njega ranije kupio. To su zemljište Juraj i njegov sin Ambroz imali u zakupu za obrađivanje. Bilo je dogovoreno da po vraćanju životinja trebaju Kvirinu vratiti onoliko koliko je dao. Druge životinje (vjerojatno u međuvremenu okoćene) trebali su dijeliti na dva jednaka dijela. Istoga dana Kvirin je prosvjedovao protiv Pavla Vrbanića iz Bakra tražeći isplatu 16 dukata odštete za dva vola. Naime, Pavao je iste sebi prisvojio, a Kvirin ih je kupio od ser Ivana, kapetana Trsata (De Renno 5, 294). Mjesec dana kasnije Andrija Jančić iz Grobnika (*Andreas Iançich*) trebao je Kvirinu dati 40 libara za dva vola koje je potonji kupio od Jakova Tolinića (*Tolinich*) (De Renno 5, 296). U srpnju 1456. Kvirin se obvezao platiti Pavlu Benkoviću iz Lovrana 960 libara za kastrate (De Renno 5, 317).

## TRGOVINA TKANINAMA, KOŽOM I VUNOM

Iz sačuvanih podataka o Kvirinovoj trgovini tkaninama, kožama i vunom vidljivo je kako je uglavnom riječ o relativno malim količinama od čega je najvredniji posao iznosio 61 dukat. Ipak, raznovrsnost te vrste robe s kojom je trgovao mnogo govori o njegovim dobrim poslovnim vezama i agilnosti. Istaknuti Riječanin Valentin Jurlinović i Kvirin Spinčić trebali su dobiti krajem svibnja 1444. od dvojice krznara, Petra pok. Marka iz Senja i Vida pok. Jurja iz Baga, 114 libri i 5 soldina vrijednu neodređenu količinu crne vune. Bilo je dogovoreno da se isporuka izvrši najkasnije do dana sv. Vida (15. lipnja), što je i učinjeno prema bilješci iz 26. lipnja (De Renno 1, 368). Krajem 1444. trgovac Pavao Fravičić (*Paulus Frauiçich*) dogovorio je kupovinu 15 volovskih koža od Kvirina za 82 libre i 10 soldina što je provedeno u rujnu 1445. godine (De Renno 2, 6–7). Krojač Juraj pok. Stjepana, jamac krznara Pavla, obvezao se u njegovo ime u kolovozu 1445. platiti Kvirinu za jaganjske kože 99 libri do Božića (De Renno 2, 53). Kvirin Spinčić i Valentin Jurlinović predali su Nikoli Raintalaru i Martinu pok. Čanini (*Çanini*) 787,5 mazza i polovinu kvarte (odnosno oko 114,63 m; Herkov, 1977, 146, 149) tkanine koju su za njih trebali prodati u Veneciji (De Renno 3, 98). Petar Krilačić de Iuanče (*Petrus Crilaçicha de Iuançe*) obećao je Kvirinu krajem 1446. platiti 8 dukata za sukno do sljedećeg karnevala. Istovremeno je Kvirin kao Krilačićev jamac trebao riječkom građaninu, dućandžiji Grizanu pok. suca Martina dati 20 dukata za maslinovo ulje što je i učinio u svibnju 1447. godine (De Renno 3, 121). U srpnju 1447. Kvirin Spinčić obećao je kožaru Jurju Sanchu iz Gorice (*cerdo Georgius Sancho*) pripremiti u Rijeci razne životinjske kože do Uznesenja Djevice Marije. To je podrazumijevalo 200 koža od koza starih tri godine (i ne manje dobi) po cijeni 14 solida za komad, kože ovnova i kastrata po istoj cijeni te jaraca po cijeni od 24 solida za komad. Povrh toga Kvirin je trebao primiti kaparu od 1 dukata (De Renno 3, 163). Kvirin je u srpnju 1449. kupio od Tome Fačića (*Façich*) iz Gorjana, stanovnika Umaga, tri peče od sukna vrijedne 51 dukat što je trebao platiti do sv. Margarete. U listopadu 1450. Toma je ovlastio riječkog građanina, zlatara Martina, pok. Dominika iz Senja da ga zastupa oko posla s Kvirinom (De Renno 3, 326). Mjesec

dana kasnije, 11. studenog, sačuvan je tekst o sporu između njih dvojice. Tada je Kvirin u postupku pred riječkim kapetanom Jakovom Ravnikarom (*Iacobus Raunacher*),[4] sucima i vijećem nastojao rasvijetliti okolnosti slučaja ističući kako je opunomoćenik Tomin, zlatar Martin potraživao novac. Kvirin je tvrdio kako je u njegovoj trgovini, u prisutnosti Jurja Sesčovića (*Georgio Seschouich*), Toma bio izjavio kako pristaje da mu se dio duga podmiri razmjenom odnosno suknom. Toma je naknadno to negirao pred vlastima koje su slučaj ispitivale u Umagu ističući kako želi novac. Nakon toga Kvirin ga je optužio za lažno svjedočenje (De Renno 3, 331–332). Osam dana kasnije Kvirin je pred dvojicom riječkih sudaca, koji su zasjedali u gradskoj loži, izjavio kako je dao spomenutom Tominu opunomoćeniku Martinu svoje zemljište u distriktu Kastva. Istaknuo je kako uslijed te činjenice Toma lažnim svjedočenjem neopravdano potražuje 51 dukat. Tužio je Tomu za 80 dukata, koliko je procjenjivao da predano zemljište vrijedi (De Renno 3, 334). Martin Verbanić iz Steničnjaka (*Martinus Verbanich de Steninsiach*) dogovorio je u ožujku 1451. kako će od Kvirina kupiti obojeni pamuk vrijedan 61 dukat. Umjesto novca obećao je isporučiti topljeni vosak po cijeni od 10 dukata za centenarij (De Renno 4, 91). U travnju iste godine Vrban pok. Nikole Ivančića (*Vrbanus condam Nicolai Iuançich*) trebao je dati Kvirinu 15 dukata za obojeni pamuk (De Renno 4, 95). U rujnu 1452. Kvirin je trebao dati Rainaldu de Ferundis iz Trevisa (*Rainaldo de Ferundis*) (ili opunomoćeniku ser Dominiku de Iuliano iz Trsta) 33 dukata za sukno (De Renno 4, 142). U kolovozu 1455. Marina supruga kožara Matije iz Selniçe obvezala mu se isplatiti za životinjske kože 86,5 libri (De Renno 5, 285). Početkom 1456. mu duguju još 48 libri i 16 soldina (De Renno 5, 301). U travnju iste godine Žigmund Čičover (*Sigismundus Çichouer*) trebao je Kvirinu za meso koje je preuzeo od njega i sukno od Valentina Jurlinovića dati 8 maraka i 5 dukata (De Renno 5, 309).

## TRGOVINA DRVNOM GRAĐOM I PRERAĐEVINAMA

Trgovina drvnom građom i prerađevinama bila je važna za Kvirina Spinčića. Ovdje nije samo riječ o količinama i vrijednostima tih proizvoda (najviše zabilježena isplata za vesla od 476 dukata) koje je prema sačuvanim zapisima u periodu od 1443. do 1452. uspio prodati. U par navrata je, iako su ugovoreni poslovi imali neku vrst zastoja, isporučivao vesla i u Veneciju (Gigante, 1913, 119). Kvirin i sudac Andrija iz Hrastovca (*Andrea de Crastouica*) u listopadu 1443. dogovaraju se o načinu rješavanja međusobnih nesuglasica. Utvrdili su dugovanja i potraživanja za pamučnu tkaninu, trgovačku robu i vesla te kupovinu mula i konja. Kvirin je trebao dobiti 476 dukata za pokriće svojih troškova za isporučena vesla (De Renno 2, 127–129; Gigante, 1913, 49). Curilo zvan Čikada de Pacha (*Curilus dictus Çicada*) dogovorio je u ožujku 1446. s Kvirinom kako će mu za vesla i drvnu građu dati 280 libri. Posao su uspješno priveli kraju nakon tri mjeseca (De Renno 2, 86). U svibnju iste godine, sudac Vid pokojnog ser Matcha (*Vitus condam ser Matchi*) prosvjedovao je pred dvojicom riječkih sudaca protiv Kvirina. Tvrdio je kako

4 Ravnikari su vlastela iz Kranjske s posjedima u unutrašnjosti Istre (Kobler 3, 176–177.). Od grofova Goričkih 1430. Martin Ravnikar kupuje vlastelinski posjed Završnik (Rutar, 1895, 219).

je potonji preuzevši neka vesla za Vida, ista prisvojio sebi, a trebala su pripasti kapetanu Gotnika. Zbog toga je Vid tražio odštetu od 20 soldina po veslu (De Renno 3, 101). U rujnu 1447. Kvirin je zajednički s kapetanom Kastva, Petrom Belim, trebao dobiti 200 dukata za isporučena vesla u Veneciju (De Renno 3, 172). Krajem 1447. godine Kvirin je prosvjedovao pred riječkim kapetanom i sucem protiv riječkog suca Vida Rossa (*Rosso*) koji je zaplijenio njegovih 310 vesala za galiju, nanijevši mu tako veliku štetu (De Renno 3, 185). Zapovjednik jednog broda, Nikola Tamiser iz Mazzorba, prosvjedovao je u kolovozu 1448. pred riječkim sucem ser Vidom Barulićem protiv građanina Kopra ser Ivana iz Ravene te Valentina Jurlinovića i Kvirina Spinčića. Tvrdio je da, do trenutka kada se žali, dva tjedna usidren ispred Rijeke čeka isporuku vesala za galiju koje je trebao otpremiti u arsenal u Veneciju. Vesla su prema dogovoru trebala biti spremna za ukrcaj na morskoj obali po Nikolinu dolasku, ali ih je on umjesto toga čekao s praznim brodom. Tijekom njegove žalbe, od spomenute trojice, bio je prisutan samo Valentin (De Renno 3, 208; Fest, 1900, 25; Gigante, 1913, 106). Matija Krajević iz Žejana (*Mateus Craieuich*) obvezao se početkom veljače 1449. Kvirinu isporučiti do mora u Preluci[5] 44 obična vesla, od kojih su dvije trećine trebale biti od javora (*aiero*), a trećina od bukve po cijeni od 5,5 solida komad, a sve do svetkovine sv. Jurja. Istovremeno je Pavao, od roda Ripari iz Žejana trebao isporučiti 22 obična vesla u Preluku u navedenom omjeru vrste drva i cijeni te roku (De Renno 3, 228–229). Ser Agnol pok. ser Antuna iz Korčule (*Agnolus condam ser Antonij*) dogovorio je u studenom 1450. kako će od Kvirina preuzeti kože i daske u vrijednost od 138 libri i 16 solida. Umjesto novca trebao mu je do Božića isporučiti u ušće Rječine ili na obalu ispred Rijeke vino i trgovačku robu po cijeni od 46 solida za modij. Agnol je od Kvirina primio 13 praznih bačava u koje je trebao natočiti vino te ih zatim prevesti svojim barkozijem u Rijeku (De Renno 3, 332–333). Nikola Tamiser iz Mazzorba prosvjedovao je u rujnu 1451. pred riječkim sucem ser Vidom Matronićem protiv Kvirina Spinčića. Prema njegovu kazivanju morao je svojim brodom iz Rijeke dopremiti vesla za galiju u mletački arsenal. No, po njegovu dolasku pred grad, ustanovio je kako Kvirin nije imao vesla pa ga je usidren čekao jedanaest dana zbog čega je bio na velikom gubitku. Mjesec dana kasnije Kvirin je pred riječkim sucima od Nikole potraživao 200 dukata za počinjenu štetu, jer potonji nije sa svojim brodom prevezao vesla koja su bila u Bakru (De Renno 4, 107–108). Jakov Tolen iz Grobnika (*Iacobus Tolen*) obvezao se u studenom 1451. Kvirinu na lokalitetu Luka kraj Rječine s Trsatske strane isporučiti 200 drvenih pregrada (*assides*) te platiti 18 libri i 3 soldina (De Renno 4, 110). Kvirin Spinčić se pred sucem ser Vidom Barulićem 17. travnja 1452. žalio kako je trebao od Ivana Alegretija iz Korčule dobiti 44 dukata. Budući da ih nije dobio, molio je suca da riječki javni glasnik Valentin oglašava dražbu oko 1000 njegovih vesala koja su se nalazila na

5 Preluka je u suvremeno doba naziv za zaljev istočno od Voloskog u Opatiji. Ondje su u 19. st. kopali kamen za izgradnju riječke luke (Klen, 1988, 247), dok je u vrijeme socijalističke Jugoslavije na tom mjestu izgrađen manji autokamp. Osnovni problem lociranja ovog mjesta u srednjem vijeku jest u tome što se u izvorima navodi benediktinski samostan sv. Jakov u Preluci (*Scum Iacobum a prelucha*, De Renno 2, 105 (1437.). Kako se samostan nalazi u Opatiji (u parku ispred hotela Imperial) pomalo je dvojbeno da je današnji Preluk istovjetan ondašnjem budući da je samostan udaljen od njega nekoliko kilometara.

tri lokacije, u Preluki, Rečicama[6] i obali ispred Rijeke. Sudac je taj zahtjev uvažio davši nalog javnom glasniku Valentinu. Tri dana kasnije Valentin je na trgu grada Rijeke, u prisutnosti okupljenih svjedoka, izjavio pred sucem kako je učinio što mu je naloženo. U tom periodu nitko nije ponudio više od Lovre Spinčića, koji je ponudio 44 dukata i 20 solida. On je stoga, kako su mu dužnost i ovlasti dane po sučevu nalogu dopuštale, vesla ustupio Lovri (De Renno 4, 150–151). Radi ilustracije, ako se uzme u obzir prethodno spomenuta cijena od 20 soldina po običnom veslu relativna vrijednost spomenutih iznosi 20000 soldina odnosno prema tadašnjem tečaju otprilike oko 175,43 dukata (Herkov, 1956, 365). Kvirinov brat ih je stoga uspio dobiti za tek 1/4 stvarne vrijednosti što je zaista ogromna dobit. Kvirin je u svibnju 1452. ugovorio s Grgurom Borovinićem iz Senja (*Gregorio Borouinich*) i Benkom (*Bencho*) iz senjske doline (*Valle Segnensi*), obojicom izrađivačima vesala, da za njega rade godinu dana proizvodeći vesla i vretena za tkanje o njihovu trošku pri čemu je on o svom trošku obećao izgraditi im kolibu u kojoj su trebali pokrenuti proizvodnju. Kvirin im se obvezao platiti za svako veslo za galiju 13 solida, pri čemu nisu trebala dimenzijama prelaziti šest koračaja (oko 10.4 m, Herkov, 1971, 99), a za svako vreteno 2 solida. Potonja dvojica imala su pravo na polovinu dobiti od svoje proizvodnje običnih vesala, a trebali su ga opskrbljivati sa svim komadima vesala i sedlima za vesla (uškama, *pedum remorum a çirono*) tih godinu dana po cijeni od 40 soldina za centenarij (De Renno 4, 129–130; Fest, 1900, 48–49; Fest, 1913, 76).

## TRGOVINA VINOM

Trgovina Kvirina Spinčića vinom bila je skromnijeg opsega i izgleda kako nije bila od njegova primarnog interesa. Razlog tomu su i propisi o ograničenju uvoza vina u Rijeku. Vjerojatno mu se zbog toga, kada je riječ o većim količinama vina, ono isporučuje van granica riječkog distrikta. Krajem 1444. Simon Pilar dobio je od Kvirina tri bačve vina od 20 modija za 69 solida po modiju. Simon je umjesto novca trebao Kvirnu dati 200 dasaka i trgovačku robu po cijeni od 20 libara za centenarij (De Renno 1, 410). Kvirin je u studenom 1444. dao bačvu vina od 16 modija svećeniku Antunu Visigniću (*Antonius Visignich*), jamcu Teodora pok. Dominika, po cijeni od 79 solida po modiju. Cijeli iznos trebalo je u dva obroka platiti do sv. Mihovila, ali to je učinjeno tek u studenom 1452. godine (De Renno 1, 414). U veljači 1445. Kvirin je isporučio Curilu Posničiću (*Curilus Posniçich*) jednu bačvu vina od 16 modija po cijeni od 70 solida za modij te je tada dogovoreno da plaćanje treba izvršiti do sv. Mihovila (De Renno 2, 16; De Renno 3, 67). Kvirin u studenom 1446. daje sucu Jurku iz Drivenika (*Iurchus*) za Teodora pok. Dominika četiri bačve vina ukupne količine 56 modija po cijeni od 67 solida za modij. Bilo je dogovoreno da se plaćanje izvrši do posvećenja crkve sv. Mihovila, što je godinu dana kasnije i učinjeno (De Renno 3, 112, 157; Teodor je Jurku dao u zalog svoju kuću i vinograd koji je imao u emfiteuzi). Mihovil Ivanov de Cranče s Brača (*Michael Iohannis de Crançe*) prodao je Kvirinu u ožujku 1451. godine 200 modija vina i trgovačke robe s Brača po cijeni od 46 solida za modij. Vino je

6 Na području Plasa. U suvremeno doba ondje se nalazila tvornica Torpedo na Mlaki (Ekl, 1994, 94, 119, 122–123).

obećao isporučiti u ušću Rječine na trsatskoj strani (De Renno 4, 92). Istoga je dana Mihovil dogovorio s Kvirinom da mu umjesto isplate 37 libri za isporučene kože dopremi još vina po jednakoj cijeni za modij (De Renno 4, 93). Dvojica Korčulana, Deodat pok. Nikole Marinovog (*Deodatus condam Nicolai Marino*) i Ivan pok. Alegreta obećali su u kolovozu 1451. Kvirinu isporučiti 200 modija vinskog mošta ondje gdje on to želi, a uzduž morske obale između Hreljina i Kastva(!) po cijeni od 38 soldina za modij (De Renno 4, 104–105). Stjepan Mortath prodao je Kvirinu u studenom 1452. bačvu vina od oko 11 modija po cijeni od 69 solida za modij, a koja je bila uskladištena u vinskom podrumu (*canipa*) Ivana Babića iz Grobnika. Kvirin mu je, dok ne plati, dao kao jamstvo svoj vinograd u Škurinjama (zapad današnje Rijeke) (De Renno 4, 149). Kvirin Spinčić založio je kod Venecijana iz Hreljina (*Veneciano de Cregnino*) jednu bačvu crvenog vina uskladištenog u podrumu Ivana Babića za 4 dukata i 3 stara žita (De Renno 4, 152).

## TRGOVINA I RAZMJENA RAZNOVRSNOM ROBOM

Već početkom 1444. godine Kvirin Spinčić je dogovorio da mu krojač Vid pok. Jurja (*Vitus quondam Georgij*) za isporučeno žito do Uznesenja Djevice Marije isplati 38 libri i 12 soldina. Kao jamstvo je u zalog od njega primio vinograd na području Brguda[7] (De Renno 1, 334). U jednoj je prilici ostalo zabilježeno kako je Kvirin prodao Marku pok. Petra Ivančića (*Marco quondam Petri de Iuançich*) i Valentinu Fulnoieu u veljači 1446. papar neodređene količine vrijedan 49,5 dukata (De Renno 2, 83). Za ilustraciju u Veneciji se te godine cijena brodskog tovara papra kretala na oko 36 dukata (Lane, 1968, 594; tovar teži oko 120 kg, Herkov, 1971, 84). Martin pok. Čanina (*Martinus condam Çanini*) dogovorio je s Kvirinom u srpnju 1449. kako će mu za željezo do Božića dati 16 dukata i 28 soldina te mu je jamčio založivši vinograd u Ičićima (*Içich*) (De Renno 3, 264).[8] Sudac Jurko iz Drivenika dogovorio je u kolovozu 1449. s Kvirinom kako će mu do Božića za željezo dati 21 dukat za što je jamčio vinogradom (De Renno 3, 268). Pavao pok. Milija iz Knina, zvan Fravičić (*Paulus condam Milij dictus Frauiçich*) dogovorio je u rujnu s Kvirinom da mu za neku trgovačku robu do najkasnije osam dana nakon sv. Jurja isplati 6 dukata i 5 libri. Kao jamstvo dao mu je perinu (*lectum de pluma*) i jednu žensku haljinu od zelena sukna (De Renno 3, 274). Kvirin je u studenom 1451. trebao dati građaninu Kopra ser Ivanu iz Ravene 300 dukata za neku trgovačku robu. Kao jamstvo dao mu je u zalog kuću u Rijeci, u kojoj je živio, a koja se nalazila pokraj kaštela (De Renno 4, 110). Kvirin je u lipnju 1454. trebao dati Petru Ivanu pok. ser Krševana iz Ferma (*Petrus Iohanni condam ser Grisostomi*) 89 libri i 14 soldina za pšenicu, a kao jamstvo dao je kuću u Rijeci koja se nalazila pokraj groblja sv. Marije (De Renno 4, str. 208). U veljači 1455. Gašpar Svavečić iz Grobnika (*Gaspar Suaueçich*) trebao je dati Kvirinu 12 dukata

7 Prostor „od Cerovice do Preluke“ (Ekl, 1994, 94, 99–104). U suvremeno doba obalni prostor između rafinerije nafte INA na Mlaki do Voloskog. Ne treba miješati sa selom Brgud, nekada dijelom Kastavštine (Laginja, 1889, 23–24), a u suvremeno doba u sklopu općine Matulji.

8 Vjerojatno negdje između Drenove i obale (Brgud) budući da se tim redom i navodi. Mislim kako nije riječ o naselju Ičići između Opatije i Ike (Lovrana) kao što navodi Fest, 1913, 84.

za maslinovo ulje (obzirom na tadašnje cijene vjerojatno je riječ o manjoj količini) (De Renno 5, 266). Kvirin je potom u travnju prodao 17 stara pšenice Morlaku Franku Miliću (*Franchus Milich*) s time da je potonji još uzeo i zajam od 17 solida (De Renno 5, 273).

## KUPOVINA, PRODAJA, NAJAM I SPOROVI OKO NEKRETNINA

Valentin Jurlinović (*Valentin condam Iurlini*) prodao je u lipnju 1442. Kvirinu kuću ser Petra Pertusana u Rijeci za 120 dukata (De Renno 5, 425). Kvirin je u svibnju 1446. prosvjedovao pred kastavskim kapetanom Petrom Belim, županom, sucima i vijećnicima protiv kapetana Bartola Misula (*Bartolus Misuli*) i župana Zavide (*Sauida*) te kastavskih vijećnika koji su dodijelili Ivanu Mavriću iz Brseča (*Maurich*) jedno njegovo zemljište u Pol(j)icama (*Police*) tražeći godišnju odštetu od 4 dukata (De Renno 3, 102). U studenom iste godine istupa pred riječkim vlastima protiv Zavide, župana u Kastvu. Između raznih pritužbi protiv njega istaknuo je kako je preuzeo jedan dio njegova zemljišta u Plasama (De Renno 3, 113). Kvirin je ugovorio u travnju 1447. sa stanovnikom Labina Matijom pok. Antuna Skampića (*Mateo condam Antonij Schampich*) kupovinu kuće, ograđenog zemljišta, manjeg zemljišta, vrta i vinograda za 100 dukata. Isplata se ugovorila u obrocima pa je 30 dukata trebalo platiti do Uznesenja Djevice Marije, a ostatak u naredne tri godine (De Renno 3, 149). Već mjesec dana kasnije Kvirin je ugovorio prodaju spomenutog imanja sucu Jurku iz Drivenika za 110 dukata. I ovdje se isplata novca ugovorila u obrocima pa je tako Kvirin trebao dobiti 40 dukata do sv. Jurja, a ostatak u sljedeće tri godine (De Renno 3, 155). Njegova je zarada u mjesec dana razlike između sklapanja dvaju poslova iznosila 10 dukata. Kvirin je udio u kući Ambroza Kožarića (*Ambrosij Coxarich*), koju je ovaj posjedovao zajednički s ocem, otkupio na javnoj dražbi održanoj u listopadu 1448. za 32 libre (De Renno 5, 435). U ožujku 1449. došlo je do sporazuma između arhiđakona Ivana i župnika Gašpara u ime kaptola te Kvirina Spinčića. On je imao u emfiteuzi masline koje su se nalazile u jednom ograđenom polju, osim nekih četrnaest stabala koje su pripadale crkvi sv. Marije. Smanjen mu je iznos davanja s 8 libri na 5 solida godišnje (De Renno 3, 238). Nakon što je u veljači 1450. provedena javna dražba nad nekim vinogradom u Kastvu u vlasništvu Petra Sebegnića (*Petrus Sebegnitch*) isti je pripao Pavlu Radaviću iz Kastva (*Paulo Radauich*) koji je ponudio 32 dukata. Taj je novac pripao Kvirinu Spinčiću kao vjerovniku (De Renno 3, 303). Krajem te godine Kvirin je prosvjedovao pred riječkim vlastima protiv Alberta Spilera, daćara u Senožeču, kojem je dao u zalog vinograd izuzev tora za ovce i maslina. Albert je izgleda taj posjed dao Petru iz Poreča, stanovniku Pule. Procijenio je kako je oštećen za 300 dukata (De Renno 3, 335).[9] U veljači 1452. Kvirin je prosvjedovao ispred riječkih sudaca protiv Pavla Mortatiča (*Paulus Mortatich*). Iako detalji nisu poznati zapisano je kako je dao svoj vrt podno Kastva, koji je nekoć bio župnikov, sucu Vidu Matroniću kao jamstvo za Pavla (De Renno 4, 120). Kvirin je u ožujku 1454. prodao jednu svoju kuću u Rijeci Krševanu Nikolinom gospodina Vannija iz Ferma (*Grisostomus Nicolai domini Vanni*) za 400 du-

9 Krajem godine Albertov zastupnik Bolfung tražio je da se vinograd s maslinama koji je Kvirin imao u emfiteuzi u Rijeci oglasi na javnoj dražbi zbog duga od 20 dukata (De Renno 5, 438).

kata (De Renno 4, 204; Fest, 1900, 57, pretvara iznos u libre). Još jedan zapis s kraja iste godine pruža uvid u Kvirinovo vlasništvo – daje jamstvo u vinogradu i vrtu sa sjenicom u kastavskom distriktu te kuću u Rijeci (De Renno 4, 217). Krajem 1455. kupio je od Grguru Novakovića iz Grobnika (*Gregorius Nouachouich*) za 100 libri nekakav pašnjak, s time da ga je ovaj i dalje mogao u pola koristiti (De Renno 5, 299). Kvirin je u veljači 1457. prosvjedovao pred riječkim sucima protiv Pavla Benkovića iz Lovrana (*Benchouich*). Naime, dao mu je u zalog kuću u Rijeci (nekad u vlasništvu trgovca Ivana) za 340 libri te je tražio 100 dukata odštete. Pavao je naredio svom zastupniku krznaru Grguru iz Grobnika da se kuću da na javnu dražbu (De Renno 5, 330).

## DAVANJE ZAJMA I DUGOVANJA

Kvirinove zajmove i dugovanja treba podijeliti barem na dvije skupine: 1. nije poznat iznos dugovanja ni sve okolnosti posla (poznati su iznosi traženih odšteta) te 2. poznat iznos dugovanja ili zajma, ali bez daljnjih pojašnjenja u tekstu.

Tako se za primjer može navesti sljedeće slučajeve gdje nisu ostale zabilježene sve okolnosti pri sklapanju poslova odnosno precizirani novčani iznosi. Izgleda da je u svibnju 1445. Kvirin Spinčić nakon provedene javne dražbe u Kastvu dobio posjede Marina Dragoslavića (*Marinus Dragoslauich*) iz Kastva. Potonji je dug trebao podmiriti u roku od godinu dana, od sv. Mihovila do sljedećeg rujna (De Renno 2, 143). Kvirin je sredinom veljače 1457. prosvjedovao pred kapetanom i sucima govoreći kako je knez Martin Frankapan primio od njega i njegova sina za podmirenje njihova duga i duga Lovre i Petra Spinčića te mesara Blaža iz Celja 39 svinja. On je pak tražio da njegova dva brata, Lovro i Petar, te Blaž iz Celja daju pola dukata jer nisu sudjelovali u isplati (De Renno 5, 330). Mjesec dana kasnije pred kapetana i suca istupio je u svoje ime Lovro, ali i u ime brata Petra i mesara Blaža. On je istaknuo kako je molio svoga brata Kvirina koji je htio ići u Jasterbarsko prodati svinje da riješe pitanje duga Martina Briganića iz Rečica, podložnika kneza Martina Frankapana. Kvirin navodno nije htio potonjeg primiti, ali i nije tražio ništa od braće i njihova suradnika (De Renno 5, 334). U ožujku, nekoliko dana kasnije, pred riječkim vlastima prosvjedovali su trojica Kastavaca, Lovro Sinčić te Lovro i Petar Spinčić kao i mesar Blaž ističući kako je Martin sin Kvirina Spinčića, zaplijenio od mesara Andrije Volčića iz Kopra (*Volçich*) 300 libri koje su oni potonjem dali za volove (De Renno 5, 335). Početkom 1458. pred riječkim sucem prosvjedovao je mesar Toma de Mutiniça (djeluje u Vinodolu). Knez Martin primio je 20 svinja od Kvirina što je štetilo Tomi pa je tražio 40 dukata odštete (De Renno 5, 351). Kvirin, Martin i Petar Spinčić bili su u ožujku 1458. jamci za kapetana Postojne Jurja Cernomela za iznos od 200 dukata kapetanu Senožeča Tomi Elacharu (De Renno 5, 359–360). U studenom 1458. Kvirin je prosvjedovao pred kapetanom, sucima i vijećem Rijeke protiv pok. Jurlina i njegove supruge Matee za koje je jamčio braći Petrichiu i Tomi te Vidu Magrulinu iz Kočevja svojim zemljištem na kojem je izgrađena kuća blizu kaštela u Rijeci. Tražio je od Matee 1000 dukata za pretrpljenu štetu i troškove (De Renno 5, 375–376).

S druge strane postoje bilješke gdje se navode samo iznosi koje pojedinci duguju Kvirinu (17), ali bez razjašnjavanja okolnosti u kojima je do takvih dugovanja došlo (usp.

tabela 2.). Kada se uzmu u obzir ti dugovi u novcu u periodu od nekih dvanaest godina može se sumirati sljedećim podacima. Prema društvenom položaju odnosno zanimanju dužnici su u 1/3 slučajeva riječki suci. Ostali su kožar, postolar, kovač, brodovlasnik, trgovac, svećenik itd. Pojedinačna dugovanja ne prelaze 61 dukat.

*Tabela 2. Dugovi u novcu prema Kvirinu Spinčiću*[10]

| Godina | Broj dužnika | Iznos u novcu | | |
|---|---|---|---|---|
| | | Dukati | Libre | Soldi |
| 1444. | 2 | 5 | 110 | |
| 1445. | 2 | 20 | 91 | |
| 1446. | 1 | | 37 | |
| 1447. | 2 | 6 | 36 | 100 |
| 1448. | 1 | 27 | | |
| 1449. | 1 | 11 | | 17 |
| 1451. | 2 | 61 | 18 | 3 |
| 1452. | 2 | | 136 | 5 |
| 1453. | 2 | 19 | 51 | 65 |
| 1454. | 1 | | 195 | 12 |
| 1456. | 1 | 11 | | |

Kada je riječ o novčanim potraživanjima prema Kvirinu Spinčiću, bez konkretnijih naznaka o robi onda zabilježenih slučajeva ima manje (8). Doduše, 1452. g. je na ime vraćanja zajma grofovima Walsee u lipnju dugovao 70 florena, a potom se dug u listopadu povećao na 100 dukata. Uz to dva dugovanja su bila naspram jednog ličkog mesara, od kojeg je ranije nabavljao stoku, pa se može pretpostaviti da je možda bila riječ o zaostacima isplate nekakvog sličnog posla (usp. Tabela 3.).

10 De Renno 2, 5–6., 21., 84., 137.; De Renno 3, 125., 155., 205., 285.; De Renno 4, 110., 112., 128., 159., 166., 208.; De Renno 5, 304.

*Tabela 3. Potraživanja u novcu prema Kvirinu Spinčiću*[11]

| Godina | Broj kreditora | Iznos u novcu | | |
|---|---|---|---|---|
| | | Dukati | Floreni | Soldi |
| 1446. | 1 | 14 | | |
| 1452. | 3 | 156 | 70(!) | 69 |
| 1453. | 1 | 51 | | 5 |
| 1454. | 1 | 70 | | |
| 1457. | 2 | 77 | | |

## POSLOVI KVIRINOVE BRAĆE, PETRA I LOVRE SPINČIĆA

O poslovima Petra i Lovre Spinčića u notarskoj knjizi Antuna de Renna sačuvano je vrlo malo. Iz tih se unesaka može reći kako braća nisu bila jednakog poslovnog profila kao i Kvirin. Ponekad su zajednički poslovali pa im se u srpnju 1458. Jakov Pomignač iz Ljubljane obvezao dati 18 dukata (De Renno 5, 364).

Petru Spinčiću je u listopadu 1449. Stjepan Gerdinić iz Klane (*Gerdinich*) obećao isplatu 20 libri i 10 soldina za vino do sv. Martina davši mu pri tome kao jamstvo dva vola (De Renno 3, 278). Ivan iz San Severa u Apuliji prodao je početkom siječnja 1454. Petru 106 koza za 24,5 dukata (De Renno 4, 195). Petar je imao dogovor s Pavlom Radavićem, ali ga je kapetan poništio u travnju 1456. na što je Petar uložio prosvjed tvrdeći kako je oštećen jer je poslao Pavlu 32 dukata (De Renno 5, 308). U srpnju je dogovorio isplatu 119 libri za volove mesaru Tomi (De Renno 5, 316). Postolar Martin iz Ljubljane obvezao mu se u ožujku 1457. dati 103 libre (De Renno 5, 336). Poput brata Kvirina imao je svoje opunomoćenike u Veneciji, Trogiru i Buzetu (De Renno 5, 320, 325, 381).

Lovro Spinčić trebao je u ožujku 1452. od Marine, udovice kožara Jakova, dobiti 47,5 libri za kože (De Renno 4, 125–126). Godinu dana kasnije Lovro je trebao od suca Jurka iz Drivenika dobiti 41 libru za volovske kože, koje je potonji primio kako bi isplatio dug krojača Plechchija, stanovnika Ljubljane (De Renno 4, 181). Lovro i Petar obvezali su se u ožujku 1454. jamčiti za svoga brata Kvirina riječkom sucu Jakovu Mikoliću i Franji pok. Petra iz Fana s 84 dukata. Obvezali su se dopremiti u grad velike kože po cijeni od 4,5 dukata za centenarij do svote od 50,5 dukata, a za 34 dukata kože po cijeni od 20 libri za centenarij (De Renno 4, 204). Lovro je u rujnu 1455. primio od suca Matije pok. ser Donata 210 libri (De Renno 5, 288). Dvije godine kasnije, u veljači je trebao dati mesaru Tomažu pok. Ivana iz Mutniçe (*Tomasio*) 15,5 dukata (De Renno 5, 329). Lovro je u ožujku obećao labinskom arhiđakonu Ivanu da će dati Puljskom biskupu Mojsiju de Bufareli-

11 De Renno 2, 83.; De Renno 4, 132., 145., 155–156., 217.; Gigante, S., 1940, 96.; De Renno 5, 331., 343.

ju (*Moysi de Bufarelis*) 15 maraka i njegovu kancelaru 5 dukata, zbog jamstva za Kastvca Lovru Sinčića (*Sinçich*). Istovremeno je potonji dao Spinčiću na korištenje kao zalog svoj vinograd u Škurinjama (De Renno 5, 332). Početkom 1459. Lovro je kao jamac Pavla Mortatića trebao dati Alegretu Martinovu iz Šibenika 36 dukata (De Renno 5, 379).

## KVIRIN SPINČIĆ I RIJEČKO DRUŠTVO PRVE POLOVINE 15. STOLJEĆA

Kvirin Spinčić tipični je primjer za ocrtavanje poslovnog djelovanja građanskog sloja, a time i razvoja riječkog društva u prvoj polovini 15. stoljeća. Nije obnašao komunalne funkcije u Rijeci (već u Kastvu), ali se poput brojnih gradskih sudaca i vijećnika, iako nije bio profesionalni trgovac, okrenuo trgovačkim aktivnostima (primjerice braća Mikolić). U tome nije bio usamljen jer su uz znatno bogatije strane trgovce iz Italije i Kranjske, u gradu na sličan način poslovali obrtnici sa spomenutih područja, ali i Dalmacije i Hrvatske (neki su postali građani). Kvirin se u nekoliko godina uklopio u gradu i postao njegovim građaninom. Komunalne vlasti su u tekstu odluke kojom su obrazlagale primanje pojedinaca u redove riječkih građana, redovito kao razlog primanja, navodile korist grada od tih pojedinaca. Nema sumnje da je i Kvirin, iako tekst njegova primanja nije sačuvan, bio osoba od koristi gradu. On nije djelovao kao puki trgovački posrednik, prekupac. Njegova pojedinačna ulaganja po poslu, uz neke iznimke, kretala su se do 200 dukata. Za riječke prilike to su bile prosječne vrijednosti. Bez obzira na to djelovao je kao pokretač poslova, prvenstveno u proizvodnji i distribuciji vesala (gdje vrijednosti posla izgleda dosežu do 500 dukata) te uzgoju i trgovini stokom. Imao je i jedno potraživanje od 1000 dukata. U načelu, krug njegovih poslovnih poznanstava ne razlikuje se od drugih trgovaca u gradu, ali i na istočnoj obali Jadrana. Više se usredotočio na poslove na području u širem okruženju grada u kojem djeluje (u njegovu slučaju Kranjska i Hrvatska), sjeverni Jadran (Kvarner, Istra i Venecija) te pokrajina Marke u Italiji, dok je tek sporadično imao veze s jugom Dalmacije. Tijekom vremena uspio je svojim radom steći brojne nekretnine – kuće, oranice, vinograde i pašnjake. Nažalost, kuća koju je izgradio u blizini gradskog kaštela, nije se očuvala. No, prema svemu sudeći bila je, za riječke prilike, među onima veće vrijednosti (400 dukata). Sačuvani izvori za drugu polovicu 15. st. su oskudni, pa se ne može utvrditi jesu li njegovi potomci prosperirali u gradu. U usporedbi s vrijednostima poslova istaknutih pojedinaca u dalmatinskim gradovima (primjerice u Zadaru, Splitu ili Dubrovniku oni prelaze 1000 dukata) njegovi poslovi bili su daleko manjeg zahvata. Vraćajući se tezi F. Hauptmanna može se reći kako, iako nije dovoljno precizna, ona dobro prikazuje Kvirninovu važnost – bio je jedan od najistaknutijih ljudi grada Rijeke u prvoj polovini 15. stoljeća.

# JUDGE KVIRIN SPINČIĆ FROM KASTAV, DISTINGUISHED CITIZEN OF KASTAV AND RIJEKA IN THE FIRST HALF OF 15th CENTURY

*Ozren KOSANOVIĆ*

University of Rijeka, Faculty of Humanities and Social Sciences in Rijeka, Department of History, Sveučilišna avenija 4, 51000 Rijeka, Croatia

e-mail: ozren.kosanovic@gmail.com

*SUMMARY*

*This paper shows overview of business activities of the distinguished citizen of Kastav and Rijeka, judge Kvirin Spinčić, in the first half of the 15th century. He was relatively rich individual and proprietor of various real estates such as houses, fields, pastures, vineyards, orchards etc. in the territory of city of Rijeka and village communes of Kastav and Lovran. In village commune of Kastav, near to Rijeka, he was communal judge for several years. At the same time he was citizen of Rijeka and one of most agile businessman in the city. In one way, he is typical example for the making of outline on business activities of citizens of Rijeka. Namely, many of city's councilmen and judges, both nobles and citizens, although they weren't professional merchants (mercator), were agile in commercial activities. Business connections of Kvirin were with merchants, craftsmen and ship-owners from various cities on the Adriatic Sea. His individual investments were in average up to 200 ducats, but he had claims up to 1000 ducats. These were average sums for business deals in Rijeka. In Dalmatian cities of Zadar, Split or Dubrovnik individuals of his social status invested in deals more than 1000 ducats. In comparison with them he was not a rich man. But if one takes in account circumstances in Rijeka, city less developed than Dalmatian cities of that time, it can be said that he was successful man. City was important transit point in commerce between Carniola and cities in Italy and many individuals used this in their advantage. Venice tried to marginalize commerce importance of Rijeka with various decrees, prohibitions and naval blockades, but in the long run this didn't take real effect. Majority of Kvirin's activities were in credit commerce in livestock, cloth, leather and oars for galleys (some directly ordered from arsenal in Venice). Along with iron and olive oil these were main items of commerce in Rijeka and because of that, he can serve as an example for generalization. This paper in one way strengthen thesis of older historiography that Rijeka in the first half of 15th century was a place where "an agile individual could make profit", and good example for that is Kvirin Spinčić.*

*Key words: judge Kvirin Spinčić, Kastav, Rijeka, Kvarner, 15th century*

IZVORI I LITERATURA

**DAR-RI-IAS:** Državni arhiv u Rijeci (DAR), Isprave, Riječke isprave (RI), Isprave augustinskog samostana (IAS)

**CDI 4:** Kandler, P. (1986): Codice Diplomatico Istriano, Volume quarto (anni 1400–1499). Trieste, Editore tipografia Riva.

**De Renno 1:** Gigante, S. (1912): Libri del Cancelliere. Volume Primo. Cancelliere Antonio di Francesco de Reno. Parte prima: MCCCCXXXVII–MCCCCXLIV. Monumenti di storia Fiumana, 2, Fiume, 5–422.

**De Renno 2:** Gigante, S. (1932): Libri del Cancelliere. Fiume, Rivista semestrale della Società di studi fiumani in Fiume, IX. (I e II semestre 1931), X/1932, Fiume, 5–153.

**De Renno 3:** Zjačić, M. (1955–1956): Knjiga riječkog kancelara i notara Antuna de Renno de Mutina (1436–1461) (Knjiga) I. Vjesnik Državnog arhiva u Rijeci (VDAR), III, Rijeka, 5–343.

**De Renno 4:** Zjačić, M. (1957): Knjiga II. VDAR, IV, Rijeka, 89–225.

**De Renno 5:** Zjačić, M. (1959): Knjiga III. Vjesnik Historijskog arhiva u Rijeci, V, Rijeka, 257–459.

**Gigante, S. (1940):** Regesti e documenti relativi alle famiglie di Duino e di Walsee. Fiume. Rivista semestrale della Società di studi fiumani in Fiume, XV–XVI/1937–1938, Fiume, 3–130.

**Listine 8:** Ljubić, Š. (1886): Listine o odnošajih izmedju južnoga Slavenstva i Mletačke Republike (Listine) VIII, Monumenta spectantia historiam Slavorum meridionalium (dalje: MSHSM) 17. Zagreb, Jugoslavenska akademija znanosti i umjetnosti (JAZU).

**Listine 9:** Ljubić, Š. (1890): Listine IX, MSHSM 21, Zagreb. JAZU.

**Listine 10:** Ljubić, Š. (1891): Listine X, MSHSM 22, Zagreb. JAZU.

**Statut:** Rački, F. (1890): Statuta lingua croatica conscripta – IV. Statut kastavski, *Monumenta historico-juridica Slavorum meridionalium*, 4, Zagreb, JAZU, 179–207.

**Antoljak, S. (1954):** Veze između Zadra i Rijeke u srednjem vijeku. VDAR, 2, Rijeka, 6–17.

**Darovec, D. (2008):** Venetian and Austrian money in Istria in the Modern age. Annales, Ser. hist. sociol., 18, 2, 277–288.

**Ekl, V. (1994):** Živa baština: studije i eseji. Rijeka, Izdavački centar Rijeka (ICR)

**Fabijanec, S. F. (2007):** Trgovački promet Kvarnera na Jadranu krajem srednjeg vijeka. Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti Hrvatske akademije znanosti i umjetnosti, 25, Zagreb, 103–152.

**Fest, A. (1900):** Il commercio di Fiume nel secolo XV. Fiume, Stabilimento Tipo-litografico Fiumano di Emidio Mohovich (E. Mohovich).

**Fest, A. (1913):** Fiume nel secolo XV. Bollettino della deputazione fiumana di storia patria, 3, Fiume.

**Gestrin, F. (1965):** Trgovina slovenskega zaledja s primorskimi mesti od 13. do konca 16. stoletja. Ljubljana, Slovenska akademija znanosti in umetnosti.

**Gigante, S. (1913):** Fiume nel quattrocento. Fiume, E. Mohovich.

**Hauptmann, F. (1951):** Rijeka. Od rimske Tarsatike do Hrvatsko-ugarske nagodbe. Zagreb, Matica hrvatska.

**Herkov, Z. (1956):** Građa za financijsko-pravni rječnik feudalne epohe Hrvatske, 1, Zagreb, JAZU.

**Herkov, Z. (1971):** Mjere Hrvatskog primorja s osobitim osvrtom na solne mjere i solnu trgovinu. Rijeka, Historijski arhiv u Rijeci i Pazinu.

**Herkov, Z. (1977):** Prinosi za upoznavanje naših starih mjera za dužinu i površinu (Nastavak). Zbornik Historijskog instituta JAZU, 8, Zagreb, 143–215.

**Hrabak, B. (1991):** Regionalna i međunarodna trgovina Mlečana i Dubrovčana drvetom iz Senja (XIV–XVIII stoljeće). Radovi zavoda za hrvatsku povijest Filozofskog fakulteta u Zagrebu, 24, Zagreb, 57–107.

**Karbić, M. (2011):** Položaj djece u Rijeci u kasnom srednjem vijeku. 4. istarski povijesni bienale. Filii, filiae...: položaj i uloga djece na jadranskom prostoru. Poreč, Zavičajni muzej poreštine i Državni arhiv u Pazinu, 114–130.

**Klen, D. (ur.) (1988):** Povijest Rijeke. Rijeka, ICR.

**Kobler 2:** Kobler, G. (1896): Memorie per la storia della liburnica città di Fiume (Memorie). 2, Fiume, E. Mohovich.

**Kobler 3:** Kobler, G. (1896): Memorie. 3, Fiume, E. Mohovich.

**Laginja, M. (1889):** Kastav. Grad i općina. Trst, Tiskarna Dolenc.

**Lane, F. (1968):** Peper Prices Before Da Gama. Journal of Economic History, 28, 590–597.

**Margetić, L. (1996):** Hrvatsko srednjovjekovno obiteljsko i nasljedno pravo. Zagreb, Narodne novine.

**Matejčić, R. (1990):** Kako čitati grad: Rijeka jučer, danas. 3 dopunjeno izdanje. Rijeka, ICR.

**Munić, D. (1990):** Prezimena kastavskih obitelji i pojedinaca iz 1723. godine. Kastav, Turističko društvo Kastav.

**Munić, D. (1998a):** Kastav u srednjem vijeku. Društveni odnosi u Kastavskoj općini u razvijenom srednjem vijeku. Rasprave o Kastvu i Kastavskom statutu. II. dopunjeno izdanje. Rijeka, ICR.

**Munić, D. (1998b):** Venecijanci u Rijeci tisućučetristotih godina. Sveti Vid - Zbornik, 3, Rijeka, 45–67.

**Novak, M. (1965):** Autonomija dalmatinskih komuna pod Venecijom. Zagreb, JAZU.

**Pov. Ven. 1: Orthali, Gh., Cracco, G., Cozzi, G., Knapton, M. (2007):** Povijest Venecije. 1, Zagreb, Antibarbarus.

**Raukar, T. (1977a):** Venecija i ekonomski razvoj Dalmacije u XV i XVI stoljeću. Radovi instituta za hrvatsku povijest, 10, Zagreb, 203–225.

**Raukar, T. (1977b):** Zadar u XV stoljeću: ekonomski razvoj i društveni odnosi. Zagreb, Institut za hrvatsku povijest Sveučilišta u Zagrebu.

**Raukar, T. (2007):** Studije o Dalmaciji u srednjem vijeku: odabrane studije. Split, Književni krug.

**Rutar, S. (1895):** Završniška gospoščina na Krasu. Izvestja Muzejskega društva za Kranjsko, V, 6, Ljubljana, 213–228.

**Šumrada, J. (2005):** Trgovina Ljubljane s Rijekom sredinom XV. stoljeća prema notarskim zapisima Antuna de Renna de Mutine. Sveti Vid - Zbornik, 10, Rijeka, 35–58.

**Šunjić, M. (1967):** Dalmacija u XV stoljeću. Sarajevo, Svjetlost.

**Voje, I. (2003):** Poslovna uspešnost trgovcev v srednjeveškom Dubrovniku. Ljubljana, Znanstveni inštitut Filozofske fakultete.

**Žic, I. (2008):** Mračni srednji vijek u Rijeci. Sušačka revija, 62/63, Rijeka, 163–169.

Received: 2014-03-07
Original scientific article
UDC 94:711.4(497.58)"14"

# THE VENETIAN IMPACT ON URBAN CHANGE IN DALMATIAN TOWNS IN THE FIRST HALF OF THE FIFTEENTH CENTURY

*Irena BENYOVSKY LATIN*
Croatian Institute of History, Opatička 10, 10000 Zagreb, Croatia
e-mail: irenabenyovsky@yahoo.com

*ABSTRACT*

*The analysis in this paper focuses on the question of how the constructed environments in Dalmatian towns expressed their ties with Venice in the first half of the fifteenth century. Particular emphasis has been accorded to the (re)construction of town citadels and count's palaces in Zadar, Šibenik, Trogir and Split.*

*Key words: Dalmatian towns, Republic of Venice, public buildings, fifteenth century, urban history, citadel, governmental palace*

# BENEŠKI VPLIV NA URBANE SPREMEMBE V DALMATINSKIH MESTIH V PRVI POLOVICI 15. STOLJETJA

*IZVLEČEK*

*Prispevek analizira v kolikšni meri je grajeni prostor dalmatinskih mest odraz njihovih odnosov z Benetkami v prvi polovici 15. stoljetja. Poseban poudarek je namenjen (re) konstrukciji mestnih kaštelov in knežjih palač v Zadru, Šibeniku, Trogiru in Splitu.*

*Ključne besede: dalmatinska mesta, Beneška republika, javne stavbe, 15. stoljetje, urbana zgodovina, kaštel, komunske palače*

# L'INFLUENZA DI VENEZIA SUI CAMBIAMENTI URBANI DELLE CITTÀ DALMATE NELLA PRIMA METÀ DEL XV SECOLO

*SINTESI*

*L'analisi presentata in questo saggio è volta a stabilire se gli assetti urbani delle città dalmate riflettevano, nella prima metà del XV secolo, lo stretto legame con Venezia. Particolare attenzione è posta sulla (ri)costruzione dei castelli urbani e dei palazzi dei conti di Zara, Sebenico, Traù e Spalato.*

*Parole chiave: città dalmate, Repubblica di Venezia, edifici pubblici, XV secolo, storia urbana, castello, palazzi comunali*

## INTRODUCTION

This paper is an overview of how the constructed environments in Dalmatian towns expressed their ties with Venice in the fifteenth century, based on the example of four communes: Zadar/Zara, Šibenik/Sebenico, Trogir/Traù and Split/Spalato in the first decades after the Venetian conquest. The central question concerns the relationship between the old – that is, what Venice found in the Dalmatian towns – and the new; the relationship between Venice and local communities in the period that ensued and how this was reflected in the urban structure (especially citadels and governmental palaces).[1] Not all Dalmatian towns have preserved their appearances from the fifteenth century.[2] For this reason archaeological, pictorial and historical (archival) research – and indeed an interdisciplinary approach – are of supreme importance. Different types of written documents are to be used for this research: the archival material drafted by or addressed to the Venetian authorities of Dalmatia (general series of the Senate, Maggior Consiglio, Council of Ten).[3] The rich collection of sources in the Croatian archives (especially the State Archive of Zadar) enhances the foundation of our understanding of Venetian-Dalmatian relations prior to 1500. This extensive material contains a great deal of information on repairs, construction, use and patronage of public and private buildings, on (fears of) military revolts, military questions, and the oversight of the local authorities. It would also be important to follow the trail of Venetian officials in Dalmatian towns to whom responsibility and oversight of public works were entrusted (*Dispacci*). However, most of the dispatch series in the Archivio di Stato in Venice begin in the 1530s.[4] It is also important to study narrative sources from later periods to supplement incomplete information. Pictorial representations are very important for the study of fortifications (old maps, *vedute*, etc). These postdate the fifteenth century but they contain essential information about the material conditions and appearance of the towns under analysis here.

1 There are no systematic studies that focus specifically on the Venetian influence on urban development in Dalmatian towns (such as Maria Georgopoulou's study on Crete; Georgopoulou, 2001).

2 Due to later reconstructions, frequent demolitions and new buildings, the old medieval urban core of the largest town and the provincial seat, Zadar, was less preserved. On the other hand, Trogir, the smallest of these four towns, managed to preserve much of its medieval core.

3 Local counts (because of their duties) had much engagement with, and great knowledge of, the individual towns, as they oversaw the entire territory or region.

4 *Dispacci antichi di ambasciatori, rettori ed altre cariche e lettere antiche*, 1321–1599, Archivio di Stato, Venice. *Provveditori alle fortezze* were established in 1542. J.R. Hale, *The First Fifty Years of a Venetian Magistracy: The Provveditori alle Fortezze*, in *Renaissance. Studies in Honour of Hans Baron*, a c. di A. Molho e J.A. Tedeschi, Firenze 1971, pp. 499–529. Still, much of the missing content can be found in other series of documents (Ilardi, 1962, 73; della Rocca, 1959), such as the deliberations of the Senate – this series of registers contain relevant instructions, correspondence and resolutions relations (the content of the dispatches are summarized in the beginning of deliberations and then the Senate's reply follows. Only the replies have been preserved.) The records of the Collegio also contain data on relations with officials and ambassadors.

*The loggia in Trogir, 20th c.*

## THE POLITICAL CIRCUMSTANCES

The Dalmatian communes on the eastern Adriatic coast were subjected to constant Venetian pressure since early medieval times: its towns, ports and islands enabled Venetian ships to sail safely and find shelter, services and supplies. Venice depended on the Adriatic because it connected the Republic with its overseas possessions and the Levant (especially after the pillage of Constantinople in 1204 and the establishment of the Latin Empire on the Bosporus). It was necessary that the entire Adriatic enhanced the glory of *La Serenissima* as dominance over the Adriatic gulf was rooted in the political culture of Venice, and it was central to the Venetian mythology (including the Ascension Day ceremony in which the doge "married the sea") (Tenenti, 1973; Benyovsky, 2002/2003, Descendre, 2007, 55–74; Vivo, 2003, 159–176; Arbel, 1996, 947–985; Israel, Schmitt, 2013; Arbel, 2013, 137).

Venetian efforts at domination of the eastern Adriatic began in the year 1000 with a naval expedition commanded by Doge Pietro II Orseolo, who first established control over the Adriatic as the "Gulf of Venice". In subsequent centuries, Venice exerted influence as a commercial and maritime power on the Adriatic, and was periodically in a position to establish its authority over Dalmatian towns (Ortalli, Schmitt, 2009). But in 1358, all Venetian possessions in Dalmatia were returned to the Hungarian-Croatian kingdom and were thus once more integrated into their Croatian hinterland (Budak, 1997, 181–201; Gruber, 1903; Gruber, 1906). However, the situation was to became unstable in the last decades of the 14th century. After 1382, when the King Louis I died without male heirs, Sigismund of Luxemburg, his son-in-law and Sigismund's cousin Ladislaus of Naples enforced their previous struggle for the Hungarian crown. Exploiting this conflict, Venice re-established

its rule over the Dalmatian coast during the first half of the fifteenth century. On 9 June 1409, Hungarian king Ladislaus sold the towns of Zadar and Novigrad (Novegradi), the island of Pag (Pago) and all rights of Dalmatia to Venice for 100,000 ducats. The way for Venice's formal and definitive entry was thus opened (*Santa intrada*). La Serenissima gradually expanded its government (either willingly or by force) to the Eastern Adriatic seaboard, including all major towns and islands (Ančić, 2009; Raukar, 1982; Mueller, 1996, 31). Still, until 1420 there was still a struggle between Venice and Sigismund of Hungary over a part of Dalmatia, and some Dalmatian towns supported the king and expected his aid against Venetian conquest (Benyovsky Latin, 2009; Rački, 1868, 94, 100).[5] In 1420, Venetian domination was imposed over towns and islands all the way down the coast, with the exception of the Republic of Dubrovnik (Ragusa) and, north of Senj (Segna), the fief of the Frankopans, a Croatian family of magnates. Dalmatia, a province stretching from the island of Krk (Veglia) to the island of Korčula (Curzola) – currently part of Croatia – was a part of Venetian territory on the East Adriatic seaboard (from Istria to Albania), and called *Colfo* or *Culphum* (Raukar, 1982, 54; Mueller, 1996). The province was under the rule of Venetian officials who governed each Dalmatian commune, and they were directly subordinated to the doge. The decisions of the Venetian government were to be executed in the same manner throughout the entire area of the *Stato da mar* (from the Adriatic to the Levant) (Schmitt, 2009, 77–101). Venetian administrative organization differentiated between two main components of its state – the city of Venice and the rest of its territory, in which the *terre da mar* were among the most important (Sander, 2011, 73; O'Connell, 2009, 2, 31).[6]

At the turn of the fifteenth century, conditions for the expansion of Venetian territory – an ambition that arose from the centuries-long desire for domination – were optimal. As a result of military actions and diplomacy at the turn of the fifteenth century, *La Serenissima* doubled both its territory and population. The fifteenth and the sixteenth centuries were a period when the Republic assumed its most complete form. Urban communes in the Eastern Adriatic were vital parts of the systematically organized territorial state (empire) (Povolo, 2000, 491–519; Martin, Romani, 2000, 12; Paladini, 2000). Venetian expansion in the fifteenth century was also motivated by a desire to increase the economic wealth.[7] The commercial interests of Venice in the fifteenth century not only encompassed Levantine luxury goods, but also a monopoly over trade in the Adriatic and the distribution of salt, grain and lumber (Mallett, Hale, 2006, 7). To keep its position as a major emporium for international trade between the northern Adriatic and the eastern Mediterranean in

5 In 1409 the Venetians called on Trogir and Šibenik to recognize their rule and subjected these towns to economic isolation to hasten their capitulation. Venice banned its ships from entering these towns and trading with them. It took a three-year siege for Šibenik, weakened by internal unrest, to declare defeat in 1412. In early 1419, the Venetians sent Captain Marco Miani to Trogir and Split with instructions to prevent the entrance of all ships into these towns, and to treat Venetian ships that broke that rule as enemy vessels.

6 From the sixteenth century onward, there were several territorial units within the larger regional authority of the *proveditore generale*. In the sixteenth century, the residence of the *proveditore generale in Dalmazia e Albania* was in Zadar, and there were regional magistracies established, such as the *generale della Cavalleria* and the *Provveditore alle Isole della Dalmazia* (Arbel, 2013 151; Ortalli, 2002).

7 For economic reasons, a monopoly on important products, such as wheat and salt, was introduced. Local procedures for permitting the sale of these products to Venice at fixed prices were introduced.

the fifteenth century, Venice had to control a strategic network of harbours and ports (Gertwagen, 2002, 373). Venice relied on all parts of the *Stato da mar*: there were many opportunities for provisioning passing fleets, where Venetian nobles could hold salaried governmental posts and tax revenues could be collected (Mueller, 1994, 30; Lane, 1933, 219–239). Human resources were also recruited for the advancement of Venice: Dalmatian towns provided sailors for ships and labourers to build fortifications (Krekić, 1996).

With the exception of the *Terraferma*, the Venetian Republic was exclusively maritime in the fifteenth century, and therefore characterized by relatively uniform problems and needs. However, the Venetian state was neither geographically or geopolitically coherent. Because of its territorial diversity, the policies differentiated between the centre and peripheries, but the legal and administrative systems, the networks of power (Gozzi, 1980; O'Connell, 2009), the system of fortifications and the state symbols (Calabi, 1991, 862) unified the territory. The fusion of Venice with the *Stato da mar* was further prevented by the unique Venetian position in the area – its location, security, political longevity and the stability of its institutions.

## AUTHORITY AND PROPERTY

Urban changes in Dalmatian towns in the early decades of the fifteenth century revealed the Venetian intention of emphasizing its sovereignty and protection, as well as its efforts to bring local needs in line with the aspirations of the metropolis. As A. Tenenti pointed out, Venice had always regarded Adriatic "as 'its own' gulf in the most possessive sense of the term, that is, an integral part of its jurisdiction" (Tenenti, 1973, 29). At the onset of the fifteenth century, the concept of *comune Veneciarum* was replaced by the concept of *Dominium* (Ortalli et al., 2007, I, 360). At the local level, the newly acquired Dalmatian towns retained many of their distinctive traits, including some elements of self-government (town councils, statutes etc.)[8] (Šunjić, 1967, 97; Chittolini, 1970). However, the fifteenth century signified a shift in the relationship between the central authorities and members of the local elites, as the power of the latter were considerably curtailed. Gradually, the Venetian presence created new loyalties (and new conflicts): the Venetians relied on some of the local patriciate and *popolani* (Novak, 1965). Although the urban patriciate partially headed resistance to Venetian rule, circumstances gradually changed. Although the urban patriciate partially headed resistance to Venetian rule, circumstances gradually changed because of complex situation with the competition between Ladislaus and Sigismund for the throne.[9] Some local noblemen increased their social standing by participating in the Venetian government (for instance, the patrician families Detrico[10] Begna[11] and Matafari[12]). The "loyal" patricians were officially treated just like the citizens

8 However only regulations and decisions that complied with Venetian policies were retained, as elsewhere in the *Stato da mar*.

9 Some of these families such as Matafari were among the greatest adherents of the Anjou dynasty before.

10 Simone Detrico received *grazia* award for his loyalty in Zadar (he was later appointed the count of Trogir (DT, I, 41).

11 Simone Begna (DT, I, 68).

12 For instance, the Zadar count Venier (who composed the Zadar *Catasto*) had close family connections with

of Venice (Pederin, 1990, 14; Gligo, 1996, 9). Their position was partly reflected in the locations of their palaces in the towns. The Cippico grand palace (a typical *sopracomiti* family of Venetian Dalmatia) in Trogir represents a surviving example of the influence of Venetian architecture on residential architecture in the fifteenth century.[13]

*The Papalić "Little Palace", Split*

Among the buildings that promoted Venice's political authority and presence in Dalmatia were structures central to the exercise of control, such as military structures (especially

the Zadar noble family Matafari.

13 Even if state directives did not regulate construction techniques, there were trends: the "vernacular" architecture of Venice must have been a constant point of reference. Other examples in Split include the Papalić Little Palace, the D'Augubio Palace, the palace in Domaldova Street and Grisogono Palace in the Peristil (Kečkemet, 2004, I, 154). In Zadar there are only partial elements preserved: the balcony of the Ghirardini Palace, the Nassi Palace, the Petrizio Palace, etc. (Petricioli, 2005, 155).

citadels in the fifteenth century) and governmental (count's) palaces. Immediately after the conquest, Venice launched the restoration of ruined Dalmatian towns, but it only restored public buildings and priority structures such as fortifications. The cost of repairs to private houses and towers was most likely borne by private individuals[14] (Lucio, 1647, 449–469; DAZd, AT, 66/33, 39v).[15] The Venetian authorities invested great care into constructing fortifications, a project that was adapted to suit Venetian military and political interests. Other (public) urban spaces too began to signify the presence of a new authority in their appearance (with symbols of St. Mark). The new government played a decisive role in certain elements of urban transformation, but not all changes were the result of its will alone. Venetians recognized almost all of the previous property relations in Dalmatian towns (Ljubić, 1886, 30, 72, 94).[16] It did not include urban space and buildings of "public" (e.g. Venetian) interest.[17] For examples, the property around the palaces of the Zadar count and captain were "communalized": houses became state property and the former owners received estates outside the town in exchange. These owners were "loyal" Zadar patricians who assisted in the "voluntary surrender of the town".[18] Recognition of old property rights excluded opponents of Venetian rule. The estates of 'disloyal' locals, supporters of the Hungarian king prior to the 1409–1420 conquest, were confiscated and used for Venetian purposes (AHAZU-10, 20, 39–42; Ljubić, 1882, 303; Ljubić, 1886, 105–106).[19] Most of these assets were eventually sold to locals (Ljubić, 1886, 29–31).[20] In Dalmatian towns, most of the urban real estate in the first half of the fifteenth century was owned by local, albeit 'loyal', individuals and families. There were no colonists in Dalmatia, but the government ruled through local elites (O'Connell, 2013; O'Connell, 2004).[21]

14 In the fifteenth century, the Venetian architectural tradition only partially influenced private construction projects. During rebuilds, old architectural elements were often left, from different periods.

15 So, for instance, the Trogir tower of St. Nicholas became uninhabitable—described by contemporaries as 'open, falling to pieces and in the worst possible condition'—following Venetian bombardment in 1420.

16 In Trogir too, the Venetians recognized old property rights in the city: all noblemen and *popolani*, religious and lay persons, were entitled to keep their pre-1420 positions and enjoy their movable and fixed assets.

17 Benyovsky Latin, 2009. In Trogir, it did not include 'certain towers or large houses' in towns, which were supposed to be placed at the disposal of the new government (Lučić, 1979, 929). The latter referred to Trogir, Split and Šibenik. In Trogir, after 1420, all urban towers had to be lowered to the height of the city walls.

18 The fifteenth-century Zadar cadastre contains interesting data on Venetian property in the city in the early decades of the fifteenth century. The list of property shows which were the "Venetian properties" in the town.

19 Their estates outside the city were frequently bequeathed to 'loyal' citizens. For instance in 1420, the Venetian government confiscated the estates of its former opponents in Trogir. On 16 October 1420, Count Simone Detrico decided that all confiscated estates, land and buildings would become communal property, and that the commune would lease those. But the money received from selling those assets no longer belonged to the council, but to Venice.

20 Except in the cases of the fiercest Venetian opponents, such as the bishop and the captain, most of the exiled individuals were allowed to return to the city. First, however, they had to introduce themselves to the Doge.

21 Although most of the *Stato da mar* territories were not inhabited predominantly by Venetians, they were governed by them (Tenenti, sense, 18). On Crete, moreover, Venice sent colonists who established deep roots there and retained ties to Venetian society (Veneto-Cretan patriciate) (O'Connell, 2009). Those Venetians settled entire city quarters and were the chief owners or the urban space.

*Cippico Grand Palace in Trogir on the main square (photo: Joško Ćurković)*

In addition to the incorporation of Dalmatian towns in the *Stato da mar* in the fifteenth century, many local factors contributed significantly to the changes that took place and their tempo. Only in some cases, organized demolitions and new construction were instigated by the Venetian administration. Political authority over towns was exercised by the control of important structures in the town (such as fortifications) that signified political legitimacy. The occupation or rebuilding of such structures erased the memory as well as the symbols of the previous ruler. The focus of renovation was the construction of the fortifications, because they were the foundation of security, and the public buildings that were needed for administration of a town.

## CITADELS (CASTELLI)

Venice was quite preoccupied with fortifications in all parts of its state. The main concern in the Dalmatian towns, as in the towns of the *Terraferma*, was the citadels.[22] They had to ensure defence and surveillance of eastern Adriatic maritime routes. Their main role was to serve as steadfast strongholds against enemies. For this reason, funds were allocated for these purpose from both the centre and local chambers. Local communities were expected to provide all labour and contribute to the costs of constructing local fortifications (Mallett, Hale, 2006, 88). In Dalmatian towns, local income often could not contribute much, so Venice assumed the costs of most fortification works (ASV, Senato Delib. VIII, 174v). For instance, the count of Trogir received 1000 ducats *pro complemento castri Tragurii* (ASV, Senato Misti, LVII, 212v). Moreover, certain wealthier Venetian towns were obliged to provide for military costs in Dalmatian towns (in 1476 the *camera* of Padua had to contribute to the military expenses of Trogir; in 1481 the *camera* of Verona did the same for Šibenik and the *camera* of Brescia for Split) (ASV, Senato Mar, IX, 111v; X, 67v, 86, 92v, Šunjić, 1967, 158–9). It seems that Zadar had less financial problems (DT, I, 5).

The construction of Venetian citadels (*castelli*) was one of the most visible urban changes in Dalmatian towns in the early fifteenth century. Citadels as the headquarters of foreign army first appeared in Dalmatian towns after the arrival of Venice in the fifteenth century. There were earlier attempts in this direction,[23] but these attempts ultimately failed: a royal stronghold in the town would have disturbed the existing balance and undermined municipal liberties (Benyovsky Latin, 2009). When Venice arrived in the fifteenth century, circumstances were dramatically different. Soon after establishing Venetian rule, its officials were charged with finding the best locations for future citadels. Finally, in most cases, citadels were located in the outskirts of a given town and on the locations of the old towers.

22 In Verona, for instance, it was the main preoccupation of the Venetians to create a walled enclave (using the old tower) that would serve a large contingent of Venetian infantry.

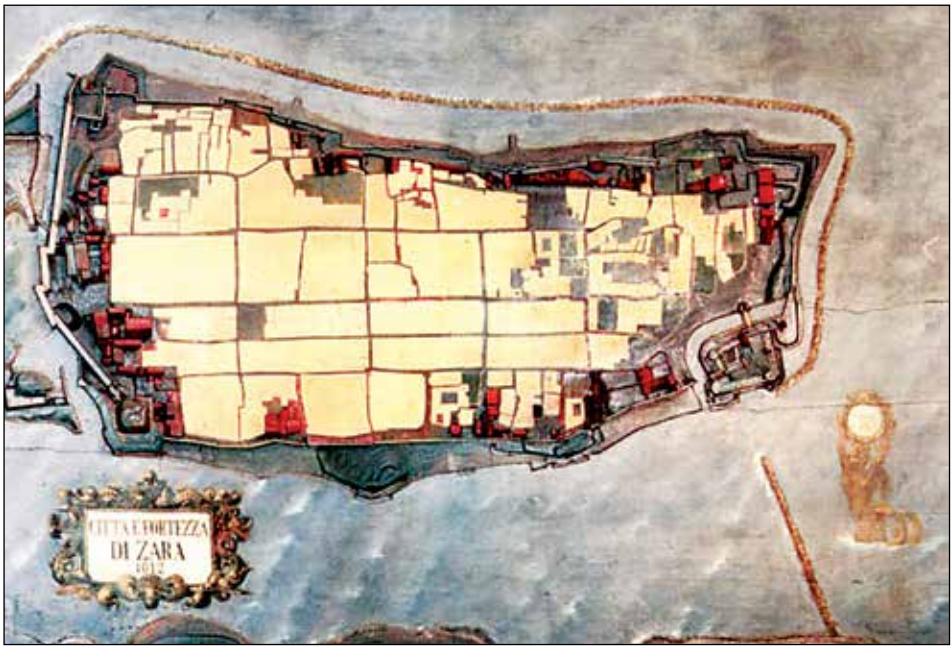
23 For instance, in Trogir in the early fifteenth century the Hungarian King Ladislaus of Naples tried to erect a citadel to accommodate his army, which had allegedly defended the city from enemies.

*The Castello fort in Zadar (Model in the Archaeological Museum in Zadar, Croatia)*

In Zadar there were two main citadels built on the sites of the old towers – one on the north near the harbour (*Castello*)[24] and the other in the south (*Citadella*) near the moat (Petricioli, 1965; Praga, 1936). Suggestions to reuse the old towers to accommodate the army already appeared in 1409.[25] The major chief military engineers were responsible directly to Venice, as in other towns in the *Stato da mar*. The construction of towers and entrances with draw bridges was planned as well (Šunjić, 1878, 5–6; Brunelli, 1913, 215–250; Praga, 1936). The old towers were rebuilt to serve new needs: the *Citadella*, in the southern corner of the town, was first fortified in 1409. Portions of the older fortifications were used for the eastern and southern walls of the *Citadella* (with a tower at the corner). The northern and the western walls were connected to these walls (Vežić, 1990, 14). Defensive towers and bridges were foreseen for the *Citadella*. During the period between 1435 and 1437, houses for the military garrison were built there (Gusar, Vujević, 2008).

24 The citadel next to the harbour entrance was rebuilt after the Venetian siege of Zadar in 1346.

25 The plan proposed by the engineer Leonardo Mozenigo, Fantino Michael and Antonio Contareno to build a fortification near the existing tower in the eastern part (*a parte levantis in uno angulo civitatis, ubi est quedam turris vocata Babiarum*) was implemented. (The area of Zadar where the Venetian fortification was about to be built was called Babe).

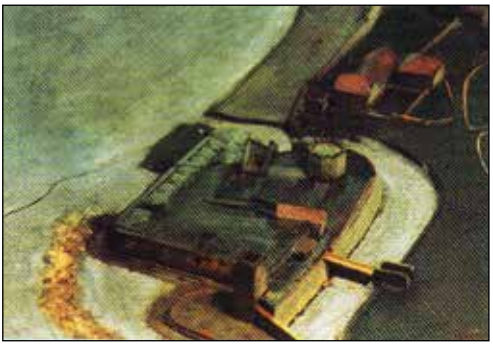



*Model of Zadar, in the Museo Storico Navale in Venice, 1570.*

Venice suggested that the tower at the entrance to the Zadar harbour should be turned into the main residence for its army (Ljubić, 1878, 56–57; Ljubić, 1882, 205; ASV, Senato, Misti, 48, 123; Petriciolli, 2005, 16; Fisković, 1959, 34; Raukar et al.,1987, 129; Deanović, 1988). In 20 November 1414, it was decided that the walls of the other Zadar citadel (*Castello*) had to be doubled in size: a crenellation had to be built, and the canal around the citadel had to be deepened, widened, and encircled with a wall (so that it would be 5 feet thicker and as much as 40 feet wider) (Ljubić, 1878, 154–158).[26] A later enactment, dated 11 June 1415, however, specified that the wall should be just six feet wider, possibly due to a lack of funds (Ljubić, 1882, 104, 192, 205; Petricoli, 1966, 127; Alačević, 1901–1903, 76; Hilje, 2011, 111). Documents from 1423 mention more works on the *Castello* (Alačević, 1901–1903, 76).[27]

26 A new rectangular tower was to be constructed inside the supporting wall of the citadel and on the location of an existing but unstable round tower. The walls were supposed to be 10 feet thick and 6 feet wide and 10 feet taller than the citadel walls.

27 In the *Museo Storico Navale* in Venice, the model of the citadel is from the sixteenth century (Petricioli, 1956/1957, 101–124).



*The model of Zadar Citadel (Castello), Museo Storico Navale, Venice ca. 1570*

Three other Dalmatian towns requested a ban on a permanent garrison for the Venetian army after they came under Venetian rule, because it signified the genuine, physical presence of a foreign ruler in the town. Thus, many documents testify to pledges from *La Serenissima* that no citadels for the Venetian army would be built within these towns. For instance, in Šibenik it was decided that "a citadel would be built only if the town council decides to do so". After the Venetians entered Šibenik in 1412, an eighteen-clause contract between the town and Venice (Doge Michael Steno) was signed. The contract specified the conditions of the town's surrender (30 October 1412). The sixth clause promised a complete demolition of the Petar Misligien (*Mišlin*) Fortress that defended the town against Venice, and that the location of a new Venetian fort would be outside both the town and the district (Barbarić, Kolanović, 1986, 193–212, 197; Ljubić, 1882, 261; Ćuzela, 2005, 31). In the early years of Venetian rule in Šibenik, the Venetians repaired nothing but the small defensive towers near the entrance into the town harbour (1414) and the count's palace. Yet soon afterwards their attention shifted to the town citadel. Venice used its diplomacy to persuade the citizens of Šibenik that a citadel was of essential importance to the safety of the town. In the end, the citizens of Šibenik abandoned the clause and 'begged' the Doge to build a citadel in Šibenik. The erection of this fortress began as early as 1416, when the Doge sent 600 ducats to renovate the *castrum Sibinici*, or the Citadel of St Michael.[28] It was erected on the location of the older tower, the so-called Petar Misligien Fortress. The old tower was obviously not entirely demolished prior to the Venetian renovation project.[29] The documents show the obvious importance accorded to a link between the new citadel and the sea, so that both the army and supplies could

28 As early as 3 November 1416, the Venetian Senate concluded that the citadel was completed and that it now needed weaponry.

29 The internal space of the citadel was filled with earth to prevent enemies taking hold, while a platform for artillery was constructed in the eastern part. Venice decided that the captain of the Colfo Giacomo Trivisano should leave Zadar on 4 May 1417 and, together with the captain of the city and the master builder Giacomo Celega, inspect the state of the Šibenik citadel and arrange its completion.


*Hohenberg – Braun, 1576: Sebenico*

be transported via the naval route if necessary (Ljubić, 1882, 156, 225, 230–233; Ćuzela, 2005, 31, 34; Grubišić, 1974; Šibenik, 136–137).

When Trogir was conquered, the flag of Saint Mark was symbolically raised on the main square and on each tower. Construction of the Camerlengo citadel began soon afterward. The representatives of Trogir in Venice also argued that the urban space was too small to accommodate a citadel, and that the construction costs would impoverish the town.[30] Venice refused to listen to the town council's pleas and went ahead with the project. Doge Mocenigo promised to build a citadel (*facere forticilia*) in 'his' Trogir that would be to the 'benefit and security' of the town.[31] The *provveditore* Pietro Loredano was charged with finding a site for the future citadel.[32]

30 In Trogir, Venetian attacks in 1419 damaged many private residences, public buildings and city fortifications with towers. In a note dated 6 September 1420, the Venetian sea captain Laurentino Victuri, who had been sent from Venice to assess the situation in Dalmatian towns described the Trogir town walls as old and in poor condition.

31 A Zadar nobleman loyal to Venice Simone Detrico was appointed the count of Trogir (1420–1421). In 1420, Detrico sailed together with Pietro Loredano into the conquered town.

32 He asked the Doge Francesco Foscari to send to Trogir an engineer who could help make the best decision. The Doge sent the commanders of Venetian galleys, Paolo Pasquali, captain of the Colfo, Nicolo Trevisano and Bartolo Lombardo to access the island from all sides and decide on the best location for the citadel, the purpose of which was the defence of the city in its weakest parts. According to Loredano, the citadel

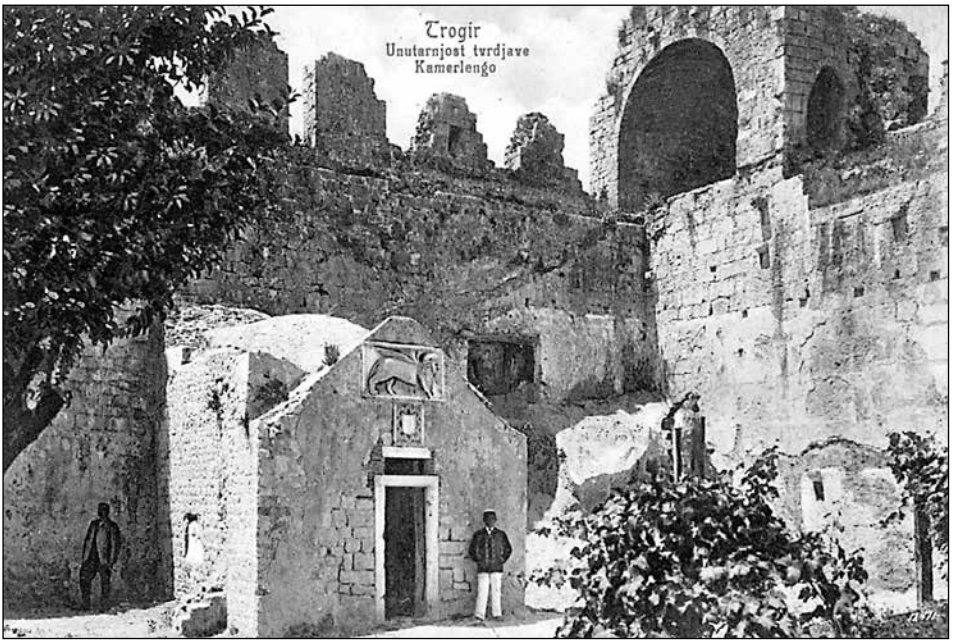
*The Camerlengo in Trogir today (photo: Joško Ćurković)*

Finally, the citadel was built on the south-western part of the town at the location of the old polygonal 'tower of chains' which became the backbone of the new structure (the tower was probably damaged during the earlier Venetian attacks on the town) (Ljubić, 1886, 29, 46; Lucio, 1674, 439; Lučić, 1979, 1000–1001; AHAZU-8, 35; AHAZU-9, 113–116; AHAZU-10, 21, 25–30).[33] Construction in Trogir was organized by Count Simone Detrico. The Camerlengo citadel, finally, had a trapezoidal floor-plan and a monumental polygonal tower in the south-western section, with smaller square towers in the north-western and south-eastern sections.[34]

was supposed to be built in the east, rather than the west of the harbour, where an old tower that closed the harbour with an iron chain had been situated. Loredano explained than on the west side there were too many tightly packed houses.

33 Following discussions about the site of the citadel, on 1 September 1420 it was agreed that the Trogir citadel would be built in the *burgus* near the town harbour (south-western part of the island upon which Trogir is situated). To build a citadel, the tower that formed part of the southern wall of the New Town had to be demolished, because a new tower closer to the future citadel was planned. It was also important to renovate this part of the town wall, facing west, as the deep sea made this location easily accessible to enemy vessels.

34 A small chapel adjoined the internal western wall of the Camerlengo. A stairway led from the chapel to the top of the Camerlengo.




*The chapel in the Camerlengo of Trogir, 20th c.*

As in Trogir, the Split delegates requested that Venice not keep an army garrisoned in or near the town, and to refrain from building a citadel. The Venetians agreed, saying that there was indeed no need "as the genuine loyalty you have displayed to our rule will be your citadel". In the treaty formalizing Split's surrender to Venice, the citizens of Split inserted a clause whereby they prohibited the erection of a Venetian citadel in the town or its environs. As early as the end of 1420, the Venetians responded to the "new pleas of Split's delegates" who, apparently, demanded a citadel that would protect the town.[35] Venice went so far as to emphasize that "although building a citadel is not necessary for the sake of protecting La Serenissima" they would nonetheless heed the plea and build it. It also promised to respond certain pleas related to debts. When speaking to the citizens of Split, the Venetians rather diplomatically made all decisions "to the benefit of Split and in accordance with the wishes of the citizens of Split." In their explanation, the primary reason for building a citadel is clear: "for the advancement and safety of our state, it is necessary to build a citadel in our town of Split, at the site where the Convent of St. Clare once stood (later it was built at another location)." (Ljubić, 1886, 275; ASV, Secreta

35 The response has been preserved as "Responses of the Venetian government to requests by Split noblemen regarding changes and additions to the privilege". Correctiones et additamenta privilegii Spalatensibus concessi sub die 9. iulii 1420.

Cons. Rog. VIII, 126; Gligoet al, 1996, 9, 14, 17, 100–102; Kečkemet, 1956, 267–303).[36] Finally, the citadel was built on the south-western waterfront and was integrated into the town walls. It closed access into the harbour.

For its construction, two ancient towers on the west-facing wall of the Diocletian's Palace were demolished, so they could not serve as a stronghold in any potential inner conflict against Venice. In a document dated 1431 the materials for the construction of the Split citadel are mentioned (Marasović, 2013, 254, 263). Other documents indicate that construction of the citadel was completed by either 1435 or 1441, because they mention the import of arms and equipment for the citadel, and the appointment of a castellan. It is possible that construction of the Split citadel continued until 1450/1451 (ASV, Senato, Mar, III, 46).[37] Finally, the citadel was built in the form of an irregular pentagon with three north-facing towers, with dimensions similar to the citadel in Trogir. Only the central northern tower has been preserved to the present, but surviving plans and archaeological excavations (Marasović, 2013; Čerina, 2009) provide an indication of the way that the citadel looked.[38] Just like other towns, the citadel in Split declined in importance in the sixteenth century when the Ottoman threat from the sea vanished.[39]

A few Venetian architects and engineers were involved in several Dalmatian towns: one of them was Lorenzo Picino, mentioned as *magistri Picini ingenarii nostri i prothoingenarius ducalis dominii Venetorum* in 1422 and 1425 (Hale, 1993, 18–19).[40] The same *magistrum Pizinum* was asked to inspect the citadel at the entrance to the Zadar harbour in 1414 and the citadel of Trogir in 1421 and 1425 (Marković, 2010, 154; Ljubić 1886, 182).[41] The *protomagistri* were often locals: they oversaw preparations of the terrain, supervised construction works, and recruited master builders and workmen. For instance, on 8 September 1420 a local Trogir *protomagister* named Marin Radojev and three other stonemasons were supposed to prepare the stone material for the construction of the Camerlengo citadel – *fabricha del castelo* (AHAZU-9, 113–116).[42] These craftsmen also

36 In Split, the first proposal was to build the citadel at the site of the St Clare convent, in the south-eastern corner of the palace, accompanied by a request for construction of a passage from the citadel to the sea. Venice promised to send the necessary funds. Yet construction of a citadel did not proceed immediately, or at the site selected originally. The change of plans was caused by a combination of circumstances that included wars and outbreaks of the plague.

37 Yet documents from 1449 indicate that even though the Venetian Count Marco Memmo rebuilt parts of the city wall, the Split representatives claimed that the walls were still in poor condition (*...in multi logi muri sono antiquissiu, minazando ruina*), seeking help for repairs from Venice (*...infortir et miter in forteza li muri e le turi.*)... The commune of Split was presented to Venice as poor and not capable of financing construction of the walls, so Venice introduced measures for it. MSHSM vol. 21, 290-4 (ASV, Senato. Mar. vol. III. c 46).

38 Also, the public building cadastre compiled in the eighteenth century, contains a description of the Split citadel (Duplančić, 1994, 140–141). Some of the buildings probably existed in the fifteenth century as well: military garrison houses, warehouses, chapels, and the castellan's residence.

39 It was finally destroyed in the nineteenth century during the brief period of French rule.

40 Picino was known for the construction of the fortifications at Lido in 1413. He conducted reconstruction of the citadel in Verona by 1428.

41 This is not the same person as Laurentius Pencinus Lapida who worked on the Šibenik cathedral.

42 *Simonis Detrico comitis cum Prothomagistro de fabricando forticilio conventio. Die 8 septembris 1420.*

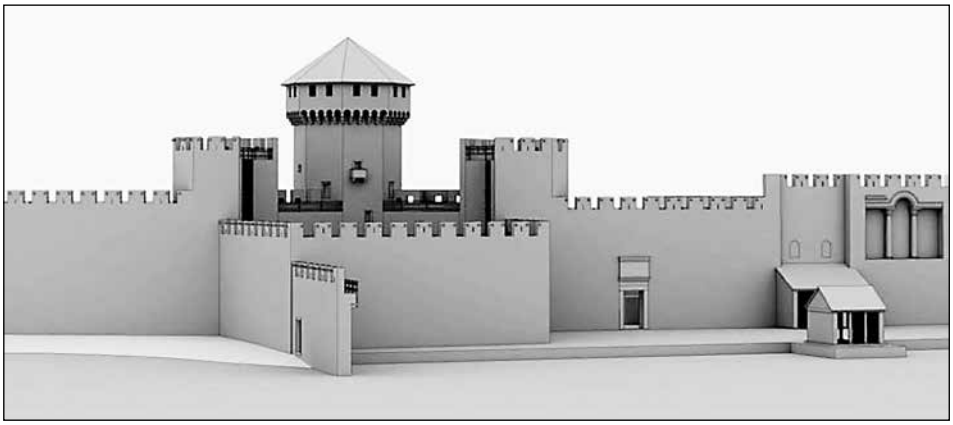
*The Citadella fort in Zadar (Model in the Archaeological Museum in Zadar, Croatia)*

circulated from one Dalmatian town to another. For instance, in 1435 the count of Trogir requested master builders Simone Bilsich and Mate Allegretti from Zadar to build the foundation for a moat (*fundamentus fovee*) on the east side of the Camerlengo, in the direction of the town. The same builders constructed, by 1437, the cistern of the Camerlengo (DAZd, AT, 67/1, 64–64v). The foreman of the 'workshop' that built the port might have been the Trogir head master Marin Radojev (DAZd, AT, 67/3, 114v).[43]

Frequently construction diverged from plans: epidemics or the economic resources of local communities determined the length and scope of a given construction project for lack of the money. Decisions were made and changed and often the scope of construction was cut back to fit the reduced budget or due to local influences. For instance, on 27 July 1421, Venice sent two syndics, Andrea Fuscola and Marco Miani, first to Zadar and then to Šibenik. They announced the continuation of construction of the citadel to the Šibenik count. (The need to connect the citadel to the sea was re-emphasized.) "Should the count say that these construction works cannot be completed due to a lack of money, you should

43 A 1438 contract specifies someone named Marin buying stone to build foundations for the bank in the port.

tell him that we are indeed surprised: the town income should be used for these purposes as the new routes would be used by Murlachi, as everyone knows" (Ljubić, 1886, 99, 103).[44] The discussions between the Venetian governors, the Venetian senate, and engineers in the field shows the number of different social groups that had a role in planning and carrying out architectural interventions.



*Presumed appearance of the Split citadel in 1441, according to K. Marasović, in: Marasović, 2013, 260.*

The citadels were necessary in Dalmatian towns for the accommodation of the Venetian army and weaponry (ASV, Senato, Mar, X, 194; Senato, Terra, VIII, 53; Šunjić, 1962, 263–264). They contained the commander's lodgings, soldiers' quarters and warehouses (ASV, Senato, Mar, X, 194; Senato, Terra, VIII, 53; Senato, Misti, LVII, 164). The chief military commander was the count (*comes et capitaneus*)[45] but the citadel was governed by a castellan (*comestabile*) who was the commander of the military units stationed in the citadel and the financial supervisor of revenues (*camerlengo*). The castellan was elected in the Venetian council for a term of two – later extended to four – years, and he commanded units of 25 soldiers (Ljubić, 1890, 144; ASV, Collegio, Notatorio, IX, 157; ASV, Senato, Delib., IV, 35; ASV, Senato, Mar, I, 47; IV, 123). He was responsible for his citadel *sub pena perdendi capitis*, and could not leave his post without permission (ASV, Collegio, Commissioni, VI, 97). Permanent fortifications were seen as a substi-

44 Yet the citadel was still unfinished and its construction and adaptation to new circumstances, as well as its furnishing with weaponry, would take a while. Šibenski diplomatarij, 230.

45 In the Dalmatian towns, commanders (*capitaneus*) were in charge of defence: in Split, Trogir and Šibenik the count (*comes*) was also a captain and it was only Zadar where two separate appointments – captain and count – were made.

tute for large standing forces in the fifteenth century (Mallett, Hale, 2006, 92). In Trogir, for instance, the count tried to persuade Venice that completion of the Camerlengo citadel would minimise the costs of defence and the number of the soldiers (ASV, Senato, Misti LVIII, 54, 113).

The soldiers were foreigners, mostly Italian mercenaries (*stipendiarii*). In the fifteenth century, Venice had to rely on the foreign mercenaries.[46] Zadar was the military centre of Dalmatia with the largest garrison (200–250 soldiers) (ASV, Senato, Delib., IV, 48; XXII, 131; Senato, Mar, V, 67; VIII, 93; Šunjić, 1962, 147).[47] In Zadar there was a significant *sondottiere* cavalry force (a small company of men-at-arms commanded by *condottiere* captain). A patrician official who had held this post in Zadar in the 1430s and 1440s was Bernardo Morosini (Mallett, Hale, 2006, 45). In 1409, there were 200 cavaliers in Zadar (ASV, Senato, Delib. IV, 48; Šunjić, 1962, 256), in 1454 and 1466 120 cavaliers (ASV, Senato, Mar, V, 67; VIII, 93; Šunjić, 1962, 256–257).


*Alessandro Ganassa, Traù (Source: Kovačić, Gradski kaštel, 107).*

In 1417, the Šibenik citadel had become ready to accommodate as many as 60 Venetian soldiers. Yet by 1419 their number had dropped to 40, partly because of consolidation of the situation in the town, and partly due to the declining danger from the hinterland (Novak, 1976, 154; Kolanović, 1995, 56; Ljubić, 1882, 276).[48] In 1414, Zadar helped the military when Croatian Ivan Nelipić attacked Šibenik from the hinterland (Ljubić, 1882,

46 The population of the Venetian Republic could not support the war efforts with its own soldiers.

47 In 1435 and 1437, the construction of a house to accommodate the garrison in the Zadar citadel was discussed (DT, I, 170/194).

48 In addition to the fortress, the Venetian garrison in Šibenik was accommodated in the large and small tower by the sea (*turris magna et parva portus Sibenici*) and at the mainland gates (*porta terre firme*).

164–169). The number of the soldiers depended primarily on external circumstances. During an Ottoman incursion in 1468, Šibenik asked for new 500 soldiers and Venice decided to send 300 (ASV, Senato, Mar, VIII, 192; Ljubić 1891, X, 419).

After the erection of the Split citadel, the building accommodated Venetian soldiers headed by the castellan. In Split there were 100 soldiers (Listine, VIII, 24) and in the time of Ottoman threat in the 1470s and 1480s there were many more soldiers – roughly 200–250 (Šunjić, 1967, 151; ASV, Senato, Mar, XI, 96). In times of peace the number of soldiers dropped again (in 1520 the military personnel in Split consisted of a commander and only 14 soldiers (Marasović, 2013, 263).

A space for the accommodation of soldiers and a large cistern were built in Trogir's citadel Camerlengo too. As many as 350 mercenaries resided in the Camerlengo in 1420. In comparison to other towns, this number is unusually high and may be related to the resistance mounted by Trogir. Yet as early as the following year the number of mercenaries fell to 150. Supporting a large number of soldiers was much too expensive for the town (Šunjić, 1967, 144).[49] In 1434, it was decided that only 100 of the 140 soldiers should stay (Ljubić, 1886, 107; Ljubić, 1890,144).[50]

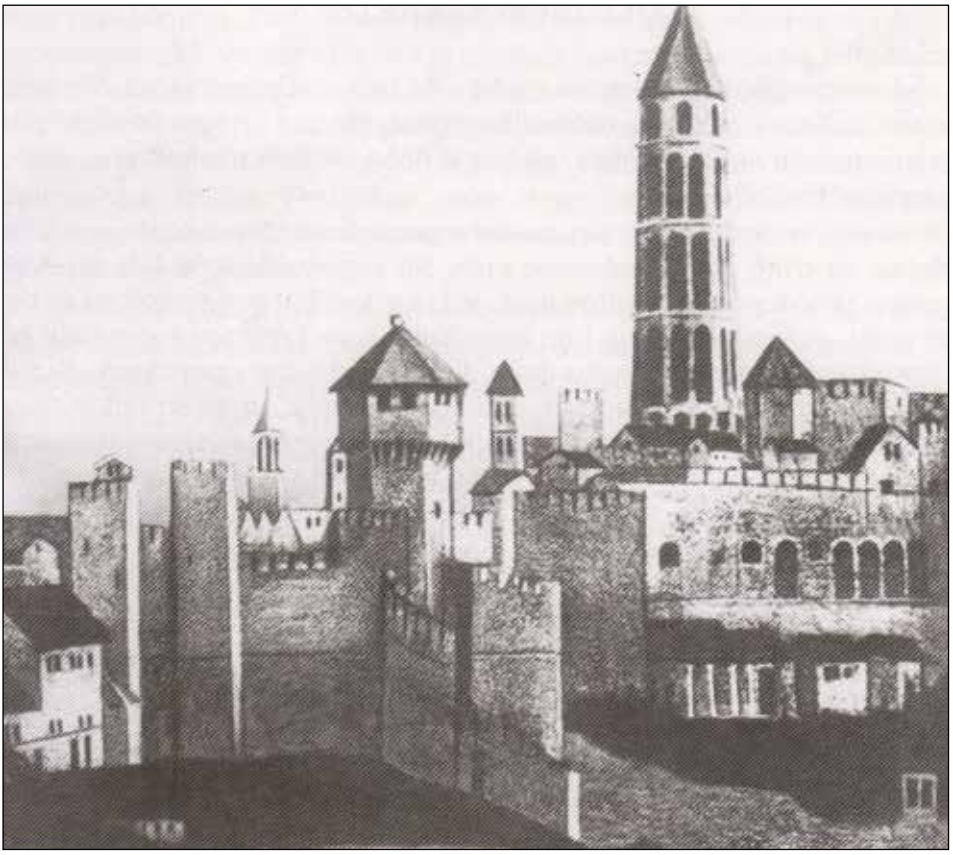
The Venetian citadels in Dalmatian towns played two main roles: they served as the seats of the conquerors and of the defenders. After much considerations about the site of the citadels, extant towers were reused to rebuild the citadels to meet new needs. They were reused for practical reasons, but there may have been political motives as well: not building a new citadel but simply refurbishing pre-existing fortifications. This sort of re-use could also be found in the case of governmental palaces as well. It would appear that the citizens of the Dalmatian towns had no choice, but to play along the wishes of Venetian government, after being "persuaded" that the towns needed defence. Venice decided to build or renovate fortresses to accommodate its army regardless of the earlier promises – actually, it was the first construction project inside towns. The construction of a citadel was rationalized as due to sorely needed renovations, following the destruction that occurred during the invasion of the towns.

The sites of the citadels on the outskirts of the towns enabled separate defence for the Venetian army. In Zadar, with two citadels (*Castello* and *Citadella*), a diagonal military-strategic axis controlled the town centre (Petricioli, 1965, 118; Ljubić, 1878, 155).[51] In 1423, the Venetian council received an application by the count of Zadar to approve additional fortifications that would secure the citadel even more (but in the first place from within the town). There were plans to build a wall with a moat and crenellation that would additionally protect the Castello citadel and the harbour (as well as the nearby urban neighbourhoods). The additional fortifications were supposed to have

49 In 1432, the count of Trogir persuaded the Venetian government that it made much more sense to complete the citadel, because that would reduce military expenses and the number of soldiers.

50 The chief military commander was the count, and the Camerlengo was governed by a castellan (*comestabile*), who was elected by the Venetian council for the period of two – later extended to four – years. He commanded units of 25 soldiers.

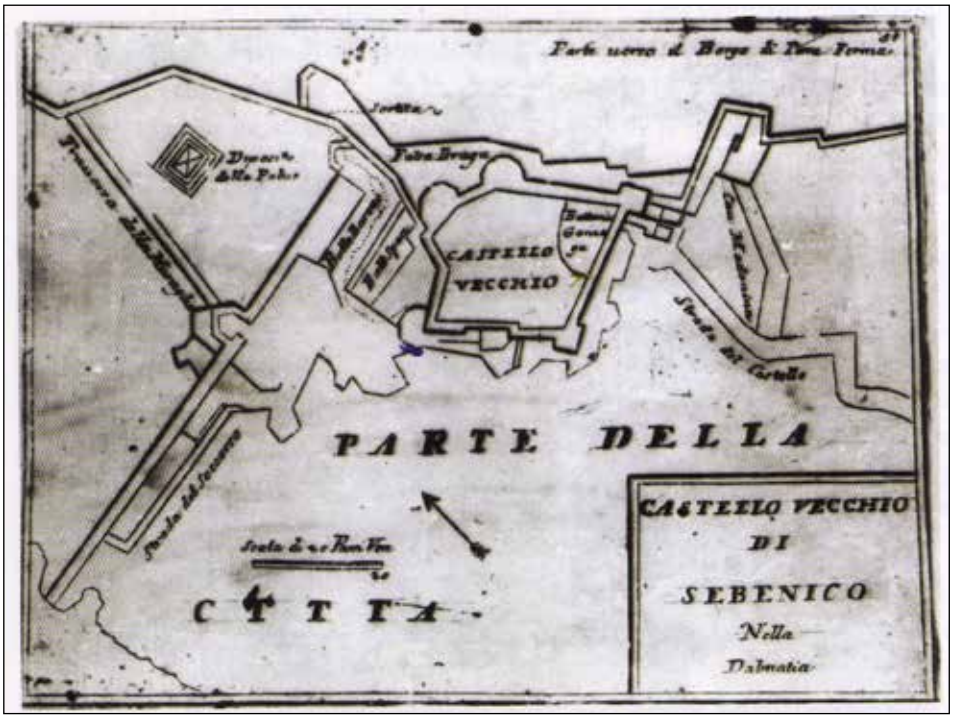
51 In 1414, construction of a new citadel to accommodate the Venetian army as well as the demolition of Citadella came under discussion (the latter, however, never took place).



*Girolamo di Santa Croce: Spalato, 1549.*

the shape of a wide arc and to extend from the gate of Saint Demetrius (*a porta sancti Dimitrii siue Brusata*), east of the Castello citadel, following a straight line from the south-western wall. In this way, the application suggested that the fortification could accommodate the entire garrison and all of the local Venetians, but would not allow the citizens of Zadar to stay inside (Raukar, Petricioli, Švelec, 1980, III, 130). Another, similar wall was supposed to enlarge the Citadella in the south-western part of the town fortifications, by encircling the citadel and the captain's palace (Ljubić, 1886, 266).[52] While both proposals were rejected, this decision demonstrates the relationship between the Venetians and locals. In 1437, Venice decided to build a moat filled with wa-

52 Extending behind the apse of the church of St Stephen with a wall the length that was supposed to be 31 fathoms. This application was received on 11 March 1424.




*V. Coronelli, Sebenico, 1688*

ter around the citadel. Therefore the nearby houses were torn down (Hilje, 2011). This demonstrates the intention for it to serve as a stronghold against the internal rebellions and not only external attacks. According to the 1421 Zadar cadastre (Antoljak, 1949, 391–404),[53] a major share of the land plots in the area called *Babe* around the *Citadella* was owned by the Venetian government. The government then leased these sections to artisans who owned wooden cottages on them (*edificium de lignamine*). Many of them probably took part in the building of the *Citadella*, probably as diggers, blacksmiths, etc.[54] The security of both Zadar's *Castello* and *Citadella* was insured by the *ducale*

53 The cadastre was compiled following the order of Doge Tomaso Mocenigo, who, by way of Count Nicola Veneri and Captain Marko Dandolo, ordered the Zadar chancellor to compose *unum inventarium de omnibus bonis et possessionibus nostri communis existentious in districtu nostro Jadre, None, Aurane et Novigradi* (30 September 1421). According to the cadastre, in 1410 the city had 7,549 residents; in 1460, 7,280 (plague), while in 1500 Zadar had just 5,740 residents.

54 The Zadar government forcibly exchanged some other houses located at strategic site in town: for instance, two brick houses covered with shingles in the St Mary area (near the east city walls) that the commune obtained in exchange from Simone de Begna. There are also examples such as exchanges of the plots near the captain's and count's palaces. The cadastre furthermore mentions two more sections: one was situated


*Juster, 1708: Pianta di Sebenico*

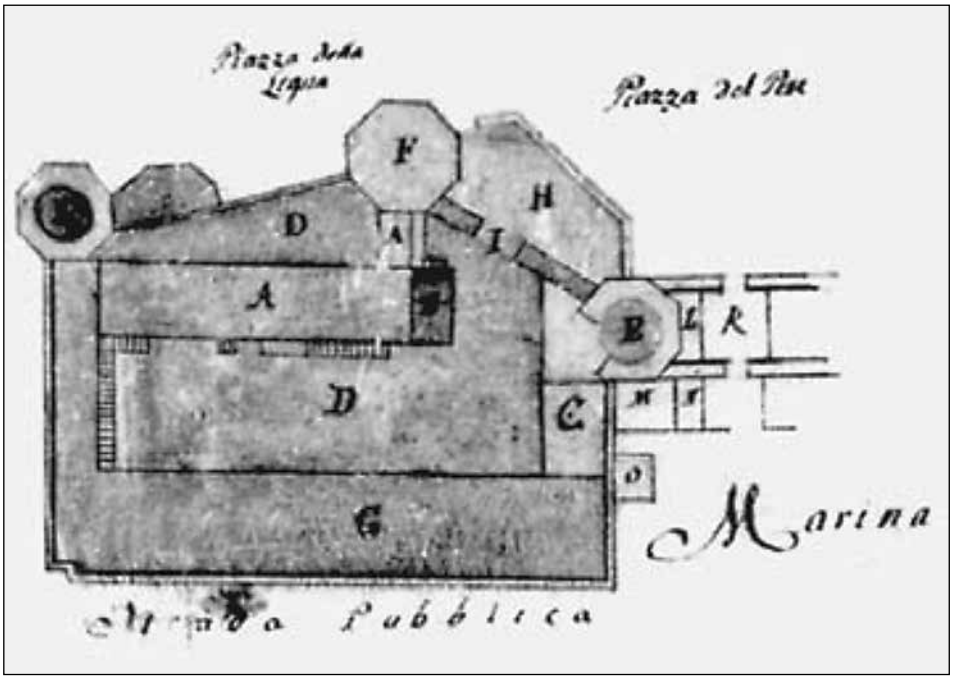
dated 1458, according to which all residents of the town and the districts were prohibited from entering the citadels. They were furthermore not to be recruited into the army (Petricioli, 1965, 118). In 1454 some buildings were demolished *pro fabricam fossi ... prope Citadellam* (Ljubić, 1891, 41; DT, I. 136).

In Šibenik, as early as the time of P. Misligien, the western, seaside town wall was constructed. It was argued that another *barbakan* ('double wall') was needed, as it made possible an isolated and defensible route from the citadel to the sea, which was of great importance to the Venetian army.[55] Thus, in the early decades of the fifteenth century, through the construction of a 'double wall' the coastal side of Šibenik came to be isolated from traffic providing a defensible route from the citadel to the sea and linking the citadel to the harbour.[56] The seventeenth-century town maps describe that communication as

next to the abattoir doors. In addition, the cadastre mentions an empty section in the area of St. Mary, near the communal palace in Zadar.

55 The configuration of the terrain was inconvenient, as the citadel was located on a hill. The nineteenth-century descriptions of Emperor Francis I mention stairs that connected the citadel to the sea, but as there are no traces of these stairs, it is likely that they were made of wood.

56 It is possible that a military route of this kind existed in Trogir as well. These fortifications in both towns were linked to the towers of the count's palaces.




*F. A. Kurir: Split citadel, 1798, Marasović, 258*

*strada del soccorso*. [57] All of these new buildings were supposed to reinforce and secure the western side of the town. The eastern side was supported by reinforcement of the tower of St Francis (in the east) and the waterfront near the count's palace.

The citadel in Split was built outside the walls of Diocletian's palace in the harbour. It faced the sea, yet its position was excellent for overseeing the town. The three towers facing the town suggest that the role of the citadel in the town may have also been intended to facilitate the possible evacuation of the army.

The Trogir citadel was also supposed to occupy a strategically key position that allowed monitoring the entrance into the town, as well as the entire town, from the sea (Lučić, 1979, 946–947). The western shore facing the moat was filled with earth and levelled. Following the Venetian conquest in 1420, part of the New Town was proclaimed public.[58] The reason for the exchange was explained as *pro securitate castri* (DAZd, AT,

57 A southern wall, closing the double wall from the sea side, was built next to the sea. The construction of a wall from the upper gate to the sea, formed by a double wall, began as early as 1417, although some documents mention 1421, when the construction site was visited by the Venetian syndics, A. Fuscola and M. Miani (Ljubić, 1886, 99).

58 To ensure sound surveillance of the area around the Camerlengo, each construction project had to be

67/2, 216 v; 67/3, 10v, 108v; Benyovsky, 2002/2003).[59] The sections around the Camerlengo that became 'public property' were later leased; in this way the population around the citadel could be controlled. Also, in peacetime, leasing these sections supplied the town with a steady income (DAZd, AT, 67/5, 41, 152).[60] Moreover, in 1420 Loredano ordered demolition of the wall between the old town centre and the New Town of Trogir (AHAZU-10, 30; Lučić, 1997, 997; Kovačić, 1997/1997, 112).[61] Although the reason for this demolition was strategic, in the Doge's letter of 1421 to the count of Trogir, it is explained that the wall separated noblemen from the *popolani*.[62] The conditions were thus created for Trogir to establish a consolidated defence system.[63] No private buildings were to be constructed near the new fortifications in Trogir (DAZd, AT, 67/5, 177v).[64]

The appearances and the locations of the citadels were determined by the Venetian aspiration to control the town and the maritime insignia of the Republic. The construction of a citadel in many ways affected the appearance and property relations in the area that surrounded it. Their iconography was supposed to symbolize Venice and its representatives. In Zadar, the relief of the winged lion of St. Mark was incorporated in the façade of the "Little Armoury" of the citadel (*castello*).[65] The northern face of Split's citadel tower

approved by the count. To make room for the Camerlengo, some of the wooden cottages were demolished and their owners were given substitute housing or money (DAZd, AT, 67/1, 65v). Some of the privately owned land sections in the New Town were purchased or exchanged with their owners, also in the interest of better defence and control of the area.

59 For instance, following the erection of the Camerlengo, in 1438 the count ordered that Petromila, a daughter of Nikola Perdusich, in exchange for her section *in civitate nova apud castrum Tragurij* should receive a plot of the same size elsewhere in the New Town.

60 Occasionally previous owners took their former sections under lease. The New Town accommodated an increasing number of immigrants from the District as well as other regions. For instance, in 1451 the count coerced a Trogir nobleman into selling him a section; later the same nobleman leased that section, now 'communal', for the period of 29 years.

61 The wall that separated these two neighbourhoods may be seen in the nineteenth-century Trogir cadastre. Archaeologists have confirmed the direction of the ca. 140 meter-wall between the old centre and the former Suburbia (New Town) (long ca. 140 m).

62 In the words of the Doge, this wall not only separated two different urban zones, but also two socially and politically disparate groups. Yet complete social and urban integration failed to take place and these two parts of the town remained separate. This was reflected not only in the population structure, appearance and function of the urban space, but also their separate names.

63 Yet the wall was supposed to be demolished only after the fortification of the 'tower of chains'. While there was no formal social division in Trogir, the New Town was socially different from the old centre. This is probably the reason why the above-mentioned letter from the count emphasized that the wall between the new and the old parts of the town separated aristocrats from plebeians. The two parts of the town remained different even after the demolition of the wall—not just in terms of the appearance and function of the urban space, but also with regard to the population structure.

64 The 1443 ducale ordered that no building should be erected at a distance of less than 40 cubes, and the location called Oprah (in the far west) had to remain empty. In the New Town, construction was not permitted near St. Dominic nor St. Mary. The Monastery of St. John the Baptist owned a plot of land facing the Church of St. Dominic (near the New Town gates), but the section had to be placed at disposal of the communal authorities. The section was surrounded by other communal real estate, from its southern and western sides, while the eastern boundary was formed by the (by then dilapidated) wall dividing the old centre and the New Town.

65 Possibly made by the artists around the famed Juraj Dalmatinac/Giorgio da Šibenik (Hilje, 2011, 111).

contained a relief of the lion of St Mark with a book (destroyed after the First World War). The sides had coats of arms that probably belonged to counts who ruled at the time of the tower's construction. In Šibenik, the Venetian Calbo family immortalized its presence twice by placing its coat of arms on the town gates: first during the rule of Antonio Calbo (1486–1489) and then a century later under Giovanni Calbo. On the south side of the Camerlengo in Trogir, near the gate, the Venetian lion of St. Mark with an open book was engraved into the stone. Below the lion, coats of arms of Pietro Loredano, Count Magdaleno Contarini and Doge Francesco Foscari can be seen.[66] The symbol of St. Mark can be found in all towns under Venetian rule at much higher frequency than any other symbol of political power dating from the pre-Venetian period as a testament to the integrated space of Venetian Dalmatia. It was at the same time a state and religious symbol, representing the subjugation of the town to Venice, but also even more so the protective role of Venice and the unity of the Venetian state (Crouzet-Pavan, 2005; Georgopolou, 2001, 120–121).[67]

The isolated character of Venetian citadels was strengthened by decrees and regulations which reflected relations with local communities. Castellans and soldiers were not allowed to leave the citadel without permission or have any relations with the locals (ASV, Senato, Mar I, 47; II, 183v; III, 173v).[68] Venice had security concerns over local residents serving as soldiers, questioning the loyalty of such locals and neighbouring regions. A decree from 1423 stipulated that all Šibenik soldiers who were either of Slavic origin or married to women from neighbouring villages or from Albania had to leave the citadel. However, there were "Dalmatians" as well as "Slavs" in the Venetian army, probably due to a shortage of soldiers. In 1473, the Venetian administration was hiring Greek and Albanian mercenaries in Dalmatian towns (Šunjić, 1962, 282, 278–283; ASV, Senato, Mar, IX, 160v). Women, except for the commander's wife, were not welcome in the citadel.[69] However, there are many cases which show assimilation with locals. As early as 1429, some soldiers from the Camerlengo were members of a local confraternity.[70] A decree dated 20 November 1420 prohibited the soldiers who rented houses in Trogir to assume ownership of these houses. Later, Venetian soldiers from Trogir began to pursue

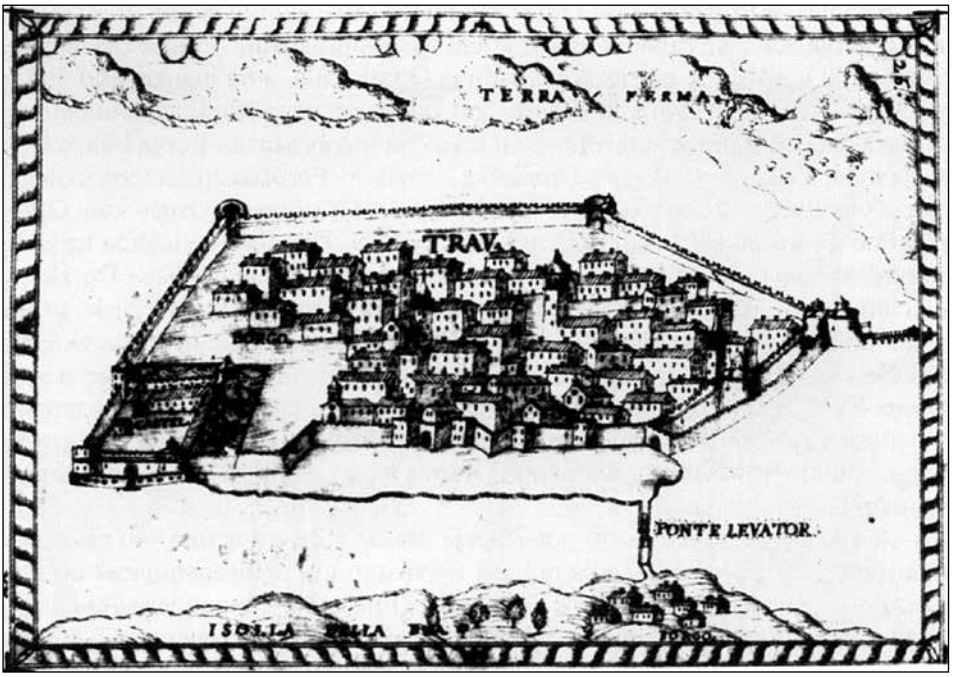
66 The symbol of St. Mark in the Eastern Adriatic has received little attention overall after Rizzi's *I leoni di Venezia in Dalmazia*. Unfortunately, few Venetian lions have survived the destructions of the 1930s, when they were perceived as a symbol of pro-Italian politics (Jareb, 2007; Praga, 1932; Rizzi, 2005).

67 In the fifteenth century, the Lion of St. Mark and the doge became associated in a relationship "that transformed delegation of power to power sharing." (Pincus, 2002, 89–137, 117).

68 Separate water tanks inside the Šibenik citadel were renovated in 1454 in Šibenik, and today they are the only surviving parts of the dilapidated citadel (Barbarić, Kolanović, 1986, 292). In Šibenik, the chapel of St. Michael was located inside the citadel. This chapel gave the citadel its name, *castrum sancti Michaelis* (Ljubić 1874, 13). Prior to the arrival of the Venetians, the chapel retained the painting of Our Lady of the Citadel, venerated by the citizens of Šibenik. Later the painting was moved to the cathedral because the chapel was later limited to use only by the army (Ćuzela, 2005, 37).

69 The only exception was the blacksmith Cvitan, who was allowed to stay but without his wife. The explanation that in Ostrovica (settlement in the district) a soldier's wife opened the gate of the citadel to the enemy, was hardly convincing.

70 The castellan Blasius Laurentius, captains Guiglelmus and Petrus de Mediolano, as well as Toma, the son of a mercenary.

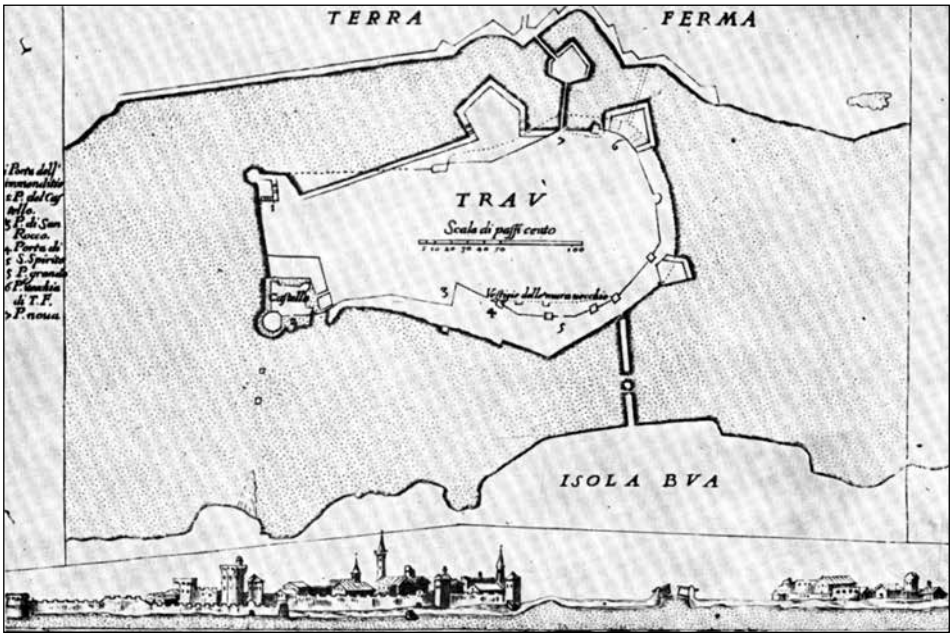



*Angello degli Oddi, Traù, 16th century*

diverse occupations.[71] It seems that soon after Venice came to power in Trogir in 1420, and against all prohibitions, some soldiers did assimilate, purchasing real estate and marrying local women (Šunjić, 1967, 145; Ljubić, 1886, 107). The similar examples can be found in Šibenik (Birin, 2012, 107).

The role of the Venetian army as a defence force became more evident as the Ottoman threat from the hinterland increased. The growing threat of Ottoman incursions led to a completely new appraisal of urban fortifications. The initial Ottoman raids possibly played a role in the gradual change in public opinion of the Venetian army and citadels inside the towns. The position of the citadels and the zones under strict Venetian control in the Dalmatian towns allowed for separate defence against all possible enemies: internal but also, even more so, external. At the beginning of the Quatrocento, growing Ottoman power troubled the Venetians very little. However, as early as 1414, the first Ottoman raiders arrived in the Šibenik hinterland via Bosnia (Barbarić, Kolanović, 1986, 292–293;

71 For instance the mercenary (*stipendiarius*) Marcheto, a son of the late Giacomo of Siena, worked as a tailor in 1468, while Marco from Venice became a resident (*habitator*), and leased of a section of land and began working on it (DAZd, AT, 68/8, 8, 123).




*Johannes Lucio, 17th c., Trogir*

Novak, 1976, 146).[72] The swift renovation of the Šibenik citadel was also important because the Croatian-Hungarian army was still in the hinterland.[73] In reply to this request, the Venetian authorities ordered that each count of Šibenik had to erect one new tower. A corridor inside the town wall also had to be constructed (Lucio, 1674, 460; Ljubić, 1890, 276–281, 322–327, 354–355; Ljubić, 1891, 33–34; ASV, Senato. Mar., IV. c. 7).[74]

72 Ottoman incursions in the Šibenik area are mentioned again. Construction of the citadel continued in 1440 under Count Giacomo Donado. Parts of the wall are still described as made of wood. In 1450, the city suffered a major outbreak of the plague. Another outbreak, in 1456–57, had dire consequences for the population of Šibenik. In 1454, the tower facing the sea in the citadel, which needed a roof, was renovated, and two cisterns for soldiers were constructed.

73 For this reason, the side-doors of the Franciscan monastery that formed part of the fortifications were mentioned as potential sources of peril. The addition of a wall to the citadel continued in 1432, when the Venetian government allowed the count of Šibenik, Moisi Grimani, to improve the town's safety. It is likely that the wall that was built then is the wall bearing the coat of arms of the Šibenik count between 1430 and 1432 (the lower section of the same wall contains the coat of arms of Count Biaggio Dolfin). Later, in the mid-fifteenth century, the fortification system was oriented toward the hinterland for the same reason: for instance, fearing attacks by the Croatian Ban Peter, the citizens of Šibenik appealed to Venice to construct ten new towers on the northern city wall.

74 In 1449, four noblemen were appointed to supervise construction. Yet the towers were never built, and the only construction works that did take place were repairs to three old towers on the northern wall in the 1450s. The seventeenth-century historian Ivan Lučić described the coastal fortifications in Šibenik:

In the late 1440s and the beginning of the 1450s, Christophorus Marcello and Francisco Michiel, the counts of Šibenik, asked Doge Francesco Foscari to increase the number of towers and to provide sufficient armour to defend against the Ottomans (Ljubić, 1890, 358–362; Romano, 2007). Ottoman attacks are mentioned in Trogir as early as 1417, and were mentioned again in 1434 and 1441. On 3 April 1424, Pietro Loredano ordered the repair of towers and bridges toward the hinterland, so in the same year a workshop was organized and tasked with the construction of fortifications, while labourers were recruited (AHAZU-10, f. 30–36; 25–30).[75] The bridge facing the mainland, destroyed in 1420, was replaced with a new wooden drawbridge (Lucio, 1674, 449) but only after the completion of the Camerlengo in 1437 (Lučić, 1979, 999–1000). In 1463, Venice decided that the count of Split had to prepare fortifications for potential Ottoman attacks (ASV, Secreta cons. Rog. XXI, 161).[76] Pursuant to Doge Christoforo Mauro's decision of 1469, Zadar became the official centre of Dalmatian defence against Ottomans (DT, II, 743).

In the first half of the fifteenth century, Venice was a maritime republic that built citadels facing the sea. The waterfront position of the citadels emphasized the Venetian maritime character and its strategic goals. Hence, most of the investment went into the construction of fortifications facing the sea.[77] The shift from sea-facing fortifications to landward ones in the late fifteenth and then sixteenth century reflected changing Venetian priorities, but also changing local priorities (defence against the Ottomans). From the latter half of the fifteenth century, the fortifications facing the north (hinterland) became a priority for the Venetian government, while those facing seawards lost their significance.[78] The citadels began to lose their importance and began to decay.[79] Furthermore, changes in military technology required the construction of stronger bastions so medieval citadels and towers ceased to be useful.[80] The ballistic power of the new artillery made most of the old fortifications obsolete. In the latter half of the fifteenth century, fortifications were modified in response to the new effectiveness of artillery. The architectural features on permanent Venetian fortifications in the latter half of the fifteenth century

*"tuttavia in Sibenico ancora rimangono alcuni pezzi di mura deboli, e basse, che vengono ad unirsi con le case private"*.

75 Venice ordered the recruitment of labourers among residents of the town and District in order to renovate the city wall. A ducale dated 12 December 1442 ordered the excavation of a canal around the city. The *popolani*, however, tried to exempt themselves from this duty, arguing that recruitment did not apply to them.

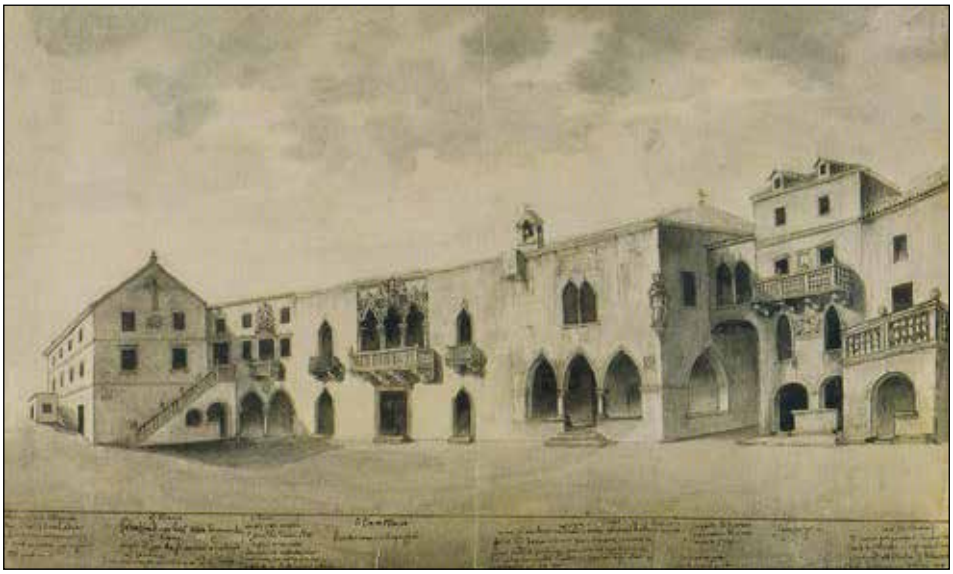
76 The public labour was to be divided among the citizens of Split.

77 For instance, there were no more than three towers on the northern wall in fifteenth-century Šibenik (between the Great Gate and Citadel).

78 The transition to the sixteenth century marked a turning point, for after the Battle of Lepanto in 1571 the naval threat from the sea decreased while the growing Ottoman threat in the hinterland shifted the focus of defence.

79 When the Ottomans took Negroponte in 1470, the Venetian Empire was riven by threats and serious losses (Tenenti, 1973, 24–25). At this time, the hinterland of the Dalmatian towns was threatened by Ottoman incursions, which resulted in Venetian-Ottoman wars from 1479 to 1573. The coastal Dalmatian towns never fell under Ottoman dominion, but their hinterlands were reduced to a very thin belt under Venetian rule (Madunić, 2012, 31; Malipiero, 1843-1844, 167, year 1499).

80 For instance, reports from the beginning of 1470s mentioned that in the Dalmatian capital of Zadar (*that was caput totius Dalmatie*), the fortifications were in poor condition: *muri civitatis a parte terre ... tendunt in ruinam* (ASV, Senato, Mar, X, IX, 41, X, 66).



*Split, 19th century count's palace*

included the thickening and scarping of walls and the construction of ravelins to make the fortifications less vulnerable to artillery (Hale, 90). In spite of the immense cost, Venice built some impregnable fortresses during the sixteenth century (as in Zadar or Šibenik) (Tenetni, 1973, 28; Deanović, 1988; de Benvenuti, 2006).

## GOVERNMENTAL PALACES

Another clear indicator of Venetian influence in Dalmatian towns was the renovation and reconstruction of communal palaces, the seats of new counts (captain-counts).[81] The appearance of the palace had to symbolize a good and well-organized government, as well as subjugation to the Republic. The residence of a Venetian official was a part of the public space, typically located in the urban core (usually in the old communal palace). Following the conquest of Dalmatian towns in the fifteenth century, Venice immediately began to restore priority buildings, in the first place the town fortifications. Usually, after troops were garrisoned in the towns, other public buildings were rebuilt or erected. In addition to these, the new Venetian authorities accorded special attention to the repair of communal palaces. Investment in public buildings was particularly evident during the sixteenth century (Calabi, 1986).

Restoration of the communal palace in Zadar began soon after the conquest: the town

81 In the fifteenth century there were 42 counts in Zadar alone, and 38 in Split and Trogir (Šunjić, 1967, 99).

was very important to the entire region: it was the first town that came under Venetian rule and had a highly sensitive position in the newly-conquered land, where the governor was supposed to "stabilize" the territory. Even before the establishment of the *provveditore generale in Dalmazia e Albania* in the sixteenth century (DT, III, 1081), Zadar had some authority over Venetian officials in Dalmatia:[82] in 1450 it was declared the chief town in Venetian Dalmatia by Doge Francesco Foscari (DT, I, 327; Arbel, 201, 152; Novak, 1965). As early as 1410, the Venetian Senate sent 400 ducats for the renovation of Zadar's communal palace (*palatium comitatus et habitations comitis nostri Jadre*). The count's palaces were also meant to be well furnished and secure sites for Venetian officials. The palace was located east of the great square, near the church of St Stephen (ASV, Misti. 48, 139). Count Giacomo Trivisan and Captain Nicolò Venier oversaw the palace's repair in 1414 (Pederin, 1990, 15). The Zadar cadastre of 1421 described the communal palace as "made of stone, covered with shingles, with an office, warehouses, cellars, two animal sheds and detainment cells inside". Repairs were also conducted in the period between 1422 and 1440 (Ljubić, 1878, 85; Ljubić, 1886, VIII, 125; DT, I, 171, 192, 349, 406, 440). For instance, in 1431 the Senate approved 100 libras for this renovation (DT, I, 114). Later, the captain's palace was erected near the count's palace. The new government set aside a site where this house could be built:[83] some of the land was confiscated from Zadar's "disloyal" citizens[84] (Antoljak, 1949, 375, 390–393).

In Šibenik, the count's palace remained at the same site as the former communal palace.[85] However, it was separated from the connected town walls and turned into an independent citadel that could defend itself. In the fifteenth century, the communal palace in Šibenik had a courtyard with a cistern, a large tower, communal salt warehouses with entrances on the coast, rooms for the town council and a suite for the count (Ljubić, 1886, VIII, 140–141).[86] Because of the construction of the cathedral, in 1432 the western façade of the palace underwent alterations (repairs of the palace were mentioned in the period beginning in 1422/23 and extending to 1437/40.) In 1442, two shops (owned by

82 *...attamen quam regimen spectabilitam vestrarum Jadre est caput totius Dalmatie ubi si quid mandatum in Dalmatia est ibi esse debet* (Šunjić, 1967, 100; DAZ, Arhiv Korčule, VII, 18/0, 50).

83 Several other buildings near the count's palace (close to St Stephen's church) were owned by Venice and obviously used for officials (1421): eight stone houses (west of the church) for tax collectors. In 1454, another house near the captain's palace, surrounded by houses previously owned by Simone de Begna and now by Venice, was mentioned. That house used to be owned by *quondam domina Zuvica de Berberio*. It was exchanged, in 1429, for an estate in the District, which had been confiscated from a rebel. Sources furthermore mention, in 1454, another state-owned house obtained in 1428 from the original owner, Emilio de Begna, in exchange for land in the District (formerly owned by rebels). The Venetian authorities had a shop near the church of St Peter. A house in the area St. Vitus was obtained from Ser Gabriele de Nosdrogna in exchange for other real estate (Antoljak, 1949, 413–414).

84 The owners of nearby houses were offered to exchange their land for property elsewhere (the owners were "loyal"): three houses near the palace were purchased by Venice from Simone de Begna. Similarly, *Cressius* Civadelis's house, with its courtyard and animal stables, was exchanged.

85 The palace went through numerous alterations over the centuries, beginning with its first mention in 1292. Following the Venetian attack in 1378, the palace and the nearby coastal fortifications underwent alterations.

86 Repairs of the palace were mentioned in the period beginning in 1422/23 and ending in 1437/40.

*The count's palace in Trogir today (photo: Joško Ćurković)*

the chancellor) were demolished, as well as another palace wall (Ljubić, 1886, 140–141; Zelić, 2008, 63; SK 259–262). In the fifteenth century, the count's palace in Šibenik had a courtyard with a cistern (Ljubić, 1886, 141), a large tower, communal salt warehouses with entrances on the coast, rooms for the town council and an apartment for the count. The south-eastern corner accommodated the palace chapel (Zelić, 1999, 145–149).

The governmental palace in Split was located on the south-western part of the square. In 1431, the town council requested that the Venetian government repair the communal palace, and the request was swiftly approved (Novak, II, 1961 441). The first floor housed the count's residence, and the second floor the gaol, guards' rooms, and an office. Unfortunately, in the early nineteenth century the former palatial complex was demolished, and all that remains are old urban landscape maps and prints showing the former palace.

Much material evidence indicates that during the conquest of Trogir, the Venetian fleet attacked from the east much more than from other directions. For this reason, the eastern side of the old town centre, which was also the location of the most important public and religious buildings, suffered the most under Venetian bombardment. So when Venice came to power, most of the investment went into the construction of the town square, especially the renovation of the count's palace (AHAZU-10, 23, 37). The Trogir council requested from the Venetians the reconstruction of "the communal palace tower" that was destroyed during Venetian attacks, as inexpensively as possible (AHAZU-9, 95;


*Angelo degli Oddi, Spalato 1584*

Lučić, 1979, 994, 1001).[87] Fifteenth-century sources describe some rooms in the Trogir communal palace[88] (DAZd, AT, I/13, 15v; 67/3, 9, 29, 48v, 51v, 52v, 136v, 143v, 168; AT, 67/ 2, 45; 67/3, 174).

The fact that Venice arrived in Dalmatia in the fifteenth century at a time when the towns had already assumed their form necessarily limited Venetian urbanization to renovation and adaptation. In most Dalmatian towns, Venice adapted extant communal palaces and reused them without major modifications, for this was cheaper. But the history of their sites also made these palaces reminders of Venetian dominion and its legacy. To disassociate buildings with their past, the Venetian authorities arranged for minor architectural details that gave them a Venetian façade – in their appearance, symbols, function or name (count's instead of communal palace). That strategy linked the physical and historical revision of the buildings and the institutions they reflected (as was the case with town citadels). The reuse of these buildings, as well as political structures and institutions, by the new rulers demonstrated that Venice "lawfully inherited Dalmatia". In towns

87 Possibly the tower of St. John.

88 For instance, a large hall in which the judge's table was placed.

in the State, such as those on the island of Crete, Venice also adapted extant communal palaces for its counts (Georgopoulou, 2001, 94–100).[89]

Numerous public offices and administrative bodies were accommodated in the theses palaces: usually the local councils met in the count's palaces. However, many lower-ranking officials were accommodated separately. A house for officials near the count's palace in Trogir was leased in the fifteenth century, as documented in 1426 (Pederin, 1987, 101–177, 60, 163). In Zadar, residences for other officials were located near the count's palace. For instance, the *camerarius* lived in the house confiscated from the "disloyal" Filippo de Georgiis and Zoilo de Nassis.

The residence of a Venetian official was a part of the public space. It was typically located in the urban core, next to the loggia where communal political and legal life proceeded. Venice made sure that the Venetian representative occupied a communal rather than private house. Because these residences were first and foremost public property, Venetian councils made sure they did not become monuments to any particular count (by decorating them with family insignia). For this reason, counts were not allowed to repair nor add to their palaces without the explicit permission of the Venetian senate. (If they were allowed do so, they had to use paint only rather than have these carved in stone.) Unauthorized repairs to buildings where individual rectors resided were punished, as they signified privatization of the palace (Ljubić, 1876, 150).[90] Venice attempted to define public spaces using collective symbols rather than individual monuments. This ensured that the Venetian lion had no competition. Instead of individual Venetian rulers, the lion of St. Mark was emblazoned on public buildings, fortifications and town gates (O'Connell, 2009, 60). But this policy was not entirely successful –even though the lion of St. Mark occupied a highly visible place, the insignia of individual counts and families were present in the public space (as was the case with the citadels).

The well transferred from Zadar count's palace to the Franciscan cloister in the nineteenth century bears the coat of arms of the count who ruled between 1410 and 1419 (Stagličić, 1982, 75–80). The well of the Šibenik count's palace cistern still bears the insignia of both the Venetian Republic and the Donado family (Count Jacob Donado 1429–1431) (Ljubić, 1882, 242). The well from the internal palace courtyard bore the coat of arms of Count Jacobus Donà (1439–1441). As early as 1426, six years after the conquest of Trogir, the repair of the Trogir count's palace began under Count Giacomo Barbarigo (1426–1428) (AHAZU-10, 37).[91] The count's coat of arms may be found on the well in the Trogir palace courtyard, reconstructed in the fifteenth century. The iconography on the Trogir loggia (1471) is of interest here, as the symbols of Venetian officials, coats of arms of the local elite and old church patrons are featured together with the state symbol[92] (Ivančević, 1991; Anderle, 2002).

89 In Negroponte, Thiriet suggests, the Venetian state inherited a palace from the Ghisi.

90 Similar examples may be found in other parts of the Venetian state, such as the island of Crete. (For Cretan examples, see Georgopoulou, 2001, 54.) On the island of Corfu, state inquisitors ordered the removal of all such insignia.

91 *Die 8. Augusti 1426. Comitis Traguriensis Domus in Platea destructae a bombardis locatio*.

92 The largest sculpture of the lion of St. Mark in Dalmatia (not preserved), showed the Venetian lion with

*The loggia in Traù, 20th c.*

## CONCLUSION

The Venetian Republic in the fifteenth century was very fragmented and lacked geographic coherence. Therefore, a more or less uniform legal and administrative system as well as standardized systems of fortifications and urban organizations became necessary.[93] Very different parts of the state also had to be kept together by the repute of the city of Venice: its location, security and the political stability of its institutions.[94] Venetian authority accorded great care to the construction fortifications, a project that was adapted to suit Venetian military and political interests. Other urban spaces also began to signify the presence of a new master by their appearance, particularly the main squares in towns and the public buildings that exhibited the symbols of the new Venetian suzerain. In addition

two figures in relief: the lions of St. Mark with the lions of St John of Trogir and St Lawrence, the diocesan patron saint, to the side, and the coats of arms of the local nobility below (by Niccolò Fiorentino).

93 This is why all units of measurement in the entire territory were standardized, as well as the currencies that regulated local markets and fomented Venetian trade.

94 Indirectly, Venice standardized its territory through its system of measurements, institutions and legal norms (Zlatkov, 2008, 172).

to the incorporation of Dalmatian towns in the *Stato da mar* in the fifteenth century, other factors contributed significantly to the changes that took place. These include political developments in the hinterland, and especially the appearance of the Ottomans, changes in local society, etc. Venice did not exclusively impose its own agenda on the architectural environment without regard for local input: there were a multiplicity of voices that went into constructing Dalmatian towns. The relationship between Venice and the parts of its *Stato da mar*, including Dalmatia, was complex and often bidirectional.[95]

*The Camerlengo di Trogir*

95 See Lovorka Čoralić's numerous, which discuss by and large the presence of Croats (Slavs) in Venice (rather than other way around). They mostly deal with the 1500–1800 period; *U gradu Sv. Marka*, Zagreb: Golden Marketing, 2001.

# MLETAČKI UTJECAJ NA URBANE PROMJENE U DALMATINSKIM GRADOVIMA U PRVOJ POLOVICI 15. STOLJEĆA

*Irena BENYOVSKY LATIN*

Hrvatski inštitut za povijest, Opatička 10, 10000 Zagreb, Croatia

e-mail: irenabenyovsky@yahoo.com

*SAŽETAK*

*Krajem 14. i početkom 15. stoljeća, za Mletačku Republiku okolnosti za proširenje teritorija i utjecaja bile su optimalne, a rezultat višestoljetne težnje za dominacijom. Konačno, Dalmacija je postala je u 15. stoljeću dio mletačkog teritorija na istočnoj obali Jadrana koji se nazivao Colfo. U gradovima Zadru, Šibeniku, Trogiru i Splitu, mletačka se vlast ubrzo konsolidira, a situacija postupno smiruje. Budući da je mletačka država geopolitički bila nekoherentna, bio je važan standardizirani sustav fortifikacija i urbane organizacije. Na lokalnim razinama, pak, novostečeni dijelovi države sačuvali su mnoga samosvojna obilježja. Urbane promjene i izgradnje tijekom prvih desetljeća 15. stoljeća pokazuju mletačku težnju da istakne svoju suverenost i zaštitu, ali i napore da se domaće potrebe usklade sa strateškim i gospodarskim željama metropole. Venecija je nakon osvojenja gradova gradila kaštele na rubu grada, što je omogućivalo izdvojenu obranu. Krajem 15. stoljeća se pojavljuje osmanska opasnost te se težište obrane usmjerava prema obali. Nakon dolaska mletačke vlasti, osim u fortifikacije, osobito se ulaže u popravak kneževih palača. Vizualni znak mletačke političke, lav. Sv. Marka, vlasti bio je prisutan svugdje u javnom prostoru.*

*Ključne riječi: dalmatinski gradovi, Mletačka Republika, javne građevine, 15. stoljeće, urbana povijest, kaštel, komunalne palače*

UNPUBLISHED SOURCES

**AHAZU –** Archive of Croatian Academy of arts and Sciences, Ostavština Ivana Lučića, vol. 9, 10.

**ASV –** Archivio di Stato, Venezia (ASV), Collegio; Commissioni, reg. 6; Notatorio, reg. 9; Relazioni, reg. 61; Secreti, reg. 3; Senato; Misti, reg. 47, 48, 57, 58; Mar, reg. I, III, IV, V, VIII, IX, X, XI; Terra, reg. 8.

**DAZd –** Državni arhiv u Zadru (DAZd), Ducale e terminazioni, I; AT – Archive of Trogir, 1/13; 67/1; 67/2; 67/3; 67/ 5.

PUBLISHED SOURCES

**Alačević, G. (1901–1903):** Il libro I. delle Ducali e Terminazioni Venete che comincia coll'anno 1409. Zara, Tabularium, Gli archivi della Dalmazia.

**Antoljak, S. (1949):** Zadarski katastik 15. stoljeća. Zagreb, Starine, JAZU.

**Andreis, P. (1978):** Povijest grada Trogira, 1-2. Split, [s.n.].

**Barbarić, J., Kolanović, J. (eds.) (1986):** Šibenski diplomatarij. Šibenik, Muzej grada Šibenika.

**Birin, A. (2012):** Šibenski bilježnici – Petar pokojnoga Ivana (1453.–1454.). Povijesni prilozi, 42, 103–189.

**Gligo, V., Berket, M., Rismondo, V., Šimunković, L. (1996):** Zlatna Knjiga Grada Splita. Split, Biblioteka Knjiga Mediterana 14, Književni krug.

**Kolanović, J. (ed.) (1989):** Spisi kancelarije šibenskog kneza Fantina de Cha de Pesaro1441-1443. Šibenik, Muzej grada.

**Lucio, G. (1674):** Memorie istoriche di Tragurio ora detto Traù. Venetia, Presso Stefano Curti.

**Lucić, I. (1979):** Povijesna svjedočanstva o Trogiru. Split, Čakavski sabor.

**Ljubić, S. (ed.) (1876):** Commissiones et relationes Venetae, I. Zagrabiae, Academiae Scientiarum et Artium.

**Ljubić, Š. (ed.) (1868):** Listine o odnošajih između južnoga slavenstva i Mletačke republike, 1 (960-1335). Zagreb, Monumenta spectantia historiam Slavorum meridionalium (MSHSM).

**Ljubić, Š. (ed.) (1870):** Listine o odnošajih između južnoga slavenstva i mletačke republike, 2 (1336-1347). Zagreb, MSHSM.

**Ljubić, Š., ed. (1872):** Listine o odnošajih između južnoga slavenstva i mletačke republike, 3 (1348-1403). Zagreb, MSHSM.

**Ljubić, Š. (ed.) (1874):** Listine o odnošajih između južnoga slavenstva i mletačke republike, 4 (1358-1403). Zagreb, MSHSM.

**Ljubić, Š. (ed.) (1878):** Listine o odnošajih između južnoga slavenstva i mletačke republike, 6 (1409-1412). Zagreb, MSHSM.

**Ljubić, Š. (ed.) (1882):** Listine o odnošajih između južnoga slavenstva i mletačke republike, 7 (1412-1420). Zagreb, MSHSM.

**Ljubić, Š. (ed.) (1886):** Listine o odnošajih između južnoga slavenstva i mletačke republike, 8 (1420-1424). Zagreb, MSHSM.

**Ljubić, Š. (ed.) (1890):** Listine o odnošajih između južnoga slavenstva i mletačke republike, 9 (1423-1452). Zagreb, MSHSM.

**Ljubić, Š. (ed.) (1891):** Listine o odnošajih između južnoga slavenstva i mletačke republike, 10 (1453-1469). Zagreb, MSHSM.

**Malipiero, D. (1843-1844):** Annali veneti dall'anno 1457 al 1500. Archivio Storico Italiano, 7.

**Novak, G. (1965):** Mletačka uputstva i izvještaji. Zagreb, MSHSM.

**Pederin, I. (1987):** Acta politica et oeconomica cancellariae communis Tragurij in saeculo XV. Starine JAZU, 60, 101–177.

**Rački, F. (1881):** Notae Johanis Lucii. Starine JAZU, 13, 211–268.

BIBLIOGRAPHY

**Ančić, M. (2009):** Od tradicije "sedam pobuna" do dragovoljnih mletačkih podanika. Razvojna putanja Zadra u prvom desetljeću 15. stoljeća. Povijesni prilozi, 37, 43–94.

**Anderle, M. (2002):** Loggia communis am der oestlichen Adria. Weimar, VDG-Verlag.

**Arbel, B. (2013):** Venice's Maritime Empire in the Early Modern Period. In: Dursteller, E. (ed.): A Companion to Venetian History, 1400-1797. Leiden, Boston, Brill, 125–253.

**Arbel, B. (1996):** Colonie d'oltremare. In: Tenenti A., Tucci, U. (eds.): Storia di Venezia. Dalle Origini alla Caduta dela Serenissima, Il Rinascimento. Società ed economia. 5. Roma, Istituto per la Enciclopedia Italiana, 947–985.

**Benvenuti, A. de (1940):** Zara nella cinta delle sue fortificazioni. Milano, Bocca.

**Benyovsky, I. (2002/2003):** Interventi sul piano urbanistico di Traù durante i primi decenni del dominio Veneto (1420-1450). Atti dell'Istituto veneto di scienze, lettere ed arti. Classe di scienze morali, lettere ed arti, 161, 981–1016.

**Benyovsky Latin, I. (2010):** Izgradnja gradskih fortifi kacija u Trogiru od 13. do 15. stoljeću. Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti Hrvatske akademije znanosti i umjetnosti, 28, 17–48.

**Benyovsky Latin, I. (2009):** Srednjovjekovni Trogir. Prostor i društvo. Zagreb, Hrvatski institut za povijest.

**Benvenuti, A. de (2006):** Fortificazioni venete in Dalmazia. Venezia, Scuola dalmata dei SS. Giorgio e Trifone.

**Brunelli, V. (1913):** Le opere fortifi catorie del comune di Zadar e la Compagna degli artiglieri. Rivista dalmatica, III, 5, 215–250.

**Budak, N. (1997):** Urban élites in Dalmatia 1350-1450. Atti e memorie della società Dalmata di storia Patria, 26, 181–201.

**Calabi, D. (1991):** Le basi ultramarine. In: Tenenti, A., Tucci, U. (eds.): Storia di Venezia. Temi: Il Mare. Roma, Istituto per la Enciclopedia Italiana, 861–879.

**Calabi, D. (1986):** Città ed edilizia pubblica nel dominio veneziano da mare: modelli, significato civile, linguaggio architettonico. In: D'une ville à l'autre. Structures ma-

térielles et organisation de l'espace dans les villes européennes (XIIIe-XVIe siècle). Rome, École Française de Rome, 813–843.

**Calabi, D. (1989):** Città ed edilizia pubblica nel dominio veneziano da mare: modelli, significato civile, linguaggio architettonico. In: D'une ville à l'autre. Structures matérielles et organisation de l'espace dans les villes européennes (XIIIe-XVIe siècle). Actes du colloque de Rome (1er-4 décembre 1986). Rome, École Française de Rome, 813–843.

**Chittolini, G. (1970):** La crisi delle liberta comunali e le origini dello Stato territoriale. Rivista storica italiana, 82, 99–120.

**O'Connell, M. (2004):** The Venetian Patriciate in the Mediterranean: Legal Identity and Lineage in Fifteenth-Century Venetian Crete. Renaissance Quarterly, 57, 2, 466–493.

**O'Connell, M. (2009):** Men of Empire. Power and Negotiation in Venice's Maritime State. Baltimore, The John Hopkins University Press.

**O'Connell, M. (2013):** Individuals, Families, and the State in Early Modern Empires: the case of the Venetian Stato da Mar. Zgodovinski časopis, 67, 1-2, 8–27.

**Concina, E. (1983):** La macchina territoriale. La progettazione della difesa nel Cinquecento Veneto. Roma, Bari, Laterza.

**Crouzet-Pavan, E. (2005):** Venice Triumphant. The Horizons of a myth. JHU Press, 97–138.

**Ćuzela, J. (2005):** Šibenski fortifi kacijski sustav. Šibenik, Gradska knjižnica Juraj Šižgorić.

**Čerina, D. (2009):** Arheološka istraživanja na zapadnome dijelu splitske rive 2006-2007. Kulturna baština, 35, 43–58.

**Deanović, A. (1988):** Architetti veneti del Cinquecento impegnati nella fortificazione della costa dalmata. In: L'Architettura militare veneta del Cinquecento. Milano, Vicenza, Electa, Centro internazionale di studi di architettura Andrea Palladio.

**Descendre, R. (2007):** Quand la mer est territoire. Paolo Sarpi et le Dominio del mare Adriatico. Studi Veneziani, 53, 55–74.

**Duplančić, A. (1994):** Gradski kaštel i zidine Splita na neobjavljenim nacrtima iz 18. stoljeća. Kulturna baština, 24-25, 139–148.

**Fisković, C. (1959):** Zadarski sredovječni majstori. Zagreb, Književni krug.

**Gaetano, G. (1980):** La politica del diritto nella Repubblica di Venezia. In: Cozzi, G. (ed.): Stato, società e giustizia nella repubblica veneta (sec. XV- XVIII). Roma, Jouvence, 15–152.

**Georgopoulou, M. (2001):** Venice's Mediterranean Colonies. Architecture and Urbanism. Cambridge, Cambridge University Press.

**Gertwagen, R. (2002):** The Venetian colonies in the Ionian and Aegean seas in Venetian defense policy in the fifteenth century. Journal of Mediterranean Studies. 12, 2, 351–384.

**Gruber, D. (1903):** Borba Ludovika I. s Mlecima za Dalmaciju (1348-1358). Rad JAZU, 152, 32–161.

**Gruber, D. (1906):** Dalmacija za Ludovika I (1358-1382). Rad JAZU, 166, 164–215.

**Grubišić, S. (1974):** Šibenik kroz stoljeća. Šibenik, Muzej grada Šibenika.

**Gusar, K., Vujević, D. (2009):** Prilog poznavanju utvrde Citadela u Zadru – istraživanja Barbakana 2008. godine. Prilozi Instituta za arheologiju u Zagrebu, 26, 1, 219–246.

**Hale, J. E. (1993):** The Citadela of Verona. In: Chambers, D. S., Clough, C. H., Mallet, M. E. (eds.): War, Culture and Society in Renaissance Venice. Essays in Honour of John Hale. London, Rio Grande, Ohio, Hambledon Press.

**Hale, J. R. (1971):** The first fifty years of a Venetian Magistracy: The Provveditori alle Fortezze. In: Molho A., Tedeschi J. A. (eds): Renaissance. Studies in Honor of Hans Baron. Dekalb, Illinois, Northern Illinois University Press, 499–529.

**Hilje, E. (2011):** Mletački kaštel u Zadru. Ars adriatica, 1, 109–116.

**Ilardi, V. (1962):** Fifteenth-Century Diplomatic Documents in Western European Archives and Libraries (1450-1494). Studies in the Renaissance, 9, 64–112.

**Israel, U., Schmitt, O. J. (eds.) (2013):** Venezia e Dalmazia. Roma, Viella.

**Ivančević, R. (1991):** Trogirska loža: Templum iuris et ara iustitiae (1471). Prilozi povijesti umjetnosti u Dalmaciji, 31, 115–146.

**Jareb, M. (2007):** Trogirski incident od 1. prosinca 1932. i mletački lav svetog Marka kao simbol 'talijanstva' istočne obale Jadrana". Časopis za suvremenu povijest, 39, 419–443.

**Kečkemet, D. (1956):** Splitski kaštel. Anali historijskog instituta JAZU u Dubrovniku, 4-5, 267–303.

**Kečkemet, D. (2004):** Kulturna i umjetnička baština, vol. I. Split, Marijan tisak.

**Kolanović, J. (1995):** Šibenik u kasnom srednjem vijeku. Zagreb, Školska knjiga.

**Kovačić, V. (1997/1998):** Trogirske fortifi kacije u 15. stoljeću. Prilozi povijest umjetnosti u Dalmaciji, 37, 109–137.

**Kovačić, V. (2011):** Gradski kaštel u Trogiru. Prilozi povijesti umjetnosti u Dalmaciji, 42, 1, 95–120.

**Kozličić, M. (1995):** Kartografski spomenici hrvatskoga Jadrana. Izbor karata, planova i veduta do kraja 17. stoljeća. Zagreb, AGM.

**Krekić, B. (1996):** Venezia e l'Adriatico. In: Cracco, G., Arnaldi, G., Tenenti, A. (eds.): Storia di Venezia. La formazione dello Stato Patrizio, 3. Roma, Istituto per la Enciclopedia Italiana, 51–85.

**Lane, F. C. (1933):** Venetian Shipping During the Commercial Revolution. The American Historical Review, 38, 2, 219–239.

**Lane, F. C. (1973):** Venice. A Maritime Republic. Baltimore, London, John Hopkins University Press.

**Madunić, D. (2012):** Defensiones Dalmatiae: Governance and Logistics of the Venetian Defensive System in Dalmatia During the War of Crete (1645-1669). PhD dissertation. Budapest, History Department, Central European University.

**Mallett, M. E., Hale, J. R. (2006):** The Military Organization of a Renaissance State. Venice c. 1400 to 1617. Cambridge, Cambridge University Press.

**Marasović, K. (2013):** Mletački kaštel u Splitu; izgradnja i preobrazbe. Prostor: znanstveni časopis za arhitekturu i urbanizam, 20, 2/44, 250–263.

**Marković, M. (2001):** Hrvatski gradovi na starim planovima i vedutama. Zagreb, AGM.

**Marković, P. (2010):** Katedrala sv. Jakova u Šibeniku. Zagreb, Naklada Ljevak.

**Martin, J. J., Romano, D. (2002):** Reconsidernig Venice. In: Martin, J. J., Romano, D. (eds.): Venice reconsidered. The history and civilization of an Italian city-state. Baltimore, Johns Hopkins University Press, 1–39.

**Mueller, R. C. (1996):** Aspects of Venetian Sovereignity in Medieval and Renaissance Dalmatia. In: Charles Dempsey, C. (ed.): Quattrocento Adriatico. Fifteenth-Century Art of the Adriatic Rim. Bologna, Nuova Alfa, 29–57.

**Norwich, J. J. (1989):** A History of Venice. New York, Vintage Books.

**Novak, G. (1961):** Povijest Splita. I-III. Split, Slobodna Dalmacija.

**Novak, G. (1976):** Šibenik u razdoblju mletačke vladavine 1412–1797. godine. In: Šibenik – spomen zbornik o 900. obljetnici. Šibenik, Muzej grada Šibenika 135–139.

**Novak, M. (1965):** Autonomija dalmatinskih komuna pod Venecijom. Zadar, JAZU.

**Novak, M. (1965):** Zadar glavni grad mletačke Dalmacije i Albanije. Radovi Instituta JAZU u Zadru,11-12, 187–202.

**Ortalli, G., Schmitt, O. J. (eds.) (2009):** Balcani occidentali, Adriatico e Venezia fra tredicesimo e diciottesimo secolo / Der westliche Balkan, der Adriaraum und Venedig (13.–18. Jahrhundert). Vienna, Verlag der Österreichischen Akademie der Wissenschaften.

**Ortalli, G. (2002):** Entrar nel Dominio: le dedizioni delle città alla Repubblica Serenissima. In: Zordan, G., Benzoni, G. (eds.): Società, economia, istituzioni: Elementi per la conoscenza della Repubblica di Venezia, 1. Verona, Cierre Edizioni.

**Orthali, G., Cracco, G., Cozzi, G., Knapton, M. (2007):** Povijest Venecije, I. Zagreb, Antibarbarus.

**Pederin, I. (1990):** Mletačka uprava, politika i privreda u Dalmaciji (1409-1797). Dubrovnik, Časopis.

**Petricioli, I. (1965):** Lik Zadra u srednjem vijeku. Radovi Instituta JAZU u Zadru, 11-12, 161–165.

**Petricioli, I. (1956/1957):** Maketa Zadra u Pomorskom muzeju Venecije. Zbornik Instituta za historijske nauke u Zadru, 2, 101–124.

**Petricioli, I. (1965):** Novi rezultati u istraživanju zadarskih srednjovjekovnih fortifi kacija. Diadora, 3, Zadar, 169–203.

**Petricioli, I. (2005):** Umjetnička baština Zadra. Zagreb, Matica Hrvatska.

**Pincus, D. (2002):** Hard Times and Ducal Radiance: Andrea Dandolo and the Construction of the Ruler in Fourteenth-Century Venice. In: Martin, J. J., Romano, D. (eds.): Venice reconsidered. The history and civilization of an Italian city-state. Baltimore, Johns Hopkins University Press, 89–137.

**Povolo, C. (2002):** The Creation of Venetian Historiography. In: Martin, J. J., Romano, D. (eds.): Venice reconsidered. The history and civilization of an Italian city-state. Baltimore, Johns Hopkins University Press, 491–519.

**Praga, G. (1932):** I Leoni di Trogir. Archivio stroico per la Dalmazia, XIV, 419– 432.

**Praga, G. (1936):** L'organizzazione militare della Dalmazia nel Quattrocento. Archivio storico per la Dalmazia, CXIX, 463–77.

**Rački, F. (1868):** Pokret na slavenskom jugu. Rad JAZU, 4, 1–103.

**Raukar, T. (1977):** Venecija i ekonomski razvoj Dalmacije u 15. i 16. Stoljeću. Radovi instituta za hrvatsku povijest (Matija Ivanić), 10, 203–225.

**Raukar, T. (1982):** Komunalna društva u Dalmaciji u 15. st. i prvoj polovini 16. stoljeća. Historijski zbornik, 35, 43–118.

**Raukar, T. (1985)**: Društveni razvoj u Hrvatskoj u 15. Stoljeću. Historijski zbornik, 38, 75–94.

**Raukar, T., Petricioli, I., Švelec, F. (1987):** Zadar pod mletačkom upravom. Zadar, Filozofski fakultet.

**Rizzi, A. (2005):** I leoni di Venezia in Dalmazia. Venezia, Scuola Dalmata dei SS. Giorgio e Trifone.

**Rocca, R. M. della (1959):** Dispacci degli ambasciatori al Senato. Roma, Venezia, tip. ITE.

**Romano, D. (2007):** The Likeness of Venice: A life of Doge Francesco Foscari 1373–1457. New Haven, Yale University Press.

**Sander, S. K. (2011):** Urban Elites in the Venetian Commonwealth Social and Economic Mobility in early modern Dalmatia (Zadar / Zara, 1540 to 1570). PhD dissertation. Graz, Karl–Franzens–Universität.

**Schmitt, O. J. (2009):** Das venezianische Südosteuropa als Kommunikationsraum (ca. 1400 - ca. 1600). In: Ortalli, G., Schmitt, O. J. (eds.): Balcani occidentali, Adriatico e Venezia fra tredicesimo e diciottesimo secolo / Der westliche Balkan, der Adriaraum und Venedig (13.–18. Jahrhundert). Vienna, Verlag der Österreichischen Akademie der Wissenschaften, 77–101.

**Slade-Šilović, R. (1910):** Kašteo Camerlengo u Trogiru. Bullettino di archaeologia e storia dalmata, 33, 1–11.

**Stagličić, M. (1982):** Izgradnja kneževe i providurove palače u Zadru". Radovi Filozofskog fakulteta u Zadru, 201, 75–80.

**Šunjić, M. (1967):** Dalmacija u 15. stoljeću. Sarajevo, Svjetlost.

**Šunjić, M. (1962):** Stipendiarii veneti u Dalmaciji i Dalmatinci kao mletački plaćenici u XV vijeku. Godišnjak DI BiH, 13, 251–288.

**Tenenti, A. (1973):** The Sense of Space and Time in the Venetian World of the Fifteenth and Sixteenth Centuries. In: Hale, J. R. (ed.): Renaissance Venice. London, Rowman and Littlefi eld., 17–46.

**Vežić, P. (1990):** Rezultati istraživanja na prostoru Citadele u Zadru. Godišnjak zaštite spomenika kulture Hrvatske, 16, 7–43.

**Vivo, F. de (2003):** Historical Justifications of Venetian Power in the Adriatic. Journal of the History of Ideas, 64, 2, 159–176.

**Zelić, D. (1999):** Postanak i urbani razvoj Šibenika u srednjem vijeku. PhD dissertation. Zagreb, University.

**Zelić, D. (2008):** Proclamationes šibenskoga kneza Fantina de Cha de Pesaro (1441.-1443.). Povijesni prilozi, 35, 149–190.

**Zlatkov, E. (2008):** Garden as an eye: The garden of the Venetian palace Soranzo-Cappello. Annales, Ser. hist. sociol., 18, 1, 167–178.

Received: 2014-06-06
Original scientific article
UDC 392.546(497.571)"16"

# THE ABDUCTION OF WOMEN FOR MARRIAGE: ISTRIA AT THE BEGINNING OF THE SEVENTEENTH CENTURY

*Marija MOGOROVIĆ CRLJENKO*
Juraj Dobrila University of Pula, Zagrebačka 30, 52100, Pula, Croatia
e-mail: mmogorov@unipu.hr

*ABSTRACT*

*This paper deals with abductions of women for marriage in Istria in the Diocese of Poreč in the first half of seventeenth century. The research is based on unpublished sources – proceedings from court trials preserved in the abduction registers from the first half of seventeenth century – and the published Istrian statutes, such as the rules governing abductions issued by the Council of Trent. The paper analyses violent and non-violent abductions, especially in the rural areas of the Poreč Diocese.*

*Key words: marriage, abductions, violence, Diocese of Poreč, first half of the seventeenth century*

# IL RAPIMENTO DI DONNE A SCOPO DI MATRIMONIO: L'ISTRIA AGLI INIZI DEL SECOLO XVII

*SINTESI*

*Nel saggio viene analizzato il rapimento di donne a scopo di matrimonio, una pratica che ha avuto luogo in Istria, nel territorio della Diocesi di Parenzo nella prima metà del XVII secolo. La ricerca è basata su fonti inedite come gli atti di processi giudiziari conservati nei registri dei rapimenti (Raptuum) risalenti alla prima metà del XVII secolo, le disposizioni sui rapimenti conservate in alcuni statuti istriani, nonché le disposizioni del Concilio di Trento in materia di rapimento. Il saggio indaga i rapimenti di donne forzati e non forzati, avvenuti principalmente nelle zone rurali della Diocesi parentina.*

*Parole chiave: matrimonio, rapimenti, violenza, Diocesi di Parenzo, prima metà del XVII secolo*

In this paper I will cover abductions of women which were processed in the court of the Poreč Diocese (Istria) in the first half of seventeenth century. Namely, very important archival records have been preserved there: the registers of abductions from the first half of seventeenth century onward.

These records are about cases from the diocesan ecclesiastical court. For this analysis, I have dealt with all cases of abductions preserved in the abduction registers in the Poreč Diocese in the first half of seventeenth century, i.e. from 1602 to 1650. This encompasses a total of 73 cases of abductions, and these cases have been preserved in four registers (BAP, 1.3. *Raptuum (1602–1609)*; 2.6. *Raptuum (1611–1624)*; 3.3. *Raptuum (1631–1644)*; 4.4. *Raptuum (1645–1657)*. The word *raptuum* is in the genitive plural rather than in the nominative case. Namely, abduction registers are annotated under precisely that name in the Poreč Diocese collection. This word implies that the word *liber* is in front of it. So, it means *Liber raptuum*). These books were written at the time of following bishops of the Poreč Diocese: Giovanni Lippomano from Venice (1598–1608), Leonardo Tritonio (1609–1631), Ruggero Tritonio (1632–1644), both from Udine, and Gianbatista del Giudice (1644–1666) from Brescia. Based on these cases, one can see where abductions were the most frequent, who the victims of abductions were, how abductions proceeded, etc. Generally, abductions marked the beginning of marriage, i.e. abductions were one of the ways – illegitimate to be sure – of getting married. These abductions can be divided into two basic groups: voluntary and coerced.

The Poreč Diocese was one of the largest dioceses in Istria. The territory of this diocese included the Venetian and Austrian parts of Istria. Namely, from the latter half of fourteenth century until the end of the Republic of Venice, Istria was divided into Austrian and Venetian parts. During that period, the population of Istria, as well as the population of Poreč Diocese, was heterogeneous. The population consisted of numerous indigenous Slavs, and far fewer "Romans" (Italians). The Romans consisted of newcomers from Florence and Venice who had adapted very soon, followed by newcomers from Carniola, Friuli and Grado. On the other hand, the Venetian government wanted to improve the demographic situation in Istria and encouraged Morlachs, a people who fled from the Ottomans in Dalmatia, Bosnia, Herzegovina and Albania, to settle in Istria. This was the second wave of settlement of Slavs, i.e. Croats, in Istria. At that time, Istria's population was depleted by epidemics and wars in the sixteenth and seventeenth centuries. At the beginning of the seventeenth century, i.e. from 1615 to 1618, Istria was devastated in the Uskok War (War of Gradisca) and after that in 1630 by the plague (Bertoša, 1995; Darovec, 1997, 50–64; Mogorović Crljenko, 2012a, 12–13; 2012b; 2010, 137–138).

The abduction of women for marriage was noted in ancient times in many completely different cultures. In abductions, the man's role was always active and the woman's passive. Abduction was connected with violence, which could vary from physical abuse to moral compulsion to marry (Mogorović Crljenko, 2006, 146; Cesco, 2004, 349; 2005, 111; Čulinović-Konstantinović, 1995–1997, 66; Klapisch-Zuber, 330).

The sources show clearly that most abductions occurred in rural areas, and that many of them involved Slavs i.e., Croats, although abducted woman could be also be of Roman

citizen. It was mainly Slavs (Croats) from Dalmatia, Bosnia, Herzegovina and Albania who in settled in the ravaged Istrian lands in the sixteenth and seventeenth centuries. In later periods, there were also abductions of women in the Dalmatian interior, e.g. in Konavle (the hinterland of Dubrovnik), so these newcomers probably brought some of their customs to their new homeland (Cesco, 2004, 372–374; 2005, 111–117; Čulinović-Konstantinović, 1995–1997, 65–78; 1986, 97–112; Vekarić et al., 2000, 97; BAP 1.3. *Raptuum*, 96; 2.6. *Raptuum*, 1–9. On the colonization of Istria, see: Bertoša, 1995).

However, there must have been a tradition of abduction in Istria prior to the new wave of settlement by Slavs, i.e. Croats. Both the civic and ecclesiastical authorities punished abductions, so there were regulations governing abductions prescribed in medieval statutes, such as in canon law. Some Istrian medieval statutes (the statutes of Novigrad, Dvigrad, Buzet, Oprtalj, Vodnjan, and Grožnjan) stipulated sanctions for abductors of women, with different punishments prescribed for abductors of virgins, married women and widows. It is unlikely that it testifies about abductions only among the Slavic population, even more because the statutes occurred in urban centres. Furthermore, abductions of women were also practiced in other parts of Europe, which was one of the reasons why the Council of Trent also prescribed sanctions for abductions of women.

Different statutes dealt with this problem in different ways. For instance, the statute of Novigrad and the statute of Grožnjan mention only abductions of married women, while the other statutes mentioned herein distinguished between the abduction of married women and the abduction of a virgin or a widow. The statutes of Buzet and Oprtalj state another category: abduction of a nun. Most of the aforementioned statutes prescribed the death penalty for the abduction of a married woman, either hanging or decapitation, while some statutes did not specify how to execute said penalty. In the case of abduction of a virgin, the statutes of Buzet and Oprtalj allowed for the possibility of marriage between the abductor and the abducted girl, but only with the consent of her parents. However, in such cases the statutes of Dvigrad and Vodnjan prescribed the death penalty without the possibility of amnesty, and the statute of Dvigrad also stipulated seizure of abductor's property by the municipality. These statutes, except for the statutes of Novigrad and Vodnjan, also foresaw a sentence for the abducted woman. The statutes of Dvigrad, Buzet and Oprtalj stipulated that the woman be burnt to death, and the statute of Dvigrad also stipulated that two thirds of her assets went to her husband and one third to the municipality. However, it is interesting that the abductor and the abducted woman could avoid punishment if the husband of abducted woman so decided (Statute of Novigrad, VI, 36; Statute of Dvigrad, 35; Statute of Buzet, 40; Statute of Oprtalj, 41; Statute of Vodnjan, IV, 19; Statute of Grožnjan, IV, 148. Compare: Mogorović Crljenko, 2006, 146–150; Benyovsky, 1999, 543-564.). The regulations in these Istrian statutes are shown in Table 1 (Cp.: Mogorović Crljenko, 2006, 184–185: Table 4).

*Table 1*

| PENALTIES FOR ABDUCTIONS PRESCRIBED IN ISTRIAN STATUTES | | | | | |
|---|---|---|---|---|---|
| **STATUTES** | **ABDUCTORS** | | | **ABDUCTED** | |
| | MARRIED WOMAN | GIRL/WIDOW | NUN | MARRIED WOMAN | GIRL/ WIDOW |
| **NOVIGRAD** | hanging; severing of right hand and removal of right eye | - | - | - | - |
| **DVIGRAD** | decapitation; property ceded to municipality | | - | burning at stake; division of assets | |
| **BUZET and OPRTALJ** | death | marriage death penalty in absentia | death | Burning at stake | - |
| **VODNJAN** | decapitation; prosecution and death penalty in absentia | | - | - | - |
| **GROŽNJAN** | severing of right hand and removal of an eye, or 5 year as a galley slave | - | - | property ceded to husband | - |

Abductions could be violent or nonviolent. In the latter case, we can talk about contractual elopement. The main characteristics of violent abductions were: violence, fornication, removal from one place to another, and the victim's life with honour. Therefore, some believe that in the case of contractual abduction no crime was perpetrated, while others thought that such abductions should be punished. Some Istrian statutes, like cases litigated in civil courts in Istria, show that in case of marriage the abductor and the abducted woman were exempt from punishment (Statute of Dvigrad, 35; Statute of Buzet, 40; Statute of Oprtalj, 41; Statute of Grožnjan, IV, 148. See: Mogorović Crljenko, 2006, 146–150; Cesco, 2004, 353–355; Gaudemet, 1989, 97).

Canon Law also sanctioned abductions, but it does not mention abductions of married women. Throughout the observed period, the most importance was attached to the provi-

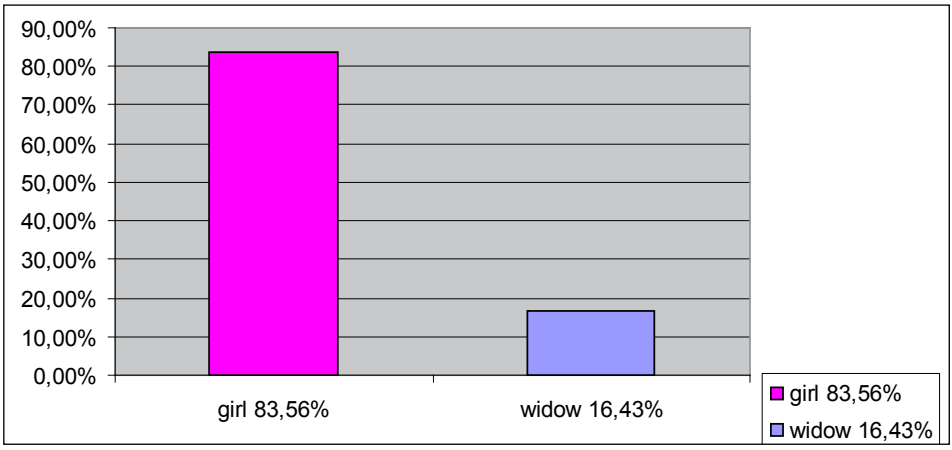
sions of the Council of Trent, which prescribed many regulations about marital issues, including the abduction. The provisions of the Council of Trent concern women who could marry, i.e. unmarried women, mostly virgins or widows. (About distinction between the jurisdiction of civil (municipal) and ecclesiastical courts in the field of punishing the cases of abduction, defloration, and illicit intercourse see more in: Mogorović Crljenko, 2012a and references listed therein.)

Among the ten reform canons adopted at its 24th session, the Council of Trent included provisions on abduction in the sixth canon. The Council stipulated that the abductor and the abducted woman could not marry while she was under his power. But, if the abducted woman departed from the abductor, and if she was taken to a safe haven, and after that agreed to marry him, they could marry. Even so, the abductor and all who aided and abetted him had to be excommunicated, shamed and stripped of honour and dignity, even if they were clerics. The abductor, regardless of whether he married the abducted woman or not, had to pay her dowry in accordance with her status and according to a ruling by a judge. With this provision, the Council confirmed that not only consent is needed for wedlock, but also personal liberty, so that the decision could be made freely. The Council particularly insisted on the woman's consent, and this consent gained in importance (*The Canons*. Sess. XXIV; Mogorović Crljenko, 2012a, 150. See also: Lombardi, 2001, 119–123, 139–140; Alessi, 1990, 808–809; Cesco, 2004, 356, 376, 391; 2005, 113; Gaudemet, 1990, 244. About dowry see also: Chojnacki, 1999, 461–492; Povolo, 1994, 41–73). However, even in cases in which the woman was separated from her abductor, it is difficult to ascertain whether she decided freely. Namely, the honour and interests of the family always superseded personal interests. Therefore, sometimes it happened that the woman who had been taken to a safe haven decided to marry her abductor in order to restore her own honour and, especially, the honour of her family (About honour see: Cesco, 2004, 350; Chojnacki, 2000, 371–416; Ferraro, 2000a, 141–190; 2000b, 41–48; Bellabarba, 2004, 185–227; Mihelič, 2000, 29–40; Mogorović Crljenko 2006; 2012a).

The diocesan courts resolved the marital issues and insisted on free will. In principle, abduction was not considered abduction if the woman agreed with this act regardless of what her parents thought. But they needed to prove that the abduction was voluntary. Therefore, denunciations were declared before a court at the moment when the abductor and the abducted girl wanted to marry (Cp: Mogorović Crljenko, 2012a, 150–151; Gaudemet, 1989, 133; Cesco, 2004, 356; BAP, 1.3. *Raptuum*; 2.6. *Raptuum*; 3.3. *Raptuum*; 4.4. *Raptuum*).

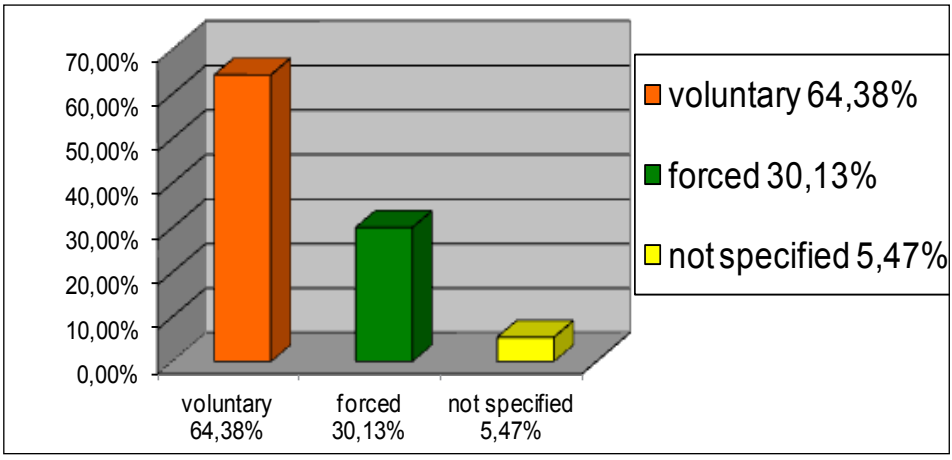
Although the Istrian statutes mentioned abductions of girls (virgins), married women, widows and nuns, in practice it was mainly unmarried girls and possibly widows who were abducted, while for married women were rarely targeted for abduction (BAP, 1.3. *Raptuum*; 2.6. *Raptuum*; 3.3. *Raptuum*; 4.4. *Raptuum*. Cp.: Čulinović-Konstantinović, 1995–1997, 69). This is apparent from an analysis of abductions in the area of the Diocese of Poreč in the period from 1602 to 1650 (Mogorović Crljenko, 2012a, 152). Out of the 73 noted abductions in the observed period, in 61 cases the victim was a girl, and in 12 cases it was a widow. No cases of abduction of married women were noted. (See Chart 1).

*Chart 1: Marital status of abducted women (1602–1650):*



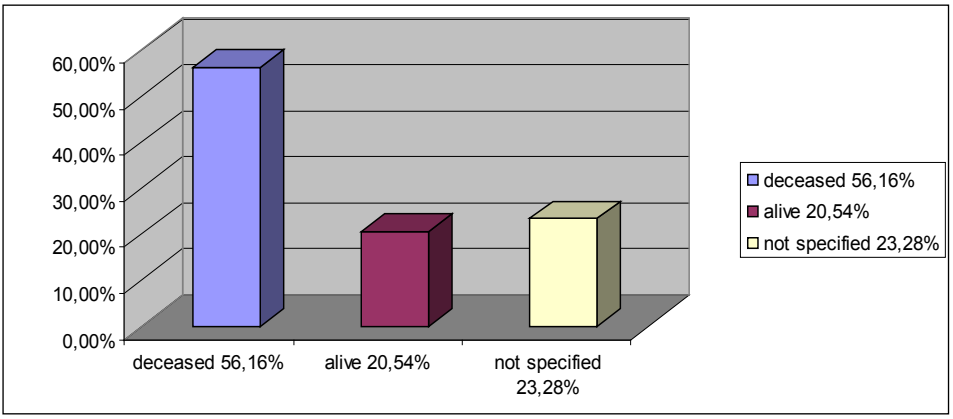

Although the statutes prescribed provisions for violent abductions, in practice voluntary abductions, i.e. contractual elopements, were also adjudicated. These contractual elopements were practiced when the parents and family did not approve of a chosen partner (Cesco, 2004, 352–353; see also Mogorović Crljenko, 2006, 146–150; Kos, 2014, 328). Istrian sources show that many abductions were contractual, i.e. voluntary (almost two thirds), while there were also the violent and coerced abductions, but in smaller numbers (slightly less than one third) (see Chart 2). However, first the voluntary nature of the abduction had to be proven.

*Chart 2: Types of abduction (1602–1650):*



Furthermore, the sources show that abductions were mainly aimed orphaned girls, whose father or both parents were deceased, i.e. those girls who could not be adequately guarded (see Chart 3) (Mogorović Crljenko, 2012a, 153–155; cp: BAP, 1.3. *Raptuum* fol. 36v).

*Chart 3: Abductions when the father was alive or deceased (1602–1650):*




Although the analyzed sample shows that voluntary abductions prevailed, which in practice meant a secret marriage, it is also important to state that violent abductions usually ended in marriage. Namely, for woman that was almost the only way to her preserve good reputation.

This is very well illustrated in the abduction of Katarina, the daughter of the deceased Zeglio Kosinožić (*Cattarina figlia del q. Zeglio Cossinosich*) from Muntrilj (*Montrevo*). In 1611, Katarina was attending festivities in Sveta Majka Božja od Polja (*Madonna del Campo*). While returning home, she was abducted near the town Višnjan. The abductors grabbed the girl by force and took her away. She screamed and cried while they beat her. She was abducted by Grgur Košutić (*Gregorio Cossutich*) and his sons Jure (*Giure*) and Luka (*Luca*), and their relatives and friends, because they wanted her to become Luka's wife. In their defence, the abductors stated that the abduction of women was their Morlach (Slav) custom, adding that they had permission from the girl's mother, and that they did not harm her. When the case came to court (the diocesan court of Poreč), Katarina and Luka were already considered spouses. Grgur Košutić also said that his son Luka was married to Katarina. But, no wedding had been held. Namely, at the time Katarina and Luka were separated and they were waiting for permission to get married. In order to obtain permission, they had to prove that Katarina was not abducted violently and unwillingly. Luka testified that Katarina was his wife and that they took her with her consent. When he was asked about her reluctance, he said that she had resisted because it was

their custom, and that she had stayed with him for three or four days, that they had slept together, and that they had sexual congress. Katarina also testified that she was married to Luka, but that she was not living with him. She was staying with her cousin because she and Luka had had to separate. She said that she had screamed because it was their custom, but when she had recognized her abductors she went with them. She also said that the abductors had her mother's permission to take her. Luka and Katarina had to be separated before marriage because the girl had to decide freely whether or not she wanted to marry Luka. Because of the abduction, all of the abductors and their assistants, as well as Luka, were (temporarily) excommunicated. Finally, Luka and Katarina were given permission to get married. This case shows that girl resisted her abductors and this marriage. After the abduction and sexual intercourse, Katarina changed her mind and agreed to marry Luka because it was the only way to restore her honour. Namely, after the abduction no one would be interested in her for marriage (BAP, 2. 6. *Raptuum*, fol. 2–14).

There was a similar situation with Mara Miljašić (*Mare Migliassich*) who was abducted in 1611 in Sveti Petar u Šumi (*San Pietro in Selva*) while she was peddling wares. She was abducted by a male member of Vuković (Vucovich) family accompanied by twenty men and taken to Tar. The abductors, armed with rifles, swords and other weapons, put Mara on a horse while she screamed and cried. Antun Miljašić (*Antonio Migliassich*), Mara's brother, sued the abductors, who claimed that they had had the permission of the girl's mother, but brother questioned this because they were too violent (BAP, 2. 6. *Raptuum*, fol. 53–58).

The abduction of Elena, the daughter of the deceased Petar Kostović (*raptum Elene filiae q. Petri Costovich*) from Vabriga, who was abducted by Matej Majušić (*Matheum Maiusich*) with accomplices, also illustrated how girls change their minds after abduction. Charges were filed with the Vicar General of the Poreč Diocese on July 26, 1608. The abducted woman testified that on the feast of St. Mary Magdalene on July 22 during Vespers, a certain Marica Nogalić came and asked her if she wanted to take Matej Majušić for her husband. Elena answered that she did not. Marica said that, according to her, Elena would be taken before the sun falls behind the mountain. Elena answered that this would not happen (*la sera di Santa Maria Madalena che fù alli 22 del passato circha hora di Vespero vene da me Mariza Noghalochin et mi disse se io son contenta di tor per marito Mattio Maiusich io gli risposi che sopra la mia fede ... non lo voglio tor et la ditta Mariza disse che sopra la sua fede prima che il sol vien a monte io sara torta et li rispose che sopra la mia fede non voglio essere*). Furthermore, when asked by the Vicar General, Elena answered that she had never promised to take this Matej Majušić for husband, although he said that she would be his wife every time he saw her in the street, but she answered that this would never happen (*io non gli ho mai promesso di torlo per marito ditto Mattio Maiusich, se bene quando lui sempre mi contrava per strada mi diceva che io sarò sua moglie et io li rispondevo che non sarà mai vero*). She also said that that evening around the Hail Mary (*Ave Maria*), she went with her cousins to the fountain to drink some fresh water. When they approached the fountain, they saw Ivan Majušić. Elena was scared that he might do something violent because he had already threatened to abduct her and give her to his brother Matej as a wife. And that is exactly what happened. Ivan grabbed her by the hand and they went to the boat of Jure Nogalić. Ivan pushed her by force into the

*Interior view of the Euphrasius Basilica in Poreč, Croatia. Wikimedia Commons. File: EuphrasiusBasilika.jpg*

boat and they headed toward Novigrad. They kept her for two and a half days, with her crying all that time. In her testimony, she stated that she had been raped and that she had lost her virginity, that she had cried, but they did not want to let her go (*Ive mi ha violato per forza et mi ha tolto la mia virginità et ho sempre cridato oime oime lasciame stare, et con tutto cio non ha voluto lasciarmi ditto Mattio*). Before she was abducted she had never thought that she would take Matej for a husband. At the time of the testimony, she was already separated from him, and when asked she said that she wanted to take him for husband (BAP, 1.3. *Raptuum*, fol. 88–97. For a detailed description of the case, see: Mogorović Crljenko, 2012a, 155–157).

From these and other cases of violent abductions, it is clear that there was a larger number of accomplices, usually men (although there may also have been some women as well). Unlike in real, violent abductions, in voluntary abductions the number of accomplices was smaller.

This was the case in the abduction of Jelena, the daughter of the deceased Stipan Stanić of Mianić (*Jelena figlia del q. Stipan Stanich de gli Mianich*) from Sveti Vital (*San Vital*), a district of Motovun, in 1613. This case can be characterized as voluntary abduction, i.e. contractual elopement. Namely, Jelena received a marriage proposal from Andrija Kučić (*Andrea Cucich*) of Motovun. She testified that her uncles Mihael and Mate Stanić (*miei zii Michiel et Matte fratelli Stanich*) did not want to give her to Andrija, so she asked a woman from Muntrilj (*Montrevo*) to ask Andrija to take her away. Andrija came with his brother and they went to Muntrilj together. When she testified in court, she said that since the abduction she had lived with Andrija in Muntrilj, that they had had sexual congress, that he had taken her virginity and that she wanted him for her husband. When the interrogator in court reprimanded her, saying that she wanted him for husband only because he took her virginity, she answered that this was not true, that she had always wanted him and that she would not have gone with him if she had not wanted him for her husband. Andrija's testimony was almost the same as Jelena's, but he denied sexual congress. The interrogator did not believe him, because Jelena stayed with him for twenty days. Because of that, he ordered Jelena to separate from Andrija. As abductors, Andrija and his brother were immediately excommunicated, but after they were married, the excommunication could be rescinded (BAP, 3.3. *Raptuum*, fol. 6–14).

Usually there were one or two accomplices, but in cases of taking the girl to the husband's house, there could have been more accomplices, especially when there was a real danger that another abductor might steal the same girl (Mogorović Crljenko, 2012a, 157. Cp.: Cesco, 2005, 123; Čulinović-Konstantinović, 1995–1997, 67).

For example, Jelena, the daughter of the deceased Mihovil Brajković from Nova Vas (*Gellena figlia q. Michovile Boraicoviche de villa Nova di Parenzo*) was taken from Mikula Milatović (*Micula Milattovich*) in 1613. Namely, her uncle wanted to marry her to another man whom she did not like and her mother told Mikula to take her. Accompanied by four men, Mikula took her to his house with her consent, and she slept there for four or five nights and they had sexual intercourse. In this case, the group of assistants was bigger because there was a danger that the girl might be abducted from another, competing group (BAP, 2.6. *Raptuum*, fol. 76–79).

It is evident from the cases that there was competition among men for women (on competition for women see also: Cesco 2004, 373; 2005, 111–117). Namely, in abductions, either violent or voluntary, the abductor very often said that he abducted the girl so that his competitors could not. It was very often an excuse for the girls as well. Namely, they said that they went with their abductor consensually and voluntarily so that the others would not abduct them, and they said that they had heard that "others" had a plan to abduct them. From this, it is evident that there was competition and also fights over women (BAP, 1.3. *Raptuum*, fol. 1–5v, 64–70; 4.4. *Raptuum*, fol. 108–111,133).

There was also a danger of abduction in cases when a father had promised his daughter for wife to the groom. Despite this, sometimes the girl was preyed upon by the others. Until the girl was taken to the groom's house, she could be a desirable bride. That was why sometimes the girl went to the groom's house before marriage, when there were rumours that others wanted her for wife and that she could be abducted (Mogorović Crljenko, 2012a, 161; Cp.: Cesco, 2005, 123; Čulinović-Konstantinović, 1995–1997, 67; BAP, 1.3. *Raptuum*, fol. 57–58).

The reasons for abductions varied. One of the reasons could be the father's poverty, so that he was unable to cover the costs of the wedding. In the abductions of orphans, there were frequently cases when girls resorted to voluntary abductions to avoid an unwanted marriage to another arranged by relatives, usually an uncle. Namely, after a father`s death, children were under their mother's tutelage or, if the mother remarried and went to house of her new husband, they were under the guardianship of their father's family. The same applied in cases of the death of both parents (on guardianship see Mogorović Crljenko, 2006, 82–84, 97–98). In the analysed cases, as a rule, this was uncle, the father's brother. In many cases it is evident poor orphaned girls were unhappy, and mistreated, under the tutelage of their uncles. In such cases, these girls sometimes made independent arrangements with their future husbands, and sometimes they ran away from the uncle's house to the men they chose (for example BAP, 1.3. *Raptuum*, fol.112–113v, 121–122; 3.3. *Raptuum*, fol.111–113; 4.4. *Raptuum*, fol. 20–22. Cp: Mogorović Crljenko, 2012a, 164–165).

Reporting to the priest and the wedding announcement were usually the time when a case came to the diocesan court. As soon as news of an abduction arose, the parish priest reported it to the court (BAP, 1.3. *Raptuum*; 2.6. *Raptuum*; 3.3. *Raptuum*; 4.4. *Raptuum*. Cp.: Mogorović Crljenko, 2012a, 168–169; Cesco, 2004, 356). All these mentioned things happened in a short period, because in both cases, the violent abduction of a girl or voluntary departure, the aim was the same: to contract marriage. In order to make the marriage legal and valid – and is what concerned everyone the most – it was necessary to marry in compliance with the provisions of the Council of Trent, and this implied previous announcements, the presence of a priest and witnesses, and the freely declared consent of the bride and groom.

Women were abducted, especially in the cases of violent abductions, when they were alone on the road, when they went to take water alone, when they were picking grapes, in the field while they were reaping or doing other jobs, when they were returning from the mill or from the harvest, when they were carrying wood, etc. (BAP, 1.3. *Raptuum*, fol. 88–97, 101–103, 107–111; 2.6. *Raptuum*, fol. 14–24, 86–88, 139–142, 232–235,

236–237; 4.4. *Raptuum*, fol. 1–5, 9–13, 59–66, 106–107). Women were not necessarily alone at the time of their abduction. The sources show that they could be in the company of other girls or women, or accompanied by a man – a relative. Court records show that in cases of voluntary abductions, the abductor usually had few accomplices, while in real, violent abductions, there were larger groups of men, mostly young men, and no one could oppose them. Besides the young men, the older men and family members also participated in abductions. In the voluntary abductions, there may have been a larger group of abductors if there was a genuine danger that the girl could be taken by another group. The abductors could be on horseback and armed, most often with swords and sabres, axes, lances, batons, and even firearms (arquebuses), so the abduction proceeded rapidly. When many people participated in the abductions, they were armed. The girl was seized and carried over the shoulder, or she was put on a horse, or she was held by the arms by two or just one of the abductors. Sometimes the girl was pulled by her hair, thrown to the ground and beaten. If the girl resisted and screamed, sometimes the abductors would cover her mouth with her own kerchief to keep her silent (Mogorović Crljenko, 2012a, 170–172).

In cases of young widows or young orphaned girls who lived alone or only with their mothers, the abductors sometimes invaded their homes and took the girl. The sources indicate that abductions were well-planned, and not random and haphazard. The abductors knew about the woman-victim's movements and the approximate times when she went somewhere. Where the woman would be taken after the abduction was also planned. It could be the house of the young man who intended to marry the abducted girl, i.e. the house of his father, or the house of some other accomplice in the abduction. After the abduction, the abductor sometimes entertained his accomplices, i.e. in court the latter testified that they had been treated to food and beverages. Unlike in violent abductions, in cases of contractual abductions, the girl went to her fiancé from her father's house alone, or sometimes accompanied by someone, such as, for example, her mother or brother. The girl may have also arranged a meeting place with her fiancé, for example in a mill or in some other prearranged location, such as a roadway or hill, and then they would flee together. Sometimes they immediately went to the house of the young man, and sometimes they remained in hiding for a time. In such abductions, i.e. voluntary elopements, there was none of the violence mentioned above (BAP, 1.3. *Raptuum*, fol. 1–5v, 30–40, 88–97; 2.6. *Raptuum*, fol.14–24, 55–58, 76–79, 120–129, 173–183, 200–224, 232–261; 3.3. *Raptuum*, fol. 23–27, 111–113; 4.4. *Raptuum*, fol. 56).

During an abduction or immediately thereafter, the relationship was usually consummated – voluntarily if it was a contractual abduction, or violently if it was a coerced abduction. In this way, the woman was in fact preordained to marry her abductor, because after a night spent with him and after sexual congress, no one else would want her for a wife. Some of the abductors, and also some of the abducted girls, very openly admitted that they had had intercourse. However, in cases of violent abductions, both sides, the abductor as well as the abducted girl, denied intercourse in their testimony. But under pressure from the interrogator, they usually would finally admit that there had been a sexual encounter (BAP, 1.3. *Raptuum* especially fol. 30–40, 51v–56, but also all other cases: 2.6. *Raptuum*, 3.3. *Raptuum*; 4.4. *Raptuum*. Cp.: Mogorović Crljenko, 2012a, 172;

Cesco, 2005, 119–120). Namely, a reliable method for obtaining a confession was excommunication, which automatically applied to the abductor and his accomplices – this was prescribed by the Council of Trent, and all of the examined court cases confirm this. Excommunication for offenders was declared as soon as there was news of an abduction, even if it had been voluntary. The court cases clearly show that these excommunications did not last for long. Immediately after the offenders admitted to the act and repented, or if a voluntary abduction has been proven, the abductors and their accomplices were granted remission of excommunication. Finally, almost all abductions actually ended in marriage. In that way, the offenders justified their actions and the girls preserved their honour (Mogorović Crljenko, 2012a, 173).

The background of abductions, as with rape, was connected to honour (Cesco, 2004, 350; Chojnacki, 2000, 371–416; Ferraro, 2000a, 141–190; 2000b, 41–48; Mogorović Crljenko 2012a). It was not just a matter of the woman's honour, but the honour of her entire family. Honour could be tarnished not only by violent abduction, but also by voluntary abduction. For any sexual congress with woman out of wedlock was considered dishonourable and it was thus necessary to take action to restored this sullied honour. In cases of contractual abductions, which happened due to the disagreement of all or part of the girl's family, the families usually accepted the marriage. The provisions of civic statutes stipulate that one of the conditions for marriage between the abductor and the abducted woman, or between the rapist and the raped girl, was the consent of the girl and her family. On the other hand, from the cases conducted at the diocesan court in Poreč, it is apparent that greater importance was accorded to the consent of the girl and the man, rather than of the parents or family. For although the courts accepted the denunciation of an abduction by a father or uncle, and attempted to ascertain the truth, the girl's voluntary consent was crucial for marriage. In some particularly violent abductions, when it was difficult to determine if the woman agreed to marry or not, the interrogator warned girl to think before she decided, because once she entered into marriage she could not renege it later. Honour was obviously an extremely important thing in deciding about marriage, because all girls (women) agreed to marry their abductors. Namely, the obligation of giving a dowry to the abducted girl or widow was mentioned only in seven cases (of the 73 examined), but in small Istrian rural places there was obviously no guarantee that the dowry would restore honour to the abducted and dishonoured woman. There was also no guarantee that such a woman could marry another man, just as there was no guarantee that in such impoverished Istrian settlements the dowry would be paid. Therefore the safest method to restore honour and, in fact, the only one in evidence in the examined sources was marriage to the abductor. Girls or women were aware of that, because all of them agreed to marry their abductors, even if they had previously rejected marriage whit that individual (Mogorović Crljenko, 2012a, 178–179).

# UGRABITVE ŽENSK ZA ZAKON: ISTRA NA ZAČETKU 17. STOLETJA

*Marija MOGOROVIĆ CRLJENKO*

Sveučilište Jurja Dobrile u Puli, Zagrebačka 30, 52100, Pula, Hrvatska

e-mail: mmogorov@unipu.hr

*POVZETEK*

*Ugrabitve žensk, ki so se končale z zakonsko zvezo, so od nekdaj znane v številnih popolnoma različnih kulturah. Delo analizira ugrabitve, ki so se v prvi polovici 17. st. dogajale v Istri, in to na območju škofije Poreč, kjer so o tem problemu ohranjeni zelo dragoceni viri, knjige ugrabitev (Raptuum) oziroma sodni procesi, ki jih je vodilo škofijsko sodišče in so zabeleženi od 17. st. naprej. Predpisi o ugrabitvah so sicer ohranjeni tudi v nekaterih istrskih statutih, predpise o tem je ravno tako sprejemal Tridentski koncil, zato so v članku poleg omenjenih sodnih procesov obravnavani tudi statutarni predpisi. Ugrabitve so praviloma označevale začetek zakonske zveze oziroma bile eden izmed – sicer nezakonitih – načinov sklenitve zakona. Obravnavati pa jih je mogoče tudi kot tajno sklenitev zakonske zveze. Poleg tega je omenjene ugrabitve mogoče deliti v dve osnovni skupini, dogovorne in prisilne. Odvisno od tega je pri sami ugrabitvi sodelovalo manj ali več pomagačev, posledična zakonska zveza pa je bila lahko prostovoljna ali prisilna. V povezavi z ugrabitvami se obravnava tudi stališče posameznih družinskih članov do ugrabitve, ki so jo zagovarjali ali ji nasprotovali, ne glede na stališče same ugrabljenke.*

*Ključne besede: zakon, ugrabitve, nasilje, škofija Poreč, prva polovica 17. stoletja*

SOURCES AND BIBLIOGRAPHY

**Alessi, G. (1990):** Il gioco degli scambi: seduzione e risarcimento nella casistica cattolica del XVI e XVII secolo. Quaderni storici, 75, 3, 805–831.

**Bellabarba, M. (2004):** "I processi per adulterio nell`Archivio Diocesano Tridentino (XVII–XVIII secolo)". In: Seidel Menchi, S., Quaglioni, D. (eds): Trasgressioni: seduzione, concubinato, adulterio, bigamia (XIV–XVIII secolo). Bologna, Il Mulino, 185–227.

**Benyovsky, I. (1999):** Reguliranje gradskih prostora u dalmatinskim gradovima srednjeg vijeka. Acta Histriae, 7, 543-564.

**Bertoša, M. (1995):** Istra: Doba Venecije (XVI.–XVIII. stoljeće). Pula, Zavičajna naklada "Žakan Juri".

**Biskupijski arhiv u Poreču** (Diocese archives in Poreč) [hereinafter as **BAP**]. 1.3. *Raptuum (1602–1609)*. Manuscript.

**BAP.** 2.6. *Raptuum (1611–1624)*. Manuscript.

**BAP.** 3.3. *Raptuum (1631–1644)*. Manuscript.

**BAP.** 4.4. *Raptuum (1645–1657)*. Manuscript.

**Darovec, D. (1997):** Pregled istarske povijesti. Pula, C. A. S. H.

**The canons and decrees** *of the sacred and oecumenical Council of Trent. Session XXIV*, 11 Nov. 1563, http://history.hanover.edu/texts/trent/ct24.html (27. 5. 2014.)

**Cesco, V. (2004):** Il rapimento a fine di matrimonio. Una pratica sociale in età moderna tra retorica e cultura. In: Chiodi, G., Povolo, C. (eds.): L`amministrazione della giustizia penale nella Repubblica di Venezia (secoli XVI–XVIII), II. Sommacampagna, Cierre, 349–412.

**Cesco, V. (2005):** Il ratto nelle diocesi di Cittanova e Parenzo: giudici ecclesiastici ed interpreti tra norme tridentine e pratiche comunitarie. In: Matijašić, R. (ed.): Statuimus et ordinamus quod... Sustavi moći i mali ljudi na jadranskom prostoru. Zbornik I. Istarskog povijesnog biennala. Poreč, Državni arhiv u Pazinu, Zavičajni muzej Poreštine, Sveučilište Jurja Dobrile u Puli, 111–128.

**Chojnacki, S. (1999):** Riprendersi la dote: Venezia, 1360–1530. In: Seidel Menchi, S., Jacobson Schutte, A., Kuehn, T. (eds.): Tempi e spazi di vita feminile tra medioevo ed età moderna. Bologna, Il Mulino, 461–492.

**Chojnacki, S. (2000):** Il divorzio di Cateruzza: rappresentazione femminile ed esito processuale (Venezia 1465). In: Seidel Menchi, S., Quaglioni, D. (eds.): Coniugi nemici. La separazione in Italia dal XII al XVIII secolo. Bologna: Il Mulino, 371–416.

**Čulinović-Konstantinović, V. (1995–1997):** Kolektivno i individualno nasilje u običajima sklapanja braka. Adrias: zbornik Zavoda za znanstveni i umjetnički rad HAZU u Splitu, 6–7, 65–78.

**Čulinović-Konstantinović, V. (1986):** Oblici sklapanja braka u tradiciji srednje Dalmacije. Kačić: Zbornik franjevačke provincije Presvetog Otkupitelja, 18, 97–112.

**Ferraro, J. (2000):** Coniugi nemici: Orsetta, Annibale e il compito dello storico (Venezia 1634). In: Seidel Menchi, S., Quaglioni, D. (eds.): Coniugi nemici. La separazione in Italia dal XII al XVIII secolo. Bologna, Il Mulino, 141–190.

**Ferraro, J. (2000):** Honor and the marriage wars of late renaissance Venice. Acta Histriae, 9, 8, 41–48.

**Gaudemet, J. (1989):** Il matrimonio in Occidente. Torino, Società editrice internazionale.

**Klapisch-Zuber, C. (2000):** La donna e la famiglia. In: Le Goff, J. (ed.): L'uomo medievale. Roma, Bari, Laterza, 319–349.

**Klen, D. (1963–1964):** Statut Grožnjana. Vjesnik historijskih arhiva u Rijeci i Pazinu, VIII–IX, 205–256. [as Statute of Grožnjan]

**Klen, D. (1965):** Statut Grožnjana. Vjesnik historijskih arhiva u Rijeci i Pazinu, X, 201–243. [as Statute of Grožnjan]

**Kos, D. (2014):** Prodane neveste barona Raigersfelda ali ženitno posredništvo v predstavah poznobaročnega svetovljana. Acta Histriae, 22, 2, 327–344.

**Lombardi, D. (2001):** Matrimoni di antico regime. Bologna, Il Mulino.

**Mihelič, D. (2000):** Ženska čast v istrskih mestih (Trst, Koper, Izola, Piran, 14.–15. stoletje). Acta Histriae, 9, 8, 29–40.

**Mogorović Crljenko, M. (2006):** Nepoznati svijet istarskih žena. Zagreb, Srednja Europa.

**Mogorović Crljenko, M. (2010):** Women, Marriage, and Family in Istrian Communes in the Fifteenth and Sixteenth Centuries. In: Sperling, J. G., Kelly Wray, S. (eds): Across the Religious Divide. Women, Property, and Law in the Wider Mediterranean (ca. 1300–1800). New York, London, Routlege, 137–157.

**Mogorović Crljenko, M. (2012a):** Druga strana braka. Zagreb, Srednja Europa.

**Mogorović Crljenko, M. (2012b):** The position of woman in «Istrian marriage pattern» (Istria in the 15th and the 16th centuries). In: Bellavitis, A., Filippini, N. M., Plebani, T. (eds.): Spazi, poteri, diritti delle donne a Venezia in età moderna. Verona, QuiEdit, 21–29.

**Parentin, L. (1966):** Statuti di Cittanova. Atti e memorie della società istriana di archeologia e storia patria, vol. XIV della Nuova Serie, 105–220. [as Statute of Novigrad]

**Povolo, C. (1994):** Eredità anticipate o esclusione per causa di dote? Un caso di pluralismo giuridico nel Friuli del primo`500. In: Accati, L., Cattaruzza, M., Verzar Bass, M. (eds.): Padre e figlia. Torino, Rosemberg e Sellier, 41–73.

**Radossi, G. (1970):** Statuto di Dignano. Atti del Centro di Ricerche storiche – Rovigno, 1, 49–151. [as Statute of Vodnjan]

**Vekarić, N., Benyovsky, I., Buklijaš, T., Levak, M., Lučić, N., Mogorović, M. & J. Primorac, (2000):** Vrijeme ženidbe i ritam poroda. Dubrovnik i njegova okolica od 17. do 19. stoljeća. Zagreb, Dubrovnik, Zavod za povijesne znanosti HAZU u Dubrovniku.

**Vesnaver, G. (1884):** Statuto municipale di Portole. Archeografo Triestino, XI, 133–180. [as Statute of Oprtalj]

**Zjačić, M. (1961–1962):** Dvigradski statut. Vjesnik historijskih arhiva u Rijeci i Pazinu, VI–VII, 233–294. [as Statute of Dvigrad]

**Zjačić, M. (1963–1964):** Statut buzetske općine. Vjesnik historijskih arhiva u Rijeci i Pazinu, VIII–IX, 71–137. [as Statute of Buzet, 40]

**Zjačić, M. (1965):** Statut buzetske općine. Vjesnik historijskih arhiva u Rijeci i Pazinu, X, 118–199. [as Statute of Buzet, 40]

Received: 2014-02-14
Original scientific article
UDC 929Černý:811.163.6'282(450.365=163.6)

# ADOLF ČERNÝ IN NJEGOV PRISPEVEK K SPOZNAVANJU SLOVENCEV V REZIJI V ČEŠKEM OKOLJU

*Petr KALETA*
Karlova Univerza, Filozofska fakulteta, Oddelek za srednjeevropske študije, náměstí Jana Palacha 2, 116 38 Praga 1, Češka
e-mail: petr.kaleta@ff.cuni.cz

*IZVLEČEK*

*Na prelomu 19. in 20. stoletja je v češkem prostoru vladalo očitno zanimanje za študij slovanskih etničnih skupin. Veliko zaslugo za to je imel Adolf Černý, ustanovitelj revije* Slovanský přehled*, ki je bila specializirana za slovansko problematiko. Černý se je osredinil predvsem na Lužiške Srbe, vendar se je v svojih delih posvetil tudi drugim slovanskim etničnim skupinam. Naša raziskava obravnava Černýjevo znanstveno zanimanje za Slovence v severni Italiji, predvsem v Reziji. Tu se opiramo predvsem na Černýjeva dela o Rezijanih, ki so izhajala v letih 1897−1908, in na arhivsko gradivo Masarykovega inštituta in Arhiva Akademije znanosti Češke republike (Masarykův ústav a Archiv AV ČR) v Pragi. Adolf Černý je v svojih znanstvenih in poljudnoznanstvenih delih obogatil češko slavistiko z manj znano problematiko rezijanskega prebivalstva, predvsem z njihovimi jezikovnimi in etnografskimi značilnostmi, ter opisal njihov tedanji položaj. Pomemben posrednik za spoznavanje vseh italijanskih Slovencev je bil videmski Slovenec, duhovnik in pisatelj Ivan Trinko, ki je svoje članke objavljal tudi v reviji* Slovanský přehled*.*

*Ključne besede: Adolf Černý, Rezijani, prelom 19. in 20. stoletja, znanstvena pot, Ivan Trinko, Slovanský přehled*

# ADOLF ČERNÝ E IL SUO CONTRIBUTO ALLA CONOSCENZA DEGLI SLOVENI DELLA VAL RESIA NELL'AMBITO CECO

*SINTESI*

*Tra la fine dell'Ottocento e l'inizio del Novecento, nell'ambito ceco si notava un forte interesse per lo studio delle etnie slave. Un particolare merito per lo sviluppo della slavistica ceca spetta ad Adolf Černý, fondatore della rivista specialistica* Slovanský přehled *(Rassegna di Studi Slavistici). Černý concentrò il suo interesse scientifico prevalentemente su tematiche riguardanti i Sorabi, ma si occupò anche di altri popoli slavi. Il presente saggio tratta delle sue ricerche inerenti alla comunità slovena residente nell'Italia settentrionale, e soprattutto alla Val Resia. Ci basiamo principalmente sui lavori pubblicati tra gli anni 1897−1908, in cui Černý si occupa dei Resiani, e su vari materiali archivi-*

*stici conservati presso il Masarykův ústav a Archiv AV ČR (Istituto Masaryk e Archivio dell'Accademia delle Scienze della Repubblica Ceca) di Praga. Adolf Černý con i suoi scritti scientifici e divulgativi diede un notevole contributo allo sviluppo della slavistica ceca presentando in tale ambito la questione della specificità linguistica ed etnografica dei Resiani, nonché caratterizzando la loro situazione di allora. Importante fu la collaborazione con Ivan Trinko, sacerdote e scrittore sloveno di Udine, che fornì ad Adolf Černý nozioni sugli Sloveni italiani e pubblicò diversi articoli sulla rivista* Slovanský přehled.

*Parole chiave: Adolf Černý, Resiani, fine dell'Ottocento, inizio del Novecento, viaggi di ricerca, Ivan Trinko, Slovanský přehled*

## UVOD

Čehi, ki so živeli v avstrijskem cesarstvu na ozemlju zgodovinskih dežel Češke, Moravske in Šlezije, so v polovici šestdesetih let 19. stoletja v svojem narodnem razvoju dosegli raven, ki je pomenila polnovredno narodno zavest. To se je zgodilo šele po procesu oblikovanja češkega naroda, ki se je začel v zadnji tretjini 18. stoletja in končal z revolucionarnim letom 1848. K oblikovanju narodne zavesti je sodilo tudi slovanstvo in ideja o t. i. slovanski vzajemnosti. Vendar pa obstajajo različni pogledi na to, kako izrazita je bila vloga slovanstva pri oblikovanju češke narodne zavesti. Jasno je, da so Herderjeve zamisli o idealiziranih Slovanih prevzeli, preoblikovali in v češkem okolju ali v okviru vseh Slovanov razvijali številni domoljubi kot so bili npr. Josef Jungmann (1773−1847), Václav Hanka (1791−1861), dva raziskovalca slovaškega porekla, ki sta pisala v češčini, Ján Kollár (1793−1852) in Pavel Josef Šafařík[1] (1795−1861), nato še František Ladislav Čelakovský (1799−1852) ali Karel Jaromír Erben (1811−1870).[2] Kot alternativa prvotnega slovanstva se v štiridesetih letih 19. stoletja po nekaterih negativnih izkušnjah z drugimi Slovani pojavlja avstroslavizem, ki je bil protiutež tradicionalnemu panslavizmu. Ustanovitelj te na Češkem vse do preloma 19. in 20. stoletja razmeroma popularne smeri je postal pesnik, novinar in politik Karel Havlíček (1821−1856), „Oče naroda" − češki zgodovinar František Palacký (1798−1876) − pa je dal gibanju programski značaj. V zadnji tretjini 19. stoletja, v času velike narodne zavesti Čehov, se je na Češkem domnevno začela oblikovati skupina raziskovalcev (ti navadno niso bili zaposleni kot pedagogi na univerzi), ki si je prizadevala spoznati in znanstveno opisati slovansko etnično skupino (skupine) in ji pomagati v razvoju narodnobuditeljskih prizadevanj. Eden najpomembnejših med njimi je bil sorabist[3] Adolf Černý.

Ime češkega raziskovalca Adolfa Černýja (1864−1952) je neločljivo povezano z majhnim narodom zahodnoslovanskih Lužiških Srbov, ki jim je posvetil svoje znanstve-

1 Slovaško Pavol Jozef Šafárik.

2 O formiranju češkega naroda glej npr. Pynsent, 1996; Hroch, 1999; Řepa, 2001.

3 Sorabisitka je veda o lužiškosrbskem jeziku, književnosti, zgodovini, etnologiji in kulturi.


*Adolf Černý, fotografija, datirana s 30. 1. 1899. MUA AV ČR, AAV, Fond Adolf Černý*

no delo in velik del lastnega literarnega ustvarjanja. S svojo jezikovno nadarjenostjo je zelo hitro obvladal gornjo lužiško srbščino, v kateri si je nato dopisoval s pomembnimi osebnostmi lužiškosrbske inteligence, med katerimi lahko imenujemo Michała Hórnika (1833−1894), Arnošta Muko (1854−1932) ali Jakuba Barta-Ćišinskega (1856−1909). Njegovo zanimanje je bilo usmerjeno predvsem v ta narod, ki živi v srbski Lužici, danes v zvezni deželi Saški in v Brandeburgu. Tja je zahajal vsako leto, raziskoval, se pogovarjal s prijatelji in se udeležil raziskovalnih poti po lužiškosrbskem podeželju. Rezultat njegovega vseživljenjskega dela na področju sorabistike so stotine znanstvenih in poljudno-znanstvenih del, pesniških prevodov in lastno pesniško ustvarjanje. Od vseh njegovih sorabističnih publikacij lahko imenujemo vrhunsko znanstveno delo o mitologiji Lužiških Srbov, napisano v gornji lužiški srbščini, *Mythiske bytosće łužiskich Serbow* (Budyšin 1898), s katerim se je za vedno zapisal v zgodovino svetovne sorabistike.[4]

Černý je imel zelo bogate znanstvene in literarne stike tudi s Poljaki, veliko pozornosti je namenil poljski tematiki, s svojimi prevodi iz poljske književnosti (J. Słowacki, M. Bałucki, I. Maciejowski, J. A. Kisielewski, W. Perzyński, S. Przybyszewski, E. Orzeszkowa) pa je bogatil češko literarno okolje. Černý je prav tako prevajal poezijo iz srbščine, hrvaščine, ukrajinščine, beloruščine ter poezijo zamejskih Slovencev iz Italije. Njegovo zanimanje za Slovane in njihove težave imamo lahko brez pretiravanja za vsestransko.[5]

Z vidika češke slavistike ne moremo prezreti niti delovanja Adolfa Černýja v funkciji lektorja lužiške srbščine in poljščine od leta 1901 ter od leta 1911 srbohrvaščine na Filozofski fakulteti Karlove univerze v Pragi. Bil je tudi češki pesnik, ki je svoje pesniške zbirke objavljal pod psevdonimom Jan Rokyta. V civilni zaposlitvi je Černý deloval kot pedagog na učiteljskem inštitutu, najprej v Hradcu Králové in od leta 1896 v Pragi. Nato je leta 1900 končal svojo pedagoško dejavnost in je postal svobodni pisatelj in publicist. V letih 1919−1927 je bil zaposlen na ministrstvu za zunanje zadeve, kjer je lahko izkoristil svoje znanje slovanskih jezikov in poznavanje okolja slovanskih dežel.

Kot je razvidno iz zgornjega besedila, je Adolf Černý poskušal v celoti spoznati Slovane in njihovo kulturo. Želel si je, da bi imela strokovna in laična javnost priložnost spoznavati politično in kulturno življenje vseh slovanskih etničnih skupin v vsem slovanskem svetu. V približno prvih petnajstih letih lastnega znanstvenega dela in objavljanja prispevkov je ta raziskovalec ciljno navezal stike s slovanskimi raziskovalci v skoraj vseh slovanskih regijah ali s tistimi, ki so se intenzivno posvečali določenemu slovanskemu narodu ali etnični skupini. Zato je lahko oktobra 1898 ustanovil revijo *Slovanský přehled,* ta pa je nato vse življenje izpolnjevala Černýjevo idejo, da bi ciljno in kompleksno pripomogel k spoznavanju Slovanov z vsemi njihovimi pozitivnimi platmi in napakami.

Imel je poseben čut predvsem za najmanjše slovanske etnične skupine, zato njegovemu zanimanju niso mogli ubežati niti Slovenci iz doline Rezije, ki jim je posvetil nekaj svojih razprav, razmeroma intenzivno korespondenco pa je navezal predvsem s slovenskim narodnim buditeljem iz Vidma Ivanom Trinkom. Njegova prva pot k Rezijanom v

4 Podrobneje o lužiškosrbskih interesih glej npr. Kaleta, 2006; Valenta, 2011.

5 O njegovem zanimanju za posamezna slovanska območja (razen lužiškosrbskega območja) glej Bartoš, 1964; Kaleta, 2003; Černý, 2013.

Italijo spomladi leta 1898 je bila hkrati njegovo prvo spoznavno bivanje med južnimi Slovani, ki si jih je tako dolgo želel spoznati – vse od rusko-turške vojne iz let 1877–1878 je v češkem tisku spremljal njihove usode.[6] S potovanjem v Rezijo so se začeli številni poznejši izleti na slovanski jug, kamor je pogosto odpotoval predvsem na okrevanje ob Jadranskem morju. Pogosto se je zadržal npr. na hrvaškem otoku Rabu, o katerem je celo napisal temeljit turistični vodič *Dalmátský ostrov Ráb* (Praha 1909).[7] Tematika o Jadranu se pojavlja tudi npr. v njegovi pesniški zbirki *Jadranské dojmy (1908–1912)* (Praha 1915). Njegova potovanja na Jadransko morje je mogoče umestiti v obdobje od konca 19. do začetka 20. stoletja, ko se je zanimanje Čehov za letovanje ob Jadranskem morju močno povečalo.[8]

To delo je posvečeno Černýjevim raziskovanjem in potovanjem od konca 19. do začetka 20. stoletja na področja rezijanskih Slovencev in drugih Slovanov severne Italije,[9] o katerih je napisal strokovne in poljudne članke. Tu se opiramo predvsem na Černýjeve publikacije in gradiva iz njegove zapuščine, ki so shranjena na inštitutu Masarykův ústav a Archiv AV ČR v Pragi. Pri opazovanem obdobju pa omenjamo tudi druge prispevke iz čeških revij z rezijansko tematiko. 19. avgusta 2014 je minilo sto petdeset let, odkar se je v vzhodnočeškem mestu Hradec Králové rodil Adolf Černý. Zato bi s pričujočo študijo hkrati radi spomnili na jubilej enega od najizrazitejših likov češkega slavističnega raziskovanja na prelomu 19. in 20. stoletja.

## PRVOTNO ZANIMANJE ZA REZIJANE V ČEŠKEM PROSTORU

Rezija (italijansko Val Resia), ledeniška dolina v zahodnem delu Julijskih Alp, ki danes administrativno spada k istoimenski občini v Videmski pokrajini[10] v avtonomni deželi Furlanija - Julijska krajina[11] v Italiji, je bila vse do leta 1420 del Oglejskega patriarhata, od leta 1420 do leta 1797 je pripadala Beneški republiki, po kratkem Napoleonovem obdobju Avstriji ter od leta 1866 Italiji. Rezijo sestavlja pet večjih vasi: Bela (rezijansko Bila, italijansko San Giorgio), Ravanca (rezijansko Ravanca, italijansko Prato di Resia) – administrativno središče doline, Njiva (rezijansko Njïwa, italijansko Gniva), Osojane (rezijansko Osoanë, italijansko Oseacco) in Solbica (rezijansko Solbica italijansko Stolvizza), h katerim spada še nekaj manjših vasi in naselij (Šekli, 2002, 26). To posebno s Slovani poseljeno območje je že od začetka slavistike pritegovalo različne raziskovalce. Adolf Černý tudi ni bil prvi Čeh, ki so ga navdušili slovanski prebivalci Rezije, saj so prvi prispevki o Rezijanih, ki segajo v začetek 19. stoletja, povezani ravno s češkim okoljem.

6 MUA AV ČR, AAV, Fond Adolf Černý, lastni delo, *Mé vzpomínky na slovanský jih* (rokopis), neurejeno.

7 Med Čehi je bila priljubljena tudi severnojadranska Opatija, kamor je Černý tudi potoval in kjer se je leta 1911 med svojim bivanjem pogosto srečeval z odličnim češkim pesnikom Jaroslavom Vrchlickim.

8 O razvoju češkega turizma na Jadranu v tem obdobju glej npr. Formánková, 2007; Kavrečič, Klabjan, 2010. O kulturnem, družbenem in političnem življenju Čehov na Jadranu, predvsem v Trstu, glej Klabjan, 2011.

9 O češkem zanimanju za Slovence in o češko-slovenskih odnosih na prelomu 19. in 20. stoletja in v obdobju med obema vojnama glej Klabjan, 2007.

10 Italijansko Provincia di Udine, furlansko Provincie di Udin.

11 Italijansko Friuli-Venezia Giulia, furlansko Friûl-Vignesie Julie.

Podobno kot na drugih slavističnih področjih je bil začetnik tudi tega raziskovanja Josef Dobrovský (1753−1829),[12] ki mu je osnovne informacije o njih leta 1801 podal vojaški kaplan Antonín Pišely (1756−1806). Dobrovský je nato leta 1806 v nemško pisanem zborniku *Slavin* objavil prispevek *Über die Slawen im Thale Resia* (Dobrovský, 1806; Dobrovský, 1834), v katerem navaja zlasti primere rezijanskih besed, ki jih razlaga v nemščini in jim včasih doda tudi češko podobo. Takoj na začetku razprave je Dobrovský pripomnil: »In einem Schreiben vom 14. April 1801 verzeichnete mein lieber Slawin (A. Pišely) einige windische Wörter, die er im Thale Resia, am Flusse gleiches Namens, zu Ruštis, einem Dorfe dieses Thales, gesammelt hat. Das Thal liegt im venetianischen Gebiete, 15 italienische Meilen von Udine, und wird von 7000 Menschen, die vom Ackerbau und Viehzucht leben, bewohnet. Die Slawisch-Redenden gehören zu dem windischen Stamme, der sich in Krain und Kärnten seit dem sechsten Jahrhundert ausgebreitet hat. Die unslawischen aus andern Sprachen aufgenommenen Wörter will ich mit einem (+) kennbar machen. Hier also eine kleine Probe.«[13] (Dobrovský, 1834, 118).

Za nadaljnjo popularizacijo rezijanske problematike v češkem okolju je bil čez slabih štirideset let zaslužen slavist in jezikoslovec Václav Hanka, ki je poskrbel, da so leta 1841 v znanstveni reviji *Časopis Českého museum* objavili odlomke iz korespondence ruskih raziskovalcev Izmaila Ivanoviča Sreznjevskega (1812−1880) in Pjotra Ivanoviča Preisa (1810−1846), ki je bila v članku *Zpráva o Rezianech (Dopisy I. Srezněvského a P. Preisa V. Hankovi)* naslovljena ravno Hanki (Hanka, 1841). V pismu, datiranem z 2. 5. 1841, se je Sreznjevski posvetil opisu načina življenja, pisnih spomenikov in navad (tudi na primeru ene pesmi) rezijanskih Slovencev, katerih dolino je na svoji poti k spoznavanju Slovanov v Italiji obiskal v dveh dneh. Po ozemlju Rezije, na katerem je po besedah avtorja pisma tedaj živelo 2067 prebivalcev, je Sreznjevskega spremljal tamkajšnji kaplan, župnik pa ga je seznanjal s tamkajšnjo zgodovino. Václav Hanka je pri redakciji pisma opazil, da je število Rezijanov, ki jih je navedel Sreznjevski, napačno. Ruski raziskovalec si je podatek napačno zapisal ali pa ni dobro razumel svojih vodičev. Hanka, ki je primerjal to število z najnovejšimi podatki slovensko-hrvaškega pisatelja Stanka Vraza (1810−1851) v *Dennici* (1841), je v opombi pripomnil, da je Sreznjevski najbrž imel v mislih 2767 prebivalcev Rezije.

Dotedanje članke o Rezijanih je poznal še Pavel Josef Šafařík. Verjetno se je med zbiranjem literature o slovanskih jezikih za svoje delo *Slovanský národopis* (Praha 1842)[14] pobliže seznanil tudi z rezijanskimi Slovenci, o katerih je v varšavskem časopisu

12 O znanstvenem zanimanju Dobrovskega za slovensko problematiko glej Kidrič (1930).

13 Prevod v slovenščino: »V pismu iz 14. aprila 1801 mi je moj ljubi Slovan (A. Pišely) zapisal nekaj vindišarskih besed, ki jih je zbral v dolini Reziji, ob reki istega imena, pri Ruštisu, vasi te doline. Dolina leži na beneškem delu, petnajst italijanskih milj oddaljena od Vidma, in je poseljena s 7000 ljudmi, ki se preživljajo s poljedelstvom in govedorejo. Slovansko govoreči spadajo k vindišarskemu plemenu, ki se je na Kranjskem in Koroškem razširilo v šestem stoletju. Neslovanske in iz drugih jezikov prevzete besede bom označil s (+). Tu je torej majhen poskus.«

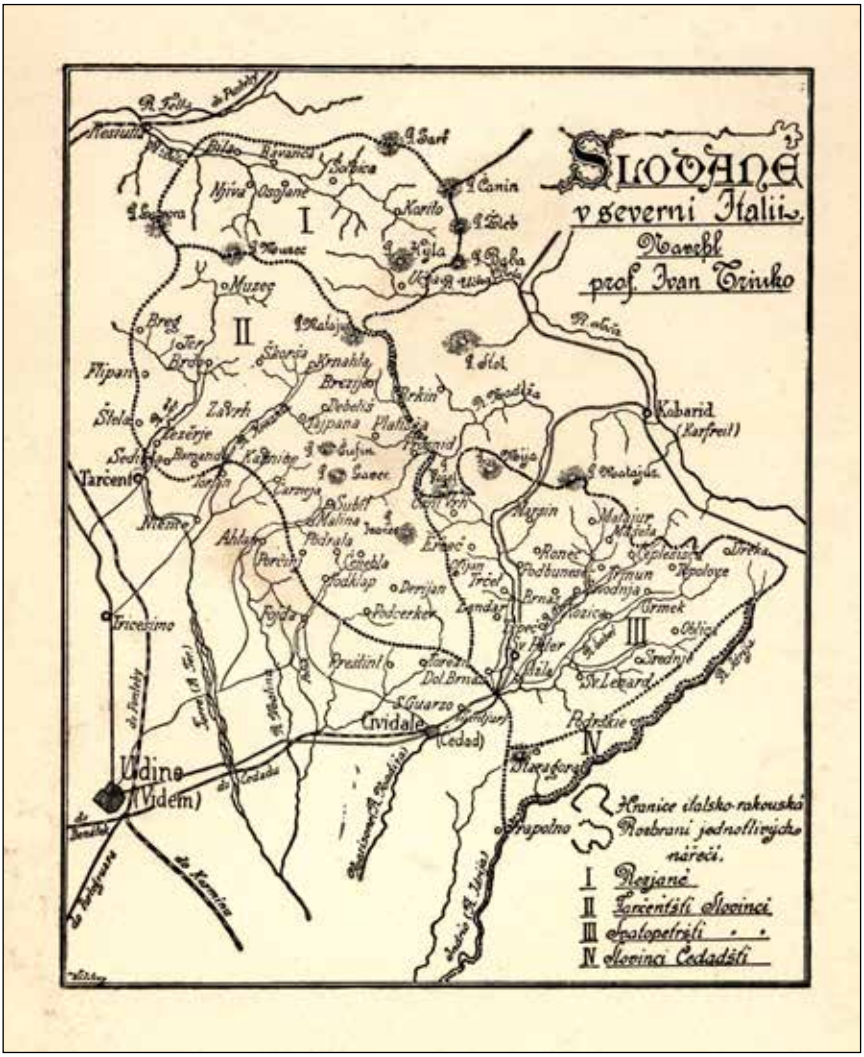
14 V *Slovanskem národopisu* (*Nářečí korutanské*) je v poglavju o slovenščini geografsko zamejil njeno tedanjo prisotnost in podal imena posameznih vej slovanskega prebivalstva. O rezijanščini in Rezijanih glej (Šafařík, 1953, 72−73, 75, 76).


*Rezijani s konca 19. stoletja (V údolí Resie. Praha 1899). MUA AV ČR, AAV, Fond Adolf Černý*

*Денница/Jutrzenka* napisal članek *О резіянах и фурлянских словинах/O Rezjanach i furlańskich Słowinach* (Šafařík, 1842). V prevodu O. Jezeckega v ruščino in A. Kucharskega v poljščino je opisal jezik Rezijanov in se usmeril na njihov izvor. V kritičnem članku je Šafařík na koncu pripomnil, da jezik Rezijanov in furlanskih Slovencev šteje za »narečje« koroške »narečne skupine«, prebivalstvo pa je slovanskega, in ne uskoškega porekla, kot so trdile nekatere predhodne hipoteze.

## ZAČETKI ČERNÝJEVEGA ZANIMANJA ZA REZIJO IN PRVO POTOVANJE TJA

Adolf Černý je imel zelo tople tako znanstvene kot prijateljske stike s poljskim jezikoslovcem Janom Baudouinom de Courtenayjem (1845–1929), ki je deloval kot profesor na ruskih univerzah v Kazanu in v Dorpatu (danes Tartuju), kratek čas v avstrijskem Krakovu, nato v Sankt Peterburgu, po prvi svetovni vojni pa v Varšavi. Černýja je še kot mladega slavista očaral Baudouinov širok raziskovalni spekter, zlasti njegove dialektološke raziskave rezijanskih Slovencev. Oba slovanska znanstvena delavca sta si začela dopisovati leta 1887, prvič pa sta se srečala v Dorpatu leta 1889 na Černýjevi poti v carsko Rusijo. Predvsem zaradi Jana Baudouina de Courtenayja je Adolf Černý obogatil svoje znanje z novo posebno južnoslovansko vejo (Rezijani) in dobil zagon, da bi temeljito spoznal in češkemu bralcu približal slovansko Rezijo, to do danes tudi med slavisti




*Trinkov zemljevid Slovani v severni Italiji iz leta 1899. MUA AV ČR, AAV, Fond Adolf Černý*

malo znano severnoitalijansko pokrajino. V obdobju, ki je sledilo, je tako zbiral gradivo o Rezijanih in skrbno preučeval posebnosti njihovega jezika. Pri tem pa je spoznal tri že na začetku omenjena dela iz prve polovice 19. stoletja, ki so povezana s češkim raziskovalnim prostorom: razpravo Dobrovskega *Slavínu* (1806), Pisma I. Sreznjevskega in P. Preisa V. Hanki v *Časopisu Českého museum* (1841), pa tudi Šafaříkovo študijo v poljski *Jutrzenki* (1842).

Osnova za pisanje njegovega prvega članka o rezijanskih Slovanih je bilo v nemščini objavljeno delo Baudouina de Courtenayja z ruskim naslovom *Материалы для южнославянской диалектологии и этнографии* (С.-Пб. 1895[15]). Jan Baudouin de Courtenay, ki je Rezijo do tedaj obiskal v letih 1872, 1873, 1890, 1892, 1893 in 1894, se je med dotedanjimi raziskovalci rezijanski problematiki posvečal najbolj sistematično.[16] Černýjev prispevek, natisnjen leta 1897 v reviji *Květy* v dveh delih (Černý, 1897), je nosil ime *Resiané*, *Slované severoitalští.* Černý je v članku Slovane v severni Italiji razdelil v štiri skupine, ki temeljijo na terminologiji J. Baudouina de Courtenayja: Rezijani, terski Slovani, nadiški ali špetrski Slovani ter starogorski Slovani, njihovo skupno število pa je ocenil na 35.000. V eseju se je usmeril predvsem na Rezijane, solidno je opisal značilnosti njihovega jezika, geografsko je opredelil njihovo ozemlje, opozoril je na rokopisne spomenike in ljudske pesmi, pravljice in povesti, opisal je tudi narodno nošo, tipe vasi in bivališča Rezijanov. V poljudnoznanstvenem članku je podrobno opisal značilnosti rezijanske problematike, ki je bila v češkem prostoru malo znana. Jasno je, da je imel Černý že tedaj dobro znanje o Rezijanih, ni pa imel neposrednih stikov z nobenim slovenskim kulturnim delavcem v severni Italiji in ni imel priložnosti, da bi to ozemlje spoznal tudi osebno.

Zavedal se je, da je treba za popolno razumevanje in poznavanje naroda ali etnične skupine dano območje obiskati, za kar si je močno prizadeval. Priložnost, da bi se seznanil z Rezijani, je dobil leta 1898, ko je bil v Italiji na okrevanju. Načrtoval je, da bo na poti nazaj obiskal Rezijane. Najprej se je ustavil v Benetkah, kjer je obiskal pianistko, skladateljico in muzikologinjo ruskega porekla Elizabeth (Ello) (von) Schultz-Adaïewsky (1846–1926), ki je bila znana zaradi podrobne študije slovenskih (tudi rezijanskih) melodij.[17] Pot je nadaljeval v Videm, kraj, v katerem je tedaj deloval najznamenitejši predstavnik kulturnega življenja italijanskih Slovencev, filozof, katoliški duhovnik, pesnik in politik Ivan Trinko (1863–1954). Poleg Trinka je Černý tedaj hotel obiskati še drugega italijanskega Slovenca, Francesca Musonija (1864–1926), vendar žal nobenega od njiju ni našel doma.

Med velikonočnimi prazniki 10. aprila 1898 se je odpravil v samo Rezijo.[18] Tja je prispel zelo dobro teoretično podkovan o jeziku in navadah tamkajšnjih prebivalcev, ki jih je poznal predvsem iz del Jana Baudouina de Courtenayja. Zato je ravno z njegovimi strokovnimi publikacijami primerjal rezultate lastnih raziskav v Reziji. Takoj po srečanju s prvim Rezijanom, kočijažem Jožefom Barbarinom[19], je intenzivno opažal značilnosti rezijanskega jezika, zlasti globoke samoglasnike. Rezijanska narečja je nato razdelil v skladu z Janom Baudouinom de Courtenayjem na bilsko, njivsko in osojsko (z učejskim).

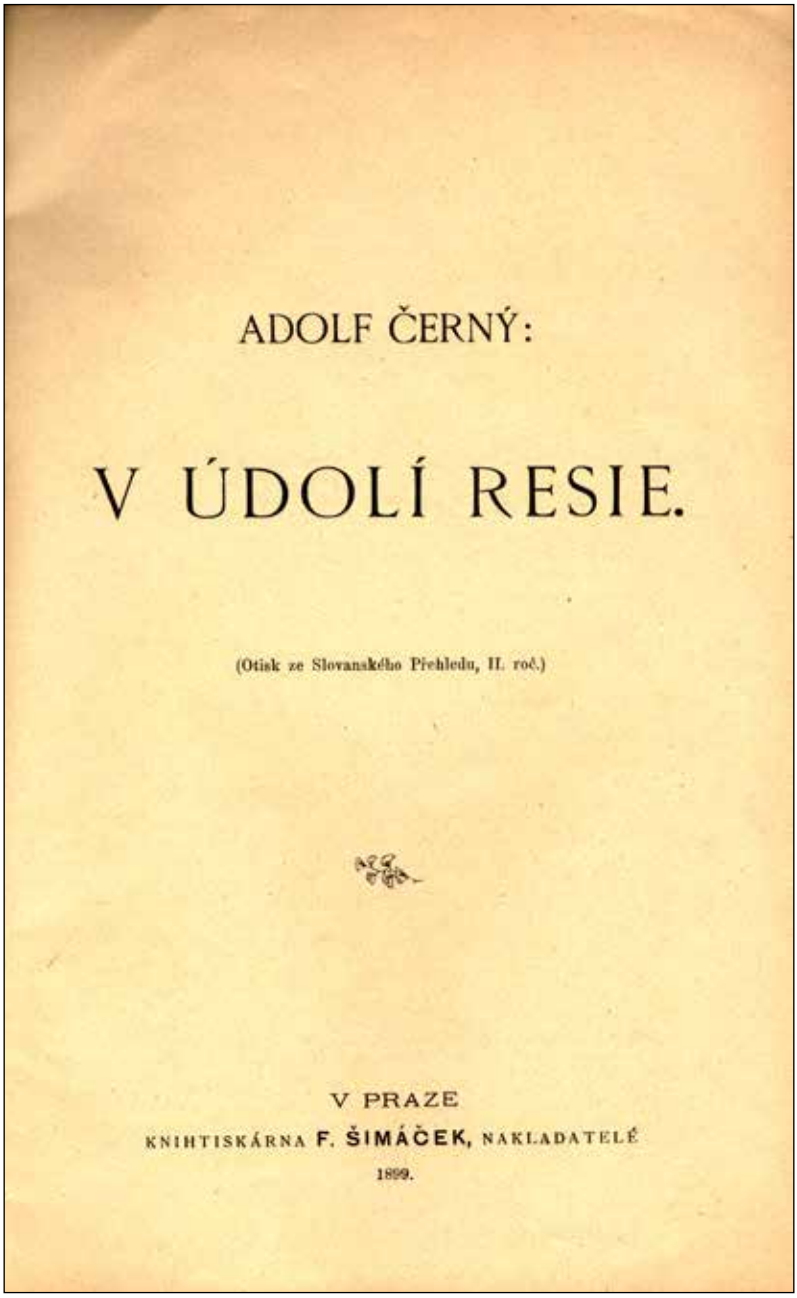
15 Ponatis (Бодуэн де Куртенэ, 2012).

16 O stikih A. Černýja in J. Baudouina de Courtenayja ter o Poljakovom posebnem zanimanju za italijanske Slovence glej Černý, 1929.

17 Ella (von) Schultz-Adaïewsky je npr. v Baudouinovem delu *Материалы для южнословянской диалектологии и этнографии* (Санкт-Петербург 1904) objavila 27 napevov slovenskih pesmi.

18 Adolf Černý je tedaj v Reziji bival med 10. 4. in 13. 4. 1898. MUA AV ČR, AAV, Fond Adolf Černý, zapisniki, zapisnik iz leta 1898.

19 V prispevku A. Černýja *V údolí Resie* se pojavlja ime Jozef Barbarino.


ADOLF ČERNÝ:

V ÚDOLÍ RESIE.

(Otisk ze Slovanského Přehledu, II. roč.)

V PRAZE

KNIHTISKÁRNA F. ŠIMÁČEK, NAKLADATELÉ

1899.

*Naslovna stran Černýjeve publikacije V údolí Resie (Praha 1899). MUA AV ČR, AAV, Fond Adolf Černý*

Vsako naselje pa je imelo svoje jezikovne posebnosti. Na priporočilo Jana Baudouina de Courtenayja se je nastanil v vasi Ravanca, v središču Rezije, v gostišču, katerega lastnika sta bila Antonio Giusti[20] in njegova žena. Pogovarjal se je s tamkajšnjimi slovanskimi prebivalci, predvsem pa je preučeval in si zapisoval jezikovne značilnosti njihove materinščine. Opozoril je denimo na keltski vpliv v oblikovanju višjih številnikov po dvajsetiškem sistemu. S presenečenjem je ugotovil, kako malo so na rezijanščino vplivali sosedni romanski govori. Ogledal si je celotno rezijansko občino Bila (rezijansko Šan Džerči, italijansko San Giorgio). Černý je opazil, da so mnogi poleg italijanščine in furlanščine zadostno obvladali še kak slovanski jezik, nemščino, madžarščino ali francoščino. Nekaj časa je stanoval v Ravanci, od koder se je odpravljal na raziskovalna potovanja med tamkajšnje prebivalce.

Tu ga je presenetila tudi močna slovanska narodna zavest. Opazil je tudi, da so imeli Slovenci razmeroma negativen odnos do okoliških Furlanov, ki so jih imeli za zelo neizobražene. Černý je o odnosu Slovencev do Furlanov zapisal: »Furlance, jak již prof. Baudouin de Courtenay ve svých spisech konstatoval, hluboce nenávidí [Slovinci] a jimi opovrhují, majíce je za náramné obmezence a hlupáky. ‚My Resiané, vykládal mi jeden, naučíme se mluvit rusky, polsky, rumunsky, německy a bůh ví jak, ale Furlanec nedovede jinak otevřít úst než furlansky.‘«[21] (Černý, 1900, 79). V času Černýjevega prihoda je bilo v Reziji pet šol (dve v Ravanci, po ena v Bili, Osojah in Solbici), učni jezik je bila italijanščina, v rezijanščini so se delno učili le bogoslužja. Z veseljem pa je Černý pripomnil, da pridige v cerkvi potekajo še vedno v rezijanščini, o čemer se je prepričal v Osojah. V vasi Njiva, kjer se je udeležil plesne zabave, ga je očaral rezijanski ples, ki pa ga je, podobno kot rezijanske pesmi, imel za relativno enoličnega. Ravno tu je dobil bogato etnomuzikološko gradivo (besedilo pesmi in opis plesa), ki ga je nato uporabil za objavo. Podrobno si je zapomnil tudi narodne noše rezijanskih žensk, ki so se mu zdele podobne lužiškosrbskim. K opisu noše je priložil še fotografije rezijanskih prebivalcev (Černý, 1899, 14−16; 1900, 82, 83). Zapiske ljudskih pesmi je Černý prav tako dobil od Ferdinanda Trankona (»ljudskega pesnika« samouka iz Ravance). Pokrajina rezijanske doline v severni Italiji ga je naravnost očarala, še bolj pa sta ga navdušili neposrednost in slovanska zavest prebivalstva.

Že med vrnitvijo iz Rezije je vedel, da tu ni zadnjič. Rezultat tega raziskovalnega potovanja je bila drobna knjižna publikacija *V údolí Resie* (Praga 1899), ki jo je objavil ponovno še leta 1900 v reviji *Slovanský přehled* (Černý, 1900).[22] Del dvaindvajset strani dolge brošure so bile štiri fotografije, besedila pesmi, pa tudi zemljevid *Slované v severní*

20 V Ravanci so mu pravili »Lipini«. Treba je omeniti, da Adolf Černý v svojih prispevkih uporablja za imenovanega gostilničarja priimek »Lýpa«. Po drugi strani pa je Karel Drož v svojem prispevku iz istega obdobja napisal ime gostilničarja v polni podobi, torej »Antonio Giusti« (Drož, 1904a, 1904b).

21 Prevod v slovenščino: »Furlane, kot je že prof. Baudouin de Courtenay v svojih spisih trdil, globoko sovražijo [Slovenci] in jih zaničujejo, imajo jih za neznanske omejence in neumneže. ‚Mi Rezijani,‘ mi je nekdo pravil, ‚se lahko naučimo govoriti rusko, poljsko, romunsko, nemško in bogve kako še, Furlan pa ne spravi iz ust nič drugega kot furlanščino.‘«

22 V razpravi iz *Slovanskega přehleda* manjka večja fotografija, ki prikazuje skupino Rezijanov. Manjka pa tudi Trinkov zemljevid.

*Itálii*, ki ga je sestavil in istega leta v svojem prispevku v *Slovanskem přehledu* natisnil Ivan Trinko. Černý je svojo knjigo o Rezijanih kmalu po izidu poslal rezijanskim prijateljem v Ravanco, ti pa so jo pri sebi hranili kot dragoceno dokumentarno gradivo, o čemer se je avtor lahko prepričal med svojim naslednjim obiskom italijanskih Slovencev. O tem, da je Černýjeva brošura s tematiko o Reziji in njenih prebivalcih motivirala nekatere Čehe za potovanje v dolino Rezije, nam priča npr. nepodpisan feljton v češkem dnevniku *Národní listy* iz leta 1901.[23] Avtor prispevka, ki je tedaj s svojim kolegom obiskal isto gostišče kot Adolf Černý, je v feljtonu zabeležil: »Vrátil se [hostinský] a po chvíli položil před každého z nás sešitek. Otisk stati pana Adolfa Černého ze ‚Slovanského Přehledu' o ‚Rézii a Rézianech'. Znali jsme brožuru a na její popud vlastně dali jsme si dnešní zajímavou túru na prázdninový program.«[24] (Národní listy, 8. 9. 1901, 2).

## STIKI Z IVANOM TRINKOM IN GLOBLJE SPOZNAVANJE ITALIJANSKIH SLOVENCEV

Po vrnitvi iz Italije domov na Češko se je Černý odločno lotil priprave prve številke revije *Slovanský přehled*. Zelo ga je razveselilo, da bo prispevek zanjo napisal tudi Ivan Trinko, na katerega se je s prošnjo za sodelovanje obrnil v pismu, datiranem z 22. avgustom 1898.[25] Trinko se je na pismo budno odzval in skupaj z drugim dopisom, datiranim s 13. 9. 1898,[26] Černýju že poslal prvi osnutek. Nato je urednik revije v svojem odgovoru napisal: »Srdečné díky za první list, jenž bude pro čtenáře ‚Slovanského přehledu' velmi zajímavým. Těším se na další listy, jež mohou být obšírnější a nemusí ani míti formu listů, mohou to býti samostatné články o poměrech italských Slovanů, […].«[27] V prvem letniku nove slovanske revije sta bili v rubriki *Dopisy* objavljeni dve Trinkovi novici o stanju slovenskega prebivalstva v Italiji, vključno z Rezijani, kjer je avtor kritično predstavil negativni odnos italijanske vlade in tiska do slovenske manjšine (Y [Trinko, I.], 1899). Kot zadnjo je Ivan Trinko leta 1899 v časopisu objavil resnično obširno razpravo *Italští Slovinci* (Trinko, 1899), v kateri se je osredinil na geografska dejstva, statistiko

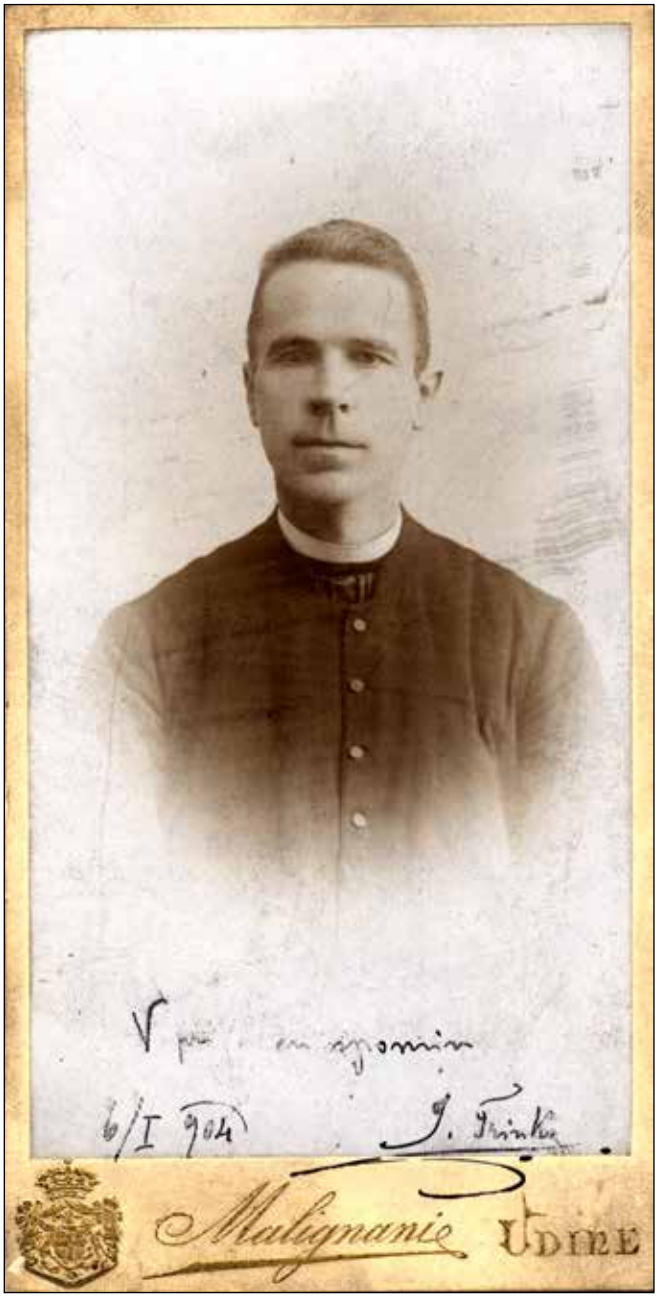
23 Národní listy, 8. 9. 1901: Feuilleton. V Pragi, 7. sept., 1−2.

24 Prevod v slovenščino: »Vrnil se je [gostilničar] in čez čas pred vsakega od nas položil zvežčič. Kopijo razprave gospoda Adolfa Černýja iz ‚Slovanskega přehleda' o ‚Reziji in Rezijanih'. Brošuro smo poznali in ravno ta nam je dala zagon, da smo si danes popestrili praznični program in se odpravili na zanimiv pohod.«

25 O znanstvenem sodelovanju in osebnih stikih obeh raziskovalcev priča korespondenca Adolfa Černýja in Ivana Trinka. Devetindvajset Trinkovih pisem, korespondenčnih listkov in razglednic iz let 1898–1930 je shranjenih v zapuščini A. Černýja na inštitutu Masarykův ústav a Archiv AV ČR v Pragi, 19 Černýjevih pisemskih pošiljk iz istega obdobja hrani Knjižnica Franceta Bevka v Novi Gorici. Kopije dopisov Černýja iz knjižnice v Novi Gorici hrani tudi Masarykův ústav a Archiv AV ČR, v. v. i. O dopisovanju Adolfa Černýja in Ivana Trinka glej tudi (Giger, Giger, 2005; Giger, Giger, 2007).

26 MUA AV ČR, AAV, Fond Adolf Černý (neurejeno).

27 MUA AV ČR, AAV, Fond Adolf Černý (neurejeno), kopija pisma A. Černýja I. Trinku iz 12. 9. 1898. Prevod v slovenščino: »Iskrena hvala za prvi list, ki bo za bralce revije ‚Slovanský přehled' zelo zanimiv. Veselim se novih listov, ki so lahko obširnejši in ni nujno, da imajo formo listov, lahko so samostojni članki o razmerah italijanskih Slovanov […].«




*Pisatelj Ivan Trinko, fotografija, datirana s 6. 1. 1904. MUA AV ČR, AAV, Fond Adolf Černý*

in način življenja slovenskega prebivalstva v Italiji. Za prispevek je izdelal tudi posebni zemljevid *Slované v severní Itálii*. Razpravo na to temo Trinko nadaljuje v članku iz leta 1900 *Vlaší a Slované* (Trinko, 1900), kjer kritično predstavi slabo poznavanje slovanske kulture v Italiji in iz tega izhajajoče predsodke o njej. V članku opozarja, da so v italijansko družbo prodrla le nekatera dela ruske in poljske literature, poglobljeno poznavanje slovanske kulture pa preprečuje neznanje slovanskih jezikov.

Drugo potovanje v Rezijo je Černý že kot mladoporočenec udejanjil skupaj s svojo ženo Boženo Černo-Reinerovo. Na območje, poseljeno z italijanskimi Slovenci, sta prispela leta 1903, svoje vtise pa je Černý zabeležil šele dve leti po vrnitvi, in sicer v potopisnem članku *Opět v Rezii* (Černý, 1905b, 1905c, 1905d). Njegov cilj niso bili le Rezijani, ampak tudi Slovenci, živeči južno od Rezije. V Reziji in okoliških slovenskih pokrajinah se je tedaj zadrževal med 26. in 31. avgustom.[28] Rezija in njeno prebivalstvo sta Černýju močno prirasli k srcu že med njegovim prvim potovanjem tja, italijanski Slovenci iz rezijanske doline pa so si zapomnili raziskave raziskovalcev in slovanskih navdušencev, kar je Černý omenil, ko se je spominjal svojega prihoda v Rezijo: »Vytvořil se tam i mythus o mně: jedni považovali mne za syna proslulého znalce a badatele Rezie, polského jazykozpytce prof. Baudouina de Courtenay, jiní za jeho bratra, opět jiní za něj samého. Pravdou jest, že se ode dávna těším vzácnému přátelství tohoto známého učence, že jeho práce vždy obracely moji pozornost k zajímavému, u nás před tím takřka neznámému koutu světa slovanského, a že také přátelství jeho razilo mi do Rezie cestu.«[29] (Černý, 1905b, 369). Iz naselja Na Bili (Resiutta) sta šla čez Bilo v Ravanco, kjer sta se spet nastanila v gostišču Alla stella ďoro pri zakoncih Giusti, ki jih je Černý poznal že s svojega prvega potovanja. Istega dne sta odšla še v bližnjo vasico Solbica, med vrnitvijo v Ravanco pa si je Černý zapisoval besede ljudskih pesmi dveh mladih Rezijank. Zvečer so se v čast znamenitega slovanskega obiska v gostišču sešli predstavniki rezijanske inteligence iz okolice, med katerimi je bil tudi mlad domoljub, kaplan Ivan Gujon, s katerim je Černý ostal v stiku tudi po odhodu iz Rezije.[30] Naslednjega dne pa sta ga obiskala na fari in se z njim odpravila na izlet v Osoje.

Černý je med svojim bivanjem leta 1903 prepotoval velik del krajev, kjer so živeli italijanski Slovenci zunaj Rezije, študiral je arhivsko gradivo, nadaljeval je z jezikoslovnimi raziskavami ter spremljal šolsko in cerkveno vprašanje. Obiskal je mesto Čedad (italijansko Cividale del Friuli), tedaj ležeče na slovensko-furlanski jezikovni meji, kjer je bil v središču njegovega zanimanja arhiv, povezan z muzejem. Med pisnim in drugim arhivskim gradivom, s katerim se je seznanil med Slovenci, je nanj pomembno vplival predvsem zapisnik čarnejske bratovščine Device Marije iz 15. in 16. stoletja, eden od redkih spomenikov itali-

28 MUA AV ČR, AAV, Fond Adolf Černý (neurejeno), zapisniki, zapisnik iz leta 1903.

29 Prevod v slovenščino: »Tam je nastal tudi mit o meni: nekateri so me imeli za sina slavnega poznavalca in raziskovalca Rezije, poljskega jezikoslovca prof. Baudouina de Courtenayja, drugi za njegovega brata, drugi spet za njega samega. Resnica je, da se že od nekdaj veselim dragocenega prijateljstva s tem znanim učenjakom, da so njegova dela vedno obračala mojo pozornost k zanimivemu, pri nas do tedaj tako rekoč neznanemu slovanskemu kotičku sveta in da mi je tudi njegovo prijateljstvo utrlo pot v Rezijo.«

30 O nadaljnjih stikih pričajo npr. pismo Ivana Gujona A. Černýju, datirano z 8. 1. 1906, in nekaj razglednic s fotografijami iz Rezije, ki jih je Gujon nabavil med obiskom zakoncev Černý. MUA AV ČR, AAV, Fond Adolf Černý (neurejeno).


*Gostišče Alla stella ďoro zakoncev Giusti v Ravanci, kjer je bil nastanjen Černý na svojih dveh potovanjih po Reziji (razglednica, 1903). MUA AV ČR, AAV, Fond Adolf Černý*


*Adolf Černý s svojo ženo Boženo pri italijanskih Slovencih (levo od hiše, razglednica, 1903). MUA AV ČR, AAV, Fond Adolf Černý*

janskih Slovencev. V dokumentu, ki mu ga je na njegovo prošnjo pokazal ravnatelj muzeja grof Zorzi, so zapisi zapuščine iz maše zadušnice; v prvem delu so maše potekale v italijanščini in latinščini, v drugem večinoma v slovenščini. Prav tako ga je prevzel pogled na Čedad in kamniti „Vražji most“ (italijansko Ponte del Diavolo) (Černý, 1908, 1. 2., 2–3). V Šenčurju je hotel obiskati italijanskega Slovenca Francesca Musonija, ki mu ga na prvem potovanju v Rezijo v Vidmu ni uspelo srečati, vendar sreče tudi tokrat ni imel.

Na poti do Špetra mu je bil zelo všeč drugi most, Ponte San Quirino, ki je tvoril narodno mejo med Furlani in Slovenci. Njegov cilj je bilo območje špetrskih Slovanov, tedaj narodnostno najbolj ohranjen del italijanskih Slovanov. Skozi vasi Dolnji Barnas in Ažla sta prispela v mesto Špeter (v tamkajšnjem narečju Špjetar), kjer ga je prijetno presenetil trden slovenski značaj mesta. K temu je Černý pripomnil: »Oslovoval jsem na ulici dospělé i děti – všichni odpovídali slovinsky. Nepochyboval jsem již v nejmenším, že Špjetar je zcela slovinský, že vlašské školy, vlaští učitelé a učitelky, furlánské kandidátky učitelství, vlašské notářství, úřednictvo a mužstvo italské finanční stráže – že vše to na potlačení slovanskosti městečka nestačí.«[31] (Černý, 1906, 669–670).

Naslednja Černýjeva destinacija je bila vas Bjača pod Landarjem, kjer je lahko izkoristil kontakte kaplana Ivana Gujona, ki jima je priporočil, naj prespita pri njegovih sorodnikih. Černý je opazoval tamkajšnje narečje, še posebej mu je vzbudila pozornost jezikovna čistost brez ene same italijanske besede, česar v rezijanskem narečju ni bilo več. Z gospodarjem Gujonom sta obiskala gorsko vas Landar z znamenito podzemno jamo, nato sta se odpravila nazaj v Špeter, od koder sta odpotovala naprej v Gornji Barnas, kjer sta se srečala s patrom Alojzom Blažutičem, čigar kontakt mu je ravno tako dal Jan Baudouin de Courtenay. Po vrnitvi v Čedad sta se odpravila še k terskim (čentskim/tarčenskim)[32] Slovanom, ki so tedaj večinoma živeli le še v treh občinah: Platišča, Brdo in Čezerije. Vendar zadnji dve nista bili več čisto slovenski. Velik del od skupaj približno 9.000 terskih Slovencev je tedaj živel v Ahtanu, Nemah, Torjanu in Gorjanih. Iz Maline sta zakonca nadaljevala pot po gorski poti do Subita, kjer se je Černý pogovarjal s tamkajšnjimi Slovenci in si zapisoval njihove pesmi ter jezikovne posebnosti. V Subitu pa patra Dorbola, čigar kontakt sta dobila od A. Blažutiča, nista našla doma. Černý v svojih zapiskih sicer govori o slovenščini, vendar je opomnil, da Baudouin de Courtenay jezika terskih Slovanov nima za slovensko narečje, temveč da po njegovem mnenju spada k srbohrvaškemu plemenu, ki prebiva v južni Istri in na slovanskih otokih Jadranskega morja.

Med potjo nazaj se je spet ustavil v Vidmu, kjer je končno lahko osebno srečal sodelavca iz *Slovanskega přehleda* Ivana Trinka. Slovenski buditelj, leto starejši od češkega slavista, je nanj naredil velik vtis, o čemer pričajo Černýjeve besede: »Návštěva u něho náleží k mým nejmilejším vzpomínkám. Vysoký kněz, tehdy čtyřicetiletý (narodil se r. 1863) stal se mi za den osobního styku milým přítelem. Cítil jsem se tak doma v jeho

31 Prevod v slovenščino: »Na ulici sem ogovoril odrasle in otroke – vsi so odgovarjali slovensko. Niti najmanj nisem več dvomil, da je Špjetar v celoti slovenski, da laške šole, laški učitelji in učiteljice, furlanske učiteljske kandidatke, laški notarji, uredništvo in možje italijanske finančne straže – da vse to ni dovolj, da bi potlačili slovanskost mesteca.«

32 Po naselju Čenta (ita. Tarcento).


*Kaplan Ivan Gujon, fotografija, datirana s 26. 8. 1903. MUA AV ČR, AAV, Fond Adolf Černý*

*Skupina tarčentskih, tj. čentskih oz. terskih, Slovencev (1903). MUA AV ČR, AAV, Fond Adolf Černý*

skrovné, takřka klášterní cele, v níž mne pozdravovaly známé časopisy a knihy slovanské, zejména slovinské a ruské. V osobní delikátnosti jeho poznával jsem jemně cítícího básníka ‚Rozvátého listí', v hovorech o italské Slovenii hlubokého patriotu a znalce své vlasti.«[33] (Černý, 1906, 808). Černý je v njem prepoznal idealista, domoljuba in temeljitega poznavalca slovenskih razmer v severni Italiji, ki pa je bil poln skepse o prihodnosti svoje etnične skupine. V Vidmu je ravno tedaj potekala deželna razstava, ki jo je obiskal tudi italijanski kraljevi par, kar je v mestu povzročilo precejšnje nemire. Med občinstvom pri kraljevem paru je bila sprejeta tudi delegacija italijanskih Slovencev pod vodstvom Ivana Trinka. Kraljico, ki je bila črnogorskega rodu,[34] je zastopnik delegacije ogovoril

33 Prevod v slovenščino: »Obisk pri njem je eden od mojih najljubših spominov. Visoki duhovnik, tedaj štiridesetletni (rodil se je l. 1863) je v enem samem dnevu najinega osebnega srečanja postal moj dragi prijatelj. V njegovi skromni, tako rekoč samostanski celici, kjer so me pozdravljale revije in slovanske, predvsem slovenske in ruske knjige, sem se počutil kot doma. V njegovi osebni občutljivosti sem prepoznal nežno čutečega pesnika ‚Razpršenega listja', v govorih o italijanski Sloveniji globokega patriota in poznavalca svoje domovine.«

34 Italijanska kraljica (1900–1946) Elena del Montenegro (1873–1952), po rodu črnogorska princesa Jelena Petrović-Njegoš.

*Procesija med tarčentskimi Slovenci (1903). MUA AV ČR, AAV, Fond Adolf Černý*

v slovenščini, kralj pa je nato spraševal po številu Slovencev v Videmski pokrajini. Na razstavi je Adolf Černý iskal slovenske sledi na Videmskem, ki pa jih je našel le v zelo majhnem številu, in to predvsem v njenem zemljepisnem oddelku (Černý, 1904). Černý je po potovanju leta 1903 potrdil svoje predhodne vtise, da so italijanski Slovenci svojevrsten slovanski element, ki ima vse pogoje, da se še naprej ohrani, in to kljub očitni italijanski asimilaciji. Najpomembnejši rezultat njegove druge raziskovalne poti v Rezijo in okoliška slovenska naselja je bila mogočna študija *U italských Slovanů* (Černý, 1906)[35], natisnjena v reviji *Květy*, kamor je priložil tudi nekatere zanimive fotografije krajev, ki jih je spoznal na svojih potovanjih.

Leta 1903 je obiskal rezijanske Slovence tudi češki pedagog, popotnik in publicist Karel Drož (1858−1928), ki je po prvi svetovni vojni služboval kot inšpektor meščanskih in romunskih šol v Podkarpatski Rusiji. Drož je bil seznanjen s Černýjevo publikacijo *V údolí Resie* in ta mu je najverjetneje dala zagon, da se še sam odpravi k Rezijanom. O svojem bivanju v Reziji je napisal potopisni prispevek *V Itálii slavjanské* (Drož, 1904a, 1904b), v katerem je natisnil tudi nekaj fotografij iz omenjene Černýjeve publikacije. Podobno kot Černý je v rezijansko dolino prispel iz naselja Na Bili (Resiutta) na vozu

35 Študija je prav tako izšla kot poseben natis, glej Černý (1906b).

*11. Nadiža pri Šenpeterskem malnu, tj. Špetrskem mlinu (1903). MUA AV ČR, AAV, Fond Adolf Černý*

kočijaža Barbarina[36], ki ga je pripeljal h gostišču Alla stella ďoro, kjer je na svojih potovanjih prebival Černý. V gostišču je izvedel podrobnosti o tukajšnjih preteklih potovanjih profesorja Jana Baudouina de Courtenayja in tudi o obisku Adolfa Černýja, o čigar osebnosti je Karel Drož zapisal: »Dobro so se spominjali Černýja. Bil je nekoliko bolehen, v Italiji je iskal zdravja in obljubil je, da se bo še enkrat vrnil. Kar je napisal o Reziji, jim je tudi poslal, kar si je signor Antonio skrbno spravil.« (Drož, 1904b, 393) Če sklepamo na podlagi avtorjevih opomb, je jasno, da je leta 1903 obiskal Rezijo še pred drugo Černýjevo raziskovalno potjo med italijanske Slovence. Karel Drož je pozneje, novembra 1917, potem kot je avstrijska vojska osvojila naselje Na Bili (italijansko Resiutta), omenil svojo pot v Rezijo iz leta 1903 v plzenskem časopisu *Český deník*.[37]

Pesniško ustvarjanje in osebnost Ivana Trinka je Adolf Černý predstavil bralcem *Slovanskega přehleda* leta 1905 (Černý, 1905a), kjer je z lastnimi prevodi objavil primere iz cikla *Razpršeno listje* iz pesniške zbirke *Poezije* (Gorica 1897), objavljene pod psevdonimom Zamejski. V svojem zadnjem prispevku v *Slovanskem přehledu* iz leta 1906 *Iz italijanske Slovenije* (Trinko, 1906) je Ivan Trinko razpravljal o brezupnih razmerah Slo-

36 Drož pa v nasprotju s Černýjem ne piše Barbarino, temveč Barbarini.

37 Český deník, 22. 11. 1917: K Slovanům Rozianským, 4; Český deník, 28. 11. 1917: K Slovanům Rozianským, 3–4.

*12. Šenpeter (pošta in župnišče, 1903). MUA AV ČR, AAV, Fond Adolf Černý*

vencev v Italiji, o raznarodovanju, o pomanjkanju knjig in revij v slovenščini, kritiziral je tudi nezanimanje Slovencev, ki ne živijo v Italiji, za njihove težave. V tem skeptično obarvanem članku avtor ni našel nobenega izhoda za ohranitev in razvoj slovenske manjšine v Italiji. Prva svetovna vojna je za dalj časa pretrgala vezi med slovenskimi raziskovalci, *Slovanský přehled* pa je zaradi delovne obremenitve Adolfa Černýja v državni službi na dolgi rok prenehal izhajati. Med vojno pa so se v češkem tisku pojavljale redke novice o italijanskih Slovencih, kot npr. 11. aprila 1916, ko je dnevnik *Národní politika* prevzel informacije od ljubljanskega lista Slovenec, da so bili med italijanskimi ujetniki iz poslednjih bojev pri Podgorici, ki so potovali skozi Šempeter pri Gorici, tudi beneški Slovenci. Beneške Slovence dnevnik po napačnem označuje za Rezijane in navaja, da jih je 40.000, ter omenja njihove nezavidljive razmere na področju šolstva in gospodarstva.[38] Revija *Slovanský přehled* je bila po prvi svetovni vojni obnovljena šele leta 1925 in še vedno so v njej izhajala poročila o italijanskih Slovanih, ki sta jih tiskala predvsem Adolf

38 Národní politika, 11. 4. 1916: Zajímavou příhodu sděluje lublaňský „Slovenec“,1.

*13. Šenpeter (občinska hiša, 1903). MUA AV ČR, AAV, Fond Adolf Černý*

Černý in Josip Vuga. Prispevki so najprej izhajali v rubriki *Slovanské menšiny*, od leta 1932 pa v rubriki *Slované v neslovanských státech*. V tem času se med poročevalci ime Ivan Trinko ni pojavljalo, leta 1930 pa je Adolf Černý natisnil dve poročili o njegovih novoizdanih knjigah *Grammatica della lingua slovena ad uso delle scuole* (Gorizia 1930) in *Naši paglavci*. *Črtice in slike iz beneško-slovenskega pogorja* (Gorica 1929) (Černý, 1930a, 1930b). O čedalje hujših razmerah italijanskih Slovencev na prelomu dvajsetih in tridesetih let 20. stoletja so na Češkem poročale tudi druge revije. V članku *Slovinci v Itálii* v reviji *Československo-jihoslovanská revue* (Fr. B., 1934) iz leta 1934 izvemo npr. še nekaj o usodi Ivana Trinka: »Ve Vidmu pod policejní dozor se dostal profesor semináře, sedmdesátiletý Ivan Trinko-Zamejski, spisovatel a vůdce videmských Slovinců. Přes to za gorického biskupa nebyl jmenován Sirotti, ale biskup Margotti z Romague, který prý umí slovinsky a srbochorvatsky.«[39] (Fr. B., 1934, 194).

## SKLEP

Adolf Černý spada k relativno močni generaciji čeških domoljubov, rojenih v petdesetih oz. šestdesetih letih 19. stoletja, ki je dosledno skrbela ne samo za razvoj in obrambo lastnega naroda, ampak si je za svoj cilj izbrala, da bo podpirala sorodne in bližnje slovanske etnične skupine v njihovem boju za narodno uveljavitev. V tem Černýjevem prizadevanju je pomembno sredstvo omenjenega cilja postala specializirana revija *Slovanský přehled*, v kateri je lahko Černý predstavil lastne nazore o Slovanih, pa tudi nazore drugih raziskovalcev najrazličnejših območij. Menil je, da je pomembno spoznati tudi italijanske Slovane, predvsem Rezijane, katerih jezik in kulturo je sam spoznal med svojima dvema potovanjema v letih 1898 in 1903 ter o katerih je napisal sedem obširnejših razprav (v letih 1897−1908) v čeških revijah *Květy, Slovanský přehled*, *Zlatá Praha* in *Čas*. K tem je treba prišteti še posebno delo *V údolí Resie* (Praha 1899), ki je bilo prav tako objavljeno leta 1900 v *Slovanskem přehledu*. Pri spoznavanju in popularizaciji Rezije sta pomembno vlogo odigrala predvsem poljski jezikoslovec Jan Baudouin de Courtenay in predstavnik italijanskih Slovencev Ivan Trinko, ki je omogočil, da je *Slovanský přehled* tiskal novice o italijanskih Slovanih. Černýjevi prispevki in študije o italijanskih Slovanih so prinašali posebej dragoceno gradivo etnografskega značaja (primeri pesmi), za današnji čas pa pomenijo dragoceni dokument za spoznavanje življenja rezijanskih Slovencev na prelomu 19. in 20. stoletja. Veliko vrednost imajo tudi fotografije iz prispevkov, pa tudi tiste, ki so shranjene med Černýjevo zapuščino. S svojim zanimanjem za majhne narode in majhne slovanske etnične skupine je Černý postal eden od pionirjev sistematičnega znanstvenega zanimanja za študij slovanskih narodnih manjšin v evropskem prostoru. Hkrati je bil prvi češki raziskovalec, ki je strokovno javnost informiral o pripadnikih majhne slovanske etnične skupine na severu Italije.*

39 Prevod v slovenščino: »V Vidmu je pod policijski nadzor padel profesor seminarja, sedemdesetletni Ivan Trinko-Zamejski, pisatelj in vodja videmskih Slovencev. Kljub temu za goriškega škofa ni bil imenovan Sirotti, ampak škof Margotti iz Romagne, ki baje zna slovensko in srbohrvaško.«

* Ta študija je objavljena s podporo GAČR P410/12/0142.

# ADOLF ČERNÝ AND HIS CONTRIBUTION TO CZECH SCHOLARSHIP ON THE SLOVENIANS IN RESIA

*Petr KALETA*

Charles University, Faculty of Arts, Department of Central European Studies, náměstí Jana Palacha 2, 116 38 Prague 1, Czech Republic

e-mail: petr.kaleta@ff.cuni.cz

*SUMMARY*

*Resia and its inhabitants were not a new topic in principle – Josef Dobrovský, Václav Hanka and Pavel Josef Šafařík had already written about them during the first half of the 19th century It is possible to state that that the Czech Slavic Studies scholar Adolf Černý (1864−1952), who was primarily oriented toward Sorbian Studies, continued in their unique research through his systematic work and main publications in the years1897−1908. His most important publications on Resia and the Resians are* Resiané, Slované severoitalští *(The Resians, the Northern Italian Slavs;* Květy*, 1897),* V údolí Resie *(In the ResiaValley; Praha 1899) and* U italských Slovanů *(At home with the Italian Slavs;* Květy*, 1906), in which he analyzed the specific character of the Resian language as well as the customs and habits of the Slovenians from Resia and their position in Italy at the time, above all problems in the areas of education, economy, culture and public awareness. He was already well familiarized with the topic due to the specialized literature, above all from the linguistic works of the Polish researcher Jan Baudouin de Courtenay. However, his two research trips to Resia and to the areas where other Italian Slovenians lived, in 1898 and 1903, were invaluable. After Adolf Černý founded* Slovanský přehled *(Slavonic Review), a specialized scholarly journal dealing with Slavic issues, the Italian Slovenes were the subject of articles published therein. The main correspondent and expert in this area was Ivan Trinko (1863−1954), a nation-builder for the Udine Slovenians, with whom Černý corresponded during the years 1898−1930. Important material for understanding Černý's interest in the Resians, including his correspondence with I. Trinko, personal records, articles and photographs, is stored in his personal estate, located in Masarykův ústav a Archiv AV ČR (Masaryk Institute and Archive of the Academy of Sciences of the Czech Republic). Though the Resians were not Černý's central research topic, he expressed significant interest in them, as he was most attracted by small Slavic minority ethnic groups. Through his work and personal contacts, he contributed to the popularization of Resia and the Italian Slovenes in the Czech scholarly community as well as among laymen.*

*Key words: Adolf Černý, Resians; turn of the 19th and 20th centuries; research trips; Ivan Trinko; Slovanský přehled*

VIRI IN LITERATURA

**MUA AV ČR, AAV –** Masarykův ústav a Archiv Akademie věd České republiky, Archiv Akademie věd (MUA AV ČR, AAV), Fond Adolf Černý.

**Bartoš, O. (1964):** Adolf Černý a Polsko. Acta Universitatis Carolinae – Historia Universitatis Carolinae Pragensis, 5, 2. Praha, 211–231.

**Černý, A. (1897):** Resiané, Slované severoitalští. Květy (prvé pololetí), 19. Praha, 326–332, 451–461.

**Černý, A. (1899):** V údolí Resie. Praha, Knihtiskárna F. Šimáček.

**Černý, A. (1900):** V údolí Resie. Slovanský přehled, 2. Praha, 16–22, 79–84, 113–118.

**Černý, A. (1904):** Z Videmu. Slovanský přehled, 6. Praha, 28–30.

**Černý, A. (1905a):** Ivan Trinko. Básník a buditel italských Slovinců. Slovanský přehled, 7. Praha, 336–340.

**Černý, A. (1905b):** Opět v Rezii. Zlatá Praha, 22, 31. Praha, 369–370.

**Černý, A. (1905c):** Opět v Rezii. Zlatá Praha, 22, 32. Praha, 379, 381.

**Černý, A. (1905d):** Opět v Rezii. Zlatá Praha, 22, 33. Praha, 391.

**Černý, A. (1906a):** U italských Slovanů. Květy (první pololetí), 28. Praha, 662–672, 797–811.

**Černý, A. (1906b):** U italských Slovanů. Praha, nákladem vlastním.

**Černý, A. (1908):** Stará památka z území italských Slovinců. Čas, 22, 31, 1. 2. Praha, 2–3.

**Černý, A. (1929):** Za J. Baudouinem de Courtenay. 13. III. 1845 – 3. XI. 1929. Slovanský přehled, 21. Praha, 641−659.

**Černý, A. (1930a):** Ivan Trinko: Grammatica della lingua slovena ad uso delle scuole. Gorizia 1930. Slovanský přehled, 22. Praha, 770–771.

**Černý, A. (1930b):** Ivan Trinko: Naši paglavci. Črtice in slike iz beneško-slovenskega pogorja. Gorica 1929. Slovanský přehled, 22. Praha, 772.

**Černý, M. (2013):** Adolf Černý jako první český překladatel novodobé běloruské literatury. Slavia, časopis pro slovanskou filologii, 82, 1–2. Praha, 69–111.

**Český deník**, Plzeň, Závody pro průmysl tiskařský a papírnický, 1916–1920, 1921–1936, 1936–1944.

**Dobrovský, J. (1806):** Über die Slawen im Thale Resia. V: Dobrovský, J. (ur.): Slavin. Beiträge zur Kenntniß der Slawischen Literatur nach allen Mundarten. Prag, Herrl'sche Buchh, 120–127.

**Dobrovský, J. (1834):** Über die Slawen im Thale Resia. V: Hanka, V. (ur.): Slavin. Bothschaft aus Böhmen an alle Slawischen Völker, oder Beiträge zu ihrer Charakteristik, zur Kenntniß ihrer Mythologie, ihrer Geschichte und Alterthümer, ihrer Literatur und ihrer Sprachkunde nach allen Mundarten. Prag, Mayregg`schen Buchhandlung, 2., razširjena izdaja, 118–124.

**Drož, K. (1904a):** V Itálii slavjanské. Ilustrovaný svět. Světová kronika současná slovem i obrazem. Časopis pro zábavu i poučení, 4, 16. Praha, 369–372.

**Drož, K. (1904b):** V Itálii slavjanské. Ilustrovaný svět. Světová kronika současná slovem i obrazem. Časopis pro zábavu i poučení, 4, 17. Praha, 393–395.

**Formánková, P. (2007):** Jak Emil Geistlich naučil Čechy jezdit na Jadran. Zakladatel „českých mořských lázní“ v Chorvatské Bašce. Dějiny a současnost, 29, 7. Praha, 24−27.

**Fr. B. (1934):** Slovinci v Itálii. Československo-jihoslovanská revue, 4, 9–10. Praha–Beograd, 191–195.

**Giger, M., Giger, M. (2005):** Dopisy Adolfa Černého v pozůstalosti Ivana Trinka. V: Kaleta, P., Martínek, F., Novosad, L. (ur.): Praha a Lužičtí Srbové. Sborník z mezinárodní vědecké konference ke 140. výročí narození Adolfa Černého. Praha, Společnost přátel Lužice, Maćica Serbska, Masarykův ústav AV ČR, 82−87.

**Giger, M., Giger, M. (2007):** Koresponca s Češko v zapuščini Ivana Trinka. V: Dapit, R., Obit, M., Trusgnach, L. (ur.): Mons. Ivan Trinko (1863−1954). Spodbujevalec spoznavanja in dialoga med kulturami: Promotore della conoscenza e del dialogo tra culture. Čedad/Cividale, Kulturno društvo-Circolo di cultura »Ivan Trinko«, 177−197.

**Hanka, V. (1841):** Zpráva o Rezianech. (Dopisy I. Srezněvského a P. Preisa V. Hankovi.) Časopis Českého museum, 15, svazek třetí. Praha, 341−346.

**Hroch, M. (1999):** Na prahu národní existence. Touha a skutečnost. Praha, Mladá fronta.

**Kaleta, P. (2003):** Ukrajinská problematika v díle Adolfa Černého. Slovanský přehled, 89, 2. Praha, 169–185.

**Kaleta, P. (2006):** Češi o Lužických Srbech. Český vědecký, publicistický a umělecký zájem o Lužické Srby v 19. století a sorabistické dílo Adolfa Černého. Praha, Masarykův ústav AV ČR.

**Kavrečič, P., Klabjan, B. (2010):** „Na najlepše morje na svetu, na Jadran.“ Procesi turističnega razvoja severnega Jadrana pred prvo svetovno vojno in po njej: Primer Češke in Češkoslovaške. Acta Histriae, Koper, 18, 1−2, 175−206.

**Kidrič, F. (1930):** Dobrovský in slovenski preporod njegove dobe. Ljubljana, Znanstveno društvo v Ljubljani.

**Klabjan, B. (2007):** Češkoslovaška na Jadranu. Čehi in Slovaki ter njihove povezave s Trstom in Primorsko od začetka 20. stoletja do druge svetovne vojne. Koper, Založba Annales.

**Klabjan, B. (2011):** „Jadran je naš“. Nacionalno prisvajanje Jadranskega morja pred prvo svetovno in po njej. Annales. Ser. hist. sociol., 21, 1, 1−12.

**Národní listy**. Praha, Julius Grégr, 1861−1941.

**Národní politika**. Praha, Ludvík Bratršovský, 1883−1945.

**Pynsent, R. B. (1996):** Pátrání po identitě. Praha, H&H.

**Řepa, M. (2001):** Moravané nebo Češi? Vývoj českého národního vědomí na Moravě v 19. století. Brno, Doplněk.

**Šafařík, P. J. (1842):** О резіянах и фурлянских словинах / O Rezjanach i furlańskich Słowinach. Денница, литературная газета/Jutrzenka, pismo literackie, 1, 9, май / maj. Варшава/Warszawa, 109−113.

**Šafařík, P. J. (1953):** Slovanský národopis. 4. Izdaja, Praha, Nakladatelství Československé akademie věd.

**Šekli, M. (2002):** Reziska, Rezičenjo a rezičćina. Sorapis, 3. Lipsk/Leipzig, 26–33.

**Trinko, I. (1899):** Italští Slovinci. Slovanský přehled, 1. Praha, 223−229.

**Trinko, I. (1900):** Vlaší a Slované. Slovanský přehled, 2. Praha, 312−316.

**Trinko, I. (1906):** Z italské Slovenie. Slovanský přehled, 8. Praha, 271–276.

**Valenta, Z. (2011):** Korespondence Adolfa Černého s Arnoštem Mukou z let 1885–1891 I. Ústí nad Labem, Univerzita J. E. Purkyně v Ústí nad Labem.

**Y [Trinko, I.] (1899):** Z Videmu (Udine). Slovanský přehled, 1. Praha, 14−15; 153−155.

**Бодуэн де Куртенэ, И. А. (1904):** Материалы для южнославянской диалектологии и этнографии. Санкт-Петербург.

**Бодуэн де Куртенэ, И. А.** (2012): Материалы для южнославянской диалектологии и этнографии. Москва, Либроком.

Received: 2013-11-05
Original scientific article
UDC 327:341.218(4)"1914/1918"

# THE QUEST FOR BALANCE: ATTITUDES OF THE CZECHOSLOVAK INDEPENDENCE MOVEMENT ABROAD TO THE ADRIATIC PROBLEM DURING THE FIRST WORLD WAR

*Dagmar HÁJKOVÁ*
Masaryk Institute and Archives of the Academy of Sciences of the Czech Republic v. v. i., Gabčíkova 2362/10, 182 00 Prague 8, Czech Republic
e-mail: hajkova@mua.cas.cz

*Pavel HELAN*
Hussite Theological Faculty, Charles University Prague
Pacovská 350/4, 140 21 Prague 4, Czech Republic
e-mail: p.helan@seznam.cz

*ABSTRACT*

*This article deals with the activities of Czechoslovak independence movement leaders during the First World War, especially their involvement in the Adriatic Question. Tomáš G. Masaryk, Edvard Beneš and Milan Rastislav Štefánik, representatives of the Czechoslovak National Council in exile, pursued a single goal during the war: an independent state. This study analyzes their skilful negotiations in the Adriatic region, where Italian and South Slavic territorial ambitions collided. Personal correspondence and diaries of the main protagonist of the Czechoslovak National Committee reveal the thinking behind their negotiations with the Italian representatives and the protagonists of Yugoslav Committee. These documents shed light on Masaryk, Beneš and Štefánik's behind-the-scenes discussions, their opinions on other politicians and their different attitudes to them.*

*Keywords: Czechoslovak independence movement, First World War, Adriatic Question, Tomáš G. Masaryk, Edvard Beneš, Milan Rastislav Štefánik*

# LA RICERCA DELL'EQUILIBRIO: L'ATTEGGIAMENTO DEL MOVIMENTO CECOSLOVACCO ALL'ESTERO IN MERITO ALLA QUESTIONE ADRIATICA DURANTE LA PRIMA GUERRA MONDIALE

*SINTESI*

*L'articolo analizza le attività dei capi del movimento indipendentista cecoslovacco durante la prima guerra mondiale, soprattutto in merito alla questione adriatica. Tomáš G. Masaryk, Edvard Beneš e Milan Rastislav Štefánik, ovvero i rappresentanti del Consiglio nazionale cecoslovacco in esilio avevano negli anni del primo conflitto mondiale in mente un solo scopo: uno stato indipendente. Questo studio analizza i loro negoziati che includevano la regione adriatica, uno spazio dove le ambizioni territoriali italiane e jugoslave entravano in conflitto. La corrispondenza e i diari dei maggiori protagonisti del Comitato nazionale cecoslovacco rivelano il modo di pensare dietro i negoziati che intercorsero con i rappresentanti italiani e di quelli del comitato jugoslavo. Questi documenti rivelano in una nuova luce le opinioni e le discussioni dietro le quinte che intercorsero tra vari politici da una parte e tra Masaryk, Beneš e Štefánik dall'altra.*

*Parole chiave: movimento cecoslovacco per l'indipendenza, prima guerra mondiale, questione adriatica, Tomáš Garrigue Masaryk, Edvard Beneš, Milan Rastislav Štefánik*

In his memoirs on the First World War[1] Edvard Beneš mentioned that controversy between Italians and South Slavs was difficult for Entente and the object of daily polemics in journalistic and political circles, and he tried to avoid these controversies (Beneš, 1927b, 87). Together with Tomáš G. Masaryk and Milan Rastislav Štefánik, Beneš was a representative of the Czechoslovak foreign independence movement, and from 1916 secretary of the Czechoslovak National Council (ČSNR) in exile.[2] The three Czechoslovak politicians followed a kind of Realpolitik in their dealings with the Italians and the South Slavs, always maintaining focus on their primary goal: the realization of Czechoslovak demands for an independent state at the expected Peace Conference. At the beginning of the First World War none of the Entente Powers – except Russia[3]– sought the destruction of Austria-Hungary, nor could any of them envision it. These states generally considered the Habsburg Monarchy a necessary barrier to German and Russian expansionism. Slavic political emigrants from Austria-Hungary were among the first to push for the creation of their own nation-states, but the various Slavic nations' public demands for emancipation concealed

1 This paper was produced as a part of the work on a grant project of the Grantova agentura ČR no. P410/10/1273. We thank Nancy Wingfield and Martin Klečacký for their comments.

2 Founded in February 1916, the Czechoslovak National Committee was the supreme body of the Czechoslovak foreign independence movement, the leaders were finaly Masaryk, Beneš, and Štefánik.

3 Russian Minister of Foreign Affairs Sergei Dmitrievich Sazonov proposed the disintegration of Austria-Hungary already in 1914 (Valiani, 1966, 178).

contradictory motivations and goals. The different movements found it difficult to reconcile their various views and form unified front. One of the sources of tensions was Adriatic area. Masaryk, Beneš, and Štefánik had to negotiate carefully during the war and after 1918 with their Entente allies, the Italians and the South Slavs, whose territorial ambitions in the Adriatic region collided. Their correspondence (Hájková, Šedivý, 2004; Hájková et al., 2004), and especially Beneš' diaries (Hájková, Kalivodová, 2013) record also the progress of these negotiations. These documents shed light on Masaryk, Beneš, and Štefánik's behind-the--scenes discussions, their opinions on other politicians, and their attitudes toward them.

At the war's outbreak, Czech relations with the Southern Slavs and the Italians differed considerably. Czech and South Slavic political activists had been in close contact before the war. Many South Slavs studied at Prague University and some had been Masaryk's students. Masaryk had also maintained contact with Serbian politicians, including Prime Minister Nikola Pašić. In summer 1914, a wave of pro-Slavic sympathy swept through much of Czech society. Some Czech soldiers leaving for the Russian front singing *Hej Slované* with the modified lyrics "The Russian is with us, and he who is against us will be swept away by the French," and Czechs abroad – in the USA, France, and England – organized large-scale pro-Serbian demonstrations (Hájková, 2011, 31–33; Pichlík, 1962, 64, 89). Czech relations with Italy, on the other hand, were not close despite the resonation of Italian *Risorgimento*, the popularity of the ancient Italian monuments, and the presence of Italian workers in the construction of railway tunnels in Bohemia. In the second half of the nineteenth century, Czech soldiers in the Habsburg army had fought against the Italians, who were perceived as a traditional enemy of the monarchy. The Italians were, however, an enemy whose military reputation left a lot to be desired (Šedivý, 2008, 338; Helan, 2012, 242).

At the war's outbreak, in the context of Italian neutrality and the cordial pre-war relationships with South Slav politicians, journalist and academics, members of the Czech independence movement abroad focused primarily on the Slavs. Masaryk spoke about a possible future Czech territorial connection with the Adriatic and, in spring 1915, in his secret memorandum *Independent Bohemia* he suggested a land corridor between the future new states: Bohemia and the South Slavic state of "Serbo-Croatia" which he considered necessary from an economic, as well as a military perspective. He claimed – and it is likely he was exaggerating – that his idea had the support of the majority of Czech and South Slavic politicians (Seton-Watson, 1943, 35ff; Masaryk, 2005a, 68). He also underlined the unique relationship between Czech and South Slavs in his foreword for the publication *L´Unité Yougoslave. Manifeste de la Jeunesse Serbe, Croate et Slovène réunie.* (Masaryk, 2005a, 91–93). Thanks to Masaryk's special relationship with Serbian politicians, he and Beneš were issued Serbian passports after going into exile, and they used them during much of the war. The top priority of the Czechoslovak wartime propaganda was to "liberate the subjugated Slavic nations from the Habsburg yoke." In November 1915, Czechs and Slovaks living abroad presented for the first time their program for an independent Czechoslovak state in their *Declaration of the Czech Foreign Committee*. The document expressed support for "the Serbian, Russian, and Polish brothers," faith in the "final victory of the Slavs and the Allies," and the conviction that "the victory of the Slavs and Allies will be to the benefit of all Europe and mankind" (Masaryk, 2005b, 137).

At the beginning of their exile, the leaders of the Czechoslovak and South Slavic program for independence met in Italy. Masaryk traveled to Rome in December 1915, and the Croatian politicians Franjo Supilo and Ante Trumbić emigrated to Italy. Masaryk quickly contacted them and other South Slavic representatives, and simultaneously tried to ensure that the Czechs and South Slavic politicians in the Habsburg Monarchy, as well as in exile, would be mutually informed about their activities and plans (Valiani, 1966, 203, 209; Beneš, 1927a, 60). The Czechoslovak National Committee negotiated with the Yugoslav Committee, which pushed for an independent state of Serbs, Slovenes, and Croats, as well as Serbian representatives, who adopted ideas about a Greater Serbia and its domination in the future state. Even before the war's outbreak, Supilo, a Dalmatian politician and journalist, strove for a Croatian-Italian rapprochement, which he was convinced could provide a barrier against Pan-Germanism (Valiani, 1966, 27–29). A barrier to Pan-Germanism also resonated in Masaryk's wartime speeches. He underlined that Germany is aggressive power which wants to expand not only to the east, but also to the west. Pangermanistic aspiration could be, according him, prevented just by defeat of Germany and by creation of the system of the small Mid-European national states as barrier. Complementary Masaryk´s argument was that Austria-Hungary lost any positive idea and its dismembering would lead to the defeat of Germany.

Trumbić and Supilo were the main Dalmatian proponents of the Yugoslav state concept[4] and it soon became apparent that their ideas would collide with Italian territorial demands in the Adriatic. Italian diplomacy, led by Minister of Foreign Affairs Sidney Sonnino, viewed the expansion of Serbia, with the support of Russia, as a dangerous encroachment of Russian influence. The Serbs were interested in eastern Adriatic territory, but the Italians gained this region as the result of the secret Treaty of London signed spring 1915, which had brought Italy into the war. Dalmatia, however, was inhabited primarily by Slavs, and was not part of Italy's demands until 1914 (Vivarelli, 1964, 364–365). The South Slavic demands were also ambitious. When it formulated territorial demands for the future South Slavic state in May 1915, the Yugoslav Committee demanded all of Dalmatia and Istria, Fiume, Pola and Trieste, Gorizia and Carnia, and half of Carinthia and Styria. At the first Serbo-Slovenian congress, held in Trieste in April 1915, delegates approved a program of Yugoslav unification under the aegis of Serbia, and called for extrication of Slavs from "Italian slavery" at all costs (Gottlieb, 1957, 349). Nevertheless, at the beginning of the war the South Slavic efforts had little impact on the Entente states, which primarily sought Italian participation in the war on their side.

Italian Minister of Foreign Affairs Sonnino opposed the destruction of Austria-Hungary, and therefore the creation of successor states, until nearly the end of war. He felt that Austria-Hungary´s destruction could bring Italy some unsavory neighbors: Russia on the

4 In a conversation with Carlo Galli, Trumbić proclaimed that he was a Croat, who thinks and speaks Italian, but wants to remain a Croat and make Italian the second language of his nation (Valiani, 1966, 174). Similarily to Supilo in the memorandum that he wrote (in Italian) in early 1915 for the British Minister of Foreign Affairs Edward Grey, he writes that among the South Slavs, Italian has been used as a cultural language (Valiani, 1966, 179).

Adriatic and Germany on the Brenner Pass (Cornwall, 2000, 113). He sought a diminution of Austria-Hungary and the Italian territorial gains based on the London Treaty. Italian politics changed fundamentally at the last year of war when Prime Minister Vittorio Orlando accepted the idea of break-up of the Habsburg Monarchy. In Italy, however, there were movements that had supported the dissolution of Austria-Hungary and the creation of Czechoslovakia, Yugoslavia, and other successor states since 1915 and 1916. They were represented, for example, by the socialists' politicians Gaetano Salvemini or Leonida Bissolati. Leaders of the Czechoslovak National Committee tried to win these politicians over to their idea of an independent Czechoslovak state. At the same time they had to cope with South Slavic-Italian tension. Despite all the declared sympathies with the Slavs, it was Italy that played a fundamental role in the political thinking of the members of the Czechoslovak National Committee. Italy's importance increased when it entered the war in May 1915 on the side of the Entente powers. Moreover, there were Czech and Slovak prisoners of war in Italy and their possible involvement in the war on the side of the Entente improved the position of the Czechoslovak foreign movement as a useful ally. Beneš, Masaryk, and Štefánik tried to negotiate pragmatically with both sides – the South Slavs and the Italians – thinking that they could become mediators, which several Italian and French politicians counted on.

In his first memorandum, Masaryk expressed support for the South Slavs and criticized Italian territorial claims, although he simultaneously strove for balance between Slavs and Italians. In spring 1915, Masaryk wrote about these issues in a secret memorandum to the British Foreign Office titled *Independent Bohemia*. He considered the Italian claims to the Adriatic to be exaggerated, but tried to unite Italian and South Slavic interests: *"Does Italy, who has a very long coast of her own and [a] number of islands* […], *need the long coast of Dalmatia as well, if she gets Trieste, Pola, and Valona?* […] *The way to Baghdad goes from Berlin not only through Constantinople, but through Trieste and Venice. Italy is the natural ally of the Southern and Northern Slavs against the* Drang nach Osten*"* (Seton-Watson, 1943, 131; Masaryk, 2005a, 69). Masaryk used similar arguments in subsequent memoranda – to unite the South Slavs under Serbian political leadership, Austria-Hungary would have to be destroyed. The solution he envisioned for Italy and its justifiable national aspirations was to become *"the neighbor of Greater Serbia and would complete the anti-German barrier formed by Poland, Bohemia and Greater Serbia"* (Seton-Watson, 1943, 195; Masaryk, 2005b, 174).

The architect of the Czechoslovak-Italian negotiations was Milan Rastislav Štefánik. In spring 1916 the French government commissioned him to recruit Czech and Slovak prisoners of war as potential volunteers for the Allied army. He first traveled to Italy in March 1916. The goal of his "Slavic mission" was to mitigate Italian-Serbian tension over the Dalmatian question and negotiate a reduction of Italy's claims on the Adriatic coast (Biagini, 2010, 46). Before his departure to Rome, he and Beneš met several times with Trumbič and Hinko Hinković. They persuaded the South Slavs to adopt more circumspect tactics regarding the Italians and to be in compliance with them. Štefánik was a skilful negotiator who impressed Vesnić. Representatives of the Czechoslovak National Committee urged Trumbić and Hinković to reach an agreement with Italy at all costs.

Štefánik convinced them that "it was necessary to be reconciled in order to achieve unification" and that it was necessary to break up Austria-Hungary and unite the South Slavs. ČSNR representatives never forgot to push through their own demand for an independent state. Beneš got the impression that the South Slavs "emotionally agreed with" the proposal. These negotiations reveal how complicated the situation was, because "emotion and agreement" could have been easily replaced with anger and South Slavic resistance to the Czech proposals (Hájková, Kalivodová, 2013, 89).

At the same time, Štefánik proposed rather ambitious territorial plans for a future Czechoslovak state. In a June 25, 1916 report for the French General Headquarters, he proposed the creation of a "Czech Kingdom", including Bohemia, Moravia, Silesia, and the land corridor south of Vienna connecting the Czech kingdom with Serbia. He claimed that Russia would not have influence over the Czech Kingdom. The goal of this arrangement was to isolate Hungary from German influence (Guelton, 2008, 55–56; Brancaccio, 1926, 32–33). ČSNR members were wary of the South Slavs' uncoordinated approach towards Austria and thought that their anti-Italian aversion could lead them to a pro-Austrian position. On September 2, 1916, Beneš pessimistically informed Štefánik about his negotiations with the representatives of the Yugoslav Committee in London: *"I have seen all sorts of things in the back hallways of the South Slavs. It is a disaster."* He was convinced that Italy would get Dalmatia and Istria and would absolutely not consent to the unification of the South Slavs. According to Beneš, an independent Croatia would be created. He concluded: *"So the South Slavs will be divided into 3 or 4 parts. It would be dangerous for us if what is left, i.e. of Croatia, wanted to return to Austria-Hungary. I think that the position is utterly lost in this sense. They will not be united"* (Hájková, 2004, 589).

Beneš also wrote to Štefánik that Colonel Nicola Brancaccio, the Italian military envoy in Paris, had told him that Italy opposed maintaining Hungary's territorial integrity and agreed with the Slovaks' forming a common state with the Czechs. When asked what future he saw for the South Slavs, Brancaccio responded: *"We will take the Slovenes, Trieste must have a Hinterland – you must take part of your Austrian Germans – or Slovenes"* (Hájková, 2004, 590). It is possible that Brancaccio, who sought an independent Croatian state, meant Slovaks instead of Slovenes. He unrealistically recommended to Beneš that a Czechoslovak Army not be set up in France, but that the Czechs should send their own army to the Balkans and occupy the Czech lands (Hájková, Kalivodová, 2013, 119).

If Beneš' recollections are accurate, Brancaccio merely stated his own personal opinion. In 1915, Minister Sonnino considered the possibility of a separate peace with Hungary and even one year later his position was not in harmony with Brancaccio's statement to Beneš. Brancaccio himself noted on August 26, 1916, that he had a long talk with Beneš, who was worried about the South Slavs' reaction to Italy's occupation of Gorizia and also thought that a militarily successful Italy would not need the Czechs any longer and would not be interested in cooperation. Beneš told Brancaccio that ČSNR's policy was, and would remain, oriented towards Italy. He informed him about his negotiations with Masaryk in London, where they had agreed that after the war Czechoslovakia and Italy should have a common border and thus entry should be granted to Trieste (Brancaccio, 1926, 32–33).

The conversation participants had ambitious ideas about how to establish the future borders of virtual states. Czechoslovakia could border Serbia or Yugoslavia, as well as Italy. By analyzing Beneš' correspondence with Masaryk, it is easy to conclude that it is as if their relations with Italy and the South Slavs were permanently vacillating and it was hard to reach a consensus. In August 1916, Beneš wrote to Masaryk that *"in Italy they are mad because we are supposedly going against them with the South Slavs etc.*" (Hájková, Šedivý, 2004, 145). Italy's doubt appears to be justified, as evinced by Masaryk's September 1916 letter to Beneš, which also reflected his pragmatic attitude and awareness of the difficulty of the situation. He noted that the Czechs were little-known foreigners, thus it was difficult to criticize France and Italy. He doubted that protests would help, because*: "We would tarnish ourselves and enrage the Italian nationalists, and then they would push the government towards more radical demands.*" Masaryk was convinced that it would be better to calmly argue against Italy and the Allies. He spoke with Supilo and his opponents in the Yugoslav Committee as well. He repeated to them that, whatever the circumstances, they had to work to unify Serbia and Croatia, even if a piece of Dalmatia would be lost. Masaryk pointed out that unified Serbs and Croatians would be stronger against the Italians and was convinced that Supilo's tactic was only making Austria-Hungary stronger. He wrote also to Beneš that he *"advised Supilo to realize that the conflict was actually detrimental to the South Slavs"* (Hájková, Šedivý, 2004, 156).

The propaganda of the Slavs' demands printed on the pages of the bi-monthly journal published by ČSNR in Paris *La Nation Tchèque* and Beneš' frequent meetings with the South Slavs Bogumil Vošnjak, Trumbić, and Niko Župančić were balanced by the efforts to maintain good relations with Italy. Beneš followed clear goals, being informed by all sides, and trying to get along with everyone. He also assured everyone that cooperation and special relations were important to him. At the same time, his main goal was an independent Czechoslovak state. For Beneš, negotiations and balancing between the Italians and South Slavs constituted a school of diplomacy. After spring 1916 the argument over the South Slavic question intensified. The Serbian effort to create a "Greater Serbia" clearly collided with Italian politicians' interests and the promises the Allies had given them in the so-called London Treaty. Italian politicians feared the strengthening of the Slavic influence in the Adriatic and refused the Yugoslav state's program. This approach influenced the position on the national-liberation ambitions of the Slavic peoples of the Habsburg Monarchy. In terms of an alliance with Italy, neither Beneš nor Štefánik wanted the propagation of the greater Serbian program to be too connected to the Czechoslovak resistance, and they were therefore trying to calm the tensions (Dejmek, 2006, 14; Hájková, Kalivodová, 2013, 100). With their negative attitude to Italy, the South Slavs were counterproductive to Czechoslovak ambitions and so, for example, when Štefánik was negotiating in Italy, Beneš asked the Yugoslav Committee chairman Trumbić to tone down his anti-Italian proclamations (Hájková, Kalivodová, 2013, 108).

At the same time, an argument arose between Beneš and Ernst Denis, the historian and editor-in-chief of *La Nation Tchèque,* about the propagandist-ideological slant of the paper. The dispute was about the South Slavic question. In April 1916 Beneš negotiated with the Yugoslav Committee about cooperating in *La Nation Tchèque,* which he wanted

to open up primarily to Slavic issues (Hájková, Kalivodová, 2013, 96). Denis openly spoke in favor of Yugoslavia, sympathized with Serbian efforts to unify the South Slavs and openly promoted the idea of a "Greater Serbia." Beneš and Štefánik, who were negotiating with Italy the possible establishment of Czechoslovak legions, were much more cautious in their positions on the South Slavs (Borrely, 1972, 230). On the other hand, they could not support Italy exclusively, since the South Slavic propaganda was very successful in France. They trod carefully, and Beneš tried to explain to Denis that "real" politics took place primarily "behind the scenes" (Hájková, Kalivodová, 2013, 101). Following their argument, Denis eventually resigned from his position in *La Nation Tchèque*, and was replaced by Beneš.

One of ČSNR's main goals was the formation of Czechoslovak military regiments. On January 10, 1917, Beneš went to Italy to raise support for this idea in governmental circles. Although he failed, he set up good relations for future negotiations. Beneš' diaries show the wide network of contacts he had established in Rome among Italian, South Slavic, French, and Russian politicians, diplomats, and journalists. On January 17 he had a long discussion with the Russian Ambassador, Michail Nicolaevitch Giers, who advised him that it was useless to antagonize the *"Italians, who nevertheless have childish politics, who are wrong, because the course of history is unstoppable"* (Hájková, Kalivodová, 2013, 130). Beneš sent Masaryk the minutes of his conversation, in which he mentioned Giers' opinion of the South Slavs: *"The South Slavs made a series of tactical mistakes; they do not have enough sense to negotiate carefully and tactfully."*[5] Beneš also negotiated with another critic of the South Slavs, the French Ambassador in Rome, Camille Barrère, who recommended to Beneš that he that he should contact other people, including the General Secretary of the Italian Ministry of Foreign Affairs, Giacomo De Martino. This meeting demonstrates how Beneš tried to capture the interest of influential "bureaucrats." He laid out their common economic and political interests and introduced the Czech question as an international problem. Moreover, he always knew what the other side wanted to hear. With De Martino, Beneš spoke about relations with the South Slavs. De Martino supported Beneš' position and emphasized that the Czechs should convince the South Slavs of the necessity for territorial compromise. Beneš replied that he was already working on this. It is also possible that he expressed his agreement when De Martino stated that there were Italians in Dalmatian cities, that the official census[6] had been falsified and that the Adriatic was Italian (Hájková, Kalivodová, 2013, 133–134).

In spring 1917, Edvard Beneš published a book titled *La Boemia contro Austria-Ungheria*. The introduction was written by Andrea Torre, former Rome Correspondent of the *Corriere della Serra* and was actually a translation of his French work *Detruisez l´Autriche-Hongrie.* It was one of his many propagandistic texts describing the situation of the Czechs and Slovaks in the Habsburg Monarchy (Cronia, 1936, 133). The Rome office of the Czechoslovak National Committee used this publication for presenting the

5 AÚTGM-EB IV/1, R 367B, 1, zahraniční odboj Paříž (mss).

6 The censunses in Austria between 1880 and 1910 enquired also nationality of each individual. See also Zeman, 1990, 31.

aims of the Czechoslovak independence movement. The director of the office, Karel Veselý, sent Benes' book to many Italian politicians and journalists and enclosed a questionnaire. He asked them whether there were substantial historical and political reasons for the Czechs and Slovaks to create a united Czechoslovak state. He wanted also to know what advantages the creation of a "bigger" Bohemia in Central Europe would bring to Europe as a whole. It is not clear how many people received this letter. The office got 37 positive responses, including from Giovanni Antonio Colonna Di Cesarò, Benito Mussolini and Pietro Nenni. The most common argument for the creation of the Czechoslovak state, besides moral reasons, was the creation of an anti-German barrier. Ernesto Nathan, former mayor of Rome saw in Czechoslovakia a barrier not only against German, but also against Russian and Polish expansion (Kybal, 1925, 133).

In 1917, the Italians began to realize the possibility of using the national aspirations of the Habsburg Monarchy nations for independence. Brancaccio also noted the change. As a military intelligence officer, he tried to use several ČSNR members as intermediaries or collaborators in the Italian-South Slav dispute. In May 1917 he noted: "*Štefánik returned from Russia, where he did a lot for his country* […] *I convinced him to go to Italy and speak with Sonnino. It is necessary to go against the hostile Yugoslav propaganda, which has become too dangerous."* Through Brancaccio, Italian diplomacy was informed of Štefánik's negotiations with Hinković on a potential South Slavic agreement with Italy. Brancaccio offered Štefánik *"to completely, discreetly take charge,"* and to act as an unofficial mediator between the Czechs, the Italians, and the South Slavs. Czech politics and aspirations increased in value and were now understood as one of the options in the struggle against Austria-Hungary.

On May 5, 1917, Brancaccio noted in his diary that the significance of the Czech movement was growing ever stronger and it was a pity that Italy had not followed it with greater interest. He saw many similarities between the Czechoslovak movement and the beginnings of the *Risorgimento*. According to him, the Czech leaders had, just like the great Italian patriots, a great moral nobility. He underlined: "*At this moment, encouraging the Czech question means having an extra element to defeat Austria.* […] *What a powerful weapon we could wield if we wanted!* […] *It seems that Italy does not believe in the strength that the Czech movement represents; I think we are making a great mistake.*" Brancaccio also understood the economic importance of the Czech lands, and the possibility that they could be a source of raw materials for Italy in the future, if Italy didn't want "*to stop being a German vassal and became a vassal of the French.*" He knew that the Czechs would need the port of Trieste and pointed out: *"The Czechs need their own port and a state that won't threaten them with political submission. Unfortunately, the Czech national movement hasn't yet found much support in Italy, only politeness, platonic support, and much mistrust*" (Brancaccio, 1926, 111).

The year 1917 ushered in radical changes in wartime developments, which significantly influenced Czech-Italian-South Slav relations. The Russian Revolutions, the Corfu Declaration, the publication of some details of the Treaty of London, the success of the Czechoslovak legionnaires at the battle of Zborov, and the defeat of Italian forces near Caporetto changed the Italian perspective on the necessity of deploying forces against Austria-Hunga-

ry. This was the context in which the ČSNR representatives, primarily Beneš and Štefánik, led the negotiations about the forming of Czechoslovak regiments in Italy. Beneš first explained to Brancaccio that Italy was not popular in the Czech lands, and there had been mistrust in the prisoner of war camps, which worked in favor of Yugoslav propaganda. He also argued that the Czechoslovak army in Italy would counterbalance the Russian and French influence, and remarked that "Czechs must follow instructions to be completely neutral in the debates between the South Slavs and Italians" (Brancaccio, 1926, 121–126). Štefánik adopted an original style of negotiation. He constantly told Brancaccio "*je vous aime bien*," he criticized France and even offered Brancaccio the post of General of the future Czechoslovak regiments. Brancaccio did not fully understand the negotiation style of "not saying things directly," and he privately called it "Slavic." He also did not know to what extent Štefánik was truly honest, so he concluded that "when the Czechs really get their independence, they will then turn their back on all" (Brancaccio, 1926, 203–204). The changed attitudes towards Czechs could be seen on the pages of the liberal *Corriere della Sera*, the most influential newspapers in Italy. From December 1917, it supported the establishment of Czechoslovak legions and regularly informed readers about Czechoslovak National Committee activities (Helan, 2006, 123–124). A similar view was adopted by Mussolini's *Il Popolo,* whereas the socialist *Avanti!* did not agree with dismembering Austria-Hungary. In autumn 1917, *Avanti!* described the situation in the Habsburg Monarchy as complicated due to increasing Czech and Slovak radicalism.[7]

In the last year of the war, the "small, oppressed" nations became an important part of the propagandist and espionage games of the Great Powers. Thus, the support of activities leading to the disintegration of Austria-Hungary gained momentum in Italy at the beginning of 1918. Despite Sonnino's objections, Prime Minister Orlando, the highest Italian military circles, and many Italian nationalists became engaged in these activities. Nevertheless, the Italians remained concerned about the strong Slavic influence on the Adriatic, and until autumn 1918 they effectively refused the program of the creation of a South Slavic state (Jelavich, 1983, 142; Seton-Watson H., Seton-Watson C., 1981, 251ff). Beneš negotiated with the Italians and South Slavs as well, and during a series of meetings in Paris he tried to get the Italians to agree to a common action against Austria-Hungary.

In the meantime, during spring 1918, significant demonstrations took place in Austria-Hungary itself. In April, representatives of Czech political parties proclaimed their nation's right to self-determination. The South Slav representatives, Anton Korošec, Ante Pavelić, Stjepan Radić, and others, arrived from Zagreb and Ljubljana to witness this declaration. Proclamations of Czechoslovak independence and Yugoslav unity were heard during Mayday celebrations. In Prague between 16 and 18 May, 1918, commemorations of the founding of the National Theatre took place and were attended by Slovaks, Slovenes, Serbs, Croats, Poles, Romanians, and Italians in the spirit of the common efforts towards national recognition.[8] The demonstrations of unity of the oppressed people

7 Avanti, 2. 10. 1917: Un blocco slavo-socialista, 2.

8 Enrico Conci represented Tridentine catholics at the meeting. Some information, not all, points to the presence of Alcide De Gasperi. In Prague, Conci pleaded for the unity of Italian catholics in Austria with Czechs and the

of Austria-Hungary were reflected in the April Congress of Oppressed Nationalities in Rome. *Corriere della Sera* informed readers in detail every day about the negotiations. It also reflected the speech of Edvard Beneš, and its enthusiastic "Viva la Boemia" applause.[9] For the first time representatives from the oppressed nationalities and the Allies had come together to proclaim publicly the need to form a united front to dissolve Habsburg Monarchy and build new states on its ruins. Apart from the unanimous approval of these joint resolutions, which included the Italo-Yugoslav clauses, individual delegates publicly explain their national causes. (Cornwall, 2000, 196, Klabjan, 2007, 84–85, 88).

With regard to the nearly simultaneous conflict between Austro-Hungarian Minister of Foreign Affairs Ottokar von Czernin and French Prime Minister Georges Clemenceau, and the new German military offensive, the congress in Rome in April 1918 occurred at an opportune time for the Slavic nations. Sonnino, however, continued to hinder England and France's efforts to recognize Polish, Czechoslovak, and Yugoslav independence. At the same time, he was able to differentiate between Czechs and South Slavs. Sonnino tolerated Czech demands, but did not want to create a precedent with the South Slavs. He worried that a newly created Yugoslavia would become Italy's enemy, orienting itself once again toward Austria or Germany.

An improvement in the situation of the Czechoslovak troops in Italy and the consolidation of the political position of the Czechoslovak foreign independence movement finally came about in 1918. The result of Štefánik's negotiations with Prime Minister Orlando on the incorporation of Czech and Slovak prisoners of war into the recently constituted Czechoslovak Army in France ended in a compromise – the Czechoslovak Legion in Italy would be under Italian command, albeit formally integrated into the French section of the Italian front (Čaplovič, 2010, 145–146, doc. no. 118). The recognition of the Czechoslovak legions took place within the context of the deliberations of the Congress of Oppressed Nationalities in Rome, where on April 21, Prime Minister Orlando and ČSNR representative Štefánik signed the definitive text of the convention on the Czechoslovak Army in Italy (Klimek, 1994, 91–99).

The difficult relations in the Adriatic and the agile Czechoslovak approach came to light in autumn 1918, when the meeting of Mid-European Union held in Philadelphia. The first session was accompanied by Italian protests against the participation of the Croatian politician Hinković and by the dissemination of pamphlets promoting Italian demands for Fiume.[10] The records of meetings and memoirs of sociologist Herbert A. Miller, the Congress' main organizer, demonstrate what ideas the participants brought to the negotiations, how they had to amend these ideas, and how they clung to them. The negotiations revealed, however, how difficult it was to reach agreement on the question of the borders and the principles on which the new states would be founded. The representatives appreciated Wilson's approach to national self-determination, but they distanced themselves from it in practice.

---

end of their allignment with the Habsburgs (Valiani, 1966, 404–405, 445; Paulová, 1968, 455ff.).

9 Corriere della Sera, 11. 4. 1918: Il programma dei czeco-slovacchi, 4.

10 TUL-CTC, Herbert Adolphus Millller papers, Miller's memoirs, Chapter IV, AR 93–6, 8/20/80, Folder Fb.

Echoes of past negotiations on the Adriatic question can be heard in the participants' declarations. The representative of the Italian Irredentists, Giovanni Almagia, was convinced that the Italian Irredentists had no problem of nationality, because they already considered themselves a part of Italy and accepted its laws and constitution. Hinković was unwilling to accept any federalization; he preferred the concept of the independent states. He was convinced that Italy *"wishes only to invade our country and rob our country, and it has always been so; this situation between the Yugoslavs and the Italians was very aggressive. We know this; the Yugoslavs had to suffer."* Hinković supplied many statistical figures to explain that Istria was populated primarily by Slavs, and proclaimed Trieste part of the territory of Yugoslavia. Amalgia simply answered that "*to say Trieste is a Yugoslav city is a mistake,*" and a while later emotionally added: "*Trieste was Italian when it was founded; it has always been Italian and always will be Italian. Italy will sacrifice herself for Trieste.*"[11]

Masaryk managed to calm tensions between Hinković and Almagia only partially, because Yugoslav Committee members temporarily resigned their membership in the Central European Union in protest. Masaryk believed that discussions and common actions against Germany were essential. However, he was worried about disagreements at the coming peace conference: "*We are all united against Germany, but are not united among ourselves. That means that after the peace conference we shall make war against each other and among ourselves. We must get together now.*"[12] The "Declaration of the Common Aims" of the Central European nations that their representatives finally signed had eventually no political impact.

In his October 31 letter to Beneš, Masaryk gave his firm opinion on the solution to the Adriatic conundrum. He wrote that he wanted to be "*consistently loyal and favorable towards the Italians*" and abide by the London Treaty. He believed that Trieste and Istria should be part of Italy, and he considered that as a necessary sacrifice. He also appreciated the Serbian fighting spirit, while Croats and Slovenes were, according to him, about to "*disappear into a vague 'Yugoslavia'* " (Hájková, Šedivý, 2004, 295). Masaryk also took a more critical position toward the South Slavs than the Italians in other letters: *"Small South Slavs. It was a mistake that they didn't cooperate with Italy from the very beginning."* Masaryk considered Hinković "a politically small man," King Alexander just "a zero," and Vesnić a man lacking perspective. Pašić alone would not be enough. Masaryk also criticized the Serbs for being politically short-sighted, but added that Serbs are actually politically strong and able to make agreement with Italians. In a wider context, he concluded: *"The Slovenes, however, will never understand that, in the end, the destruction of Austria and the defeat of Germany mean far much more for us Slavs than does the Slavification of Gorizia etc. The towns are Italian.*" (Hájková, Šedivý, 2004, 304).

11 TUL-CTC, Herbert Adolphus Millller papers, Minutes of the Democratic Mid-European Union, 24. 10. 1918, AR 93–6, Folder E.

12 TUL-CTC, Herbert Adolphus Millller papers, Miller's memoirs, Chapter VII, AR 93–6, 8/20/80, Folder Fb; Herbert Adolphus Millller papers, Minutes of the Democratic Mid-European Union, 26. 10. 1918, AR 93–6, Folder E.

When the President of the nascent Czechoslovak state provided an overview of his previous activities to the Council of Ministers in Prague in December 1918, he also analyzed South Slavic and Italian wartime politics. His words document the Czechoslovak National Council's approach as it developed during the war: "*The Italian government treated us most politely.* […] *Therefore we cannot be doing some student politics with the South Slavs; when I negotiated with the Italians, the word 'Yugoslavs' was never mentioned and it will never be* […] *Since it is in our vital interest to have an army, it is necessary to have the best relations possible with Italy. Nevertheless, I am not approving hereby anything against the South Slavs. But it would be insane to have an anti-Italian policy*" (Masaryk, 2003, 47). The Adriatic question and cautious negotiations with all interested parties were only a segment of the war activities of members of the Czechoslovak National Committee. Discussions that Masaryk, Beneš, and Štefánik led demonstrated their abilities to negotiate with various, often opposing partners. They also show the pragmatism of their actions determined by their final goal: dismembering Austria-Hungary and creating a new independent Czechoslovak state.

## ISKANJE RAVNOVESJA: ODNOS ČEŠKOSLOVAŠKEGA GIBANJA ZA NEODVISNOST V TUJINI DO JADRANSKEGA PROBLEMA MED PRVO SVETOVNO VOJNO

*Dagmar HÁJKOVÁ*

Masarykov inštitut in arhiv Akademije znanosti Češke republike v. v. i., Gabčíkova 2362/10, 182 00 Praga 8, Češka republika

e-naslov: hajkova@mua.cas.cz

*Pavel HELAN*

Husitska teološka fakulteta, Karlova univerza v Pragi

Pacovská 350/4, 140 21 Praga 4, Češka republika

e-naslov: p.helan@seznam.cz

*POVZETEK*

*Tomáš G. Masaryk, Edvard Beneš in Milan Rastislav Štefánik, predstavniki češkoslovaškega gibanja za neodvisnost v tujini in od leta 1916 predstavniki Češkoslovaškega narodnega sveta (ČSNR) v izgnanstvu, so si med vojno prizadevali za en sam cilj: neodvisno državo Češkoslovaško. Študija opisuje njihova spretna pogajanja v Jadranski regiji, v kateri so prihajala navzkriž italijanska in južnoslovanska ozemeljska stremljenja. Korespondenca med Masarykom, Benešem in Štefánikom ter zlasti Beneševi dnevniki*

*popisujejo napredek v teh pogajanjih. Ti dokumenti osvetljujejo zakulisne razprave med Masarykom, Benešem in Štefánikom, njihova mnenja o drugih politikih ter njihove različne odnose do teh politikov.*

*Ob izbruhu vojne se je češka drža do južnih Slovanov in Italijanov precej razlikovala. Leta 1914 je češko družbo zajel val simpatij do Slovanov. Zahvaljujoč Masarykovemu posebnemu odnosu s srbskimi politiki sta oba z Benešem po odhodu v izgnanstvo dobila srbska potna lista. Partnerji v pogajanjih Češkoslovaškega narodnega odbora so bili Jugoslovanski odbor, ki si je prizadeval za neodvisno državo Srbov, Slovencev in Hrvatov, in srbski predstavniki, katerih zamisli o veliki Srbiji in njeni prevladi v prihodnji državi so bile za Jugoslovanski odbor nesprejemljive. Voditelji Češkoslovaškega narodnega odbora so poskušali te politike pridobiti za svojo zamisel o neodvisni češkoslovaški državi, hkrati pa so se morali ukvarjati z južnoslovansko-italijanskimi trenji. Kljub vsem izjavam o simpatijah s Slovani pa je temeljno vlogo v političnem razmišljanju članov Češkoslovaškega narodnega odbora odigrala Italija. Njen pomen se je še okrepil, ko je maja 1915 vstopila v vojno na strani sil antante. Poleg tega so bili v Italiji češki in slovaški vojni ujetniki, njihovo morebitno sodelovanje v vojni na strani antante pa je izboljšalo položaj češkoslovaškega gibanja na tujem kot koristnega zaveznika. Beneš, Masaryk in Štefánik so se poskušali pragmatično pogajati z obema stranema – z južnimi Slovani in z Italijani –, ker so mislili, da bi lahko postali mediatorji, na kar je računalo tudi več italijanskih in francoskih politikov.*

*Propagando o slovanskih zahtevah, ki je izhajala na straneh La Nation Tchèque, in Beneševe pogoste sestanke z južnimi Slovani Vošnjakom, Trumbićem in Župančićem so uravnovešala prizadevanja za ohranjanje dobrih odnosov z Italijo. Beneš je sledil jasnim ciljem, ker je dobival informacije od vseh strani in se je poskušal z vsemi dobro razumeti. Eden od glavnih ciljev ČSNR je bila vzpostavitev češkoslovaških vojaških polkov. Ti so veljali za enega od propagandističnih stebrov, ki bi lahko pomagali prepričati zaveznike o pripravljenosti Čehov in Slovakov na boj proti Avstro-Ogrski. Leta 1917 je v vojnih okoliščinah prišlo do korenitih sprememb, ki so pomembno vplivale na češko-italijansko-južnoslovanske odnose. Ruska revolucija, Krfska deklaracija, objava podrobnosti o Londonskem sporazumu, »zmaga« češkoslovaških legionarjev v bitki pri Zborovu v Ukrajini, ki jo je češkoslovaška propaganda sijajno izkoristila, in poraz italijanskih sil pri Caporettu so spremenili italijanske poglede na nujnost mobilizacije sil proti Avstro-Ogrski. Priznanje češkoslovaških polkov je potekalo v kontekstu posvetovanja Kongresa zatiranih narodov v Rimu, kjer sta ministrski predsednik Orlando in predstavnik ČSNR Štefánik 21. aprila podpisala dokončno besedilo konvencije o češkoslovaški vojski v Italiji.*

*Težavni odnosi v Jadranski regiji in prožen češkoslovaški pristop so prišli na svetlo jeseni 1918 na kongresu zveze Mid-European Union v Philadelphii. Toda pogajanja so razkrila, kako težko je bilo doseči dogovor o vprašanju meja in načel, na katerih naj bi bile utemeljene nove države.*

*Ključne besede: češkoslovaško gibanje za neodvisnost, prva svetovna vojna, jadransko vprašanje, Tomáš G. Masaryk, Edvard Beneš, Milan Rastislav Štefánik*

## SOURCES AND BIBLIOGRAPHY

**AÚTGM-EB IV/1 –** Archiv Ústavu T. G. Masaryka (Masaryk Institute and Archiv AV ČR), fond EB IV/1.

**TUL-CTC –** Temple University Library, Conwellana-Templana Collection (CTC).

**Avanti.** Milano, Partito Socialista Italiano, 1896–.

**Corriere della Sera.** Milano, 1876–.

**Beneš, E. (1927a):** Světová válka a naše revoluce. Vzpomínky a úvahy z bojů za svobodu. Vol. I. Prague, Čin – Orbis.

**Beneš, E. (1927b):** Světová válka a naše revoluce. Vzpomínky a úvahy z bojů za svobodu. Vol. II. Prague, Čin – Orbis.

**Biagini, A. (2010):** Generál Štefánik. Muž, vojak a vlastenec v dokumentoch talianskych archívov. In: Čaplovič, M. et al. (eds.): Milan Rastislav Štefánik v zrkadle prameňov a najnovších poznatkov historiografie. Bratislava, Vojenský historický ústav – Ministerstvo obrany SR, 45–52.

**Borrely, M. T. (1972):** Ernest Denis et les intellectuels français au service de l´Indépendance Tchécoslovaques 1914–1918. Travaux et Recherches, 3, 214–232.

**Brancaccio, N. (1926):** In Francia durante la Guerra. Milano, A. Mondadori.

**Čaplovič, M. et al (eds.) (2010):** Milan Rastislav Štefánik. V zrkadle prameňov a najnovších poznatkov historiografie. Bratislava, Vojenský historický ústav.

**Cornwall, M. (2000):** The Undermining of Austria-Hungary. The Battle for Hearts and Minds. London – New York, MacMillan Press – St. Martin.

**Cronia, A. (1936):** Čechy v dějinách italské kultury. Prague, Tisíciletá žeň.

**Dejmek, J. (2006):** Edvard Beneš. Politická biografie českého demokrata. Vol. I. Prague, Karolinum.

**Gottlieb, W. W. (1957):** Studies in Secret Diplomacy During the First World War. London, George Allen and Unvin.

**Guelton, F. et al. (2008):** Generál Milan Rastislav Štefánik v archívnych dokumentoch historickej služby francúzskeho ministerstva obrany. Bratislava, Vojenský historický ústav – Ministerstvo obrany SR.

**Hájková, D. (2011):** Naše česká věc. Češi v Americe za první světové války. Prague, Nakladatelství Lidové noviny.

**Hájková, D. et al. (eds.) (2004):** Edvard Beneš a Milan Rastislav Štefánik – svědectví jejich dopisů. Sborník archivních prací, 54, 2, 567–655.

**Hájková, D., Kalivodová, E. (eds.) (2013):** Deníky Edvarda Beneše a Hany Benešové z doby první světové války (1915–1918). Prague, Nakladatelství Lidové noviny.

**Hájková, D., Šedivý, I. (eds.) (2004):** Korespondence T. G. Masaryk – Edvard Beneš. Prague, Masarykův ústav AV ČR.

**Helan, P. (2006):** Duce a kacíř. Literární mládí Benita Mussoliniho a jeho kniha Jan Hus muž pravdy. Brno, L. Marek.

**Helan, P. (2012):** Risorgimento a české země. In: Hojda, Z. et al. (eds.): Naše Itálie. Stará i mladá Itálie v české kultuře 19. století. Prague, Academia, 240–251.

**Jelavich, B. (1983):** History of the Balkans. Twentieth Century. Cambridge, Cambridge University Press.

**Klabjan, B. (2007):** Češkoslovaška na Jadranu. Čehi in Slovaki ter njihove povezave s Trstom in Primorsko od začetka 20. stoletja do druge svetovne vojne. Koper, Založba Annales.

**Klimek, A. et al. (eds.) (1994):** Dokumenty československé zahraniční politiky. Vznik Československa 1918. Prague, Ústav mezinárodních vztahů.

**Koldinská, M., Šedivý, I. (2008):** Válka a armáda v českých dějinách. Sociohistorické črty. Prague, Nakladatelství Lidové noviny.

**Kybal, V. (1925):** Italské referendum o Československém státě z r. 1917. *Naše revoluce*, Vol. III, 129–168.

**Masaryk, T. G. (2003):** Cesta demokracie. Projevy – články – rozhovory 1918–1920. Vol. I. Prague, Masarykův ústav AV ČR.

**Masaryk, T. G. (2005a):** Světová revoluce. Ve válce a za války 1914–1918. Prague, Masarykův ústav AV ČR.

**Masaryk, T. G. (2005b):** Válka a revoluce. Články – memoranda – přednášky – rozhovory 1914–1916. Vol. I. Prague, Masarykův ústav AV ČR.

**Paulová, M. (1968):** Tajný výbor Maffie a spolupráce s Jihoslovany v letech 1916–1918. Prague, Academia.

**Pichlík, K. (1968):** Zahraniční odboj 1914–1918 bez legend. Prague, Svoboda.

**Seton-Watson, H., Seton-Watson, C. (1981):** The Making of a New Europe. R. W. Seton-Watson and the Last Years of Austria-Hungary. London, Methuen.

**Seton-Watson, R. W. (1943):** Masaryk in England. Cambridge, New York, The University Press, The McMillan Comp.

**Valiani, L. (1966):** La dissoluzione dell'Austria-Ungheria. Milano, Il Saggiatore.

**Vivarelli, R. (1964):** Questione adriatica e politica estera italiana durante la Prima guerra mondiale. Siena, Circolo Giuridico dell´Università.

**Zeman, Z. A. B. (1990):** The Four Austrian Censuses and their Political Consequences. In: Mark Cornwall (ed.): The Last years of Austria-Hungary. Essays in Political and Military History 1908–1918. Exeter, The University of Exeter Press, 31–39.

Received: 2013-07-15
Original scientific article
UDK 94:323.1(497)"19"

# THE PERFECT OPPORTUNITY TO SHAPE NATIONAL SYMBOLS? AUSTRO-HUNGARIAN OCCUPATION REGIMES DURING THE FIRST WORLD WAR IN THE ADRIATIC AND THE BALKANS

*Tamara SCHEER*
Ludwig Boltzmann-Institute for Social Science History, Vienna
Wanriglgasse 4/2, 1160 Vienna, Austria
e-mail: scheer.tamara@gmx.at

*ABSTRACT*

*Austria-Hungary incorporated parts of the Balkans and the Adriatic coast where it had long faced the Ottoman Empire only to have the Ottoman opposition replaced by Italy, Russia, and Serbia during the nineteenth century. Austria-Hungary occupied Montenegro as well as parts of Serbia and Albania during the First World War. In the occupied countries its army sought to counter enemy influence, especially that of Russia and Italy. In enemy states such as Serbia and Montenegro, Habsburg authorities introduced bans on some cultural symbols, including the Cyrillic alphabet. In Albania, which was classified as an occupied friendly state, the Habsburg occupiers supported Albanian culture to diminish Italian influence, including for example the changing of place names. The article shows that even when the occupier held administrative authority, measures it enacted could fail. The primary reason for failure was not purely political but lay rather in the fact that the measures endangered the smooth functioning of the occupation regimes's bureaucratic system.*

*Key words: Austria-Hungary, Occupation, First World War, Balkans, Nationalism*

# L'OCCASIONE IDEALE PER FORMARE SIMBOLI NAZIONALI? I REGIMI DI OCCUPAZIONE DELL'AUSTRIA-UNGHERIA NELL'AREA ADRIATICA E NEI BALCANI DURANTE LA PRIMA GUERRA MONDIALE.

*SINTESI*

*L'Austria-Ungheria iniziò ad incorporare parti dei Balcani e della costa Adriatica dove a lungo si trovò a contrastare l'Impero Ottomano, per vedere poi l'opposizione degli Ottomani rimpiazzata dall'Italia, dalla Russia e dalla Serbia nel corso del XIX secolo. L'Austria-Ungheria occupò il Montenegro e parti della Serbia e dell'Albania durante la prima guerra mondiale. Nei territori occupati i suoi circoli militari dovettero contrastare l'influenza nemica, soprattutto quella della Russia e dell'Italia. Negli stati nemici come la Serbia e il Montenegro, le autorità asburgiche bandirono alcuni simboli culturali, tra*

*i quali l'alfabeto cirillico. In Albania, che fu classificata come uno stato occupato amico, gli occupatori asburgici promossero la cultura albanese per contrastare l'influenza italiana, anche con il cambiamento dei nomi dei luoghi. L'articolo dimostra che anche nel caso in cui l'occupatore abbia in mano l'autorità amministrativa, le misure che mette in atto possono non risultare efficaci. La ragione principale di tale fallimento non è solo di carattere politico, ma si basa soprattutto sull'incapacità di instaurare un regime di occupazione burocraticamente efficiente.*

*Parole chiave: Austria-Ungheria, occupazione, prima guerra mondiale, Balcani, nazionalismo*

## INTRODUCTION

"Eine ähnliche zwecklose Verletzung des kriegerischen Stolzes der serbischen Bevölkerung war die Abtragung des Monuments, das die Serben zur Erinnerung an die nationalen Einigungskriege und den Balkankrieg im Kalemegdanpark errichtet hatten. Die wenigen Zentner gewonnener Bronze der hohlgegossenen Figuren bedeuteten für die Mittelmächte trotz ihrer Rohstoffnot keinen wesentlichen Gewinn" (Kerchnawe, 1928, 66). [The dismantling of the monument that had stood in Kalemegdan Park to commemorate the wars of national unification and the Balkan Wars represents a comparably unprofitable violation of the Serbs' bellicose pride. The few hundred pounds of bronze that the hollow figures contained brought little benefit to the Central Powers despite their lack of raw material.]

Under the pretext of an urgent need for raw materials the Austro-Hungarian occupiers not only seized virtually all of Belgrade's church bells and doorknobs but also dismantled a famous national monument in Kalemegdan fortress park, one of the best-known sites in the Serbian capital. When Colonel Hugo Kerchnawe, one of the heads of the occupation regime, called it a "futile violation of the Serbian bellicose pride," he was surely thinking of the local population's reaction. This dismantling of cultural heritage, which constituted a violation of the Article 56 of the Hague Convention (Strupp, 1914, 126), helped foster animosity between the occupier and the occupied in Serbia. While the symbols of some occupied peoples were dismantled, however, the symbols of others were encouraged. This seemingly contradictory occupation policy reflected Austro-Hungarian foreign policy, its military goals, and its struggle to extend its cultural influence in the Balkans especially in the three countries occupied during the First World War: Albania, Montenegro, and Serbia.

The k.u.k. military leaders' arguments concerning this cultural war went in two directions. On the one hand, not only were some monuments dismantled and street names changed in Montenegro, Albania and Serbia, but the occupiers also attempted to remove the Cyrillic alphabet from public space entirely. While the Habsburg occupiers considered Cyrillic signs in Serbia to be Serbian and Russian national symbols and thus to be replaced, Italian influence competed with Albanian culture on the Adriatic coast. On the

other hand, the occupiers stressed the need to protect and support existing local culture against enemy influence in Albania, where local culture was declared to be in need of protection from Italian influence. This was also the case for Muslim Slavs, Albanians, and Turks in Serbia and Montenegro whose culture needed defending in the face of hostile Serbian (Russian) influence. While in Albania the occupiers propagated Albanian culture, no specific culture officially was propagated in Serbia and Montenegro. Although Serbia was an occupied enemy state and Albania an occupied friendly state in both countries similar changes in cultural heritage were made without consulting the population. In Serbia the conquerors chose to to replace enemy culture, while in Albania they declared their replacement of Italian culture to be protecting Albanian heritage and culture.

This article analyzes Habsburg occupation attempts to combat enemy influence by use of bans and forced changes in Montenegro, Serbia and Albania.[1] Some bans were unsuccessful and thus quickly retracted. Evidence reveals that although officials might have the status of "occupiers," they were not omnipotent. Occupation status was no guarantee of being able to make quick changes in daily cultural practice. Austria-Hungary had to withdraw its stipulations in the cases described below, not for political reasons but rather because the measures endangered the functioning of the occupation regime's bureaucratic system.

## AUSTRIA-HUNGARY'S ENGAGEMENT WITH THE BALKANS AND EASTERN ADRIATIC IN THE NINETEENTH CENTURY THROUGH 1914

Austria-Hungary had a long history of influence in the eastern Adriatic and the Balkans. Centuries of competition characterized this region; first with the Ottoman Empire, followed in the nineteenth century by Italy, and the newly emerged nation-states, Serbia--and its protector Russia--and Montenegro (Haselsteiner, 1996). Indeed, the Habsburg Monarchy was itself "Balkan." As a result of its incorporation of Croatia and Bosnia-Herzegovina, as well as parts of today's Montenegro and Serbia, Austria-Hungary's inhabitants included Croats, Serbs, Bosnians, and a handful Albanians. Moreover, domestic competition dominated the politics of the multiethnic Habsburg Monarchy. Historians have demonstrated that this ethnic struggle did not exclusively focus on opposing the imperial administration. They show that there was also competition among the various ethnic groups living in Dalmatia and the Upper Adriatic, for example, Italians against Slovenes and Croats. Other powers, like Italy intervened to shape the region's cultural and therefore political landscape (Wingfield, Klabjan, 2013; Reill, 2012; Cetnarowicz, 2008; Monzali, 2009; Klabjan, 2011). This power struggle, which took place before 1914 was always reflected in the Habsburg army. Indeed, the Habsburgs sometimes played an active role in cultural struggles (e.g. Monzali, 2009, 78).

In the years before the First World War, however, leading Habsburg military and civil figures became increasingly convinced of the "threats" certain ethnic groups posed. It

1 For this article I am employing sources from the military regimes as well as literature on the regimes that deal mainly with the civilian population. Especially the ban of Cyrillic was an important factor not only in historiography but in daily life for the population (e.g. Knežević, 2006; Mitrović, 2007).

was no longer clear to state authorities, for example, if Serbs singing traditional songs were simply living their culture or spreading Serbian nationalist ideas, as one staff officer reported to his superiors in Vienna.[2] Before 1914 Chief of General Staff Franz Conrad von Hötzendorf exercised great influence on the Monarchy's strategic planning and knew all the reports coming from the Balkans. He became convinced that Russia and Italy exercised a negative influence on the national attitudes of some peoples in that region of the Monarchy. Although in 1882 Italy had become part of the Austro-Hungarian-German alliance (together with Italy called the Triple Alliance), it still aimed to increase its influence in the Habsburg Adriatic provinces. Conrad thus argued for a preventive war against Italy. His beliefs led to his dismissal in 1911 as Chief of General Staff, although he was reappointed the following year. From this position, he would dominate Habsburg military policy during the First World War. He and hundreds of other officers experienced the threat of growing Italian national influence in "Italian" parts of the Habsburg Monarchy and Serbian/Russian influence in Southern Hungary, Bosnia-Herzegovina (from 1878 on) and the Sanjak of Novipazar (1879–1908) (Scheer, 2013). A Habsburg officer who was stationed in Trieste wrote in 1902: "Man hatte auch hier den Eindruck in Feindesland zu leben."[3] [One has the impression that he lives in enemy territory]. This attitude helps explain why, after military authorities had gained decisive power on political and administrative decisions owing to emergency laws put in place during the First World War, they sought to counter what they perceived as hostile domestic and foreign influences. These suppressive actions were especially directed against Serbian, Italian, Ruthenian, and Czech alleged anti-Habsburg efforts (Scheer, 2010).

Austria-Hungary was not only interested in countering the influence of the Russian and Italian enemy but had also long considered itself the protector of Christians living under Ottoman rule. Thus, throughout the nineteenth century Albanian Catholics had been given religious protection (Kultusprotektorat). The Austro-Hungarian government paid for priests' education, monasteries, and schools after the 1850s. Italian was the primary language taught to Albanians in Austrian schools because it was the lingua franca on the Adriatic coast. With the rise of Italian national influence and a growing irredentistism that sought to incorporate not only regions inhabited by Italophones into the newly created Italian nation state but also regions influenced by Italian culture, Austria-Hungary after the 1890s began propagating the slogan "Albania for Albanians." (Löhr, 2010, 27; Deusch, 2008, 6). In the Ottoman areas of the Balkans, Austria-Hungary and Italy participated in a sort of cultural arms race. When, for example, the Italians built a school with two classrooms, the Austrians built a larger one with four classrooms in view of the Italian school (Blumi, 2011; Fried, 2012). The Kultusprotektorat aimed to support Albanians Catholics in the Muslim Ottoman Empire but in the course of the late nineteenth century

2 ÖStA-HHStA, Konsulatsarchiv, Zivilkommissariat Plevlje, Kt. 3, Konv. Ausarbeitungen des Gen. Hptm. Oskar Melzer über das Vilajet Kosovo (1883) [Paper from Captain Oskar Melzer of the general staff on the Kossovo vilajet].

3 ÖStA-KA, Nachlasssammlung [NL], B/58, Nr. 4, August von Urbański. Das Tornisterkind (unveröffentlichtes Manuskript), 88.

through 1914 it was transformed to protect Albanians of all faiths from Italian cultural and political influence. The Habsburg-Italian cultural battle continued after the Balkan Wars of 1912 and 1913 when the principality of Albania was created and the Ottomans had been vanquished from the Balkans.

Although the Venetian Empire had disappeared from the map of Europe with the unification of Italy in 1871, Italian culture remained part of daily life in Albania and many Italians lived along the Habsburg Adriatic coast. Therefore, Italian-language geographic terms remained standard, and parents continued to give their children Italian names. As long as Austria-Hungary and the Kingdom of Italy were allied, relatively little official political attention was paid to this influence with the exception of Conrad's ongoing references to the Italian threat.

The Austrian Adriatic and the Habsburgs' southeastern provinces were for the most part calm at the turn of the century. There were almost no larger political efforts to counter Italian nationalist movements. The military was called in only infrequently to quell riots, that is, with the exception of Trieste in 1902 and the uprisings in the Krivošije near Kotor during the early 1880s. There had been no comparable efforts to "tame" nationalism, as Robin Okey has described in the case of neighboring Bosnia-Herzegovina (Okey, 2007). Although the entire Habsburg Adriatic could be called a "language frontier" – a region with a linguistically mixed population – it was not a point of political focus as were language frontiers in, for example, Bohemia or Northern Italy (Judson, 2006).

Nevertheless, Conrad was not the only military official to detect "hostile" cultural patterns in the region before the war. During earlier "crises," including the annexation crisis of 1908 and the First Balkan War, the Habsburg army had restricted cultural symbols through use of emergency regulations. Especially Serbs from southern Hungary and Bosnia-Herzegovina were affacted when the use of Cyrillic was restricted (Scheer, 2010).

## AUSTRO-HUNGARIAN OCCUPATION POLICY

During the First World War Austro-Hungarian control of the Adriatic and the Balkans expanded. The Habsburg military occupied parts of Serbia during late autumn/winter 1915 (Bulgaria occupied the rest), Montenegro in January 1916, and northern Albania later the same year. While the occupier took over all political and administrative duties in Montenegro and Serbia, Albania was designated an occupied friend state. Thus, existing adminstrative heads remained in place and some Albanians were involved in decision-making processes and administration (Blumi, 2014; Scheer, 2009). Chief of General Staff Arthur Arz von Straußenburg, who had replaced Conrad in March 1917, sent the army commands' political principles for Albania to Foreign Minister Stephan Burián von Rajecz. These principles dated from September 1918 demonstrated that in some cases the occupation administration of Albania differed little from those in Montenegro and Serbia. Arz stipulated that South Slav propaganda was "unzulässig" [unacceptable]. The difference between Montenegrin/Serbian and Albanian occupation administration was reflected in the first point of the political principles: "Das Nationalgefühl der Albaner soll unbedingt geschont werden." [Albanian national feeling is to be carefully treated at all

costs] (Schwanke, 1982, 106). In Albania the occupier had an additional interest to support the local nationality. Montenegro and Serbia were treated differently. From the outset the occupation regimes combat Russian influence in Serbia, Italian influence in Albania, and the influence of both in Montenegro. In Serbia and Montenegro there was no official stipulation of which culture should replace the Serbian and Montenegrin. In documents dating from 1916 – a time when Serbia, Montenegro and Albanian were already occupied – lower-rank military officials proposed that Serbia be "croatized".[4] When the Hungarian prime minister István Tisza visited occupied Serbia in 1916, he opposed a process of croatiziation in Serbia and protested some of the measures taken there, including banning the Cyrillic alphabet.[5] Tisza's opposition much more resulted of a political interest to extend Hungarian influence in the Balkans then of a support of the Serbs (Scheer, 2009, 210).

It was long standard military practice that during occupation symbols deemed to be enemy expressions were removed and replaced with the occupier's symbols. These then dominated daily life (Scheer, 2011). Hillary Foottit has referred to "the power of naming," which foreign troops entering a country needed to "effectively occupy its space, imposing their own geography on what is to them a deeply unfamiliar territory." (Footitt, 2012, 7). In occupation regimes new names often depended on the occupier's future plans. For example, during the First World War the leaders of the Italian regime in Slovenia and the Bulgarian regime in Macedonia argued that they are ruling over their own realm; thus they planned to annex these territories. They therefore employed their hinterland's administrative structures and terms in occupied areas (Opfer, 2005; Svoljšak, 2012). The Habsburg occupiers did not make such an effort in Serbia, Montenegro or Albania although some leading figures, including Conrad, argued for annexation of some parts of Serbia and Albania.

Nevertheless, renaming processes owing to the Habsburg occupation did occur. Thus, when a Serbian or Montenegrin citizen walked through his hometown, soldiers in foreign uniforms passed him. Black-yellow flags with the double eagle replaced his own flag on administrative buildings. Inside public buildings Habsburg Emperor Francis Joseph and high Habsburg military authorities had replaced his monarchs. When he reached for matches because he wanted to have a smoke, there was now an Austrian double eagle on the matchbox.[6] Then the citizen had to ask someone for the time because the Austro-Hungarian administration had introduced daylight savings time, or as the local population noted, "naše vrijeme" (our time) and "vaše vrijeme," (their time) our time and their time (Wallisch, 1917, 95). The occupation regime also introduced left-hand side traffic on the streets as was standard in Austria-Hungary. Moreover, one of the occupation regime's first orders in January 1916 the military police renamed all those streets names in Belgrade which were considered "politisch bedenklich" (politically suspect). In the end,

4 ÖStA-HHStA, Politisches Archiv [PA] I, Kt. 975, Konv. Einzelne Verwaltungsmaßnahmen, Hptm d. R. Julius Ledinegg an AOK NA-Abt. , 24. 9. 1916.

5 ÖStA-HHStA, PA, Kt. 973, 32a, Serbien, Liasse Krieg, Vertreter des MdÄ in Serbien, Ludwig Graf Szechenyi, 18. 3. 1916, fol. 105f. Tisza also militated against the ban of Cyrillic in Bosnia-Herzegovina. He believed the ban only fanned the growing dissatisfaction among loyal inhabitants. (Juzbašić, 2002/03, 267).

6 ÖStA-KA, Neue Feldakten [NFA], Kt. 1590. Verordnung vom 20. 10. 1916.

police changed only 26 street names.[7] "Car Dušan Street" remained, as did Kral (king) Petar and Kraljica (queen) Natalija Streets.[8]

The Cyrillic alphabet was not only removed from public places in Serbia and Montenegro for political reasons (to counter Russian influence), but also because the occupier had few personnel who were able to read (or censor) it. The latter also served as excuse for bans on the language in the Habsburg lands. In Southern Hungary (today's Serbia) post office based censorship offices simply disposed of letters written with the Cyrillic alphabet for months, a procedure might have started at the beginning of the war. An investigation by the k.u.k. Kriegsüberwachungsamt (War Surveillance Office), which was responsible for the censorship, revealed in November 1914 a simple explanation for this incident: The outbreak of the war and the mobilization of a hundred thousands of men meant most post offices lacked sufficient skilled personnel to read Cyrillic. Post office officials therefore decided it was better simply to throw away the letters rather than risk the possibility of forwarding messages that might be directed against the Habsburg Monarchy or provide secret operational information to the enemy (Scheer, 2010, 97, Juzbašić, 2003/03, 267). The Habsburg military police in occupied Serbia commented the reason for elimination of street names rendered in Cyrillic: "Sämtliche Straßenbezeichnungen waren in cyrillischer Schrift gehalten, daher für uns zumeist vollkommen unverständlich," [All street names were in Cyrillic, which meant that they were a total mystery to us] in a report on their first months. There would have been also practical reasons for double inscriptions: Cyrillic and Latin side-by-side to give all pedestrians the possibility of reading them. This solution can be found too in the above- mentioned police report from July 1917, but only as an interim arrangement in Belgrade because the occupation policy aimed to replace all Cyrillic in public places.[9]

In addition to the sites behind the frontlines whose renaming had been authorized, Habsburg officers and enlisted men built a variety of commemorative sites, which they named for the most part after Austro-Hungarian military commanders. The soldiers also renamed fountains as well as buildings and streets. This unauthorized renaming continued under the occupation regimes. Superior commands opposed these actions and soon after the occupation an order came down to prevent such behavior. The orders stipulated that only the military general government could name new buildings. Moreover, those places that had already been renamed were to be reported. The only exception those new geographic names for which local communities were responsible. Nevertheless, under the pretext that community leaders had been assessed as hostile, the lower occupation authorities counseled local communities to avoid "willkürliche Änderungen oder unpassende Benennungen" [random changes or inappropriate naming], e.g. naming them for Russian or Serbian leaders.[10]

---

7 ÖStA-KA, Bildersammlung [BA], Erster Weltkrieg, Alben, Bd. 677. K.u.k. Militärpolizeikommando Belgrad 1915–1917, Kriegs-Ausstellung Wien, Juli 1917 [anlässlich „Ein Jahr Militärverwaltung in Serbien" [k.u.k. military police command Belgrade, War-Exhibition in Vienna ](loose pages, unpaginated).

8 ÖStA-KA, Neue Feldakten [NFA], MGG S, Kt. 1629, Konv. MGG S Befehle 1917, Nr. 156, 26. 11. 1917.

9 ÖStA-KA, BA, Erster Weltkrieg, Alben, Bd. 677.

10 ÖStA-KA, NFA, Kt. 1689, MGG Montenegro, 1916. Verlautbarungen, 30. 11. 1916, Nr. 75.

The occupation regime also followed politically motivated efforts to eliminate Serbian and Russian symbols from public spaces. Images of current or former enemy monarchs and their families were forbidden: The Russian Tsar and the kings of Italy and Serbia were explicitly named in an order from May 1916. All existing pictures were to be removed but – as the order stated – "ohne Aufsehen zu erregen" [without causing sensation].[11] This order may have caused difficulties for the subordinate officers and soldiers charged with carrying it out. How were they to enter private buildings and remove pictures without being seen by the entire family and neighborhood? Praying for the king in the churches of Montenegro and Serbia with the argument with the argument that the Orthodox Church always had a close relationship with the nation state.[12] But as was the case of using Cyrillic letters, these bans were later eased or canceled altogether. While the ban for the praying for the Montenegrin king remained in effect, the use of pictures of the king and his family was permitted in public buildings and in private spaces.[13]

In Serbia the Gregorian calendar replaced the Julian, although the population was much more familiar with the former calendar. In diaries, for example, people often used both dates, referring to them as our and the other time (Knežević, 2006). The writer Friedrich Wallisch, who travelled through the occupied territories in official capacity, published a propagandist book on the occupation regime's achievements in 1917. Referring to a regulation based on an Army High Command common regulation valid for Serbia and Montenegro, Wallisch wrote that despite the change of the calendar, church holy days had remained on the same date. He commented: "Man schont dabei Stimmungen und Traditionen" [With these regulations we respect mood and tradition] (Wallisch, 1917, 95; Verordnungsblätter, 8. 5. 1916).

On the other side another "futile violation of bellicose pride" that Kerchnawe commented on concerning the removal of the monument in Belgrade, occurred. Soon after the Austro-Hungarian army occupied Montenegro, the military general governor ordered the removal of the remains of the Montenegrin Prince Petar II/Petrović Njegoš from his tomb on Mount Lovćen, because the occupiers had classified the tomb as a "feindliches Nationalsymbol" [enemy national symbol]. Another reason was that the occupiers planned to fortify this tactical important point. The action caused international debate on the Austro-Hungarian occupation policy. Gustav Ritter von Hubka, who had been the pre-war military attache in the Montenegrin capital, Cetinje, and was later chief of staff of the military government in Montenegro, wrote "Der Schwarzen Berge letzter Gospodar. Eine Streifschrift zur Ehrenrettung König Nikolaus I. von Montenegro" [The last prince of Montenegro. A paper to save the honor of King Nikolas I of Montenegro] in 1947. In this article he quoted an Italian journalist who asserted that the tomb caused "in Wien mehr Argwohn und mehr Verdruss auslöste, als die Truppen des [montenegrinischen] Königs Nikolaus" [caused more anger in Vienna than King Nicholas' army]. Although the metropolitan bishop had vetoed their removal, the King's remains were taken to a monastery in Cetinje. Hubka concluded: "Dieses Vorgehen löste bei der Bevölkerung

11 ÖStA-KA, NFA, 14. 5. 1916.

12 ÖStA-KA, NFA, Kt. 1628, MGG Serbien, Fasz. Priština, 3. 1. 1915.

13 HL, II. 468., k.u.k. MGG M, Kt. 1, Konv. Közlemények 1–86, Verlautbarung, Pkt. 13, 14. 5. 1916.

große Bestürzung aus." [This action caused great consternation among the population.] (Hubka, 1947, 50).

## COMBATING ENEMY CULTURAL INFLUENCE

These measures as well as the following very often lacked a grand strategy, although some of them were similar to the pre war, war and crisis planning (i.p. against Serb nationalism). None of these measures analyzed above caused so much international uproar as did the attempt to ban the use of the Cyrillic alphabet in Montenegro and Serbia. The occupiers initially sought the alphabet's ban throughout the occupied areas because military decision makers considered it the strongest symbol linking the occupied peoples to Serbian nationalism and Russian policy.[14] The occupier soon recognized, however, that in practice elimination of the alphabet was hard to achieve. Literacy was low in Serbia and those who were literate read Cyrillic. Thus the Cyrillic alphabet was not completely forbidden, but as the "Allgemeine Grundzüge" (the "constitution" of the occupation governments) stated: it had to be "auf jenes Maß beschränkt werden, das nach dem praktischen Bedürfnisse unbedingt erforderlich war" [restricted to a degree that is inevitablely necessary for daily practice] (Jungerth, 1918, 12). In February 1916 the government ordered subordinate offices to encourage older people to learn the Latin alphabet.[15] But they did not offer any suggestion how to put this order into practice.

The Austro-Hungarian occupation regimes brought a broad bureaucratic system into Montenegro and Serbia which required reading knowledge. Almost everyone – literate or not – had to apply for passports when he or she wished to travel to another town. When peasants' crops were requisitioned, they received requisition receipts for their goods, which they were obliged to take to the occupation office for reimbursement. The military governor of Montenegro ignored the writing and reading skills of the population. He gave an order in April 1916 that permitted the use of only the Latin alphabet in correspondence with Austro-Hungarian offices. He provided the reason for this request: „Der Gebrauch der Cyrillica durch die Bevölkerung erschwert infolge Unkenntnis dieser Schrift seitens der k.u.k. Kommanden unnötig den Dienstbetrieb und verzögert daher die Erledigung der Bitten und Beschwerden der Bürger." [The population's use of Cyrillic causes delays owing to a lack of knowledge on the side of the military commands in answering their requests and complaints] (Kundmachungen, 1916, 15. 4. 1916).[16] The archival documents do not indicate how this appeal was addressed to the population by the occupier. Very likely that it was – as it was practice in April 1916– posted on the buildings' walls or published in newspapers – and used only the Latin alphabet.

14 Stjepan Sarkotić, the governor of Bosnia-Herzegovina with Croatian origin, propagated Cyrillic as an enemy symbol ("the alphabet of a hostile foreign country") (Juzbašić, 2002/03, 269).

15 ÖStA-KA, Armeeoberkommando [AOK], Qu. Abt., MGG S, Kt. 2379, Fasz. Militärverwaltung. Akt Nr. 18312, 24. 2. 1916.

16 The handling of administrative correspondence in terms of accepting or rejecting documents written with the Cyrillic alphabet was also discussed in Bosnia-Herzegovina from 1878 onwards. All in all, correspondence employing the Cyrillic alphabet had been accepted. (Juzbašić, 2002/03, 247).

The desire for the occupation regime's bureaucratic system to function smoothly was then an important reason why the ban of Cyrillic was soon softened. The first "Allgemeine Grundzüge für die Militärverwaltung in Serbien" from January 1916 do not mention the Cyrillic alphabet, perhaps because the occupier had not expected any further discussion on the use of alphabets The experience from the first months of occupation induced the occupiers to publish new regulations in April. In the new version the occupation forces restricted themselves in the favor of the population: "Der Bescheid an die Partei ist jedoch in diesen Fällen gleichlautend in lateinischer und cyrillischer Schrift auszufertigen". [In correspondence with the population the Latin and Cyrillic alphabet must be used in the same way]. This passage was removed from the third edition of the Grundzüge of September 1916. (Allgemeine Grundzüge, September 1916, 10). No cause for the deletion was mentioned, but again, perhaps it owed to a lack of skilled personnel – a situation which increased monthly But the population was "still" permitted to send letters to the Austro-Hungarian commands in Cyrillic (Jungerth, 1918, 12).The ban was finally annuled for practical reasons: the need to communicate with the population more efficiently, despite the fact that the Habsburg occupiers lacked sufficient personel who could read Cyrillic. As consequence Serbs and Montenegrin had to wait much longer for an answer. Bureaucracy slowed down.

When Serbian schools re-opened in spring 1916 after the occupation teachers came mostly from the Habsburg lands (not only Serbs but also Croats, Slovenes, and others with Slav language knowledge). They employed the Latin alphabet, with which they were familiar, to teach. At the beginning of the occupation Latin became the only alphabet permitted.[17] Although Cyrillic-language text books had been in use in the Habsburg lands, they could not be imported into occupied Serbia because it was forbidden to use them.[18] Thus until the occupation regime ended schools in Serbia and Montenegro lacked sufficient school books. Milovan Đilas, who later became a Yugoslav politician and writer, was a young schoolboy during the occupation of Montenegro. In „Land ohne Recht" [Land without justice], Đilas wrote about his early education: „Mein Schulbuch trug den bescheidenen Titel: Fibel für die Volksschule. Die Fibel enthielt nur Buchstaben in lateinischer Schrift. Insgeheim lehrten uns jedoch die älteren Schüler aus alten Büchern das cyrillische Alphabet. Unser Lehrer, der wie wir Hunger litt, wusste es, er übersah es geflissentlich. Die Lateinschriftfibel und das Kaiserbild an der Wand blieben nicht die einzigen Einbrüche der brodelnden politischen Situation." [My school book was titled: Book for the Primary School. Only the Latin alphabet was used. Older boys secretly taught us Cyrillic using old school books. The teacher, who was starving as we were, ignored this. The books with the Latin alphabet and the picture of the emperor on the wall were not the only expressions of the seething political situation] (Djilas, 1958, 88).

17 ÖStA-KA, AOK, 24. 2. 1916.

18 During occupation of Bosnia-Herzegovina, there was ongoing discussion about how to restrict the use of the Cyrillic alphabet and to limit it to religious classes and secondary schools. The Cyrillic alphabet was not only forbidden in the schools of the occupied countries, but also in Croatia at the end of 1914 (Juzbašić, 2002/03, 248, 264).


*Fig. 1: Classroom in occupied Serbia. On the right Emperor Francis Joseph looks down on the children, while a little girl is writing majka, otac, brat [mother, father, brother] on the blackboard using the Latin alphabet; Source: ÖStA-KA, Bildersammlung, Serbien, Kt. 22, Nr. 3425, Schule Loznica, während des Unterrichts, I. und II. Klasse, Mädchen.*

Young Đilas's teacher was an Austro-Hungarian Unteroffizier or (non-commissioned officer, NCO) who was perhaps aware of the occupation policy. The Armeeoberkommando (army high command, AOK) feared that a too strict ban would provide cause for hostile reaction from the local population,[19] and thus found a compromise for the schools. Cyrillic was implemented as an academic subject so students could read religious books.[20] On July 24, 1916 the occupation regime ordered that the school instructions be given only in the Latin alphabet, but old Slavic Cyrillic was to be taught in the course on Greek-Orthodox religion. (Verordnungs-Blatt, 24. 7. 1916).

In the beginning the use of the Cyrillic alphabet was forbidden or restrictedboth in schools and in bureaucratic communication. An AOK instruction from May 5, 1916 allowed publishing in Cyrillic only with the permission of the military government. It also required that orders of the occupation authorities had to be printed in Cyrillic and in Latin alphabet and posted in public (Verordnungsblatt, 5. 5. 1916). In November 1917 the oc-

19 ÖStA-KA, AOK, Akt Nr. 18312, 1916.

20 ÖStA-HHStA, PA I, Kt. 974, Liasse Serbien, MGG S an AOK 24. 8. 1918.

cupation government promoted its annual calendar, which was printed in German, Hungarian, and Serbo-Croation with the comment that all calendars were printed in Gregorian and Julian style, the latter in Cyrillic, which was also used in some parts of the instructive and entertaining texts.[21]

The above examples demonstrate that while the occupier held civil and military authority over the local population and had the political will to limit enemy culture, it faced intractable opposition that forced the occupation regime to abandon some of its measures piecemeal. The main reason for the abandonment was not purely political but rather that the measures endangered the smooth functioning of the occupation regime's bureaucracy. The regime also feared a growing resistance of the population. In the end, it was not the enemy culture that disappeared but the rigid stipulations of the occupation regime's first weeks.

## SUPPORTING NATIONAL SYMBOLS

Efforts to remove Italian geographic place names on the Adriatic coast were not limited to Albania but were also made in Montenegro and Dalmatia. In mid-1916 the AOK ordered all subordinate commands in Dalmatia to employ Croat rather than Italian place names in internal and external correspondence, for example, Zadar instead of Zara, and Šibenik instead of Sebenico, and Kotor instead of Cattaro. To avoid "Unstimmigkeiten oder Reibungen" [inconsistency and friction] use of the older term in brackets would be permitted until July 1917 (HL, 31. 7. 1916). Former Habsburg officers who employed Italian place names in their memoirs reflect this policy's lack of effectiveness. For example, Joseph Stürkgh, who served as an officer in the Balkans used Spalato instead of Split. (Stürgkh, 1922, 40). He was not alone.

Military interest was not the sole reason for the renaming. In 1916 the Balkan commission of the Austrian Academy of Sciences was invited to a meeting in Vienna of the Commission for the Dalmatian Toponomy (place names) ("Kommission für Ortsnamen in Dalmatien").[22] That the academic interest in place names in the Balkans and East Adriatic predated the war is shown by the case of Professor Peter Skok who worked as school teacher in Banja Luka and later became a linguist at the University in Zagreb. He had already requested toponomy research on the Venetian influence on Dalmatian toponomy in 1912.[23] Following Skok other scientists went to Albania for expeditions by Austria-Hungary. Other scientists from the Austrian Academy of Sciences soon realized that they could travel to Albania under the auspices of the army soon after its occupation in January 1916. Geologists, botanists, art historians, ethnologists, archeologists, and linguists

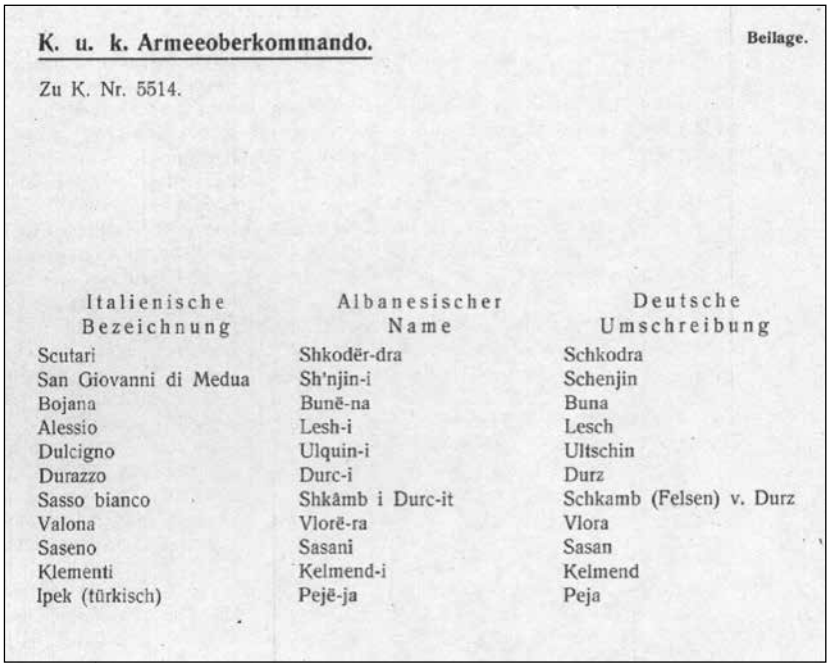
21 ÖStA-KA, NFA, MGG S, Kt. 1628, Fasz. Militärgeneralkommando-Befehle. Befehl Nr. 150, 14. 11. 1917.

22 AÖAW, Balkan-Kommission, Kt. 1: Konv. A4, Einladung der Balkan-Kommission zur Kommission für die Ortsnamen in Dalmatien etc. am 16. 11. 1916 [Invitation for the Balkan Committee from the Committee for Geographical Terms in Dalmatia]; Marchetti, 2013.

23 AÖAW, Konv. C1. The Croatian linguist Petar Skok was born in 1881 in the Slovene lands in a small village near Žumberak. He was a language teacher in Banja Luka before the First World War and later taught at the University of Zagreb.

travelled throughout the Balkans with official permission and under the guidance and surveillance of the military (Kerchnawe, 1928, 301–302). Among other activities, they "rescued" Albanian artistic work that was to be used for an Albanian national museum after the war (Schwanke, 1982, 473).

The treatment of Italian names of Dalmatian towns was replicated in Albanian towns. In March 1916 Habsburg occupation forces ordered that henceforth all geographic terms as well as "tribal" names no longer be rendered in Italian but rather the German translation of the Albanian term was to be used. A list containing both the old and the new names was to be published. The older term would be permitted in brackets. Only a few months after Charles succeeded Francis Joseph as Habsburg emperor in 1916, he withdrew the orders on place names and commanded that the earlier toponymy be re-introduced for the occupied countries.[24] When in the beginning the Italian version Scutari was no longer to be used, but rather Schkodra, and Vlora instead of Valona (see Fig. 2) then Schkodra was again designated "Skutari," the German version of the Italian name.[25]



K. u. k. Armeeoberkommando. Beilage.

Zu K. Nr. 5514.

| Italienische Bezeichnung | Albanesischer Name | Deutsche Umschreibung |
|---|---|---|
| Scutari | Shkodër-dra | Schkodra |
| San Giovanni di Medua | Sh'njin-i | Schenjin |
| Bojana | Bunë-na | Buna |
| Alessio | Lesh-i | Lesch |
| Dulcigno | Ulquin-i | Ultschin |
| Durazzo | Durc-i | Durz |
| Sasso bianco | Shkâmb i Durc-it | Schkamb (Felsen) v. Durz |
| Valona | Vlorë-ra | Vlora |
| Saseno | Sasani | Sasan |
| Klementi | Kelmend-i | Kelmend |
| Ipek (türkisch) | Pejë-ja | Peja |

*Fig. 2: ÖStA-KA, NFA, Kt. 1628, MGG, 28. 3. 1916.*

24 HL, II. 468., kuk MGG M, Kt. 1, Konv. Közlemények 1–86, Verlautbarungen Nr. 82 des MGG M, 20. 12. 1916.

25 ÖStA-KA, Kt. 1628, MGG Serbien, Fasz. oranger Ordner, MGG Befehl Nr. 11, 27. 1. 1917.

The Habsburg officer Georg Veith introduced his official report on the Habsburg Albanian campaign with a comment on the Austrian self-conception of the Albanian occupation. He wrote that "man war als Freund und Befreier ins Land gekommen" [we came as friends and liberators]. In a report Veith wrote after the First World War on the military experience in Albania he claimed that Albanians helped to "cleanse" the country of former occupiers by which he meant the Italians. Veith continued that the same should happen to Italian "Kulturspuren" [cultural traces] in order to foster Albanian independence.[26]

Habsburg support of Albanian culture in Albania started immediately after the occupation. The opposite happened in Montenegro and Serbia where Albanians also lived. In September 1916, almost nine months after the implementation of the military government, the civil commissioner of Mitrovica (today Kosovska Mitrovica in Kosovo), Julius Ledinegg, reported to the intelligence branch of the AOK on the Habsburg occupation policy in "New Serbia." He described the occupiers' attitude towards the southern Serbian regions as "Feindesland" [enemy territory], which were not considered "former Turkish provinces."[27] Ledinegg claimed that the population of the former Turkish provinces should be treated like Albania: as occupied friends. His claim reflected the attitude of many Habsburg officers for whom these regions were an integral part of the Ottoman Empire although Montenegro and Serbia had conquered them during the First Balkan War (1912). Many occupation officers knew the former Sanjak region because they had served until 1908 with the Habsburg military. They had experienced the Muslim population as friendly and supportive and regretted the outcome of the First Balkan War (Scheer, 2013). Ledinegg appealed for a more supportive atittude toward the Albanian and Muslim population that had backed the Austro-Hungarian troops during the recent fighting. He argued against the ongoing "Croatization" of Serbia, a policy that military authorities had pursued during the first months of occupation, but abandoned during summer 1916. Ledinegg also appealed for Albanian- rather than Croatian-language schools for Albanian speakers in Serbia.[28]

Military authorities in Vienna declared the occupation regime in Serbia a success solely because it was a source of raw material and labor for the Monarchy. The "land of king killers had become the land of milk and honey" as the historian Jonathan Gumz notes (Gumz, 2009, 3). The military leaders did not discuss intensively the outcomes of such a policy, or the degree to which the Serbs and Montenegrins had been negatively influenced by such a supportive policy of their minorities.

26 HL, Manuskripte/TGY Jegyzek, Nr. 544, Veith György, Der Feldzug in Albanien 1916–1918 [The Albanian Campaign], 22.

27 ÖStA-HHStA, PA I, Kt. 975, Konv. Einzelne Verwaltungsmaßnahmen, Hptm d. R. Julius Ledinegg an AOK NA-Abt. , 24. 9. 1916.

28 ÖStA-HHStA, PA, 24.9.1916; HL, Personalia, Kt. 161, Suhay Imre, Tagebuch Nr. 5, 15. 4. 1917; ÖStA-HHStA, PA, 18. 3. 1916.

## CONCLUSION

Habsburg measures to counteract enemy cultural influence in the occupied Balkan states proved toothless from the outset. Occupation measures sharply restricted the respective population's ability to cultivate cultural symbols, when they had been identified as "enemy." But there were practical reasons why these measures were fleeting. Certainly occupation authorities even employed the forbidden Cyrillic alphabet in their own announcements to guarantee that the local population could understand them. Although Italian place names had been forbidden in Albania, Montenegro, and the Dalmatinian Coast they remained more popularly used than their Croatian or Albanian equivalents.

Austria-Hungary only occupied Albania, Montenegro, and Serbia for some two and a half years, too brief a period to implement long-term political change. These examples show, however, that domestic politics influenced occupation policy. Many measures the military introduced under Francis Joseph were retracted after his death in November 1916 by his successor, Charles. Another reason for the retraction of suppressive measures was that they had threatened the smooth functioning of the bureaucracy of the occupation regimes.

## POPOLNA PRILOŽNOST ZA OBLIKOVANJE NACIONALNIH SIMBOLOV? AVSTRO-OGRSKI OKUPACIJSKI REŽIMI MED PRVO SVETOVNO VOJNO NA JADRANU IN BALKANU

*Tamara SCHEER*

Inštitut Ludwiga Boltzmanna za zgodovino družbenih ved na Dunaju

Wanriglgasse 4/2, 1160 Dunaj, Avstrija

e-naslov: scheer.tamara@gmx.at

*POVZETEK*

*Avstro-Ogrska je vključevala velike dele Balkana in Jadranske obale. Skupaj z Italijo, Rusijo, Črno goro in Srbijo je postopoma izrinila vpliv Otomanskega cesarstva v jugovzhodni Evropi. Med prvo svetovno vojno je habsburška vojska čedalje bolj širila svoj vpliv tako v notranjih zadevah s širjenjem izrednih razmer kot na vojaškem področju z zasedbo delov Albanije, Črne gore in Srbije.*

*Članek analizira avstro-ogrska vojaška prizadevanja na okupiranih ozemljih v odziv na sovražne kulturne vplive – predvsem Rusije in Italije. V okupiranih sovražnih deželah, kakršni sta bili Srbija in Črna gora, si je habsburška vojska prizadevala za odpravo*

*kulturnih simbolov. V Albaniji, ki je bila označena kot okupirana prijateljska država, so se habsburški okupatorji proti italijanskemu vplivu poskušali boriti tako, da so podpirali albansko kulturo. Njihovi ukrepi so vključevali prepoved uporabe cirilice v šolah in v javnosti v Srbiji in Črni gori ter spreminjanje imen mest, zamenjavo in odstranjevanje spomenikov v vseh treh državah.*

*Članek ponazarja, da lahko celo okupacijski sili, ki ima upravna pooblastila, uvedeni ukrepi spodletijo. Avstro-Ogrska je morala v treh spodaj analiziranih primerih preklicati svoje odloke v obeh sovražnih okupiranih državah in v Albaniji. Glavni razlog za preklic ni bil enoznačno političen, temveč so ukrepi ogrožali gladko delovanje birokratskega sistema okupacijskega režima.*

*Ključne besede: Avstro-Ogrska, okupacija, prva svetovna vojna, Balkan, nacionalizem*

## SOURCES AND BIBLIOGRAPHY

**AÖAW** – Archiv der Österr. Akademie der Wissenschaften.

**HL** – Hadtörténelmi Levéltár Budapest.

**Kundmachungen** – Kundmachungen und Verlautbarungen des k.u.k. Militär-General-Gouvernements in Montenegro in der Zeit von 1. März bis 31. Oktober 1916. Cetinje 1916.

**ÖStA-HHStA** – Österreichisches Staatsarchiv. Haus-, Hof- und Staatsarchiv.

**ÖStA-KA** – Österreichisches Staatsarchiv. Kriegsarchiv.

**Verordnungsblätter** – Verordnungsblätter der k.u.k. Militärverwaltung in Montenegro, 19. Mai 1916 – 9. 9. 1918.

**Verordnungs-Blatt** - Verordnungs-Blatt der k.u.k. Militärverwaltung in Serbien, 22. 3. 1916 – 31. 12. 1916.

**Reichsgesetzblatt** - Staatsgrundgesetz vom 21. Dezember 1867 über die allgemeinen Rechte der Staatsbürger für die im Reichsrate vertretenen Königreiche und Länder. In: Reichsgesetzblatt, Nr. 142/1867.

**Blumi, Isa:** Albania, in: 1914–1918-online. International Encyclopedia of the First World War, ed. by Ute Daniel, Peter Gatrell, Oliver Janz, Heather Jones, Jennifer Keene, Alan Kramer, and Bill Nasson, issued by Freie Universität Berlin, Berlin 2014-10-08. DOI: 10.15463/ie1418.10197 Last modified: 2014-10-13.

**Blumi, I. (2011):** Reinstating the Ottomans. Alternative Balkan Modernities, 1800–1912. New York, Palgrave.

**Cetnarowicz, A. (2008):** Die Nationalbewegung in Dalmatien im 19. Jahrhundert. Vom "Slawentum" zur modernen kroatischen und serbischen Nationalidee. Frankfurt, Peter Lang.

**Deutsch, E. (2008):** Das österreichisch(-ungarische) Kulturprotektorat im albanischen Siedlungsgebiet. IDM Kulturführer, 2008, 4–6.

**Djilas, M. (1958):** Land ohne Recht. Köln, Kiepenheuer & Witsch.

**Footitt, H. (2012):** Introduction. Languages and the Military: Alliances, Occupation and Peace Building. In: Footitt, H., Kelly, M. (eds.): Languages and the Military: Alliances, Occupation and Peace Building. Basingstoke, Palgrave, 1–11.

**Fried, M.B. (2012):** The Cornerstone of Balkan Power Projection. Austro-Hungarian War Aims and the Problem of Albanian Neutrality, 1914–1918. Diplomacy & Statecraft, 23. 3. 2012.

**Gumz, J. E. (2009):** The Resurrection and Collapse of Empire in Habsburg Serbia, Cambridge, Cambridge University Press.

**Haselsteiner, H. (1996):** Bosnien-Hercegovina: Orientkrise und Südslavische Frage (= Buchreihe des Instituts für den Donauraum und Mitteleuropa 3). Vienna, Böhlau.

**Hubka von Czernczitz, G. (1947):** Der Schwarzen Berge letzter Gospodar. Eine Streifschrift zur Ehrenrettung König Nikolaus I. von Montenegro. Vienna. (unveröff. handschriftl. Manuskript (ÖStA/NL, B/61:1–18, Nr. 10).

**Judson, P. (2006):** Guardians of the Nation. Activists on the Language Frontiers of Imperial Austria, Cambridge, Mass., Harvard University Press.

**Jungerth, M. (1918):** Entstehung und Organisation des k.u.k. MGG für Serbien. Belgrade, [s.n.].

**Juzbašić, D. (2002/2003):** Die Sprachenpolitik der österreichisch-ungarischen Verwaltung und die nationalen Verhältnisse in Bosnien-Herzegowina, 1878–1918. Südost-Forschungen, 61/62, 235–272.

**Kerchnawe, H. (1928):** Die k.u.k. Militärverwaltung in Serbien. In: Kerchnawe, H. (ed.): Die Militärverwaltung in den von den österreichisch-ungarischen Truppen besetzten Gebieten (= Carnegie-Stiftung für internationalen Frieden, Abteilung Volkswirtschaft und Geschichte). Vienna, Hölder-Pichler-Tempsky, 53–269.

**Kerchnawe, H. (1928):** Die Militärverwaltung in Montenegro und Albanien. In: Kerchnawe, H. (ed.): Die Militärverwaltung in den von den österreichisch-ungarischen Truppen besetzten Gebieten (= Carnegie-Stiftung für internationalen Frieden, Abteilung Volkswirtschaft und Geschichte). Vienna, Hölder-Pichler-Tempsky, 270–304.

**Klabjan, B. (2011):** "Scramble for Adria." Discourses of Appropriation of the Adriatic Space before and after World War I. Austrian History Yearbook, 42, 16–32.

**Knežević, J. (2006):** The Austro-Hungarian Occupation of Belgrade during the First World War: Battles at the Home Front. Phil. Diss. Yale.

**Kraus, K. (1957):** Die letzten Tage der Menschheit. Munich, Kösel.

**Löhr, H.C. (2010):** Die Gründung Albaniens: Wilhelm zu Wied und die Balkan-Diplomatie der Großmächte 1912–1914. Frankfurt, Lang.

**Marchetti, Ch. (2013):** Balkanexpedition. Die Kriegserfahrung der österreichischen Volkskunde – eine historisch-ethnographische Erkundung (=Untersuchungen des

Ludwig Uhland-Instituts der Universität Tübingen, Bd. 112). Tübingen, Tübinger Vereinigung für Volkskunde.

**Mitrović, A. (2007):** Serbia's Great War 1914−1918. West Lafayette, Ind., Purdue University Press.

**Monzali, L. (2009):** The Italians of Dalmatia. From Italian Unification to World War I. Toronto, University of Toronto Press.

**Okey, R. (2007):** Taming Balkan Nationalism. The Habsburg "Civilizing Mission" in Bosnia, 1878–1914. Oxford, Oxford University Press.

**Opfer, B. (2005):** Im Schatten des Krieges. Besatzung oder Anschluss – Befreiung oder Unterdrückung? Eine komparative Untersuchung über die bulgarische Herrschaft in Vardar-Makedonien 1915–1918 und 1941–1944. Studien zur Geschichte, Kultur und Gesellschaft Südosteuropas 3. Munich, Lit Verlag.

**Reill, D. Kirchner (2012):** Nationalists Who Feared the Nation. Adriatic Multi-nationalism in Habsburg Dalmatia, Trieste and Venice. Stanford: Stanford University Press.

**Scheer T. (2013):** "Minimale Kosten, absolut kein Blut!": Österreich-Ungarns Präsenz im Sandžak von Novipazar (1879–1908). Neue Forschungen zur ostmittel- und südosteuropäischen Geschichte 5. Frankfurt et al., Lang.

**Scheer, T. (2011):** Manifestation österreichisch-ungarischer Besatzungsmacht in Belgrad (1916–1918). In: Angelow, J. (ed.): Der Erste Weltkrieg auf dem Balkan. Perspektiven der Forschung. Berlin, Bebra, 211–239.

**Scheer, T. (2010):** Die Ringstraßenfront – Österreich-Ungarn, das Kriegsüberwachungs amt und der Ausnahmezustand während des Ersten Weltkriegs. Schriftenreihe des Heeresgeschichtlichen Museums 15. Vienna, Heeresgeschichtliches Museum.

**Scheer, T. (2009):** Zwischen Front und Heimat: Österreich-Ungarns Militärverwaltungen im Ersten Weltkrieg. Neue Forschungen zur ostmittel- und südosteuropäischen Geschichte 2. Frankfurt, Peter Lang Verlag.

**Schwanke, H. (1982):** Zur Geschichte der österreichisch-ungarischen Militärverwaltung in Albanien. Univ. Diss. Vienna.

**Strupp, K. (1914):** Das Internationale Landkriegsrecht. Frankfurt am Main, Baer.

**Svoljšak, P. (2012):** The Language Policy of the Italian Army in the Occupied Slovenian Territories, 1915–17. In: Footitt, H., Kelly, M. (eds.): Languages and the Military: Alliances, Occupation and Peace Building. Basingstoke, Palgrave, 70–85.

**Stürgkh, J. (1922):** Politische und Militärische Erinnerungen. Leipzig, List.

**Wallisch, F. (1917):** Die Pforte zum Orient: Unser Friedenswerk in Serbien. Vienna, Tyrolia.

**Wingfield, N. M., Klabjan, B. (2013):** Introduction to forum on Continuity and Change in South-Central Europe, 1914–1920. Acta Histriae, 21, 4, 729–734.

Received: 2013-12-08
Original scientific article
UDC 94:394.46(450)"19"

# LINEAMENTI STORIOGRAFICI, MEMORIE PUBBLICHE E MITI ALL'ORIGINE DEL SACRARIO DI REDIPUGLIA. LA FONDAZIONE DI UN TEMPIO DELLA NAZIONE

*Gaetano DATO*
Università degli Studi di Trieste, Scuola Dottorale in Scienze Umanistiche, Dipartimento di Storia e Culture dall'Antichità al Mondo Contemporaneo,
34100 Trieste, via Economo 4, Italia
e-mail: gdato7@gmail.com

*SINTESI*

*L'articolo prende le mosse da una strutturata analisi teorica e metodologica, a partire dagli studi di Nora e Isnenghi sui luoghi della memoria, che vengono posti in relazione con le conclusioni di altri importanti studiosi della materia, come quelle di Emilio Gentile sulle religioni civili e politiche. Successivamente, l'autore passa ad un inquadramento dei miti emersi nel corso della Prima Guerra Mondiale nel Vecchio Continente, sulle base delle analisi di Winter, Fussel e altri storici, nel contesto di una più generale formazione della memoria pubblica del conflitto. Tali questioni sono poi collegate alla fondazione del Sacrario, la cui costruzione fu strettamente connessa alle ideologie della fase imperiale dell'Italia fascista ed in particolare al mito dell' "armonico collettivo". Allo stesso tempo, miti come quello dell' "esercito dei morti", o del "milite ignoto", che furono dei prodotti culturali comuni a tutta l'area europea, trovarono in Redipuglia una loro specifica materializzazione. Il testo conclude sintetizzando il riutilizzo del Sacrario da parte dell'Italia postbellica, sottolineandone il ruolo nel corso della questione di Trieste.*

*Parole chiave: Redipuglia, Sacrario, Prima Guerra Mondiale, Grande Guerra, religione politica, milite ignoto, mito*

# HISTORIOGRAPHICAL FEATURES, PUBLIC MEMORIES AND MYTHOLOGIES AT THE ORIGIN OF THE REDIPUGLIA SHRINE. THE FOUNDATION OF A TEMPLE OF THE NATION

*ABSTRACT*

*The article leads its analysis first assessing a structured methodological setting. Its foundation is upon Nora's and Isnenghi's studies on sites of memory, and other well known studies, including Emilio Gentile's though on civil and political religions. Thus emerges the role of myth in WWI European public memory, thanks to Winter's, Fussel's and other historians' research.*

*These topics are then connected to shrine's foundation, whose building depended by the fascist ideology imperial phase, in search for a material manifestation of the "harmonious collective" myth.*

*The role of other myths as "the army of the dead", and of "the unknown soldier" represented continental refrains and were the cornerstone of Redipuglia Shrine.*

*Finally, the text concludes recalling that Italy after 1945 tried to reuse the memorial, specially adapting its features toward the Trieste Question.*

*Key words: Redipuglia, shrine, WWI, political religion, Unknown Soldier, myth*

A Redipuglia, il mito della nazione si fece tempio e fuse la natura con i corpi dei soldati sacrificati fra le trincee. L'eccezionale memoriale sul fronte dell'Isonzo esaltò l'ideale della Grande Italia[1], mentre portava il suo contributo all'epica europea dei culti della patria.

Cercherò di ricostruire il percorso storico-culturale che portò alla costruzione del Sacrario, per poi passare alla sua inaugurazione e infine accennare ad alcune complesse vicende del secondo dopoguerra, che svilupperò in altri contributi.

Prima di tutto però, è necessario inquadrare la linea interpretativa che ho scelto per esaminare queste vicende: si tratta di un modello di analisi che potrebbe essere riferibile a molti altri luoghi della memoria, e che a Redipuglia trova un campo di applicazione particolarmente favorevole.

## STRUMENTI DI ANALISI

Occuparsi di un luogo della memoria come il Sacrario di Redipuglia, spinge a decifrarne la simbologia e a valutare la potenza dei riti pubblici di cui fu teatro. Ciò comporta una valutazione su di un particolare tipo di manifestazione del potere, collegata al rapporto dell'uomo con la morte.

Nora è colui che per primo ha studiato i luoghi della memoria e ne ha fatto uno specifico campo di indagine (Nora, 1984–92, 1998). Di simile concezione sono i lavori di Mario Isnenghi nel contesto italiano (Isnenghi, 1996–97). Entrambi hanno messo in luce i legami fra differenti luoghi della memoria, e la funzione sociale delle memorie collettive per l'identità nazionale. Le memorie collettive svilupparono infatti una loro particolare dinamica a partire dalla Rivoluzione Francese, che fu il momento embrionale in cui fu definito il senso e l'utilità dei luoghi della memoria; la dinamica sociale delle memorie collettive è stata studiata per primo da Halbwachs (Halbwachs, 1950). La memoria è del resto un elemento intrinseco del vivere sociale, un tratto distintivo di ogni comunità e

1 E. Gentile, ha studiato approfonditamente il mito nazionale della Grande Italia, sorto alla fine del XIX sec. e basato sull'esaltazione della penisola come potenza di livello europeo, in continuità con le glorie dell'antichità (Gentile, 2000).

come ogni aspetto della vita associata, possiede costanti e variabili nel corso del tempo. Per questo se ne può studiare la storia, in base alla disponibilità delle fonti.

Esiste anche una memoria pubblica, che può sovrapporsi a quella collettiva, o può rappresentarne una manipolazione, ed è prodotta da coloro che hanno voce nello spazio pubblico, a cominciare dalle istituzioni e dall'opinione pubblica (Canfora, 1982).

Da una parte quindi, un luogo della memoria cristallizza un elemento della memoria collettiva, di quella individuale o di quella pubblica, e dà per scontato il proprio fondamento nella storia. Ma allo stesso tempo, di quello stesso luogo della memoria, si può leggere e interpretare un sua propria, autonoma narrazione, che si dipana nel tempo. Inoltre, il passaggio dal privato al pubblico, dall'individuale al collettivo, dal relazionale al politico, non può essere compreso se distaccato da un più ampio ambiente culturale, politico e religioso. Anzi possiamo vedere come tutto questo complesso si sia mosso unitariamente, raggiungendo modalità specifiche a seconda del contesto.

L'uso politico della memoria e della storia fu un elemento costitutivo della *nazionalizzazione delle masse* (Mosse, 1975). Mosse individuò una serie di pratiche che costituirono la "nuova politica", che accompagnò il progetto di unità nazionale tedesco e l'emersione della borghesia come classe dirigente.

La "nuova politica" fu anche una forma di partecipazione al politico alternativa al voto. Si realizzò attraverso una serie di cerimonie pubbliche ed organizzazioni associative, eminentemente culturali o sportive, ispirate a forme religiose tradizionali, ma focalizzate intorno ai concetti di appartenenza, identità e nazione, i quali offrirono un nuovo inquadramento all'interno del quale rideterminare il passato del *gemein* e del *volk*, e quindi fondare lo stato.

L'analisi di tali dinamiche si lega alla *invenzione della tradizione* (Hobsbawm, Ranger, 1983). La forma mentis stimolata dall'idealismo, le contingenze politiche, l'emergere di una dimensione culturale nazionale e l'affacciarsi delle masse nella società della rivoluzione industriale, insieme ad altri fattori, provocarono una particolare reinterpretazione della storia da parte delle organizzazione politiche. Esse cominciarono, più o meno volutamente, a vedere una realtà deformata dai propri desideri e dalla proprie teorie, al punto da inventare consapevolmente delle tradizioni inesistenti, laddove si rendeva necessario trovare un'adeguata legittimità a pratiche culturali o politiche nuove. Il radicamento di quelle proposte avvenne infatti in una società bramosa di certezze, mentre erano in corso epocali mutazioni nelle organizzazioni produttive, sociali, e politiche, che a loro volta stimolavano fortemente quegli stessi processi culturali, ed in particolare la formazione degli stati nazione: emerse pure una *nazionalizzazione del territorio,* come ebbe a dire Charles Maier (Cattaruzza, 2008, 365). Tale concetto porta l'attenzione sul profondo legame tra la seconda rivoluzione industriale e la necessità dell'omogeneità culturale e linguistica che in quest'ottica non era più un fine, ma un mezzo per raggiungere il totale sfruttamento delle risorse di una nazione e la piena efficienza del suo sistema produttivo.

Ma la tradizione, oltre che essere inventata, aveva continuato a influenzare la società e le sue componenti? Probabilmente sì, dato che nacquero le religioni della politica, che furono la conseguenza della tendenza a sacralizzare la politica stessa. A questo riguardo, Gentile ha riconosciuto in letteratura e ha comparato, tre importanti interpretazioni: quella "ciurmatorica", quella "fideistica" e quella "funzionalistica". Sulla base di tale impo-

stazione, egli ha analizzato e distinto le religioni civili da quelle politiche, queste ultime prodotte dai sistemi totalitari (Gentile, 2001, 2010).

A partire da tali particolari configurazioni religiose, mi sono allora interrogato sulle modalità in cui la sacralizzazione della politica si sia potuta realizzare, nella concretezza dei fatti che costituiscono la storia. Ho ritenuto che sia possibile scavare sino a comprendere nel profondo in che modo questo possa essere avvenuto, studiando in questi anni un caso specifico come quello dell'area nord adriatica, che consente un'ampia casistica in un territorio molto ristretto.

È inoltre possibile giungere a un livello superiore dell'analisi, che dalle forme esteriori del culto politico, acceda alla comprensione dei suoi meccanismi non manifesti. Una riflessione di don Sturzo ripresa da Gentile consente di proseguire l'analisi:

> *È vero: le idolatrie moderne sono religioni laicizzate, ma non mancano di santuari, di altari e di vittime. Dal culto della dea ragione in poi, in certi momenti frenetici, gli idolatri moderni sentono la nostalgia delle idolatrie antiche e il bisogno dell'imitazione dei riti del culto.*
> *Ma quello che soprattutto esigono sono le vittime; oggi le vittime immolate a queste divinità crudeli, nelle guerre civili e in quelle militari, sono superiori a quelle dei tempi d'Ifigenia; si contano a migliaia e a milioni* (Sturzo, 1933).

Il valore di questa affermazione sta nel saper tratteggiare un percorso che inizia con l'illuminismo e che risveglia una nostalgia di "idolatria". Cioè vediamo delinearsi un fenomeno storico di una certa ampiezza, in cui il discorso viene focalizzato nelle forme rituali e nel bisogno delle persone di ricercare un certo tipo di esperienza, alla quale si associa un sacrificio di sangue.

Gates e Steane, riflettendo sulle religioni della politica, hanno ricordato quanto Durkheim avesse valorizzato il significato del senso di appartenenza nelle religioni tradizionali e quanto già Weber avesse insistito sull'importanza della religione per la coesione sociale (Gates, Steane, 2009).

Vi è pertanto una tendenza, molto interiore dell'uomo, a credere a un livello superiore dell'esistenza rispetto a quello concesso dalla quotidianità: questo è emerso anche dal bisogno di idolatrie. È stato inoltre ampiamente dimostrato in che modo la religione risponda all'esigenza degli individui di appartenere a un gruppo, e come poi questo insieme di persone necessiti di restare coeso, anche orientando i singoli in modo che le spinte centrifughe individuali non mettano a rischio il gruppo stesso. Però, come fu possibile realizzare delle religioni senza Dio? O meglio, come fu possibile che l'autorità politica avesse cercato di prendere alcune delle forme dell'autorità religiosa?

Non è solo retorica se a Trieste nel 1945, riflettendo sul senso del 4 novembre, anniversario della vittoria italiana nella Grande Guerra, Giani Stuparich si esprimesse così, nelle pagine de "La Voce Libera": "*Noi restiamo i soldati del Dovere e questo Dovere è un gigante, un enorme Dio. Per noi oggi, Dio è la Patria*" (Stuparich, 1945).

Carl Schmitt, con le sue riflessioni riguardanti la teologia politica e la legittimità permette di fare un ulteriore passo avanti. Secondo il giurista e filosofo tedesco, la dottrina

politica si attuò, almeno dal Cinquecento, come progressiva applicazione delle forme e del pensiero teologico alla politica. Col sorgere dell'idea di *nazione* a partire dal Romanticismo, era suggellato un percorso che aveva trovato una tappa fondamentale nel pensiero di Hobbes. Per questi, infatti, l'Europa uscita dalle guerre di religione avrebbe dovuto togliere Dio dall'orizzonte della politica, per raggiungere quei compromessi minimi utili a mantenere l'ordine e a dare solide basi allo stato, consentendo così al Leviatano di manifestarsi. Per cui successivamente, fra Illuminismo ed età Romantica, si sostituì al concetto di Dio, quello di patria, ma le dottrine politiche erano ormai costruite da secoli utilizzando gli strumenti concettuali elaborati nel contesto teologico. La Chiesa nel frattempo, fu così privata di uno specifico ruolo di mediazione fra uomo e divinità nell'ambito del politico, da cui venne progressivamente estromessa insieme alla nobiltà (Schmitt, 1998; 2008).

Possiamo così comprendere come la "nuova politica" citata da Mosse non sorse dal nulla, ma fosse invece l'esito finale di un lungo processo che si era attuato sin dalle origini della modernità, e il quale coerentemente, nel momento in cui le masse entrarono nello scenario politico, propose a queste un meccanismo di partecipazione per loro comprensibile e già conosciuto nella sua struttura: ecco il bisogno insostituibile della "nuova politica", basata sulla partecipazione per tramite dell'esserci e della condivisione simbolica e rituale di un patrimonio comune di valori e di simboli di chiara matrice religiosa.

Il valore della riflessione di Schmitt sta quindi nel farci capire in che modo la sacralizzazione della politica non fosse una scelta fatta a tavolino da alcuni gruppi dirigenti. Fu piuttosto l'esito di un fenomeno storico di lunga durata che raggiunse l'apice nel Novecento. La sacralizzazione della politica fu anche un frutto della civiltà occidentale, che nell'elaborazione delle sue forme politiche fra monarchie assolute e democrazie novecentesche, ha separato nettamente fra l'autorità politica e quella religiosa, costituendo un modello ampiamente riconosciuto. Quella separazione non ha però eliminato il rapporto fra politica e religione, ma lo ha riproposto in forme nuove. Anzi, fra la Rivoluzione francese e l'Ottocento, il secolo del progresso ma anche delle nuove religioni, vi fu l'abbozzo di un tentativo, portato alle sue estreme conseguenze nel Novecento, di inglobare le funzioni del religioso da parte del politico.

Poste queste premesse, emerge il bisogno di una chiave di lettura per capire con che strumento le masse siano state coinvolte nel processo della sacralizzazione della politica, al di là del dato di fatto che il linguaggio utilizzato fosse quello religioso; ovvero, quale corda interiore fu toccata e in che modo.

Un altro spunto che mi è possibile cogliere da E. Gentile, è il concetto di *numinoso* tratto da Rudolf Otto e reso più chiaro da Mircea Eliade. Il numinoso emerge dalla percezione della potenza, della presenza, e della manifestazione della divinità. R. Otto scrisse ne "Il Sacro", testo del 1917 , di come il numinoso sia definibile dal *Mysterium Tremendum*, il timore reverenziale e religioso che il mistero del sacro provoca nella coscienza individuale, per la sua forza e potenza, e dal *Mysterium Fascinans*, l'attrazione dell'uomo verso quel mistero. A ciò aggiunse la categoria del *Sanctum-Augusto*, opposto a ciò che è impuro e contaminato (Otto, 1917).

Eliade puntualizzò a sua volta, come il valore della riflessione di Otto fosse nell'aver posto l'attenzione sull'esperienza del fenomeno religioso, più che sugli aspetti teologici;

lo studioso rumeno andò poi oltre, perché sottolineò quanto, sulla base dell'esistenza del numinoso, sia di estrema importanza il fenomeno della *ierofania*, della manifestazione del sacro, quale tramite essenziale al singolo e ai gruppi per accedere alla dimensione del sacro, e che è possibile evocare attraverso i riti e i miti (Eliade, 1958, 1959).

L'aver raggiunto la conoscenza della ierofania, che significa comprendere anche la potenza dei simboli nei culti religiosi, ci permette di porre domande a un livello molto profondo circa il senso dei luoghi della memoria.

L'esaltazione delle vittime, degli eroi, dei martiri, nelle religioni della politica, attraverso il mito e le commemorazioni intorno ai luoghi della memoria, furono allora quella ierofania necessaria per raggiungere un numinoso politico? E risalendo nel ragionamento, quelle ierofanie furono la moneta che permise di comprare la coesione sociale, di determinare il senso di appartenenza e così di raggiungere quegli obiettivi politici che determinati gruppi ricercarono attraverso l'egemonia sulle masse in specifiche fasi della storia? Col cadere dell'influenza del messaggio religioso, non avvenne una progressiva svalutazione di quella moneta?

Inoltre la questione della società dello spettacolo (Debord, 1967) e della società dei consumi (Baudrillard, 1970), e la crisi che dagli Sessanta travolse ogni tradizione in Occidente, intervennero pesantemente a modificare la relazione della popolazione con i luoghi della memoria e con le religioni, comprese quelle civili: così come era insita nella seconda rivoluzione industriale la spinta verso la creazione degli stati nazione e della "nuova politica", parimenti le nuove tendenze socio-economiche nella seconda metà del Novecento, realizzando un individualismo sempre più spinto, incisero profondamente nella coscienza collettiva e nelle sue forme di espressione. Il sociologo Sabino Acquaviva poteva così tracciare chiaramente, già dal 1961, una disamina di lungo periodo sulla caduta del ruolo del sacro nelle società europee, avvenuta sin dagli albori della modernità, e che stava giungendo, nel tratto mediano del secolo breve, ad una fase estremamente avanzata (Acquaviva, 1961). [2]

## FONDAZIONE E CONSACRAZIONE DEL MEMORIALE

L'analisi che segue, si situa nella corrente di studi sulla prima guerra mondiale che, come hanno affermato Prost e Winter, è cominciata almeno dal 1979 con lo storico germanico Koselleck. Essa cerca di analizzare la memoria del conflitto e l'elaborazione del lutto, poiché: "*historians began to historicize a ritual which combined elements of the sacred with lessons in citizenship directed in particolar at the young*" (Winter, Prost, 173).

Gibelli ha altresì sottolineato, nell'introduzione all'edizione italiana dell'opera di Fussel, quanto la prima guerra mondiale avesse rappresentato "*per larga parte delle popolazioni europee la frattura e il trauma a partire dal quale si costituì una moderna memoria collettiva*". La morte di massa, il cambio di confini statuali e di gerarchie di

2 Non fu un caso che questo autore, elaborò il testo anche grazie a un confront diretto con Mircea Eliade, *"to whom I owe a great deal for the thorough examination of the experience of the sacred."* (Acquaviva, 1961, 17).

potenza, furono contestuali a una "*modificazione irreversibile del territorio mentale dei suoi abitanti*" (Gibelli, 2000, XVII–XVIII).

Fra queste trasformazioni, una delle più significative, fu il ritorno della centralità del mito nelle società avanzate. Per Fussel, questo significava la rinascita, nel Novecento, della mentalità e dei sentimenti del Medioevo, proprio grazie alla guerra che più di tutte si era distinta per l'esaltazione delle macchine, dell'industria e del materialismo (Fussel, 2000, 146). Il ritorno del mito segnò inoltre tutta la fase delle guerre mondiali e, anche nell'area nord adriatica, lasciò il proprio segno pure dopo il 1945 (Rožac Darovec, 2012).

Il trapasso violento di milioni di uomini copriva di nuovi veli lo stesso mistero della morte, il quale faceva sentire il bisogno di una spiegazione e di un supporto morale che la ragione non sapeva dare, tanto alle masse operaie e contadine arruolate negli eserciti d'Europa, quanto alla classe dirigente dei vari stati nazionali. Nemmeno il futurismo, che pure dominò l'immaginario dell'interventismo, si dimostrò capace di proporre una accettabile estetica della morte: piuttosto in tutta Europa, di fronte alle immense stragi del moderno conflitto, vi fu una incessante rivalorizzazione e rielaborazione delle tradizioni religiose (Winter, 1998, 13). Sicché, tra i vari fronti, l'iconografia religiosa ebbe un nuovo impeto. Particolarmente frequenti furono le immagini del soldato crocefisso e della Vergine che accoglieva i caduti (Winter, 1998, 149–166).

A queste simbologie i movimenti politici favorevoli alla guerra e gli stati belligeranti associarono una serie di miti, in virtù dei quali favorire il consenso verso i valori e gli obiettivi da essi proposti.

Mosse ha studiato in particolare il Mito dell'Esperienza della Guerra, che "*guardava al conflitto come ad un evento carico di senso, positivo, e anzi sacro*". Esso aveva già una lunga storia nel 1915. Nacque infatti con le masse dei volontari che avevano combattuto nei conflitti della Francia rivoluzionaria e nelle guerre antinapoleoniche tedesche, col preciso obiettivo di rendere la dura realtà della guerra più semplice da sopportare. Ma nel primo conflitto mondiale, quel Mito raggiunse un'elaborazione e un valore politico mai toccati prima, specialmente in Italia e in Germania.

> *La memoria della guerra venne così rimodellata in un'esperienza sacra, che forniva alla nazione una nuova profondità di sentimento religioso, mettendo a sua disposizione una moltitudine di santi e di martiri, luoghi di culto, e un retaggio da emulare* (Mosse, 1990, 7).

Mosse commenta, all'inizio dell'opera da cui è tratta questa citazione, proprio un dipinto esposto al Sacrario di Redipuglia, raffigurante un soldato morente accolto tra le braccia di Cristo: fu un'iconografia comunissima in tutta Europa e che aveva la finalità "*di trasferire la credenza tradizionale nel martirio e nella risurrezione, alla nazione, facendone una onnicomprensiva religione civica*". Questi processi ideologici furono inoltre assunti da tutte le religioni del nazionalismo, che cooperarono con gli stati nell'innalzare l'esperienza di guerra nel regno del sacro (Mosse, 1990, 7–10).

Tuttavia, nell'Europa occidentale degli anni Trenta, la sfrenata glorificazione della guerra era già un fenomeno sorpassato, tanto che nel 1939 non si replicò alcun volontarismo paragonabile a quello accaduto all'inizio del precedente conflitto mondiale. In Italia

e in Germania nondimeno, ed in parte dal 1941 in Unione Sovietica, le cose andarono però diversamente (Winter, 1998, 16).

Il Sacrario fu infatti inaugurato nel 1938; del resto, nel corso di quel decennio, proprio in Germania e in Italia i pellegrinaggi nei luoghi del conflitto furono molto più popolari che nel resto del continente. I due regimi totalitari si fondavano d'altra parte sul nazionalismo e sugli ideali del combattentismo (Mosse, 1990, 92–93).

Il turismo di guerra e riti per i caduti si nutrivano però di modelli precedenti, derivanti dal pellegrinaggio propriamente religioso, che ebbe già nel XIX sec. una prodigiosa rinascita (Winter, 1998, 170–173).

Un altro mito assai diffuso fra tutte le nazioni coinvolte nel conflitto, e che interessa particolarmente l'edificazione di Redipuglia, fu quello del ritorno dei soldati caduti e dell'esercito dei morti, che aveva radici antichissime. Ad esempio, un tenente francese testimoniò sulla stampa di tutta l'Intesa un suo vittorioso combattimento, fiaccheggiato dai commilitoni miracolosamente resuscitati (Winter, 1998, 174–175, 292–295); innumerevoli furono poi i racconti di apparizioni soprannaturali, come le figure angeliche che si mostrarono alle truppe britanniche a Mons e le molte leggende che raccontavano di armate di morti che si combattevano nel sottosuolo (Todero, 2002, 43). La questione si connette altresì col tema della stessa sepoltura dei caduti dato che, nella prospettiva ideologico-politica allora dominante, i fanti continuarono a combattere per la patria anche restando nell'oltretomba e a guerra finita (Todero, 2002, 29, 101–102).

In effetti, lo stesso termine "caduti" sublima la morte, e invita a pensare che chi habbia offerto la vita alla Patria resti vivo nella memoria dei connazionali (Cadeddu, 2011, 47). Anche per questi motivi, su pressione delle formazioni nazionalistiche, essi vennero lasciati dove erano stati uccisi, in modo che il loro tumulo potesse essere la testimonianza del proprio eroismo, del proprio sacrificio per la patria, e a monito per le generazioni future (Cadeddu, 2011, 34–39). In effetti l'altissimo numero di caduti non identificabili favorì ulteriormente quell'orientamento, producendo a sua volta un nuovo mito, quello del milite ignoto, che fu poi uno degli elementi costitutivi della memoria rappresentata e coltivata a Redipuglia. Peraltro, la realizzazione del rito del milite ignoto, insieme alle altre commemorazioni postbelliche, aveva ulteriormente esacerbato le tensioni fra la componente etnica italiana e quelle slovene e croate nell'area nord adriatica, incrinando sin dal principio il processo di nazionalizzazione che era ad esso sotteso (Klabjan, 2010).

Un altro elemento costitutivo della memoria del Sacrario furono invece le date italiane delle commemorazioni della prima guerra mondiale. Mentre le altre nazioni dell'Intesa avevano esclusivamente privilegiato come data da celebrare l'11 novembre, giorno dell'armistizio finale, il Regno d'Italia aveva tutta una serie di motivazioni per concentrarsi invece sul 4 novembre, giorno dell'entrata in vigore delle clausole armistiziali fra Italia e Austria-Ungheria. Smarcarsi dalla scelta degli alleati voleva dire affermare come la penisola avesse vinto il conflitto da sola e non per l'aiuto delle forze francesi, inglesi e americane accorse dopo Caporetto.[3] D'altra parte fu proprio questo uno degli oggetti

3 Il ruolo determinante di inglesi e francesi nella vittoria italiana, specialmente a Vittorio Veneto, è stato un tema particolarmente sottolineato dalla storiografia britannica. Fra le opere recenti che hanno ribattuto su

dello scontro a Versailles fra l'Italia e l'Intesa, e che contribuì alla nascita del mito della vittoria mutilata.

L'Italia è stata inoltre l'unica nazione che abbia celebrato pure l'ingresso nel conflitto (Sema, 1986, 178). Il fascismo, che con il primo atto del governo Mussolini decretò il 4 novembre festa nazionale, con una legge del 1923 incluse il 24 maggio nel culto della nazione. Il duce stesso si recò il 24 maggio 1923 "*in sacro pellegrinaggio*" a Redipuglia, proprio per accelerare l'ufficializzazione dell'anniversario. Per Gentile,

> *facendo ricorso ad analoghe metafore cristologiche, il fascismo esaltò l'intervento presentandolo come l'atto voluto e imposto da una "aristocrazia morale e spirituale del popolo", insorta a "reclamare la propria croce per salire al calvario della redenzione"* (Gentile, 1994, 75–76).
> *Nel 1930, in una fase ormai matura del regime, il Popolo d'Italia poteva dunque scrivere che il 24 maggio, data fatidica, rappresentava anche l'origine prima della Rivoluzione Fascista e l'inizio di una nuova storia per l'Italia* (Gentile, 1994, 81).

La Redipuglia degli eroi, rimodellata dal fascismo ed inaugurata nel 1938, era però assai diversa da quella che Mussolini visitò per la prima volta. Tanto per Winter (Winter, 1998, 79, 119) nei riguardi nel contesto europeo, quanto per Fabi (Fabi, 1996, 9–22) e Isnenghi (Isnenghi, 1989, 346–348), per quello italiano, fra il 1918 e gli anni Trenta i cimiteri militari subirono una continua concentrazione e monumentalizzazione. Nella penisola, tali trasformazioni avvennero contestualmente alla evoluzione della religione politica del fascismo. Dalla marcia su Roma al 1926, Mussolini e il suo movimento cercarono prevalentemente di prendere il controllo degli apparati simbolici dello stato (Ridolfi, 2003, 72–74).

Nella seconda metà degli anni Venti il regime, che progressivamente stava sviluppando la sua dimensione totalitaria, attuò una propria liturgia, e trattò il culto della patria come una componente della sua più ampia religione politica: l'autorappresentazione del fascismo divenne il rituale nazionale dello stato (Ridolfi, 2003, 72–74).

Nella terza e ultima fase, corrispondente agli anni Trenta, il fascismo standardizzò e rafforzò la propria ritualità, centralizzando ulteriormente le cerimonie: venne data ancora maggiore importanza al culto dei combattenti e ad un concetto idealizzato di eroismo, mentre la ricerca ossessiva dell'esaltazione dell'uomo nuovo fascista spinse a fare dei caduti il modello prediletto per la comunità nazionale (Ridolfi, 2003, 74–79). Fu l'epoca del Sacrario monumentale di Redipuglia, al cui ingresso una lapide cinta da fasci littori, riportava un'epigrafe del Duca d'Aosta che ben condensava lo spirito di quell'epoca:

> *O morti gloriosi d'Italia*
> *da questo cimitero degli invitti*
> *che è sintesi immortale*
> *dei sacrifici e della gloria della Patria*
> *emana una luce come di baleno*
> *che sarà il faro d'Italia.* (Consociazione Turistica Italiana, 1939, 116).

questa tesi ricordo: Thompson, 2009.


*Fig. 1: Primo sacrario. (Archivio fotografico IRSML FVG).*
*Sl. 1: Prvo svetišče. (Fotografski arhiv IRSML FVG).*

Il Sacrario monumentale nacque però in opposizione a un primo cimitero militare, che era stato inaugurato nel 1923 nel vicino colle sant'Elia e che era costituito da una fitta serie di gironi concentrici segnati da kilometri di filo spinato e punteggiati da epigrafi e residuati bellici. L'insieme aveva l'intenzione di richiamare la salita al Calvario e allo stesso tempo la struttura dell'inferno dantesco. Si trattava di una rappresentazione sacra, allestita infatti da un regista di teatro, Antona Traversi (Todero, 2002, 8).

La parte più alta dell'opera conteneva i corpi di 463 ufficiali, mentre il resto della collina ospitava le salme di 30.000 fanti, di cui soltanto di 5.860 si conosceva l'identità. Un monumento crocifero venne costruito sulla sommità; da esso dipartivano dei fasci di luce, mentre al suo interno vi aveva sede una cripta, scelta dal Duca d'Aosta[4] come proprio mausoleo, ove furono apposte una serie di quadri connotate da un senso di pietà e raccoglimento, ad opera di M. Ciotti. È qui, che fu inizialmente collocata la tela ricordata da Mosse (Fabi, 1996, 11–12).

L'aver accumulato le salme di così tanti caduti in unico luogo costituiva la materializzazione del mito dell'esercito dei morti. Nel contesto della cultura italiana esso significa-

4 Comandante della III Armata, che combattè le battaglie dell'Isonzo fra 1915 e 1917.

va un recupero della cultura classica, operato prima dal neoclassicismo di Foscolo e poi dal Gabriele D'Annunzio del "*Libro Ascetico*" e di altre opere (Todero, 2002, 42).

Lo stesso Duca d'Aosta, nel suo "*Testamento Morale*", affermò la volontà di partecipare in prima persona, con le sue proprie spoglie, a questa sacra rappresentazione:

> *Desidero che la mia tomba sia, se possibile, nel cimitero di Redipuglia, in mezzo agli Eroi della III Armata. Sarò, con essi, vigile e sicura scolta alle frontiere d'Italia, al cospetto di quel Carso che vide epiche gesta ed innumerevoli sacrifici [...]* (Consociazione Turistica Italiana, 1939, 10).

Per il duce tuttavia, il Sant'Elia era un complesso non adeguato a rappresentare gli ideali del regime. Lo aveva ritenuto troppo intimista, personale e fragile e il dittatore aveva più volte espresso la propria contrarietà verso i monumenti "*piagnoni e pietosi*" (Fabi, 1996, 22). Il complesso emanava invece unna eccessiva umanità e ricordava con crudo realismo la tragedia della guerra; era perciò inadatto a una nazione protesa nelle avventure coloniali e che sognava una nuova grandezza (Todero, 2002, 67). Pertanto fu demolito e sostituito dalla nuova opera.

Emilio Gentile ha chiaramente mostrato quanto il fascismo, specialmente nel passaggio fra la seconda e la terza fase della sua religione politica, abbia cercato di "*trasfigurare i riti di morte in riti di vita*". Questo perché anche quando celebrava la morte, questa azione simbolica doveva esprimere vitalità e fede nel futuro, in quanto il "*sangue del martire era la linfa rigeneratrice che ridava vita alla nazione e alimentava la sua rinascita*". In siffatto contesto la liturgia fascista intendeva promuovere "*il mito dell'armonico collettivo*", uno strumento fondamentale nel progetto di "*trasformazione del carattere degli italiani*" (Gentile 1994, 54–59).

Il generale Cei, nuovo Commissario generale straordinario per le onoranze ai caduti in guerra, eseguì precise disposizioni da Mussolini, ed affidò a Giovanni Greppi e Giannino Castiglioni, già vincitori del concorso per le opere del Monte Grappa, la progettazione del nuovo sacrario. Sorse dunque nel 1936 l'idea della grande scalea bianca da costruire sul fianco della Quota 89, ovvero il monte Sei Busi, di fronte al Colle Sant'Elia (Todero, 2002, 66–67). Il colle fu una località aspramente contesa durante il conflitto, poiché permetteva di controllare un importante accesso occidentale all'altipiano carsico (Ministero della Difesa – Onorcaduti, 1999, 2). I corpi dei caduti del precedente sacrario, insieme a quelli recuperati da altri cimiteri minori, furono così traslati dalla brigata Sassari nella nuova sede (Todero, 2002, 67–68).

Il numero complessivo delle salme giunse alla cifra impressionante di 100.187, di cui solo 39.857 di identità conosciuta. Redipuglia divenne fra più grandi sacrari militari della prima guerra mondiale in tutta Europa. (Ministero della Difesa – Onorcaduti, 1999, 2–3).

Insieme ai corpi dei fanti e dei loro ufficiali, vennero portati nella nuova opera anche i resti del Duca di Aosta, che dal 1931 riposava nella cripta del colle Sant'Elia (Todero, 2002, 67–68). Ora la nuova composizione attuava con maggiore realismo scenico lo schieramento sul campo della "invitta" Terza Armata, con a capo il Duca sabaudo, deposto in un sarcofago di marmo rosa (Ministero della Difesa – Onorcaduti, 1999, 2–3). Ai suoi

piedi, nel piazzale antistante alla scalinata, furono collocati i sacelli dei principali generali dell'Armata: Greppi, Chinotto, Monti, Paolini, Prelli, e Riccieri. Inoltre, fra l'entrata, al cui fianco era stata mantenuta e valorizzata una delle tante trincee rimaste nella zona, e i generali, venne collocata la "via eroica", costellata da 38 targhe di bronzo, incise con i nomi di altrettante battaglie del celebrato conflitto. Alle spalle di questa prima parte del complesso, si erse la struttura, composta da 22 gradoni incorniciati da una impressionante teoria di "Presente" scolpiti a grandi caratteri nella pietra carsica: si trattava di una citazione diretta del Sacrario dei Martiri Fascisti disegnato da Libera e Valente per la mostra della rivoluzione fascista del 1932. Nella grande scalea, furono così collocati i corpi dei caduti noti. I soldati rimasti senza nome vennero inumati in due cripte, edificate nella sommità della scalinata. Queste andarono a completare il vertice del monumento con un edificio, coronato da tre imponenti croci, e composto da una cappella e due salette museali, in cui trovarono posto le tele del precedente mausoleo del Duca d'Aosta. L'intera struttura apparve così come una piramide a gradoni e allo stesso tempo ricordava un immenso altare, che si stagliava all'ingresso del Carso e sulla principale arteria stradale che dalla penisola conduceva a Trieste. L'opera si poneva in dialogo architettonico con altre vicine realizzazioni, minori in dimensioni, ma di affine monumentalità: l'Ossario di Oslavia, dimora di oltre 50.000 caduti, e il Sacrario di Caporetto contenente le spoglie di 7.000 fanti, quest'ultimo progettato dagli stessi autori del nuovo Sacrario di Redipuglia (Fabi, 1996, 26–28).

I caduti furono dunque privati di ogni dimensione "privata"; piuttosto la scelta fu quella di esaltare una complessiva massificazione della morte, che riproduceva a sua volta la massificazione dell'esperienza bellica (Todero, 2002, 67–68). La nuova Redipuglia diventava in questo modo una plastica rappresentazione dell'ideale fascista che intendeva perseguire la schiacciante superiorità dello stato sugli individui: il soldato non era più un libero cittadino, con la sua specifica personalità, bensì lo strumento di un disegno superiore (Dogliani, 1996, 382). Emilio Gentile ha analizzato come il mito dell'armonico collettivo, che trovò una sua massima esaltazione in Redipuglia, avrebbe dovuto risolvere le irriducibili diversità del popolo italiano, riunendo ed unificando quest'ultimo "*in una sola volontà, in una sola passione, in un solo, altissimo scopo*", come affermava Bottai (Gentile, 1994, 194–195).

In un opuscolo commemorativo del 1939 fu inoltre espresso, tramite l'uso poderoso dell'arsenale retorico di quegli anni, un fattore assolutamente importante per questa ricerca, la manifesta volontà di fare di Redipuglia uno dei santuari principali della religione politica del fascismo. In questo modo, poteva essere evocata una forma particolare di numinoso, strettamente politico e non trascendente, e finalizzato al controllo delle masse attraverso l'uso di un linguaggio religioso immediatamente comprensibile e di facile penetrazione in molte delle coscienze individuali e collettive dell'epoca:

> *Bisognava giungere alla mistica ed artistica significazione dell'altare. Così come dalla greppia alla croce si raccolse nella preghiera la religione di un mito coronato di spine sulla cresta, il più bello, il più puro, il più mistico senso della Grande Guerra Vittoriosa ha ora fabbricato il proprio Sacrario a Redipuglia: e su ogni gradino, per ogni nome noto e ignoto si piegheranno le fronti e le ginocchia dei figli nostri mormorando una preghiera senza parola.* […] *Gli uomini vogliono combattere anche*

*contro l'imperversare degli elementi e dei secoli. Il richiamo architettonico è quello dell'adunata. Lo spirito che vi aleggia è quello di una religione dedicata al valore che non può e non deve scomparire. Di nome in nome, di ricordo in ricordo, l'esercito dei Morti schierati perennemente in linea con il Duca che ammonisce e comanda e i generali in testa, presidia il vertice conquistato ed indistruttibile. La storia cammina. Per quest'ascesa di bronzo, costruita col sacrificio più bello, i vivi risaliranno e comprenderanno che non vi sono limiti per il valore del Soldato italiano, poiché nell'estremo limite si spalanca la porta che conduce nella smisurata gloria di quel paradiso che è all'ombra delle croci e delle spade* (Officine Grafiche Rizzoli, 1939, 2–5).

Il resto dell'opuscolo è costituito prevalentemente da foto del Sacrario. Inoltre vi è testimoniata la presenza del duce nella cerimonia di inaugurazione, il 19 settembre del 1938. Espressa nel corso di quell'evento, un'affermazione del leader dell'Italia fascista è di particolare interesse, perché sottolineava il senso pedagogico del memoriale. Mussolini, infatti, rivolgendosi ai progettisti e agli operai prima di ripartire, disse: "*avete collaborato ad un opera grandiosa, veramente romana, che educherà generazioni e generazioni*" (Officine Grafiche Rizzoli, 1939, 6).

La "*consacrazione*"[5] del nuovo sacrario avvenne tramite un rito solenne, privo di alcun discorso pubblico, tenuto nel corso della quarta visita di Mussolini a Trieste, e la sua seconda partecipazione ai riti di Redipuglia; ma nell'inaugurazione del 1923, il dittatore si era mantenuto in disparte (Dogliani, 1996, 385). Nel 1938 il clima storico era ormai completamente diverso. I nemici di un tempo erano i nuovi alleati: la Germania del 1938 era quella del führer e dell'Anschluss, e pochi giorni dopo il duce sarebbe andato a Monaco, per discutere con Hitler, Chamberlain e Daladier il destino della Cecoslovacchia.

Perciò, nei resoconti delle solennità presso Sacrario riportate sui giornali, ogni riferimento all'impero Austro-Ungarico venne accuratamente rimosso. La scelta della data del 19 settembre 1938, oltretutto, non corrispondeva ad alcun anniversario, ma alle scadenze imposte dagli impegni ufficiali di Mussolini; infatti l'opera non era ancora del tutto completata, malgrado l'accelerazione disperata dei ritmi di lavoro nelle settimane precedenti all'evento (Fabi, 1996, 25–27).

Il duce arrivò a Trieste il 18 settembre, per un viaggio nel nord est della penisola che si sarebbe concluso in Veneto una settimana dopo. La nuova sistemazione del monte Sei Busi, era del resto parte integrante di un più ampio piano di investimenti nelle infrastrutture, negli impianti industriali e negli assetti urbani, che il regime aveva predisposto per ridisegnare la Venezia Giulia, rilanciarla economicamente ed accelerarne l'inclusione nel resto della penisola. Nel capoluogo giuliano Mussolini inaugurò quindi numerose opere pubbliche, ma ciò che lasciò soprattutto un segno nella storia, fu il discorso in piazza Unità d'Italia, in cui annunciò le leggi razziali (Fabi, 1996, 26–28; Vinci, 2011, 231–233).

Le immagini della folla plaudente e il tono dei manifesti esposti in quella piazza, esprimono efficacemente la centralità dei sogni di gloria imperiale nell'agenda politica di quella fase.

5 Così è chiamata la cerimonia di apertura nell'opuscolo di propaganda.

*Fig. 2: Mussolini in piazza Unità d'Italia a Trieste pronuncia il discorso in cui annuncia le leggi razziali il 18 settembre 1938 (Archivio fotografico IRSML FVG).*
*Sl. 2: Mussolini na Velikem trgu (piazza Unità d'Italia) v Trstu javnosti predstavi protijudovske rasne zakone, 18. septembra 1938 (Fotografski arhiv IRSML FVG).*

Quanto adesso occorre però sottolineare è la stretta relazione fra creazione dell'uomo nuovo fascista, politica razziale ed esaltazione dei caduti della Grande Guerra, elementi che insieme erano funzionali anche al contesto della costruzione dell'Impero.

Così concludeva il resoconto della cerimonia l'inviato de "La Stampa" di Torino:

> *Le anime dei morti di Redipuglia hanno avuto la suprema felicità di sentire passare, fra la loro divina presenza, Colui [Mussolini, ndr] che ha mantenuto il giuramento. Sono morti per i confini della Patria e il sangue si è allargato su un Impero* (La Stampa, 20. 9. 1938, 3, A Redipuglia tra gli Eroi della Terza Armata).

Non fu tuttavia il fascismo, ad elaborare ed esaltare per primo queste costruzioni ideologiche in Italia, e la natura di lungo corso del razzismo italiano, è stata da tempo

ampiamente evidenziata da studi come quelli di Burgio (Burgio, 1999, 2001) e Re (Re, 2010), che hanno individuato le origini ottocentesche e coloniali di quel fenomeno.

Non mancò tuttavia, nemmeno in quella che poteva essere un'occasione per l'esaltazione della sola religione politica del fascismo, il supporto delle più alte sfere del clero. All'arrivo di Mussolini mons. Margotti, arcivescovo di Gorizia, benedì le salme dei caduti da un "*piccolo, lucente altare*" posto sul corso della Via eroica (La Stampa, 20. 9. 1938, 3, A Redipuglia tra gli Eroi della Terza Armata).

Nel grandioso edificio di Redipuglia l'autonomia della Chiesa rispetto al fascismo si definì nella realizzazione della cappella votiva ed in particolare nelle stazioni della via Crucis. Una pubblicazione della diocesi di Milano fu realizzata appositamente per ispirare il rito che emulava presso il Sacrario la passione di Gesù. In essa la concezione cristiana del martirio fu piegata senza compromessi alle esigenze dello stato totalitario:

> *È necessario il dolore, è necessaria la morte: sono le più alte testimonianze della fede. Il figlio di Dio operò miracoli* […]. *Ma volle poi mettere il suggello del sangue alla sua parola divina, perché l'uomo si arrende all'esempio più che all'argomento, e non vi è più autorevole esempio del morire.*
> *Altre misteriose ragioni si adducono per la passione di Gesù. Su questo calvario del sacrificio per l'Italia, valga la ragione dell'esempio che raccosta i Caduti gloriosi a Gesù sul Golgota* (Dini, 1939, 1)


*Fig. 3: Il Sacrario di Redipuglia nel giorno della sua inaugurazione, 19 settembre 1938 (Il Sacrario di Redipuglia, 1939).*
*Sl. 3: Kostnica v Redipulji na dan odprtja, 19. septembra 1938 (Il Sacrario di Redipuglia, 1939).*

## DOPO IL 1945

I partiti della penisola ebbero la necessità, dopo il 1945, di rifondare uno stato che fosse al contempo nazionale e democratico; nel fare ciò, ritennero che il fascismo non avesse fatalmente compromesso tutti i simboli della nazione. Emerse così l'esigenza di riconsacrare quei simboli, e di rilegittimarli per dare continuità allo stato fondato nel 1861. Tuttavia, come reazione alla religione politica del regime, sorse una certa diffidenza nei confronti della dimensione simbolico-rituale della politica (Ridolfi, 2003, 93–94).

Solamente nel corso del lungo dopoguerra giuliano tuttavia, avvennero le più importanti commemorazioni al Sacrario, e il sito conquistò una posizione prominente nel rituale nazionale.

Istituzioni locali e Governo, cominciarono dal 1946 ad investirlo di sempre maggiore importanza, fino alla riconsacrazione del 1950, in cui parteciparono oltre 30.000 persone e dove l'arcivescovo di Gorizia concesse, per intercessione del papa, l'indulgenza plenaria a tutti i presenti (Giornale di Trieste, 5. 11. 1950, 1). In quel giorno, la fusione fra religione cristiana e religione civile arrivò a un momento di intensità raramente incontrato in altri momenti della storia dell'Italia unita. Nell'anno giubilare del 1950, l'indulgenza concessa a Redipuglia stava infatti a rappresentare una evidente equiparazione fra il Sacrario di Redipuglia, la basilica di san Pietro e altri santuari della Chiesa.

Nel 1952 il presidente del consiglio De Gasperi, e nel 1953 il suo successore Pella, lo utilizzarono come pulpito da cui rispondere a Tito nell'evolversi della questione di Trieste di fronte a oltre 100.000 partecipanti e agli inviati della stampa internazionale. I fanti del passato e le armi del presente si attestarono su di un fronte che prima di tutto esisteva nell'immaginario politico, ma che fu capace di influenzare anche la realtà della storia.

Fino a quando furono ancora in vita le generazioni che avevano combattuto la Grande Guerra, quindi fino agli anni Sessanta-Settanta, i riti di Redipuglia mantennero una partecipazione relativamente alta, intorno ad alcune decine di migliaia di persone, benché non svolgessero più il ruolo importante che ebbero nel corso della questione di Trieste. Poi seguì un lento declino, che accompagnò l'obsolescenza della memoria degli eroi e del militarismo, per fare il posto alle memorie delle vittime dell'ultimo conflitto.

## CONCLUSIONI

Nell'introduzione, ho cercato di esprimere il contesto storico dell'analisi e di fornire un modello interpretativo. Esso è stato finalizzato a evidenziare l'uso politico della storia e della memoria, ma soprattutto del rito e del mito, al fine di evocare il "numinoso politico", un'arma estremamente sofisticata per la ricerca del consenso in una società ancora intrisa di cultura religiosa e tradizionale. I riti e i miti legati a Redipuglia cercarono infatti di toccare una determinata corda interiore nelle masse, molto vicina al campo della spiritualità. Il fascismo, edificando il Sacrario e impostandone una specifica ritualità, utilizzò consapevolmente quelle dinamiche. La Repubblica italiana nel contesto della Guerra Fredda e della questione di Trieste cercò di porsi in continuità con quanto avvenuto in passato, con risultati interessanti, che esigono di essere approfonditi in ulteriori contributi che l'autore si ripromette di pubblicare.

# HISTORIOGRAFSKE POTEZE, JAVNI SPOMINI IN MITI KOT IZVOR KOSTNICE V REDIPULJI. OBLIKOVANJE NACIONALNEGA SVETIŠČA

*Gaetano DATO*

Univerza v Trstu, Doktorska šola za humanistične študije, Oddelek za zgodovino in kulture od antike do sodobnosti, 34100 Trieste, via Economo 4, Italija

e-mail: gdato7@gmail.com

*POVZETEK*

*Članek analizira ideološki proces, ki je privedel do gradnje spomenika italijanskim vojakom iz prve svetovne vojne v Redipulji/Sredipolju leta 1938 in kontekst, v katerem je nastal bodisi na nacionalnem bodisi na evropskem nivoju.*

*Na podlagi klasične analize Pierra Noraja in Maria Isnenghija o krajih spomina besedilo opozarja na Halbwachsove zamisli o kolektivnem spominu in razlike z javnim spominom. Avtor razširi svoja temeljna izhodišča z Mossejevo raziskavo o »nacionalizaciji množic« in jo poveže z »izumljanjem tradicije« (Hobsbawm in Ranger). Na teh podlagah razširi svoje argumente, tako da vključi tudi sakralizacijo politike in raziskave Emilia Gentileja o politični religiji, ob tem pa preučuje tudi Webrove in Durkheimove misli. Analiza nato ponudi dolgoročnejšo perspektivo odnosa med politiko in religijo v sodobni Evropi, zahvaljujoč se delom Carla Schmitta. Nasloni se tudi na razmišljanje Rudolfa Otta in Mircea Eliadeja o konceptih »numinoznega« in »hierofanije« ter opozori, da se miti in obredi zrcalijo v njihovi svetosti.*

*Na tej teoretski podlagi članek ugotavlja, da je bila gradnja spomenika v Redipulji/Sredipolju večplasten proces, v katerem so ključno vlogo odigrali prva svetovna vojna in italijanski ter fašistični miti. Da bi spominsko obeležje postavil v ustrezen kontekst, avtor opiše evolucijo evropskega spomina na prvo svetovno vojno od konca samega konflikta do tridesetih let prejšnjega stoletja, upoštevajoč raziskave Kosellecka, Winterja, Fussella in Mosseja. Po enakem postopku obravnava tudi italijanski spomin. Še posebej izrazito so bili v italijanskem primeru prisotni miti o »vrnitvi padlih vojakov«, skupaj z mitoma o »vojski mrtvih« in o »neznanem vojaku«, ki so bili tudi temelj za postavitev obravnavanega spomenika. Na spomenik pa so vplivali tudi posebni fašistični ideološki dejavniki, vključno z nekaterimi Mussolinijevimi osebnimi odločitvami, na primer miti o »harmonični skupnosti«, »novem fašističnem človeku« in »veliki Italiji« ne nazadnje pa tudi italijanski rasizem in vzpon italijanskega imperija.*

*Spomenik v Redipulji/Sredipolju, zgrajen na lokaciji nekdanjega vojaškega pokopališča, je največje evropsko obeležje v spomin na prvo svetovno vojno po številu tam hranjenih posmrtnih ostankov: teh je 100.187, od katerih jih je bilo 39.857 tudi identificiranih. Kot tak je postal tudi najpomembnejše svetišče fašistične politične religije, ki ima poseben pomen za gojenje italijanstva na severovzhodni meje države.*

*V sklepnem delu se članek posveča temi, kako je spominsko obeležje uporabila Republika Italija po letu 1945, o njegovi vnovični posvetitvi leta 1950, v kateri je pomembno*

*vlogo odigrala tudi katoliška cerkev, ter o najbolj množičnih komemoracijah v letih 1952 in 1953, v času, ko je bil zaradi tržaškega vprašanja italijansko-jugoslovanski konflikt na vrhuncu.*

*Ključne besede: Redipuglia (Sredipolje), kostnica, prva svetovna vojna, politična religija, neznani vojak, mit*

FONTI E BIBLIOGRAFIA

**Archivio fotografico IRSML FVG –** Archivio fotografico dell'Istituto Regionale per la Storia del Movimento di Liberazione nel Friuli Venezia Giulia.

**Il Sacrario di Redipuglia (1939):** Milano, Officine grafiche Rizzoli.

**Touring Club Italiano (1925):** Congresso ed Escursione Nazionale ai Campi di Battaglia. Milano, TCI.

**La Stampa**. Torino. A Redipuglia tra gli Eroi della Terza Armata, La Stampa, 20. 9. 1938, 3.

**Giornale di Trieste**. Trieste. Nel silenzio di Redipuglia, la solenne promessa dei vivi ai morti, Giornale di Trieste 5. 11. 1950, 1.

**Ministero della Difesa – Onorcaduti (1999):** Redipuglia. Roma.

**Acquaviva, S. (1961):** L'Eclisse del Sacro nella Civiltá Industriale. Milano, Edizioni in Comunità.

**Baudrillard, J. (1970):** La Société de Consommation. Paris, Denoel.

**Burgio, A. et al. (1999):** Nel Nome della Razza – Il razzismo nella Storia d'Italia, 1870–1945. Bologna, Il Mulino.

**Burgio, A. (2001):** La Guerra delle Razze. Roma, Manifesto Libri.

**Cadeddu, L. (2011):** Alla ricerca del milite ignoto – Aquileia, Redipuglia, Altare della patria, i luoghi della memoria e dell'identità italiana. Udine, Gaspari.

**Canfora, L. (1982):** Analogia e storia: l'uso politico dei paradigmi storici. Milano, Il Saggiatore.

**Cattaruzza, M., (2008):** L'Italia e il Confine Orientale 1866–2006. Bologna, Il Mulino.

**Consociazione Turistica Italiana (1939):** Sui Campi di Battaglia – Medio e Basso Isonzo. Milano.

**Dato, G. (2013)**: L'Uso delle Memorie: Il caso di Trieste, confine culturale e ideologico nel cuore dell'Europa. Phd dissertation, Scuola dottorale in scienze umanistiche, indirizzo storico, University of Trieste.

**Debord, G. (1967):** La Société du Spectacle. Paris, Buchet-Chastel.

**Dini, D. (1939):** La via crucis – Sacrario di Redipuglia. Milano, Diocesi di Milano.

**Dogliani, P. (1996):** Redipuglia. In: Isnenghi, M. (ed.): I luoghi della Memoria. Simboli e miti dell'Italia unita. Roma, Bari, Laterza, 375–390.

**Eliade, M. (1958):** Patterns in Comparative Religion. New York, Sheed & Ward.

**Eliade, M. (1959):** The Sacred and the Profane – The Nature of Religion. Orlando, Hancourt.

**Fabi, L. (1996):** Redipuglia – Storia, Memoria, Arte e Mito di un Monumento che Parla di Pace. Trieste, LINT.

**Fussel, P., (2000):** La Grande Guerra e la Memoria Moderna. Bologna, Il Mulino.

**Gates, D.K., Steane, P. (2009):** Political Religion – the Influence of Ideological and Identity Orientation. Totalitarian Movements and Political Religion, 10, 3–4, 303–325.

**Gentile, E. (1994):** Il Culto del Littorio. Bari, Laterza.

**Gentile, E. (2001):** Le Religioni della Politica: fra Democrazia e Totalitarismi. Roma, GLF editori Laterza.

**Gentile, E. (2006):** La Grande Italia: il Mito della Nazione nel XX secolo. Roma, GLF editori Laterza.

**Gentile, E. (2010):** Contro Cesare: Cristianesimo e Totalitarismo nell'Epoca del Fascismi. Milano, Feltrinelli.

**Gibelli, A. (2000):** Introduzione all'edizione italiana. In: Fussel, P.: La Grande Guerra e la memoria moderna. Bologna, Il Mulino.

**Halbwachs, M. (1950):** La Memoire Collective. Paris, Presses universitaires de France.

**Hobsbawm, E.J., Ranger, T. (1983):** The Invention of Tradition. New York, Cambridge University Press.

**Isnenghi, M. (1989):** Le Guerre degli Italiani, 1848–1945. Milano, A. Mondadori.

**Isnenghi, M. et al. (1996–97):** I Luoghi della Memoria. Roma, Bari, Laterza.

**Klabjan, B. (2010):** Nation and commemoration in the Adriatic. The commemoration of the Italian unknown soldier in a multinational area: the case of the former Austrian Littoral. Acta Histriae, 18, 3, 399–424.

**Mosse, G. (1975):** The Nationalization of the Masses – Political Symbolism and Mass Movements in Germany from the Napoleonic Wars Through the Third Reich. New York, H. Fertig.

**Mosse, G. (1990):** Fallen Soldiers. Reshaping the Memory of the World Wars. New York, Oxford University Press.

**Nora, P. et al. (1984–92):** Les Lieux de Memoire. Paris, Gallimard.

**Nora, P. (1998):** Realms of Memory – Rethinking the French Past. New York, Columbia University Press.

**Otto, R. (1917):** Das Heilige – Über das Irrationale in der Idee des Göttlichen und sein Verhältnis zum Rationalen. Breslau, Trewendt & Granier.

**Re, L. (2010):** Italians and the Invention of Race: the Poetics and the Politics of Difference in the Struggle over Lybia, 1890-1913. California Italian Studies, 1, 1, 1–58.

**Ridolfi, M. (2003):** Le Feste Nazionali. Bologna, Il Mulino.

**Rožac Darovec, V. (2012):** "Po svobodije v vas pršu hudič!": pomen ustne zgodovine za razkrivanje mitoloških struktur v preteklosti – primer spominjanja Rakitljanov. Acta Histriae, 20, 4, 693–702.

**Schmitt, C. (1998):** Teologia politica. Quattro capitoli sul concetto della sovranità. In: Schmitt, C.: Le categorie del politico: saggi di teoria politica. Bologna, Il Mulino.

**Schmitt, C. (2008):** Political Theology II: The Myth of the Closure of any Political Theology. Cambridge, Polity Books.

**Sema, A. (1986):** Le celebrazioni della vittoria. Qualestoria, 14, 1-2, 176-190.

**Sturzo, L. (1933):** Idolatria collettiva, El Matì, 19/12/33. In: Gentile, E. (2001): Le Religioni della Politica: fra Democrazia e Totalitarismi. Roma, GLF editori Laterza, 104.

**Stuparich, G. (1945):** La Realtà della Patria, La Voce Libera, 3. 11. 1945, 1.

**Thompson, M. (2009):** La Guerra Bianca – Vita e Morte sul Fronte Italiano, 1915–1919. Milano, Il Saggiatore.

**Todero, F., (2002):** Le Metamorfosi della Memoria – La Grande Guerra tra Modernità e Tradizione. Udine, Del Bianco.

**Vinci, A. (2011):** Sentinelle della Patria: il Fascismo al Confine Orientale, 1918-1941. Roma, Bari, GLF editori Laterza.

**Winter, J. (1998):** Il Lutto e la Memoria. La Grande Guerra nella Storia Culturale Europea. Bologna, Il Mulino.

**Winter, J., Prost, A. (2005):** The Great War in History: Debates and Controversies, 1914 to the present. Cambridge, Cambridge University Press.

Received: 2014-02-05
Original scientific article
UDC 332.021.8:63(498)"1864/1921"

# LA TIERRA EN EL PUZZLE RUMANO DE ENTREGUERRAS: RAZONES, MODOS Y CONSECUENCIAS DE LA REFORMA AGRARIA RUMANA DE 1918/1921

*José DÍAZ-DIEGO*
Universidad Católica de Temuco, Facultad de Ciencias Sociales, Departamento de Antropología,
Manuel Montt, 56. Temuco, Chile
jose.diaz@uct.cl

*RESUMEN*

*Tras la Revolución Rusa de 1917 y en plena I Guerra Mundial, los gobernantes rumanos decidieron publicitar y emprender luego una reforma agraria liberal para impulsar la modernización del campo y la tecnificación de su agricultura, esperando frenar los posibles amagos revolucionarios, apaciguar las revueltas campesinas, minimizar las deserciones de guerra y activar la economía nacional empezando por paliar el desabastecimiento de alimentos en los mercados. En términos socioagrarios, la reforma consiguió corregir algunos desajustes en la estructura agraria como el sobrepeso del latifundio rumano, sin embargo no se resolvieron, más bien al contrario, otros problemas fundamentales de los entornos rurales como el reducido tamaño de las parcelas y las elevadas deudas de las familias campesinas con el Estado relativas al pago de las nuevas tierras.*

*Palabras clave: Reforma agraria, Rumanía, campesinado, 1918, 1921*

# THE LAND IN THE ROMANIAN INTER-WAR PUZZLE: REASONS, PROCEDURES AND CONSEQUENCES OF THE ROMANIAN AGRARIAN REFORM OF 1918/1921

*ABSTRACT*

*After the 1917 Russian Revolution and during the First World War, the Romanian rulers decided to advertise and undertake then a liberal land reform to boost the countryside modernization and the agriculture tecnification, in order to try to stop the possible revolutionary attemps, to appease the peasant revolts, to minimize the war desertions and to active the national economy starting to alleviate food shortages in markets. In socio-agrarian terms, the land reform got to correct agrarian structure imbalances like the huge representation of the Romanian large farms but other main problems of the rural contexts were not resolved, quite the contrary, like the small size of the plots and the hight debts of the peasant families with the State related with the payment of the new lands.*

*Key words: Land reform, Romania, peasantry, 1918, 1921*

## ANTECEDENTES DE LA REFORMA

La primera y única reforma agraria llevada a cabo en Rumanía antes de la aplicada entre 1918 y 1921, fue la de 1864. Tal reforma no consiguió invertir los desequilibrios imperantes en el medio rural sino que, en algunos casos, los acentuó debido a una previsión insuficiente, a una gestión ineficaz y a un contexto inflacionario que dificultaron la emergencia de una clase campesina cuyas producciones ni repercutieron decididamente en el aumento de la producción y el saneamiento de la economía nacional, ni consiguieron o les permitieron lograr una mejora sustancial de sus propias vidas. Más al contrario, la reforma agraria de 1864 y el posterior contexto externo e interno arruinaron a buena parte de los pequeños propietarios, obligados a fragmentar ilegalmente sus fincas y a vender parcelas a los terratenientes, haciendo de sus propiedades explotaciones aún menos rentables.

Entre la reforma agraria de 1864 y la primera década del siglo XX, la superficie de tierra destinada al cultivo de frutales y especies de rotación anual se duplicó en detrimento de los bosques y prados, es decir, se ocuparon y trabajaron muchas más tierras con cultivos y aprovechamientos a priori más rentables, sin embargo ello no mejoró sustancialmente la calidad de vida del campesinado rumano en la medida en que estuvieron subyugados, entre otros elementos, por una estructura de la propiedad excesivamente reducida. De hecho, a principios del siglo XX, el tamaño medio de la explotación familiar rumana estaba por debajo de las 2 hectáreas, lo que distaba mucho de las 1,25 hectáreas/año que, según Tomasevich, resultaban imprescindibles para la subsistencia de una persona en la Rumanía de comienzos del siglo XX, y no de una familia (citado en Cartwright, 2001).

De forma desagregada, los datos son aún más reveladores, pues el 25% de las explotaciones agrarias, que resultaba casi tanto como decir, el 25% de las familias campesinas dedicadas a tareas agrícolas, no tenían tierra. Y más del 58% de las familias que sí la poseían, estaban por debajo del umbral de superficie/año calculado por Tomasevich (Rusu et al., 2001; Rusu, 2002). Tal estructura de la propiedad determinaba, obviamente, la capacidad de las familias rumanas de sacar rédito a su trabajo en la explotación, de modo que aproximadamente 1.240.000 pequeñas explotaciones tenían beneficios que no superaban los 95 lei anuales. Evidentemente correspondían con las tierras de las familias campesinas menos pudientes. A continuación, un grupo más pequeño de explotaciones, que no superaban las 15.200, alcanzaban rendimientos de 110 lei al año. Otro grupo aún menor, de unas 3.100 explotaciones, lo suficientemente extensas ya, alcanzaban un rendimiento económico de 7.260 lei anuales. Finalmente, al otro lado de la balanza, más de 2.200 grandes explotaciones, en manos incuestionablemente de familias terratenientes, producían rentas por encima de los 45.400 lei al año. Ello suponía que a comienzos del siglo XX una gran explotación ($\geq$ 100 ha) era 50 veces mayor que una pequeña ($\leq$ 2 ha), sin embargo, el rendimiento era un 47.689,47% mayor. Dicho de otra forma, las familias terratenientes tenían rentas, al menos, 478 veces mayores que las del promedio de las familias campesinas (Axenciuc, 1996 y 1997).

Como cabe esperar, tal disparidad no redujo la crispación social del campesinado. Algunos políticos avezados, aunque algo distantes de las preocupaciones de los campesinos, percibieron en la crisis del mundo rural un importante escollo para el desarrollo econó-

mico del país, lo que les llevó a proponer la necesidad de una nueva reforma agraria. Éste fue el caso de Ion Brătianu (1864–1927), presidente del Partido Nacional Liberal, quien conocía bien la estructura económica rumana pues había sido ya Primer Ministro durante dos años, desde el 27 de diciembre de 1908 al 28 de diciembre de 1910.

En 1913, aún bajo el reinado de Carol I y en la oposición, Brătianu planteó la necesidad de corregir la situación agraria de Rumanía a través del reparto de tierras entre los campesinos (Roberts, 1951). El Partido Nacional Liberal perseguía poner en producción de forma intensiva toda aquella tierra capaz de serlo, de tal forma que un país mayoritariamente rural tuviese un sector primario lo suficientemente dinámico como para permitir generar la riqueza necesaria para, ahora sí, afianzar el verdadero sector en el que los liberales depositaban su fe: la industria.

No obstante, aquello quedó prácticamente en una declaración de principios pues tras la subida nuevamente al gobierno, como Primer Ministro, el 4 de enero de 1914, Brătianu no consiguió convencer en el parlamento ni a los miembros del Partido Conservador, ni a los más conservadores de su partido. Habría que esperar a un hecho trascendental en la historia de Europa para que los dirigentes rumanos se concienciasen de la importancia de aliviar el hambre de tierras del campesinado, agravada por las esperanzas frustradas tras la abolición de los privilegios feudales y la reforma agraria de 1864: la Revolución Rusa de 1917. Pero antes resulta preciso destacar otro periodo funesto en la historia rumana y europea, más determinante aún para el impulso de la reforma agraria de 1921: la I Guerra Mundial.

## LA CRISIS BÉLICA Y EL TEMOR AL ESTE EN EL IMPULSO DE LA REFORMA AGRARIA

Entre el 28 de julio de 1914 y el 11 de noviembre de 1918, tiempo que duró la Gran Guerra, Rumanía sufrió graves perjuicios económicos, estructurales y humanos. Estos últimos ascendieron a más de 755.000 damnificados, lo que supuso la pérdida de 1/5 parte de la población activa del país. Las reservas nacionales de trigo se agotaron antes de terminar la guerra. La producción agrícola rumana, que oscilaba a principios de siglo en torno a los 4,6 millones de toneladas se desplomó durante el conflicto bélico hasta las 109.000 toneladas, en parte también porque más del 30% de la maquinaria agrícola se destruyó además del incontable número de animales de tiro (Berend, 1985).

La producción industrial descendió más de un 50%. El leu, la moneda rumana, se devaluó 40 veces por debajo de su valor en 1916, lo que agravó más aún la precaria situación económica, con poco que exportar y mucho que importar. Rumanía no notaría un cierto desarrollo económico hasta 1922, año en el que los precios del trigo en el mercado internacional subieron y su producción agroindustrial en ascenso consiguió aprovechar el diferencial de su moneda aún devaluada.

No terminada la guerra todavía, con una acusada crisis económica, los dirigentes rumanos asistieron con nerviosismo a la Revolución Rusa de febrero de 1917, que acabaría con el régimen zarista un mes más tarde. Una revolución de tal envergadura en uno de los países vecinos más influyentes de Rumanía condicionó el curso de su historia. Inmedia-

tamente, el rey Fernando I hizo un comunicado público prometiendo una reforma agraria basada principalmente en la expropiación a los grandes terratenientes y su reparto entre los jornaleros y pequeños campesinos. De hecho, para demostrar su voluntad reformista prometió ceder al Estado todas las fincas de la Casa Real para que, igualmente, fuesen distribuidas entre aquellos que las necesitasen.

En plena I Guerra Mundial, el rey y un importante sector liberal y agrarista del gobierno plantearon una reconversión del medio rural que cumpliese, al menos, tres objetivos fundamentales. En primer lugar, atenuar las tensiones sociales presentes en el mundo rural, lo que a su vez frenaría la influencia bolchevique e impediría una revolución roja en Rumanía. En segundo lugar, mejorar la situación económica impulsando cambios liberales en el sector agrícola, de modo que la producción agraria, especialmente de grano, permitiese por un lado aumentar las exportaciones y por otro aliviar las penurias de un campesinado empobrecido y hambriento tras 4 años de guerra y un anquilosado sistema que de lo feudal había pasado a lo burgués sin producir mejoras substanciales en sus vidas (Díaz-Diego 2013a y 2013b). Y en tercer lugar, insuflar ánimo a un ejército masacrado en el campo de batalla, con una promesa de tierras que debía evitar las deserciones al tiempo que animar a los campesinos a alistarse y combatir.

El imperio ruso se desmoronaba a manos de una revolución apoyada por amplios sectores populares, al comienzo dominada por los moderados mencheviques pero rápidamente radicalizada por el movimiento bolchevique. Habían derrocado al zar y a su gobierno, y se proponían, como finalmente consiguieron, transformar la estructura del Estado aboliendo, entre otros derechos, el de la propiedad privada.

Unas medidas de tal calado, formuladas con anterioridad y planteadas, entre otros momentos, durante la Revolución Rusa de 1905, que daría lugar al conocido "Domingo sangriento" de San Petersburgo, pululaban por toda Europa, especialmente entre los sectores más próximos al campesinado y a la clase obrera. Tales ideas eran conocidas sobradamente en Rumanía gracias, en buena parte, al proselitismo que, durante la segunda década del siglo XX, realizaron algunos futuros dirigentes de la Rusia soviética en la capital rumana, como Christian Rakovski y Lev Davídovich Bronstein 'León Troski'. Sin embargo, hasta la fecha, las revueltas campesinas, como las de 1908, habían sido sofocadas con éxito por medio de la fuerza, ahorrándose el gobierno cualquier medida tendente a una verdadera reconversión del medio rural, hecho que permitía a la clase dominante prolongar en el tiempo sus privilegios y con ellos su *modus vivendi*.

Durante los primeros meses de 1917, antes aún de la decisiva entrada de Estados Unidos en la contienda mundial, Rumanía estaba prácticamente bajo el control de las potencias centroeuropeas y los dirigentes rumanos no alcanzaban a saber con seguridad cuál sería el devenir de la guerra, no obstante, sí sabían que la pérdida de la guerra no supondría una inversión de la estructura socioeconómica. Quizás otro gobierno, otra política económica, otros mercados… pero las bases fundamentales del sistema capitalista-burgués continuarían siendo las mismas. Los contendientes tenían intereses enfrentados pero no ideologías opuestas. La Revolución Rusa, por el contrario, amenazaba justamente eso, las ideas, el sistema, la estructura, el orden y el modo de comprender las relaciones de poder dentro del Estado, desde lo social a lo económico pasando cómo no por lo político.

La clase proletaria rusa, inteligentemente dirigida, había conseguido horadar los pilares de todo un imperio, lo que trasladado al caso rumano podía suponer que los campesinos, probadamente contestatarios, ciudadanos de segunda que vivían bajo una suerte de *neoiobăgia* (neoservidumbre), tal y como la calificaría uno de los más destacados pensadores social-demócratas de la Rumanía de principios del siglo XX, Constantín Dobrogeanu-Gherea (1910), ésos, junto a los políticos más radicales, podrían poner en grave riesgo el régimen de exenciones, dispensas, prerrogativas y demás privilegios semi-feudales que, basados en la propiedad privada, constituían la base de las desiguales relaciones entre la oligarquía rural y el campesinado.

Ante esta situación, parece obvio que la actitud de la clase política rumana cambiase diametralmente. De ahí que el llamamiento del rey prometiendo tierras fuese sin duda un acontecimiento crucial y cargado de una importancia trascendental pero no fuera el único. Hasta el propio general Alexandru Averescu, que había sido nombrado Primer Ministro tras la salida del gobierno de Brătianu, el 11 de diciembre de 1916, estaba de acuerdo con la idea de establecer un régimen de expropiaciones de la clase terrateniente para repartir lotes de tierra entre el campesinado, y eso que fue precisamente uno de los más altos cargos militares responsables de aplastar las revueltas campesinas de 1907. Sin duda, vieron peligrar seriamente sus intereses.

## LA DIVERSIDAD NORMATIVA ANTE LA GRAN RUMANÍA

Desde el pronunciamiento del rey, el 23 de marzo de 1917, el parlamento rumano se puso manos a la obra. Una de las primeras leyes que hubo que modificar para implementar la reforma agraria fue la misma Constitución, vigente desde 1866 y no remplazada luego hasta 1923. Los parlamentarios modificaron el artículo 19 de la carta magna en el que se recogía que las propiedades del Estado, de cualquier naturaleza, eran sagradas e inviolables, y no se podían expropiar en su totalidad salvo en contadísimos casos de utilidad pública, constatados y sujetos a resarcimiento. Las expropiaciones estaban sujetas así a la promoción de infraestructuras públicas del tipo vías de comunicación o estructuras de saneamiento y poco más[1].

Tras la modificación del artículo, finalizada victoriosamente la guerra pero con una crisis económica que demoraría en dar señales de mejora más de cuatro años, y al alcance de las transformaciones radicales bolcheviques, el gobierno, nuevamente en manos de Brătianu, aprobó por decreto el 15 de diciembre de 1918 el régimen de expropiaciones

1 "La propiedad de cualquier naturaleza al igual que todos los créditos del Estado son sagrados e inviolables. Ninguno puede ser expropiado salvo por la causa de utilidad pública legalmente comprobada y después de una justa y previa compensación. Por causa de utilidad pública se entiende solamente la comunicación y el saneamiento públicos así como los trabajos para proteger la tierra. Las leyes que existen acerca de la alineación y la ampliación de las calles en las comunas así como las leyes acerca de las orillas de las aguas que corren al lado de las comunas siguen en vigor. El procedimiento y la forma de expropiación serán reguladas por leyes especiales. El libre e ilimitado empleo de los ríos navegables y flotables, de las carreteras y de otros medios de comunicación pertenece al dominio público". Artículo 19 de la Constitución rumana de 1866. Traducción propia.

del *Veche Regat* o Antiguo Reino[2] (Decreto-Ley 3697 de 1918). Las expropiaciones comenzaron en ese mismo año de 1918, y aunque oficialmente duraron hasta 1926, colearon reclamaciones, juicios y sentencias apelables durante toda la década de los años 30.

No obstante, la Rumanía posbélica comprendía ya territorios mucho más extensos que el Antiguo Reino. Una de las consecuencias inmediatas de entrar a formar parte en el último momento del bando que terminaría ganando la guerra, fue el reconocimiento de Rumanía como país co-beligerante en la firma de la Paz de París (1919–1920), lo que le valió anexionar Transilvania, Maramureş, Crişana, el Banat, Besarabia y el sur de Bucovina, hecho que transformó el mediano país carpato-balcánico en la *România Mare* o Gran Rumanía, un país con 18 millones de habitantes, de los cuales prácticamente el 79% vivían en áreas rurales, y 294.030 km$^2$, es decir, el doble de sus proporciones iniciales (Censo rumano de 1930).

Por fuerza, la reforma agraria inicialmente prevista debía ajustarse a la nueva realidad pues no sólo había aumentado la población y el territorio sino también la complejidad jurídica y la diversidad étnica. Se incorporaban al proyecto rumano gentes y lugares con una historia social y agraria distintas, que durante siglos habían permanecido bajo otros Estados, con estructuras de poder distintos, relaciones sociales distintas, distintas culturas, distintos intereses… desiguales realidades, en suma.

Inevitablemente, este hecho obligó al parlamento rumano a adoptar nuevas medidas para la puesta en marcha de la reforma agraria en los nuevos territorios. Además, dado el cambio que ello suponía y el apremio, tipo de procedimiento y norma por la que se había impulsado la reforma en el Antiguo Reino, recordemos que fue por decreto, los políticos rumanos decidieron además elaborar para las regiones históricas una nueva ley que, de forma más minuciosa, reportase mayor seguridad jurídica y ayudase a alcanzar los objetivos marcados en la norma anterior.

Así, el parlamento aprobó el 11 de marzo de 1920 el Decreto para la Reforma Agraria de Besarabia, publicado en el *Monitorul Oficial* (Boletín Oficial del Estado, en adelante MO) núm. 258, dos días más tarde, el 13 de marzo de 1920. Al año siguiente, el 14 de julio de 1921 se aprobó la Ley 3093 para la Reforma Agraria de Oltenia, Muntenia, Moldavia y Dobrogea (Antiguo Reino), publicada en el MO núm. 82 del 17 de julio de ese mismo año. Cinco días después, el 23 de julio de 1921 se aprobaba la Ley 3608 para la Reforma Agraria de Bucovina, publicada en el MO núm. 93 de 30 de julio. Y finalmente, se aprobaba ese mismo día y se publicaba en ese mismo MO la Ley 3610 para la Reforma Agraria de Transilvania, Banat, Crişana y Maramureş.

Del tal forma, el parlamento daba cuenta de la diversidad de realidades que se daban cita en cada territorio, intentando dar soluciones específicas a cada una de ellas. No obstante, y aunque se promulgaron distintas leyes y decretos para cada región, no pueden considerarse medidas particularistas sino que hay que identificarlas y comprenderlas en

2 Nombre con el que los rumanos designaban al territorio que abarcaba los límites de los principados unidos de Valaquia y Moldavia, ahora ya con la distinción de reino, más alguna adquisición tras la Segunda Guerra de los Balcanes (1913), como la del Cuadrilátero dobrogeano. Este territorio se componía de las regiones de Oltenia, Muntenia, Moldavia y Dobrogea.

las coordenadas del mismo proyecto de reforma agraria dado que su carácter, su filosofía, su propósito, sus objetivos y sus procedimientos eran los mismos.

## LA LEY DE REFORMA AGRARIA EN EL ANTIGUO REINO

La norma que afectó a un mayor número de propiedades, campesinos y terratenientes, la Ley para la Reforma Agraria del Antiguo Reino, contó con dos partes diferenciadas, la primera sobre la expropiación de las tierras y la segunda sobre la apropiación de las mismas. La ley se estructuró en 21 capítulos y 160 artículos. Estableció que las expropiaciones debían llevarse a cabo por "interés nacional" con el objetivo de aumentar las propiedades del campesinado, los pastos comunales así como para responder al interés general, económico y cultural del país[3].

Como criterio general, las expropiaciones se realizarían sobre aquellas fincas que superasen las 100 hectáreas, pudiendo ser expropiaciones o totales o parciales. El artículo 7, que regía el sistema de expropiaciones totales, establecía que las autoridades embargarían íntegramente las propiedades rurales de todos los ciudadanos extranjeros ya lo fuesen por nacimiento o porque hubiesen perdido la nacionalidad rumana por medio del matrimonio, de una condena judicial, etc. Se expropiarían igualmente en su totalidad todas aquellas explotaciones propiedad de los *absenteiştilor* o ausentes, esto es, de aquellos de quienes se demostrase que llevaran al menos 5 años ininterrumpidos sin trabajar sus fincas, lo que suponía un extendido e improductivo sistema de manos muertas.

Se expropiarían, con algunas excepciones, aquellas propiedades rústicas que llevasen arrendadas de forma continua 10 años (9 años en el caso de Bucovina), desde el 23 de abril de 1910 al 24 de abril de 1920. Se enajenarían también, y de ahí el necesario cambio de la Constitución, las explotaciones arables de la Corona, las propiedades de las *Casei Rurale* u oficinas de la Casa Rural[4] así como las propiedades de toda institución o funda-

3 En una propuesta de clasificación de los de países en función de la pervivencia actual de la cuestión agraria, Víctor Martín (2007), siguiendo a Jean Le Coz (1976), habla, entre otros modelos, del que constituyen aquellos países que durante las primeras décadas del siglo XX realizaron sus reformas agrarias a través de la "vía prusiana" de transición hacia el capitalismo, como Alemania o Italia. Es el caso igualmente de Rumanía (si bien con algunas diferencias, como se expondrá más adelante) y de algunos de sus vecinos, cuyas reformas agrarias no estuvieron detonadas por revoluciones internas (como había ocurrido siglos antes en Francia o antes aún en Inglaterra) sino por el interés de sus clases dominantes –burguesas– de reconvertir el sector agrario en una empresa integrada en una estructura económica nacional, dirigida desde políticas económicas liberales y alineada con los intereses industriales, que a la postre eran los intereses particulares de dichas clases dominantes. Evidentemente, el impacto contemporáneo de tales reformas agrarias ha sido bien distinto debido, entre otras causas, al bloque geopolítico en que se integraron estos países culminada la II Guerra Mundial. Alemania e Italia (con excepción del sur) resolvieron la cuestión agraria aplicando medidas socioliberales mientras que Rumanía y vecinos como Polonia, la ex Yugoslavia o la antigua Checoslovaquia, entre otros, invirtieron el modelo liberal por uno colectivista hasta 1989/1991 y posteriormente neoliberal, sufriendo en las últimas décadas un considerable aumento de las desigualdades socioeconómicas en el campo (Giosan, 1964; Sandu, 1975 y 2000; Stanescu, 1975; Dumitru, 1983; Ianos, 1992; Tanasescu, 1992; Kideckel, 1993; Meurs, 1999; Iancu, Tarau y Trasca, 2000; Ovidiu, 2000; Cartwright, 2001; Roske et al., 2004; Dropu, 2007; Roske, Abraham y Catanus, 2007; Ioardachi y Dobrincu, 2009; Díaz-Diego, 2013a).

4 Institución pública que gestionaba las propiedades rústicas del Estado.

ción pública o privada aun cuando sus objetivos de fundación estuviesen cumpliendo un servicio público.

Finalmente, se expropiarían en su totalidad aquellas fincas que hubiesen continuado reproduciendo antiguas fórmulas de privilegios nobiliarios y monásticos anteriores a la reforma de 1864, especialmente en lo tocante al arrendamiento y al cobro de diezmo, como el *bezmăn* o el *embatic*.

En cuanto a las expropiaciones parciales, el artículo 8 de la ley permitió enajenar la parte que excediese de 100 hectáreas de toda finca que estuviese siendo trabajada por su dueño o por un arrendatario a 23 de abril de 1920. Con mayor detalle, la ley previó la expropiación de las explotaciones privadas fijando el umbral en 100 hectáreas en zonas de colina y montaña, 150 hectáreas en zonas de llanura donde hubiese mucha demanda de tierra, 200 hectáreas en zonas de llanura donde la demanda de tierra no fuese muy alta y 250 hectáreas en zonas de llanura donde la demanda estuviese satisfecha.

Dado que la reforma tenía entre unos de sus principales objetivos el de mejorar la economía aumentando la producción agraria, la ley benefició e impulsó todo acto de inversión y modernización de las fincas, de tal modo que el apartado 'c' del artículo 8 permitió un mejor trato a aquellos propietarios que, trabajando ellos mismos sus fincas, demostrasen a través del inventario de sus infraestructuras, una inversión continuada en la mejora de sus explotaciones.

De tal suerte, la ley aumentaba el umbral mínimo necesario para expropiar parcialmente una propiedad rústica, lo que permitía a los terratenientes conservar más tierra. En concreto, el anteriormente nombrado apartado 'c' recogía que la enajenación de estas fincas con inversión se harían a partir de 100 hectáreas en zonas de colina y montaña, 200 hectáreas en zonas de llanura con alta demanda de tierras, 300 hectáreas en zonas de llanura con una demanda de tierras no muy elevada, 500 hectáreas en zonas de llanura donde la demanda de tierras estuviese satisfecha.

En cualquier caso y según el artículo 10, ningún terrateniente podría continuar poseyendo fincas de más de 500 hectáreas, a razón de explotaciones no superiores a 200 hectáreas en zonas de montaña, 250 hectáreas en zonas de llanura con alta demanda de tierras, 400 hectáreas en zonas de llanura con una demanda de tierras no muy elevada, 500 hectáreas en zonas de llanura con la demanda de tierras satisfecha.

En la misma línea, la ley fomentaba la tecnificación de la agricultura, tal y como lo hacían los programas de fomento agrario implantados o en vías de aplicación en Checoslovaquia, Yugoslavia, Polonia, Finlandia, Grecia, Bulgaria, Reino Unido, Francia, Bélgica, Holanda, Dinamarca, Suecia, Noruega o Suiza, entre otros (Ovidiu, 2000).

Así, con el propósito de optimizar los recursos incorporando personal cualificado, el artículo 12 de la ley permitía que los umbrales de expropiación respetasen 50 hectáreas más por cada hijo titulado en agronomía o estudiándola que tuviese el propietario, con la condición de que, si aún era estudiante, la terminase en 5 años a partir de la promulgación de la norma. En caso contrario, esas hectáreas serían enajenadas. Obviamente, se trataba de una medida que beneficiaba sólo a los grandes terratenientes, capaces de sufragar tales estudios y de prescindir durante años de la colaboración o la fuerza de trabajo de uno o varios hijos, para que se formasen en escuelas técnicas o en la universidad.

Se consideró objeto de expropiación toda tierra cultivable ya hubiesen sido aradas previamente o bien destinadas a pastos, viñedos, campos de frutales, prados para el pastoreo e incluso zonas inundables. De hecho, la ley promovió la desecación de las zonas pantanosas, estableciendo que todos aquellos terrenos improductivos por causa de inundación serían expropiados en su totalidad siempre y cuando su propietario no se responsabilizase de desecarlo en un periodo de 10 años.

En cuanto al usufructo de la campaña agrícola de 1921, todo propietario que, en el momento de la resolución de expropiación tuviese cultivada su finca, tenía derecho a recoger sus frutos, aunque la tierra ya no le perteneciese. No ocurrió lo mismo durante las primeras expropiaciones de 1918, en las que una laguna legal permitió que los campesinos no sólo obtuviesen las tierras expropiadas sino que, en muchos casos, se quedasen la cosecha, dado que el Decreto-Ley 3697 no lo aclaraba. La Ley de 1921 obligó de forma retroactiva a que aquellos terratenientes que se hubiesen quedado sin los beneficios de sus cultivos fuesen ahora recompensados por ello.

De cualquier forma, la lentitud de las tareas técnicas de medición y parcelado beneficiaron en este sentido a los antiguos propietarios, pues en regiones como Bucovina o Besarabia, ningún propietario tenía la obligación de dejar de trabajar sus fincas hasta la intervención de las autoridades para el reparto efectivo de la tierra. En el Antiguo Reino, no existió esta prebenda gratuita si bien se permitió a los antiguos propietarios arrendar al Estado sus tierras ya parceladas hasta el momento en el que fuesen finalmente repartidas.

Las expropiaciones disolvieron además todos los contratos de arrendamiento, de forma que no pudiesen continuar proyectándose en el tiempo formas pretéritas que contraviniesen el espíritu de la reforma. En este sentido, el propietario estaba obligado a resarcir al arrendatario si el contrato disuelto estaba sujeto a una finca de la que no se había expropiado más del 25%. Sólo en el caso de que efectivamente, más de ¼ de la explotación le hubiese sido detraída a su dueño, entonces se veía libre de indemnizar al arrendatario por daños y perjuicios. Esta medida contaba, como otras muchas, con excepciones, pero sin embargo la más llamativa de ellas estaba estrechamente vinculada con ese afán de tecnificación de la agricultura referido con anterioridad. Y es que el contrato de arrendamiento no podía ser disuelto y por tanto era de obligado cumplimiento hasta la fecha de su finalización, en caso de que el arrendatario fuese agrónomo titulado.

Los nuevos contratos de arrendamiento no podían tener una duración inicial inferior a 7 años, de modo que el campesino pudiera desarrollar un proyecto económico y de vida en la finca. Se pretendía así fijar a la población, especialmente en aquellas zonas menos pobladas, frenar la escalada de precios de la tierra tras la reforma y evitar una posible reproducción del sistema de manos muertas, asegurando al menos 7 años de producción agrícola tras la aplicación de la ley.

En cuanto a la indemnización a los propietarios, ésta debía ser pagada bien en efectivo, bien con bonos públicos llamados *titluri de rentă* (títulos de renta), amortizables durante un periodo máximo de 50 años a un interés anual del 5%. Tanto el montante de esa indemnización como el que debían hacer frente los nuevos compradores debía ser fijado en primer lugar por una comisión provincial -del *județ*- y en segunda instancia, de haber desacuerdo, por un tribunal de apelación. Una vez valoradas las tierras de todos los

distritos, las tablas de precios se pasaban al Comité Agrario, de ámbito nacional, para que armonizara y unificara los precios estimados por el trabajo de las anteriores comisiones.

Finalmente, cada finca alcanzaba un valor distinto pues se calculaba en virtud de la calidad de la tierra, del desnivel, del aprovechamiento, del rendimiento que hubiese tenido y cómo no, del precio de la hectárea en el mercado. Así, por ejemplo, para el cálculo del precio de las tierras cultivables, fueran aradas o en barbecho para pastos, se tuvo en cuenta la calidad del suelo, las características físicas del terreno, especialmente aquellas que facilitasen o mejorasen la producción, el valor del suelo rústico en el pueblo, así como otros criterios que condicionarían el éxito de la nueva explotación, como la proximidad de estaciones de tren, puertos de mar o de río e incluso la existencia de ferias y la buena venta de sus productos en ediciones anteriores.

Con tales indicadores, cada comisión provincial calculaba el precio por hectárea según los ingresos netos que considerasen que iban a conseguir producir, lo que no podía exceder el precio máximo que las comisiones regionales habían establecido como techo para el arrendamiento de fincas en esa misma zona desde 1917 hasta la fecha, multiplicado por 40, con excepción de los suelos que habían sido usados tradicionalmente para pastos, a priori menos productivos, que poseerían el mismo sistema de cálculo para la fijación de su precio y el mismo techo determinado por el precio de los arrendamientos, pero esta vez multiplicado como máximo por 20.

El Estado haría frente al pago de las expropiaciones con lo percibido de los nuevos propietarios. En cualquier caso, el Estado se hacía responsable de la diferencia si tales pagos no alcanzaban el valor real de la finca expropiada. Para ello, el gobierno aprobó un impuesto especial sobre las rentas más altas a razón de un 1% para las rentas iguales o superiores a 200.000 lei, con recargos del 0,5% por cada tramo de 300.000 hasta un máximo del 5%.

Los órganos encargados de aplicar tales medidas fueron el Comité Agrario (*Comitetul Agrar*), las Comisiones Provinciales de Expropiación (*Comisiunea Judeţeană de Expropriere*) y las Comisiones Locales para la Expropiación (*Comisiunea de Ocol pentru Expropriere*). Por su parte, el Comité Agrario era el órgano asesor del Ministerio de Agricultura en todo lo tocante a la reforma agraria, lo que suponía, entre otras responsabilidades, gestionar las solicitudes de apelación a nivel nacional, las sentencias firmes de expropiación y apropiación, aconsejar sobre las contradicciones de la ley si las hubiera, etc. Estaba formado por 18 miembros, de los cuales la mitad abogados y la otra mitad agrónomos y economistas. El presidente era designado por el Ministerio de Agricultura y el Consejo de Ministros. Finalmente, contó con tres secciones, compuestas al menos por tres miembros: Sección para el Antiguo Reino, Sección para Transilvania y Sección para Bucovina.

A continuación, cada *judeţ* o distrito contaba con una Comisión Provincial de Expropiación compuesta por cuatro miembros: un presidente, miembro del Tribunal de Apelación y nombrado por el Ministerio de Justicia; un delegado provincial de la Oficina Central de Apropiación (*Casa Central a Împroprietăririi*); y un delegado de los ciudadanos. Además, cada comisión provincial debía contar con un secretario encargado de las citaciones y de las actas. Como se ha dicho con anterioridad, estas comisiones eran las principales responsables del cálculo del precio de la tierra.

Finalmente, cada partido judicial (*circumscripţie de judecătorie de ocol*) contaba con una Comisión Local para la Expropiación, compuesta por cuatro miembros: el juez comarcal como presidente, un delegado de la Oficina Central de Apropiación, un delegado de los propietarios y un delegado de la población local. Igual que la comisión provincial, la local también debía contar con un secretario.

Dado que estas últimas eran las comisiones más próximas a la realidad cotidiana de cada pueblo y por tanto mejor conocedoras de su contexto, las comisiones locales fueron las encargadas de pronunciarse en primera instancia sobre la situación jurídica de los propietarios y sus explotaciones, prestando especial atención al valor de las fincas según lo dispuesto por la ley y el Decreto 3697/948 sobre el precio de la tierra y los arrendamientos, y en cualquier caso, atendiendo a la calidad de las tierras, su productividad y la presencia de bosques, viñedos, plantaciones de otro tipo, edificios, recursos industriales, estanques, lagunas, zonas inundables, etc.

Las comisiones locales debían informar sobre la parte que correspondía expropiar de cada finca y sobre las posibilidades de intercambio de tierras cuando no correspondía una expropiación pero sin embargo parte de la propiedad resultaba de una significativa utilidad púbica. Para ello, las comisiones tenían la facultad de constituir subcomisiones de expertos, además de escuchar a las partes interesadas y recabar cuanta información fuese necesaria para el cumplimiento de sus responsabilidades. Tales tareas comenzaron 70 días después de la publicación de la ley en el Monitor Oficial.

Las tierras expropiadas debían quedar libres de toda hipoteca o carga fiscal sujeta al dueño anterior de modo que, por norma general, si el pago por la expropiación no cubría el importe, el Estado se hacía responsable de afrontar el resto de la deuda.

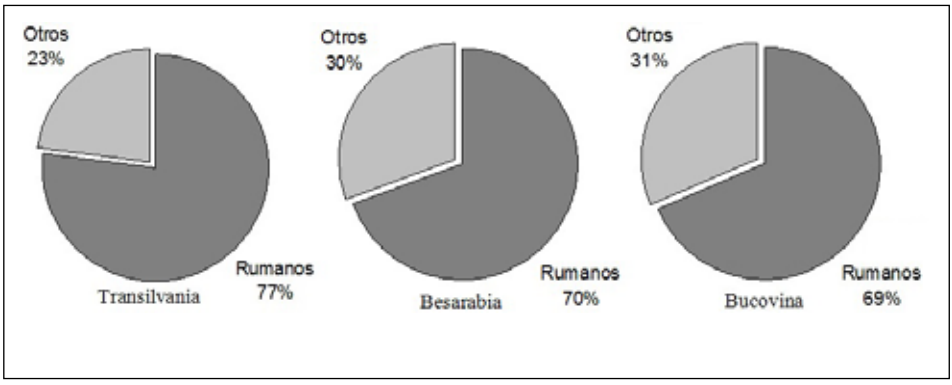
## EL CARÁCTER ETNONACIONALISTA DE LA NORMA

En relación con los criterios establecidos para el reparto de las tierras, es necesario decir que la ley fue étnicamente discriminatoria. La reforma agraria, como se ha sostenido con anterioridad, tenía claros objetivos relacionados con la pacificación del mundo rural y la activación de la economía, no obstante, cumplía también otras finalidades de carácter nacionalista que no deben quedar fuera del análisis. La Gran Rumanía había anexionado territorios que llevaban cientos de años bajo soberanía extranjera y tanto la distribución étnica como de poder de los distintos grupos nacionales eran bastante dispares.

Por ejemplo, en Transilvania, más de 82.600 familias de las que recibieron tierras, pertenecían a minorías étnicas, es decir, aproximadamente el 30% de todas ellas. Las minorías étnicas suponían en Transilvania el 42,4% de toda la población pero su historia agraria había seguido caminos singularmente distintos a los del resto de regiones. Transilvania había permanecido más tiempo bajo dominación de las minorías, anexionada al Reino de Hungría, después Sacro Imperio Romano Germánico y más tarde Imperio Austro-Húngaro, con periodos de influencia otomana. La estructura étnica de su población era más igualitaria, a favor de las minorías y éstas, además, habían conseguido acumular la mayor parte de las tierras, convirtiendo a la población rumana en campesinos al servicio de señores feudales de origen magiar o germánico.

Obviamente, la reforma agraria suponía en este contexto una importantísima herramienta ideológica para el gobierno rumano en la medida en que bien aplicada, contribuiría a la corrección de tales desequilibrios o al menos, y simbólicamente no era poco, al resarcimiento moral de un campesinado sin voz ni voto en su propia tierra, históricamente excluido de sus principales instituciones de poder, como la *Dieta Transilvanie* o cámara de representantes. De ahí que el artículo 77 de la ley recogiese literalmente que la tierra expropiada por el Estado se parcelase para ser vendida en lotes a los habitantes "rumanos" que cultivasen la tierra, en las condiciones y modos recogidos por la norma. Evidentemente, en un texto jurídico posbélico aprobado en la Rumanía de 1921, al decir "rumanos" se refería a los ciudadanos con nacionalidad rumana, no obstante, no se puede dejar escapar el carácter étnico del párrafo pues la desintegración de los tres grandes imperios vecinos: el Imperio Austro-Húngaro, el Imperio Otomano y el Imperio Ruso, junto a la ampliación de Rumanía, había hecho que muchos grupos nacionales distintos quedasen ahora bajo soberanía rumana. Las minorías que quedaron dentro de las ampliadas fronteras rumanas no estaban conformadas por habitantes de otras tierras pero ni les beneficiaba la norma, pues habían sido en muchos casos ostentadores del poder y la riqueza, ni eran afines a la nación impuesta, por lo cual muchos fueron excluidos, especialmente allá donde más poder habían conseguido, es decir, en Transilvania (gráfico 1). El Gobierno se defendió de las críticas al carácter excluyente de la reforma arguyendo que si bien se estaban produciendo algunas de estas circunstancias no eran sino reflejo del sobreesfuerzo necesario para superar el injusto reparto de riquezas que habían heredado de las regiones anexionadas (Cartwright, 2001).

*Gráfico 1. Perfil etnonacional de los campesinos tomadores de tierra, 1930*




Fuente: Ionescu-Sisesti, 1920; Hunya, 1987; Axenciuc, 1996 y 1997. Elaboración propia.

A continuación, el artículo 78 de la ley desgranó con mayor detalle los grupos de ciudadanos que efectivamente tenían derecho a solicitar tierras, antes incluso que los campesinos de los que, exclusivamente, se había tratado en el artículo precedente. Así, pasaban

a tener derechos de propiedad, en el siguiente orden de prelación, los soldados que habían combatido en la I Guerra Mundial, los soldados que habían combatido en la Guerra de los Balcanes, las viudas de guerra, los jornaleros, los pequeños campesinos y los huérfanos de guerra. Además, en caso de producirse algún tipo de encuentro de intereses por paridad de condiciones, el artículo 79 establecía otra serie de criterios, como la edad, las cargas familiares o la invalidez, para jerarquizar las personas dentro de sus respectivos perfiles. En cualquier caso y si persistía el empate, la ley establecía el sorteo como fórmula de resolución de conflictos.

*Cuadro 1. Grupos prioritarios para la adquisición de tierras, 1921*

| *Art. 78. Pământul expropriat se vinde celor îndreptăţiţi în următoarea ordine de precădere:* | Art. 78. Las tierras expropiadas se venderán conforme al siguiente orden de prioridad: |
|---|---|
| *1. Mobilizaţilor în războiul 1916–1919* | 1. Movilizados durante la guerra entre 1916–1919 |
| *2. Mobilizaţilor în campania din 1913* | 2. Movilizados durante la campaña de 1913 |
| *3. Văduvelor de război pentru copii* | 3. Viudas de guerra con hijos |
| *4. Agricultorilor mici lipsiţi de pământ* | 4. Pequeños agricultores desprovistos de tierras |
| *5. Agricultorilor cu proprietăţi mai mici de 5 ha.* | 5. Agricultores con propiedades menores de 5 ha. |
| *6. Orfanilor de război* | 6. Huérfanos de guerra |
| *Art.79. La condiţiunile egale de îndreptăţire se vor prefera în aceeaşi categorie:* | Art.79. Las condiciones de igualdad de derechos se verán priorizadas atendiendo a las siguientes categorías: |
| *a) Invalizii* | a) Los inválidos |
| *b) Cei care în trecut au muncit pe moşie* | b) Los que hubiesen trabajado anteriormente en la finca |
| *c) Cei care au inventar şi gospodărie întemeiată* | c) Los que conformen o mantengan una unidad familiar |
| *d) Cei mai în vârstă* | d) Los de mayor edad |
| Fuente: Ley de 17 de julio de 1921 para la reforma agraria de Oltenia, Muntenia, Moldavia y Dobrogea (Antiguo Reino), MO núm. 82, de 17 de julio de 1921. Traducción propia. | |

Además de los anteriores perfiles de nuevos propietarios, el carácter solidario de la norma abarcó un mayor conjunto de personas con derecho a tierras y que, sin embargo, no suelen recogerse en los estudios y análisis elaborados sobre este período de la historia de Rumanía, sin duda por el escaso número e impacto de tales repartos, lo que no detrae importancia social a que también fuesen incorporados a la norma como sujetos con derecho. Se trata por un lado de los sacerdotes, maestros y funcionarios residentes en el medio rural, además de los titulados por una Escuela Técnica de Agronomía, en cualquier nivel, siempre y cuando se comprometiesen a trabajar la tierra que se les cediera. A este grupo se les sumaban además todos aquellos artesanos, herreros, sastres, músicos e incluso taberneros y pequeños comerciantes que hubiesen poseído tierras y por cualquier razón las hubiesen perdido y ahora careciesen de ellas.

Ello provoca una obligada reflexión. Administración, iglesia y escuela eran las tres instituciones sociales fundamentales del medio rural rumano y dado que se excluía de la medida a todos los carentes de nacionalidad rumana, se fortalecían los recursos humanos del Estado beneficiando a los funcionarios rumanos y no a los que mantuviesen su antigua nacionalidad aunque fuesen tan autóctonos como el resto. Con respecto a los maestros, mejorando sus condiciones de vida favorecían enormemente el proceso de etnogénesis rumana pues estos mismos trabajadores serían los encargados de transmitir en la escuela los valores e ideales de la nueva nación. No debe, sin embargo, minusvalorarse, que el apoyo a la institución educativa también suponía luchar contra el analfabetismo, lo que contribuiría a medio/largo plazo a una mejor preparación del campesinado y a un más seguro desarrollo de la calidad de vida en el medio rural.

Finalmente, apoyar al clero ortodoxo rumano resultaba fundamental, pues la religión había pasado a ser un referente identitario de primer nivel en la confrontación y la lucha social, especialmente, de los rumanos transilvanos. La Iglesia Ortodoxa había sido y continuaría siendo un elemento central de la reafirmación del "nosotros" como pueblo y empoderarla suponía fortalecer los marcadores de la identidad rumana en detrimento de los propios de las minorías, de confesiones distintas. De hecho, mientras que la Iglesia Ortodoxa recibía tierras para la construcción de templos (máximo de 1 hectárea por templo, art. 28), el 85% de las tierras propiedad de otras confesiones fueron expropiadas (Rusu et al., 2001; Rusu, 2002).

En cuanto al reparto de tierras entre los egresados de las escuelas técnicas, la medida respondía al ya comentado objetivo de tecnificar la agricultura incorporando trabajadores cualificados que fuesen capaces de modernizar las fincas de su propiedad, al contrario de lo que había ocurrido con las fincas en manos muertas o la tendencia de los grandes propietarios aburguesados a vivir de las rentas minimizando los riegos económicos a base de marginar cualquier tipo de inversión.

Por último, otorgar derechos de propiedad a los artesanos y pequeños comerciantes tuvo como objetivo principal fijar al territorio a estos profesionales imprescindibles para el desarrollo rural, evitando así su emigración hacia las ciudades, incomparablemente más dinámicas desde el punto de vista comercial. Este último grupo recibió, eso sí, un reconocimiento de la Administración más que un apoyo a su modo de vida, dado que el mismo artículo que los incorporaba a la ley, el art. 84, sentenciaba al final: "*nu vor fi*

*împroprietăriţi decât după ce au fost satisfăcuţi toţi ceilalţi îndreptăţiţi dela art. 78*", es decir, *"no serán propietarios hasta después de ser satisfechos todos aquellos con derechos* [recogidos] *en el artículo 78"* (soldados, viudas, huérfanos, jornaleros y pequeños campesinos principalmente).

La guerra había marcado la conciencia colectiva y, por supuesto, la situación económica del país. Hay que tener en cuenta que Rumanía había llegado a estar prácticamente en su totalidad ocupada por las potencias centro-europeas, las instituciones de gobierno tuvieron que disolverse en Bucarest y constituirse en Moldavia, los muertos, tan sólo del ejército, superaban los 335.000, y de no ser por la Revolución Rusa, las posibilidades de haber anexionado Besarabia hubieran sido escasísimas, sin tener en cuenta lo que podría haber supuesto el avance del ejército ruso sobre una Rumanía aliada pero incapaz de defender su autonomía. En cualquiera de los dos casos, la gran unificación hubiera tenido más de quimera que de consumación.

Tal situación, podríamos calificar, de "estrés nacional", se vio reflejada en el nuevo marco jurídico y por supuesto, en la reforma agraria. No por casualidad, en el reparto de tierras no se priorizaron a los campesinos sino a los soldados movilizados por la contienda. Pero aún más, con la ley se premió también a todos los oficiales del ejército que hubiesen sufrido algún tipo de percance que les hubiese terminado acarreando una minusvalía física. Para ellos, la norma reservaba lotes de 5 hectáreas en las regiones históricas y de hasta 25 hectáreas en los lugares de colonización, como el Cuadrilátero dobrogeano[5], si desplazaban allí su residencia y se responsabilizaban de poner aquellas tierras en producción.

En la misma línea de exaltación militar y resentimiento bélico, el artículo 86 de la ley excluía de los derechos de propiedad a tres grupos de ciudadanos, dos de los cuales estaban directamente relacionados con la guerra: detractores y colaboradores del enemigo. En este sentido, se llegaron a considerar desertores a todos aquellos que hubiesen quedado tras las líneas enemigas y en una investigación *ad hoc* no pudieran demostrar la fuerza mayor por la que no retrocedieron junto al ejército rumano. Entre las pocas razones que podrían justificar tal acción se encontraban las heridas graves incapacitantes o la captura por parte del enemigo. Incluso así, sus derechos se verían menguados frente al resto de demandantes de tierra, pasando al último lugar. El tercer grupo de los excluidos fueron los condenados con sentencia firme por cualquier delito, aunque hubiesen sido indultados posteriormente por las autoridades competentes. Evidentemente, los más perjudicados fueron los magiares, sículos y germanos transilvanos, pues muchos de ellos combatieron en el bando de las potencias centrales, en el ejército del Imperio Austro-Húngaro -no olvidemos que por entonces su legítimo país- perdiendo por ello el derecho a la propiedad de la tierra.

En cuanto al reparto de tierras entre los distintos perfiles de demandantes con derecho a ello, y tras la jerarquización y priorización según las distintas categorías establecidas por

5 Para más información sobre la colonización y posteriores conflictos en el Cuadrilátero dobrogeano, resulta de interés consultar el capítulo IV de la tesis doctoral de Basciani, 1999, sobre "Dobrudja en los años del predominio rumano (1919–1940)".

la ley, quedaba el dónde y el cuánto. Las regiones históricas eran territorios densamente poblados, con un suelo limitado, cuyo reparto no daba para satisfacer toda la demanda. De ahí que si el exceso de receptores no resolvía voluntariamente irse a los colonatos, se sorteaba quién tendría finalmente derecho a tierras en su lugar de origen y quién, si estaba interesado en ellas, debía emigrar hacia las áreas de frontera.

La parcelación general debía hacerse en lotes de 5 hectáreas en las regiones históricas y de 7 hectáreas en las colonias. Cuando la alta demanda no lo permitía, los lotes podrían ser inferiores a las 5 hectáreas, según el precio, calidad y aprovechamiento dominante del suelo. Así, los lotes, especialmente en zonas de montaña, podrían reducirse a 3 hectáreas, e incluso a menos, a 0,5 hectáreas siempre y cuando estuviesen cerca del pueblo. Por el contrario, en Dobrogea, las parcelas llegaron a medir 8, 10 y hasta 25 hectáreas, dependiendo de la demanda.

Para el éxito de las nuevas explotaciones, la Casa Rural y la Oficina del Catastro llevarían a cabo estudios técnicos para la unión de las fincas expropiadas, especialmente encaminados a minimizar la fragmentación parcelaria. En la misma línea, especialmente para las zonas de colonización, la Casa Rural tenía la potestad de apoyar a los colonos con créditos, estudios técnicos, gestión de materiales e incluso orientación en los modos de gestión y producción.

Además de los usos agrarios, la reforma contempló la necesidad de tierras tanto para la dotación de una huerta a las casas, como para el establecimiento de nuevos hogares especialmente en los nuevos poblamientos. De tal forma, la ley permitió el reparto de lotes de entre 1.000 y 3.000 $m^2$ para la construcción y ampliación de casas, y de hasta 5.000 $m^2$ en zonas de baja demanda si anexa a la casa se contaba con huerto y frutales en regadío.

Tanto para el aprovechamiento agrario como para el del hogar, los nuevos propietarios debían hacer frente al pago estimado por las comisiones locales y fijado por las comisiones provinciales a modo de dos cuotas anuales a satisfacer el 1 de mayo y el 1 de noviembre de cada año, a un interés del 5% sobre el valor nominal. El periodo general en el que se amortizaron los pagos fueron de 15 años (Rusu et al., 2002) si bien la norma previó que en los casos de dificultad para hacer frente a los pagos fraccionados, los campesinos pudieran recalcular su deuda sobre un periodo más prolongado, de hasta 20 años. Por último, si el campesino se demoraba más de 2 años en pagar, es decir, dejaba sin satisfacer cuatro cuotas semestrales, y no lo hacía en el periodo de tres meses después de serle notificado el impago, se le confiscaban sus tierras y se repartían de nuevo entre otras familias.

## FRAGMENTACIÓN Y DESCAPITALIZACIÓN AGRARIAS

La reforma agraria emprendida en 1918 y continuada en 1921 expropió 5.804.837 hectáreas, de las cuales aproximadamente el 64% fueron tierras arables. Ello supuso desmembrar 2/3 partes de la gran propiedad de Rumanía y consecuentemente propiciar el declive de la clase latifundista y su poder terrateniente. Por su parte, el número de familias beneficiadas ascendió a 1.393.383, a razón de:

*Cuadro 2. Campesinos beneficiados de la reforma agraria de 1921 por región*

| Región | Número de campesinos que adquirieron tierras | % sobre el total |
|---|---|---|
| Antiguo Reino | 648.843 | 46,56 |
| Besarabia | 357.016 | 25,62 |
| Transilvania | 310.583 | 22,30 |
| Bucovina | 76.941 | 5,52 |
| Gran Rumanía | 1.393.383 | 100 |

Fuente: Axenciuc, 1997. Elaboración propia.

Al contrario que la reforma agraria de 1864, la de 1921 no fue tan estricta en cuanto a las condiciones de venta o alquiler de las nuevas tierras de los campesinos. Así, tras 5 años desde el reparto de tierras, las familias campesinas pudieron vender pequeños lotes de su nueva propiedad con el propósito de calibrar mejor la capacidad de hacer frente al pago de la superficie adjudicada, mientras que en la reforma de 1864 este periodo se prolongó, al menos sobre el papel, 30 años (Díaz-Diego, 2013a y 2013b).

El Estado podía adquirir estas tierras pero como quiera que tuvo e hizo uso de la potestad que le otorgó el parlamento a través de la ley para reservarse fincas de hasta 300 hectáreas y un máximo de una octava parte de todo lo expropiado, no acudió a la compra de los pequeños lotes vendidos por los campesinos en apuros, sino que pasaron a manos de los terratenientes y la burguesía local.

Una de las estrategias que implementó el gobierno para intentar evitar en lo posible que la gran explotación volviera a dominar el panorama agrario rumano a costa de anexionar las tierras enajenadas por los campesinos, fue introducir un artículo, el 121, en el que se establecía que el máximo que un privado podía comprar de las tierras repartidas eran 25 hectáreas en zonas de montaña y 100 hectáreas en zonas de llanura. Esta capacidad de venta permitió aliviar las cargas fiscales de algunos campesinos pero acentuó uno de los principales problemas que acarreó la reforma, la fragmentación parcelaria. De acuerdo con Mitrany (1930) y Cartwright (2001), la fragmentación fue una de las causas que debilitó el alcance transformador de la reforma agraria de 1921.

Además, a la enajenación de pequeñas fracciones del lote de tierra obtenido mediante la venta legal o alegal a los terratenientes, se sumó un aspecto cultural rumano, base fundamental de su organización social: el sistema de herencias. Como ocurre en amplias zonas de Europa, la mayoría de familias rumanas estructuran sus reglas de parentesco a través de la filiación cognaticia, es decir, tanto el padre como la madre juegan un papel importante en la concepción y percepción de los parientes, especialmente de los ancestros. Las sociedades con este tipo de filiación suelen protagonizar herencias en las que las posesiones conjuntas del matrimonio se reparten por igual entre todos los hijos, indistintamente del género o la primogenitura.

Para frenar su impacto, el conjunto de leyes para la reforma agraria estableció límites de fragmentación por causa de herencia, fijados en 1 hectárea en zonas de montaña y 2 hectáreas en zonas de llanura. Los herederos que, por esta medida, no pudieran acceder legítimamente a su parte de herencia, debían ser recompensados por sus hermanos-tomadores. De igual forma, tampoco la casa, y por ende, su huerta anexa, podían ser divididas en partes iguales entre todos los herederos. El artículo 121 de la Ley para la reforma agraria en el Antiguo Reino fijó que las casas construidas o ampliadas gracias a tierras cedidas durante la reforma no podían enajenarse de manera que se viesen reducidas a menos de 1 hectárea de extensión (incluyendo sus huertas). No obstante, tales medidas no evitaron que las ventas y las herencias hicieran que la segunda generación de campesinos volviera a sufrir los mismos problemas que la generación de sus abuelos a finales del siglo XIX, con parcelas inviables por su reducido tamaño (Mitrany, 1930; Díaz-Diego, 2013a y 2013b).

En lo que sí coincidieron las reformas de 1864 y de 1921 fue en la excesiva carga fiscal sobre los nuevos propietarios. En el caso de la reforma de 1921, el pago arruinó a muchos campesinos pues las comisiones locales encargadas de informar sobre el precio de la tierra y las comisiones provinciales encargadas de fijarlo atendieron al valor del suelo en los últimos 5 años, pero también a la depreciación de la moneda, lo que encareció sobremanera las propiedades y las situó muy por encima de la verdadera capacidad económica del campesinado. El pago obligatorio de la primera cuota, correspondiente al 20% del valor total de la finca, debilitó económicamente a las familias campesinas, algunas de las cuales estuvieron pagando por periodos de tiempo que llegaron a los 50 años (Cartwright, 2001).

El gobierno, más allá de mirar hacia otro lado, comprometió al Estado a afrontar el pago de hasta el 50% del valor de los lotes más pequeños repartidos entre las familias menos pudientes, lo que desafortunadamente ni aseguró que los campesinos más pobres pudieran hacer frente al restante 50%, ni resolvió un problema de mayor envergadura, el grave endeudamiento del campesino medio, aquél que había sido llamado a ser el motor económico tras la reforma agraria.

Para agravar aún más esta situación, los precios industriales crecieron muy por encima de los precios agrícolas, empobreciendo al campesinado, incapaz de ahorrar, lo que aumentó su deuda debido a tal diferencial y a la falta de crédito (Ovidiu, 2002). En este sentido, es necesario apuntar que el gobierno del Primer Ministro Nicolae Iorga aprobó una Ley de Cooperativas en 1931, para mejorar la situación de las pequeñas explotaciones, que mostraron desde un principio claros síntomas de inviabilidad económica. Sin embargo, el movimiento cooperativista tuvo un escaso seguimiento, pues los campesinos se mostraron recelosos de que los verdaderos objetivos de los políticos fueran los de colectivizar sus propiedades (Turnock, 1974, 1976 y 1986). El campesinado rumano no poseía cultura cooperativa alguna, ni referentes positivos en tal sentido. Además las cooperativas resultaron instituciones directamente controladas por el aparato provincial del poder (Roberts, 1951).

Otro de los errores de 1864 en el que se volvió a caer en 1921 fue infravalorar la importancia de los bosques y los prados en la economía doméstica del campesinado. Los

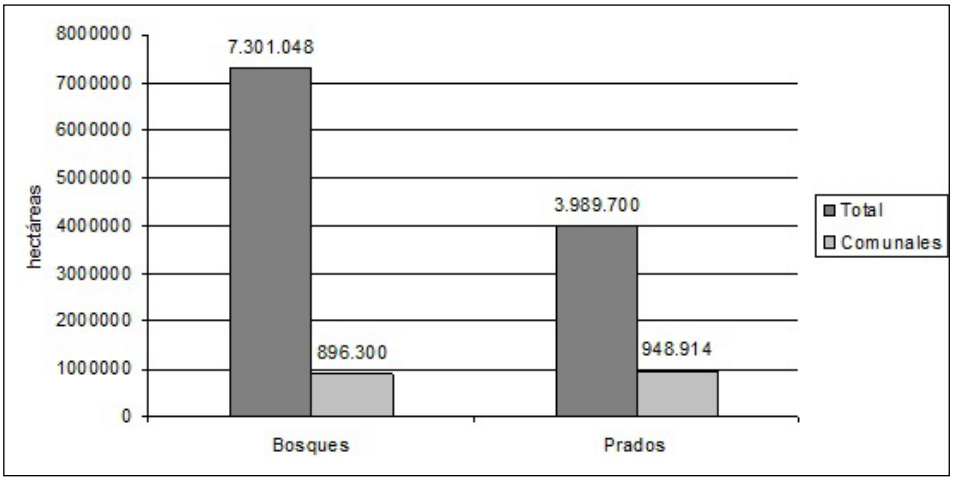
recursos forestales, especialmente los maderables, resultaban de vital importancia para el buen funcionamiento del hogar y la explotación campesina, pues desde el fuego para cocinar hasta las cercas para el ganado requerían de madera. Por otro lado, los pastos naturales eran imprescindibles para la cría de ganado. La pequeña propiedad a penas producía para la alimentación del grupo doméstico y algún excedente para el comercio, de ahí que los pastos fuesen un recurso natural no sólo complementario sino prácticamente central en la alimentación del ganado, especialmente del caballar y el vacuno. Sin embargo, la ley dedicó poca atención a estos aspectos, aunque lo recogiese entre sus principios filosóficos en el artículo 1. Por un lado, el artículo 21 estableció que se podrían -no que se deberían- expropiar bosques por un máximo de 200 hectáreas y siempre y cuando se pudieran intercambiar por suelo urbano u otras tierras no arables. Buena parte de los bosques expropiados no terminaron perteneciendo al patrimonio de los ayuntamientos sino directamente al patrimonio del Estado, que aumentó así sus posesiones, especialmente forestales, en más de 1,5 millones de hectáreas. Por otro lado, en cuanto a los pastos, el artículo 23 de la ley fijó que en caso de ser necesario dotar o ampliar los pastos comunales -nótese de nuevo la laxitud de la norma-, se podría llegar a dedicar un máximo de 25 hectáreas de las expropiaciones para tal recurso, aunque en regiones de montaña se considerase más apropiado dedicarles cantidades más pequeñas, de no más de 10 ó 20 hectáreas.

Los bosques y los pastizales no adquirieron, por tanto, la necesaria importancia en las reformas de las distintas regiones, a penas en la de Transilvania. Cuando fueron tenidos en cuenta, estas superficies incultas pasaron a formar parte, en su mayoría, de los recursos comunales cedidos a los nuevos poblamientos surgidos tras la unificación del país y la colonización de espacios poco poblados, parte de ello regido por la Ley para el Establecimiento de las Fronteras, de 24 de septiembre de 1920. Los problemas en estas áreas llegarían más tarde, cuando colonos y autóctonos ocuparon la propiedad comunal para su propio provecho, debilitando la función distributiva de este suelo público. En este sentido, en 1927, aproximadamente 949.000 hectáreas de prados comunales fueron ilegalmente apropiadas, al igual que unas 900.000 hectáreas de bosques, cuya madera se vendió sin que lo mismo redundara de ninguna forma en las arcas públicas locales (Bulei, 2005). Otros efectos negativos estuvieron relacionados con la caída del número de cabezas de ganado por la falta de pastos comunales y el consiguiente esfuerzo del campesinado por centrar sus esfuerzos en monocultivos más productivos, como el cereal, lo que encareció el precio de la carne y de los productos lácteos, como ocurriera justo tras la reforma agraria de 1864 (Ovidiu, 2000).

## CONSECUENCIAS DEL REPARTO DE TIERRAS

La reforma agraria de 1921 cambió por completo la estructura agraria y de propiedad de la tierra en Rumanía de modo que de un país mayoritariamente latifundista se pasó a un país mayoritariamente minifundista. En términos socioeconómicos se puede decir que la unidad económica básica del medio rural dejó de ser la gran explotación para pasar a serlo la familia campesina propietaria de una pequeña parcela de tierra cuyo tamaño medio pasó a rozar tan sólo las 3,92 hectáreas.

*Gráfico 2. Superficie de bosques y prados, 1927*




Fuente: Ionescu-Sisesti, 1920; Hunya, 1967; Axenciuc, 1996 y 1997; Sabates, 2005. Elaboración propia.

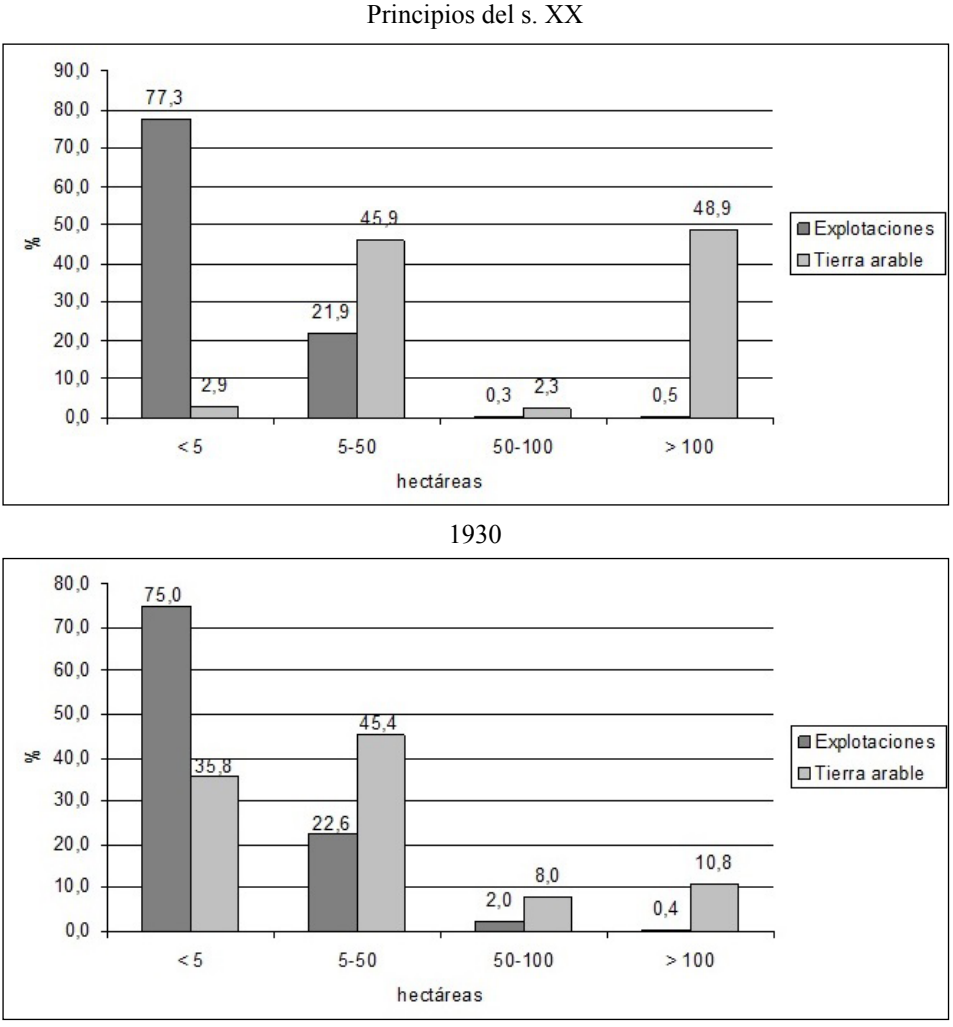
Antes de la reforma, más de 8.000.000 de hectáreas formaban parte de grandes explotaciones mientras que después, la gran propiedad pasó a estar por debajo de los 2.000.000 de hectáreas, repartidas desigualmente y con predominio en las áreas montañosas de los Cárpatos. Las grandes explotaciones, con medios de producción incipientemente modernizados, pasaron a manos de campesinos sin capacidad de inversión, lo que convirtió a buena parte de la anterior producción en agricultura de subsistencia. De cierta forma, esta parte del campesinado pobre desaceleró la recuperación económica del sector primario.

A comienzos del siglo XX, el minifundio era dominante en el medio rural si bien sólo en cuanto al número de explotaciones, que alcanzaban el 77,3% del total, sin embargo, todas ellas juntas no suponían siquiera el 3% de la tierra arable. Después de la reforma, el minifundio continuó dominando en número de explotaciones pero descendió al 75% del total, lo que supusieron unas 2.460.000 explotaciones. Ahora bien, habían pasado a representar el 35,8% de toda la tierra arable del ampliado país rumano. El siguiente tramo, las propiedades de 5 a 50 hectáreas, venía de representar el 21,9% de las explotaciones mientras que después de la reforma, ascendió al 22,6%, con unas 758.000 explotaciones.

Las fincas de un tamaño ya considerablemente grande, de entre 50 y 100 hectáreas, también aumentaron del 0,3% a principios del siglo XX al 2% en 1930, lo que supuso que pasaran de concentrar del 2,3% al 8% de la tierra, sin duda debido a los grandes lotes de tierra repartidos en zonas de colonización, como Dobrogea. Finalmente, el grupo más perjudicado, la gran explotación, no desapareció pero las aproximadamente 2.200 grandes explotaciones del país pasaron de agrupar el 48,9% de la tierra al reducido 10,8% de la misma (gráfico 3).

Efectivamente, la reforma contribuyó a equilibrar la propiedad de la tierra detrayéndosela a los grandes terratenientes para repartirla entre los desposeídos y los pequeños propietarios, reforzando incuestionablemente el peso relativo de la mediana propiedad, de cualquier forma, no se acabó con la gran propiedad, la cual, de hecho, se recuperaría en la siguiente década y, debido a la endémica crisis del campesinado, consiguió que volvieran a ella más de 700.000 jornaleros (Rusu et al., 2001; Rusu, 2002).

*Gráfico 3. Estructura de la propiedad agraria antes y después de la reforma de 1921*




Fuente: Hunya, 1987; Meurs, 1999. Elaboración propia.

Tal reparto de tierras entre campesinos aumentó la superficie agraria y activó parte de la economía. Así, entre 1922 y 1923 se experimentó un aumento de la producción agrícola como sigue: maíz, 34,9%; trigo, 27,1%; cebada, 17,0%; avena, 12,5%; y centeno, 2,5%. Así, los pequeños propietarios que fueron obteniendo beneficios de sus explotaciones dejaron pronto de ser un "lastre" para la economía nacional. Sus modestas producciones permitieron a corto plazo reducir el precio local del grano, lo que permitió facilitar la cría de ganado y mejorar la alimentación no sólo de la población rural (77,8% del total del país en 1920) sino también de la urbana. Su escasa capacidad económica no era nula y el esfuerzo inversor centrado en la mejora de la propiedad recientemente obtenida permitió el impulso de la industria, entre ellas la metalúrgica y afines, productoras de aperos y útiles para el campo. El campesinado pasó pronto a ser el principal consumidor interno de los productos más baratos, es decir, de los nacionales, reinvirtiendo en el país y mejorando la capitalización de Rumanía gracias a una más fuerte autarquía de posguerra (Cornateanu, 1930; Opritescu, 2005).

En 1924, se habían alcanzado los niveles de producción anteriores a la guerra, sin embargo, la recuperación económica continuaba siendo insuficiente. Había aumentado la tasa de nacimiento y disminuido la tasa de mortalidad, elevándose por tanto la presión demográfica. Había disminuido la mecanización del campo[6] y aumentado la fragmentación parcelaria, reduciéndose la rentabilidad de la hectárea cultivada y por tanto agravando la deuda agraria. Y para empeorar la situación, la crisis económica de 1929, que se dilataría hasta 1933, afectó fuertemente a los países más dependientes de los mercados internacionales, como Rumanía, cuya balanza económica estaba fuertemente condicionada por la venta de trigo en el mercado europeo.

Tal situación llevó a más del 50% de la población rural activa a estar infra-empleada (Berend, 1985). Según Virgil Madgearu (en Cartwright, 2001), ello convirtió en deudores a más de 2,2 millones de rumanos en 1934, lo que supuso una deuda privada de más de 52,4 billones de lei, cuando el PIB agrario de Rumanía no superaba los 46,7 billones de lei. Prácticamente todos los campesinos que habían adquirido tierras durante la reforma agraria eran incapaces de afrontar sus cargas fiscales 10 años después, aun cuando el gobierno había ido reduciendo los intereses de pago hasta el 3%.

## CONSIDERACIONES FINALES

La reforma agraria de 1921 cambió la estructura del agro rumano inclinando la balanza de la propiedad hacia el minifundio. Aunque la gran propiedad no desapareció, vivió un fuerte retroceso del que no consiguió recuperarse. Ello supuso, evidentemente, un avance en equidad social, pues la pequeña propiedad se impuso producto de la expropiación de una parte de las grandes fincas y el reparto de tales tierras en pequeños lotes entre familias campesinas, la mayoría sin propiedades rústicas previas. Sin embargo la reforma no mejoró sustancialmente la vida del campesinado porque, entre otras poderosas razones, los mecanismos económicos previstos por el Estado para el pago de las tierras por

6 En 1938, Rumanía contaba únicamente con 4.039 tractores, 1 por cada 2.490 hectáreas (Sabates, 2005).

parte de los nuevos propietarios no se ajustaron a la precaria realidad económica de los mismos, viéndose presionados por deudas muy superiores a su capacidad de ahorro.

El contexto bélico y posbélico de la reforma impregnó además el texto de las distintas normas reformistas de un aire revanchista en contra de algunas minorías étnicas, principalmente magiares y germanos, quienes habían ostentado el poder durante siglos en Transilvania y que, tras la pérdida del eje alemán, se verían fuertemente reprimidas. El Estado usó la reforma para desposeer a estas comunidades de sus tierras y con ellas de la razón de sus privilegios.

El conjunto de las normas regionales que conformaron este proyecto reformista, especialmente las medidas aplicadas en el Antiguo Reino, fueron puestas en marcha desde el convencimiento de la necesidad de modernización del campo y en concreto de la tecnificación de la agricultura, tal y como lo estaban haciendo la mayoría de países de la Europa central y occidental. No obstante, ello sólo ocurrió realmente en las grandes fincas, mientras que del lado minifundista la falta de recursos individuales primero y de una mejor planteada planificación cooperativista por parte del Estado después imposibilitaron la generalización de usos y manejos más allá de los tradicionales.

Aunque el Estado intentó frenar la división de las pequeñas propiedades legislando, por un lado, la compra-venta de los nuevos predios y, por otro lado, los sistemas tradicionales de herencia, no lo consiguió, propiciando la consolidación de un agro campesino microfragmentado y descapitalizado, incapaz en gran parte de ofrecer a sus gentes herramientas para hacer frente a su ostracismo económico y político. La proyección en el tiempo de su dependencia de clase y su exclusión de las esferas de decisión y formación no ofrecieron al campesinado muchas más alternativas para continuar ligados a la tierra que la de trabajar sus exiguas parcelas y proseguir como jornaleros en las grandes fincas de las familias terratenientes.

## AGRADECIMIENTOS

Agradezco a Juan Antonio Márquez, a José Manuel Jurado, a Rafael Viruela, a Fernando Condesso y a los revisores anónimos de la revista *Acta Histriae* el tiempo dedicado a la revisión del texto así como sus valiosos comentarios.

# ZEMLJA V ROMUNSKI MEDVOJNI UGANKI: RAZLOGI, POSTOPKI IN POSLEDICE ROMUNSKE AGRARNE REFORME V LETIH 1918/1921

*José DÍAZ-DIEGO*

Katoliška univerza Temuco, Fakulteta za družbene znanosti, Oddelek za antropologijo,

Manuel Montt, 56. Temuco, Čile

jose.diaz@uct.cl

*POVZETEK*

*Po ruski revoluciji leta 1917 in med prvo svetovno vojno so se romunski vladarji odločili napovedati in nato izvesti takrat liberalno agrarno reformo, da bi izboljšali modernizacijo podeželja in povečali uporabo tehničnih orodij v kmetijstvu, s čimer so skušali ustaviti morebitne revolucionarne poizkuse, pomiriti kmečke upore, zmanjšati dezertacije vojakov in aktivirati nacionalno ekonomijo z zmanjševanjem pomanjkanja hrane na trgu. V družbeno-agrarnem smislu je agrarna reforma popravila strukturna neravnovesja, kot denimo prekomerno veliko zastopstvo velikih romunskih kmetij, vendar drugih glavnih težav v agrarnem kontekstu ni razrešila – ravno nasprotno, pojavile so se nove težave, veliko majhnih kmetij in visoka zadolženost kmečkih družin v državi zaradi plačila novih zemljišč.*

*Ključne besede: agrarna reforma, Romunija, kmetje, 1918, 1921*

## REFERENCIAS BIBLIOGRÁFICAS

**Axenciuc, V. (1996):** Evolutia economica a Romaniei. Cercetari statistico-economice 1856-1947. Vol. II. Agricultura. Bucarest, Editura Academiei Romane.

**Axenciuc, V. (1997):** Introducere in historia economica a Romaniei. Bucarest, Editura Fundatiei Romania de Maine.

**Basciani, A. (1999):** El contencioso de Dobroudja en las relaciones entre Rumanía y Bulgaria, 1919-1940. Tesis Doctoral. Madrid, Universidad Complutense de Madrid.

**Berend, I. T. (1985):** Agriculture. In: Kaser, M. C., Radice, E. A. (eds.): The economic history of Eastern Europe 1919-1975, vol. I. Oxford, Clarendon Press.

**Cartwright, A. (2001):** The return of the peasant. Land reform in post-Communist Romania. Aldershot, Ashgate.

**Cornateanu, N. (1930):** Reforma agrara si gospodaria noastra agricola. Bucarest.

**Díaz-Diego, J. (2013a):** Las reformas agrarias de Rumanía, 1864-1991. Tierra, agricultura y campesinado. Tesis Doctoral. Huelva, Universidad de Huelva.

**Díaz-Diego, J. (2013b):** La reforma agraria rumana de 1864: frustración campesina y precarización de la servidumbre. Transylvanian Review, 22, 2, 228–251.

**Dobrogeanu-Gherea, C. (1910):** Neoiobăgia (Studiu economico-sociologic al problemei noastre agrare). http://ro.wikisource.org/wiki/Neoiob%C4%83gia

**Dropu, C. (2007):** Agricultura si politicianismul. Un secol de política agrara in Romania 1907-2007. Iasi, Editura Sedcom Libris.

**Dumitru, D. (1983):** Agricultura socialista a Romaniei. Bucarest, Editura Politica.

**Giosan, N. (ed.) (1964):** Agricultura romaniei: 1944-1964. Bucarest, Editura Agro-Silvica.

**Hunya, G. (1987):** New developments in Romanian agriculture. East European Politics and Societies 1, 2.

**Iancu, G., Tarau, V., Trasca, O. (2000):** Colectivizarea agriculturii in romania. Aspecte legislativa 1945-1962. Cluj-Napoca, Universitatea Babes-Bolyai.

**Ianos, I. (1992):** Romanian agriculture in transition. Bucarest, Typescript.

**Iordachi, C., Dobrincu, D. (eds.) (2009):** Transforming peasants, property and power. The collectivization of agriculture in Romania, 1949-1962. Budapest, Central European University Press.

**Ionescu-Sisesti, G. (1920):** Reforma agrara in Romania. Bucarest.

**Kideckel, D. (1993):** The solitude of collectivism: Romanian villagers to the revolution and beyond. London, Cornell University Press.

**Kligman, G., Verdery, K. (2011):** Peasants under siege. The collectivization of Romian agriculture, 1949-1962. Princeton, Princeton University Press.

**Le Coz, J. (1976):** Les réforme agraires. Paris, Presses Universitaires de France.

**Martín, V. (2007):** La transformación del paisaje agrario: el papel de las reformas agrarias en los países subdesarrollados. Nimbus, 19-20, 143–179.

**Mitrany, D. (1930):** The land and the peasant in Rumania: the war and agrarian reform 1917-21. London, Oxford University Press.

**Meurs, W. (1999):** Land reform in Romania. A never-ending story. South East Europe Review, 2, 2, 109–122.

**Opritescu, M. (2005):** Historia economiei. Bucarest, ASE.

**Ovidiu, L. (2000):** Politici agrare in Romania interbelica. Bucarest, ASE.

**Roberts, H. (1951):** Rumania: political problems of an agrarian state. New Haven, Yale University Press.

**Roske, O. et al. (2004):** Colectivizarea agriculturii in Romania. Represiunea, 1949-1953. Bucarest, Institutul National pentru Studiul Totalitarismului.

**Roske, O., Abraham, F., Catanus, D. (2007):** Colectivizarea agriculturii in Romania. Cadrul legislative: 1949-1962. Bucarest, Institutul National pentru Studiul Totalitarismului.

**Rusu, M. et al. (2001):** The agricultural household in Romania. An agroregional analysis. http://www.pasad.uni-bonn.de/Rusu_The_Agricultural_Household.pdf

**Rusu, M. (2002):** Land fragmentation and land consolidation in Romania. International Symposium "Land Fragmentation and Land Consolidation in CEEC" Papers. Munich.

**Sabates, R. (2005):** Cooperation in the Romanian countryside: an insight into post-soviet agriculture. New York, Lexington Books.

**Sandu, D. (1975):** Reforma agrara din 1921 in Romania. Bucarest, Editura Academiei Republicii Socialiste Romania.

**Sandu, D. (2000):** Reforma agrara din 1945 in Romania. Bucarest, Institutul National pentru Studiul Totalitarismului.

**Stanescu, N. S. (1975):** Cooperativizarea agriculturii in Republica Populara Romina. Bucarest.

**Tanasescu, N. (1992):** Colectivizare: intre propaganda si realitate. Bucarest, Globus.

**Turnock, D. (1974):** An Economic Geography of Romania. London, Bell.

**Turnock, D. (1976):** Restructuring of rural settlement in Rumania. The Slavonic and East European Review 54, 1, 83–102.

**Turnock, D. (1986):** The Romanian economy in the Twentieth Century. London, Croom Helm.

**Legislación citada por orden cronológico**

**Constitución de 1866.** Monitor Ofi cial núm. 142 de 13 de junio de 1866.

**Decreto 1036.** De 11 de marzo de 1920 para la reforma agraria en Besarabia. Monitor Oficial núm. 258 de 13 de marzo de 1920.

**Decreto-Ley 3610.** De 30 de julio de 1921 para la reforma agraria de Transilvania, el Banat, Crisana y Maramures. Monitor Ofi cial núm. 93 de 30 de julio de 1921.

**Decreto-Ley 3697.** Para la aplicación de las expropiaciones en el Antiguo Reino. Monitor Oficial núm. 215 de 16 de diciembre de 1918.

**Ley 3093.** De 14 de julio de 1921 para la reforma agraria de Oltenia, Muntenia, Moldavia y Dobrogea (del Antiguo Reino). Monitor Ofi cial núm. 82 de 17 de julio de 1921.

**Ley 3608.** De 23 de julio de 1921 para la Reforma Agraria de Bucovina. Monitor Ofi cial núm. 93 de 30 de julio de 1921.

Received: 2014-01-27
Original scientific article
UDC 347.962(497.4)

# INDEPENDENCE OF JUDICIARY IN SLOVENIA: ECONOMIC AND HISTORIC PERSPECTIVE

*Katarina ZAJC*
University of Ljubljana, Law School, Poljanski nasip 2, 1000 Ljubljana, Slovenia
e-mail: Katarina.zajc@pf.uni-lj.si

*ABSTRACT*

*The article examines the independence of judiciary in Slovenia since its secession from Yugoslavia and communist regime in 1991. Using the theory on the independence of judiciary and the Landes – Posner model of judicial independence the article concludes that there are two possible conclusions as to why the legislative and executive branches were encroaching the independence of judiciary via wages. One is the lack of political competition which gives the other two branches the chance to control judiciary and the other one is that the encroachment of judiciary independence via wages was not intentional and does not have any negative impact on Slovene judiciary, which needs to be further examined empirically in the future work.*

*Key words: independence, judges, judiciary, wages, political competition, Slovenia*

## L' INDIPENDEZA GUIDIZIARIA IN SLOVENIA: UNA PROSPETTIVA ECONOMICA E STORICA

*SINTESI*

*Il presente articolo prende in esame l'indipendenza della magistratura slovena a partire dal 1991, anno in cui la Slovenia si separò dalla Jugoslavia, abbandonando il regime comunista. Nell'attività di analisi, utilizzando la teoria dell'indipendenza della magistratura e il modello di indipendenza dell' indipendenza giudiziaria Landes – Posner, l'autore giunge alla conclusione che l'interferenza da parte del potere esecutivo e legislativo sull'indipendenza di quello giudiziario, riducendo gli stipendi dei magistrati a livello incostituzionale, può essere dovuta alla mancanza di un'effettiva competizione politica oppure risulta per caso e non porta alcuna incidenza sull'indipendenza della magistratura, fatto che dovrà essere ulteriormente esaminato.*

*Parole chiave: indipendenza, giudici, magistratura, salari, Slovenia, competizione politica*

## 1. INTRODUCTION[1]

Judiciaries around the world allegedly face backlogs or slow disposition time and dishonest judges (Gallanter, 1994).[2] Slowness not only affects the economic growth as already documented but also affects the poor the most (Djankov et al., 2003 and citations therein and Buscaglia et al., 2005). Over the years, many millions of dollars and knowledge were poured into judiciary reforms, some with more, some with less success in order to improve transparency, accessibility, independence and efficiency of judges.[3]

This article focuses solely on judicial independence in Slovenia, a country that declared independence in June 1991 and started to build up its institutions among them also judicial independence as one of the cornerstones of the democracies. The question arises whether Slovenia succeeded with securing the independency of the judiciary in the quest to become a democracy.

The article is structured as follows. After introduction, a theory of judicial independence is presented. The third part of the article discusses the Slovenian judiciary together with empirical data and the encroachment of the independence of the Slovenian judiciary by the executive and judiciary branch. Conclusion follows.

---

1 This article was written while the author was a Fulbright scholar at Washington and Lee University Law School in the Fall 2013. The author is a member of the Judicial Council of the Republic of Slovenia. The views expressed in the article do not represent the views of the Judicial Councilof the Republic of Slovenia but author‘s own views. The author would like to thank Janja Roblek, Jaša Vrabec and anonymus referee for helful comments and suggestions.

2 The judiciary is broadly defined as: »*The institutions that are central to resolving conflicts arising over alleged violations or different interpretations of the rules that societies create to govern members' behavior; and that, as a consequence, are central to strengthening the normative framework (laws and rules) that shapes public and private actions."* (see Reiling, 2007) In organizational terms, a justice system may span all three branches of government and multiple non-state actors, including: the courts, the police, prosecutors' offices, public defenders, state and civil society legal aid providers, alternative dispute resolution mechanisms, administrative adjudication and enforcement mechanisms, customary and community-based institutions, anticorruption and human rights commissions, ombudsman offices, and property and commercial registries (The World bank, New Directions in Justice Reform, 2012, 2).

3 For the overview of the not successful project, see The World Bank, Law, Equity& Development, Volume 2, 2006, which cites the following: "*Thomas Carothers, "Promoting the Rule of Law Abroad: The Problem of Knowledge," in Thomas Carothers, Critical Mission: Essays in Democracy Promotion, 131–44 (Washington, DC: Carnegie Endowment for International Peace, 2004); Thomas Carothers, Promoting the Rule of Law Abroad: The Problem of Knowledge (Washington, DC: Carnegie Endowment for International Peace, 2006); Julio Faundez, Good Governance and Law: Legal and Institutional Reform in Developing Countries (New York: St. Martin's Press, 1997); Poonam Gupta, Rachel Kleinfield, and Gonzalo Salinas, "Legal and Judicial Reform in Europe and Central Asia," Working Paper, no. 27811, Operations Evaluation Department, World Bank, Washington, DC, 2002; Linn Hammergren, The Politics of Justice and Justice Reform in Latin America: The Peruvian Case in Comparative Perspective (Boulder: Westview Press, 1998); Lawyers Committee for Human Rights, Halfway to Reform: The World Bank and the Venezuelan Justice System (New York: Lawyers Committee for Human Rights, 1996); Carol V. Rose, "The 'New' Law and Development Movement in the Post–Cold War Era: A Vietnam Case Study," Law and Society Review 32, no. 1 (1998):93–140; Frank Upham, "Myth Making in the Rule of Law Orthodoxy," Carnegie Endowment Working Papers, Rule of Law Series, Democracy and Rule of Law Project, no. 30 (September 2002), Carnegie Endowment, Washington, DC; and USAID,…"*

## 2. INDEPENDENCE OF JUDICIARY

> *Judicial independence refers to the existence of judges, who are not manipulated for political gain, who are impartial towards parties of a dispute, and who form a judicial branch, which has the power as an institution to regulate the legality of government behavior, enact "neutral" justice, and determine significant constitutional and legal values* (Larkins, 1996).

It is claimed that the independence of judges is one of the corner stones of democracy, promoting checks and balances among the three branches of government and a necessary condition for markets to work (Hayek, 1960; Persson and Tabellini, 2000), which is confirmed by numerous empirical studies, for example Barro (1991), Havrylyshyn and van Rooden (2000), and Svejnar (2002).[4] Independency promotes both, economic and political freedom (La Porta et al., 2004), by constraining everybody, including the government, to take private property and by constitutional review, resisting the attempts of the government and/or parliament to suppress dissent.

A number of data sets, for example Doing Business of the World Bank dataset and their governance indicators demonstrate a positive correlation between the rule of law and economic development as does The Business Environment and Enterprise Performance Survey (BEEPS)—developed jointly by the World Bank and the European Bank for Reconstruction and Development, which indicates that crime, complex regulations and judicial performance hinder the efficiency of the economy (Initiatives in justice sector 1992 – 2012, 2–3). Therefore some institutional safeguards are embedded in the rules that help judiciary accomplish should be present.[5,6] However, there is another view on the judiciary, claiming that the independence of judges is not contingent on the constitutional rules or constraints that are put on the judiciary, but is the outcome of the political competition. As Ramseyer (1994) puts it: "*Despite most of what we teach in schools, I suggest, judicial independence has had less to do with constitutional texts. It has had more to do with elections (*Ramseyer,1994)." There are two possible outcomes with respect to the independency or dependency of the judiciary, according to the view held by Ramseyer (1994) and to a large degree also by the Public Choice movement, which rest on the assumption of existence of competition between the political parties and whether there is likelihood of continued democratic elections. As Hellman (1998) showed, in transition economies the most consistent and welfare enhancing reforms were in countries where elections were competitive, the government turn – over was frequent and where there were broad coalition governments. Hellman (1998) claims that the main challenge to reforms in general were not from losers of the initial reforms, but from the "elites," which

4 For an excellent overview of the impact of rule of law on economic growth see Haggard and Tiede (2010).

5 Hayek (1960) saw independent judiciary as one of the ways in which judicial checks and balances are established.

6 See La Porta et al (2004), which present empirical data by examining judicial independence and constitution review in 71 countries, that the independence of judges and constitutional review matter for economic and political freedom.

benefited from initial reforms and were resisting further reforms, because the partial reform generated high rents for them and imposed high costs on the rest of the population.[7] If there is no competition between the political parties "spoils" of the reforms end up in the hands of interest groups that are not seeking growth, but are trying to preserve the status quo. Political competition, on the other hand, brings up the growth seeking interest groups, which benefit from the reforms, but so does the whole economy.

When there is competition among political parties, when there are competitive elections, where government turnover is frequent and where broad political coalitions are formed, and where there is a view that democratic elections will continue indefinitely, than we can get the Landes – Posner equilibrium of independent judiciary. Landes and Posner claim that the independence of judges increases the ex ante price that legislators can extract from the interest groups buying the legislation and therefore independence of judges is valuable to all politicians.[8] According to this view, competition among politicians delivers efficient equilibrium since it is in the interest of politicians to make or leave judiciary independent.[9]

Despite the proclaimed judicial independence, there is a wealth of evidence, at least in the US and some in Japan, which supports the view that the judiciary is not as independent as theory would like it to be in order to perform its role in the story of checks and balances.[10] Therefore, if there is lack of competition or the competition among political parties is non-existent and it is not certain whether democratic elections will continue in the future, the outcome of the political process might not be Pareto superior, such as Landes –Posner model predicts, but we might end up with dependent judiciary or the judiciary that might be susceptible to the influences of executive or legislative branch, despite the rules guarding judicial independence (Ramseyer, 1994).

These two possible outcomes, Pareto superior with independence of judiciary and Pareto inferior with the lack of independent judiciary might answer the famous question that Epstein (1990) posed as to why do we have so many checks and balances that provide for judicial independence, if we get a "good" outcome as the product of political process. It could be that checks and balances are in place just for such a case, when we are stuck in Pareto inferior equilibrium with lack of political competition, even though it has to be pointed out that the rules might not help much such circumstances. However, if enforced, they do increase the transaction costs to whoever wants to influence the judiciary.

---

7 »*... the most frequently mentined obstacles to the progress of economic reform in post – communist transitions have come from a very different sources: from enterprise insiders who have become new owners only to strip their firms's assets; from commercial bankers who have opposed macroeconomic stabilization to preserve theor enormously profitable arbitrage opportunities on distorted financial markets; from local officials who have prevented market entry in their regions to protect thier share of local monopoly rents; and from super-rich »mafiosi« who have undermined the creation of stable legal foundation for the market economy*.« (Hellman, 1998, 204). "*As those in power attempt to stay in power, they help themselves and their supporters through excessive dictatorship. State ownership becomes a mechanism for dispending patronage and for maintaining political support for the incumbent politicians*." (Shleifer & Vishny, 1994).

8 They claim that »the independent judiciary is not only consistent with, but essential to, the interest group theory of government.«

9 See also McCubbins and Schwartz (1984).

10 See also Stephenson (2003) for the empirical evidence on the independence of judges.

What does empirical evidence tell us about the two outcomes that were outlined above? Ramseyer (1994) gave three examples of his theory, the independence of courts in modern Japan, the United States and Imperial Japan. All three stories are consistent with his theory, namely that since one of the political parties was in power in Japan for so many years, they had no incentives to have independent judiciary and they influenced either by job assignments or promotions of judges in order to control them. In the US, for example, politics play a role at the stage of appointment, at least at the federal level, and later on, as he claims, politicians follows a hands off politics.[11] His theory was also validated by Hanssen (2004). He claims that, in line with the Landes – Posner model, by establishing an independent court, costs for future regime of changing the policy are higher.[12] However, at the same time, independence gives judges the freedom to pursue their own "political" goals and therefore might become unpredictable for the politicians. He tested his hypothesis on state-level data in the United States judicial institutions. He found that independence is the product of competition between political parties and moreover so, if the political parties have vastly different platforms.

Despite proclaimed independence on paper, it seems that political competition determines to a large degree whether judges are independent or not.[13]

### 2.1. What rules make judges independent

According to Posner (1994) judges' utility function consists mainly of the following variables: income, leisure, judicial voting, reputation and promotion. Judges are treated as rational maximizers and are therefore, susceptible to influences to some degree.[14] How do rules or institutions make them less susceptible to undue influence?

For example, Buscaglia et al. (1995) claim that what makes judiciary independent is budget autonomy, uniform and stable jobs for judges, salaries that cannot be changed but in certain circumstances[15] and retirement systems that motivate judges to retire when they are ready. Also, appointment of judges should be credible and transparent. Judges should have access to education. What they point out as important are disciplinary procedures, which make them more accountable. Lastly, they are in favor of judicial councils

11 For a good overview of the discussion of the judicial independence in the United States, see Burbank (1999).

12 For a similar argument in other situations see Glazer (1989), Persson and Svensson (1989), Alessino and Tabellini (1990), Tabellini and Alessina (1990), to mention just a few.

13 See also Feld and Voight (2003), who found that »de facto« judicial independence and not »de iure« independence affects growth in economies.

14 I am not claiming that all judges are corrupt and succeptible to influence. I would just like to point out, in line with the empirical literature, that there is some room for influencing them and that they might be susceptible for corruption. For a good discussion on how judges decide case see Aranson (1990), who claims that there are three modes of decision making: 1) rule governed behavior, 2) efficiency enhancing allocation based on calculation (law and economics approach) and redistributive rent – provision (public choice approach).

15 On the discussion of the salaries of the judges see Choi, Gulati and Posner (2009), who claim that increase in wages will influence the quality of judging under two conditions: if judges can be sanctioned for performing inadequately or if the appointment process reliably screens out low-ability candidates.

and their role in selection and promotion of judges.[16] Cabrillo and Fitzpatrick (2008) also mention the above characteristics of independent judiciary. They add proper judicial infrastructure so judges can have proper working conditions, the strength of media in the country, which can expose undue influence and certain benefits that can be either bestowed or withheld from judges, such as "promotion" to the periphery or nicer offices and similar, the number of times and length of time in the office. Not only appointments, and the appointed or elective system, but also the possibility and ease of impeachment are important for judicial independency as well as the ease of regulating the size of the judiciary, especially at the top of the hierarchy, legislative resistance to judicial decisions and jurisdiction stripping (Burbank, 1999).

## 3. SLOVENIA

### 3.1. History of judiciary

Slovenia is a small country, which gained independence from Yugoslavia in 1991, joined the EU in 2004 and adopted the Euro in 2007.[17] It adopted its Constitution on December 23, 1991, in which it is expressly stated that judiciary is an independent branch of government and that all matters pertaining to judges and judicial work are to be prescribed by law. Based on the new Constitution, three acts legislating judiciary were enacted in 1994, namely the Constitutional Court Act, the Judicial Services Act and the Judiciary Act, which were amended many times throughout the years.[18]

Even when Slovenia was part of Yugoslavia, its judicial system was struggling with backlogs. Backlogs and unresolved cases in Slovenia are not a recent occurrence. Already in the 80s and 90s backlogs started to pile up. For example, in 1992, there were 199.893 unresolved cases and "important" cases represented 100.049 cases at first instance courts.[19] 40% of the unresolved cases were commercial cases, half of them commercial enforcement procedures (Zajc, 2012). The matters got worse after the reorganization of the judiciary in 1995. On January 1,1995, after the judicial reform and a brake from the "socialist" judiciary organization, 44 local courts and 11 district courts with general jurisdiction, four appellate courts with general jurisdiction, a Supreme court and four Social and labor courts were set up.[20]

16 However, see Voight and Bialy (2013), which found empirical evidence for european countries that resolution rates in courts are negatively – and very robustly – correlated with the presence of judicial councils. Even though judicial councils might positively affect the independence of courts, they might negatively affect the efficiency of judges.

17 Slovenia has 2 million people, its BDP is around 35 billion EUR (91% of EU average) and it measures 20.273 km$^2$ (http://www.slovenia.info/en/spoznajte-slovenijo.htm?spoznajte_slovenijo=0&lng=2).

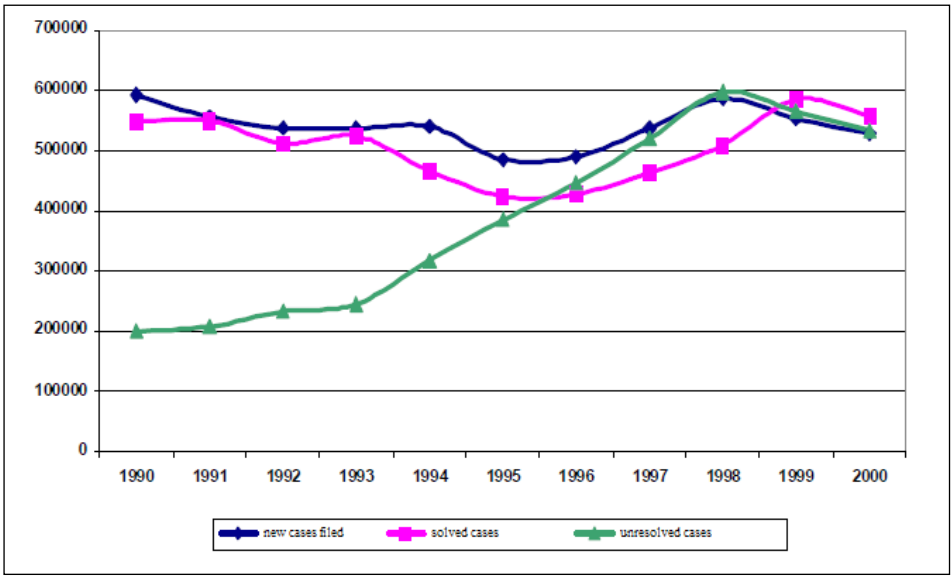
18 Official Gazzette of the Republic of Slovenia, No. 15, 1994 and No. 19, 1994. It should be noted that Slovenia had Constitutional court from 1963 onwards, one of the few in the region. However, the jurisdiction of the court was very different than it is today (Zajc, 2012; Brzezinski, 1993)

19 Important cases are cases that can only be decided by a judge. For less important cases the rules allow that the cases can be decided, with or without the supervision of the judge, by either paralegals or court personnel.

20 The Administrative court was established as late as 1998.

As the graphs below show, the matters got worse up until 1998 when the judiciary was faced with 597.587 unresolved cases at the end of the year, 213.559 of them "important" cases, an almost a three fold increase from the year 1990, when there were 199.893 unresolved cases (Graph 1).[21,] After 1998 the number of unresolved cases and backlogs started to abide, even though it should be pointed out that the number of cases filed each year even during the 90s was decreasing steadily.[22] Matters got better after 1999. The number of unresolved cases and backlogs were steadily decreasing as was the inflow of new cases.. However, enforcement cases and land registry were still plagued with huge backlogs.[23]

*Graph 1: Solved, unresolved and filed cases: 1990 – 2000*



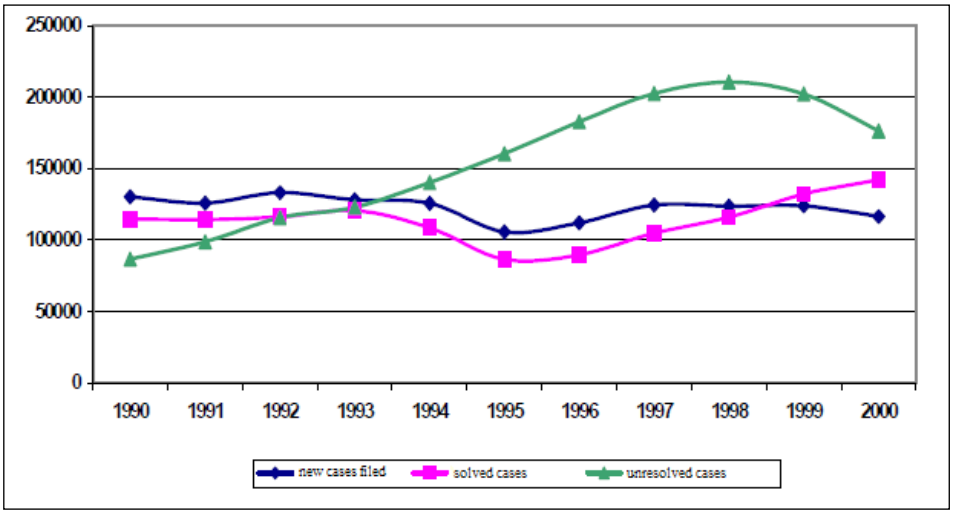

Source: Report 2002, 9

21 Backlogs in Slovenia, analysis of the causes and the recommendation for remedies, Report prepared by the Supreme Court and the Ministry of Justice, 2002.

22 It is interesting to point out that the normative for judges was again instituted in 1997, with a try-out in December 1996 and coincides with the incresased number of cases per judge.

23 Ibidem.

*Graph 2: Solved, unresolved and filed important cases: 1990 – 2000*

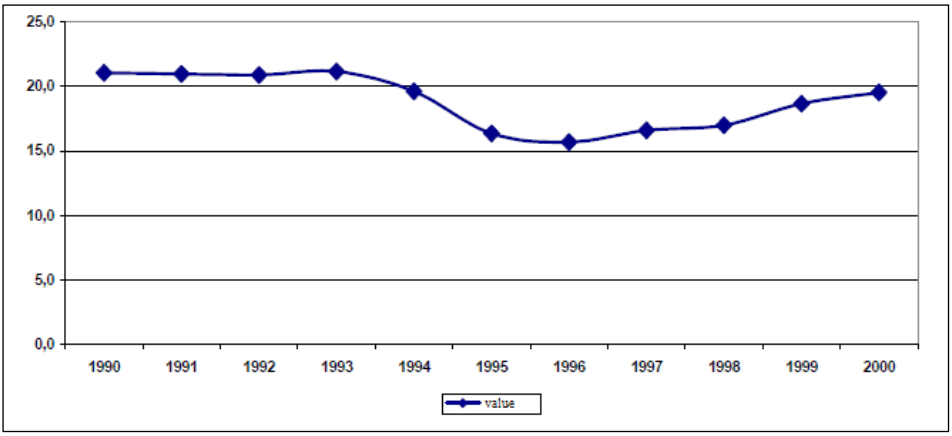



Source: Report 2002, 10

By the end of the 90s, the Supreme Court and the Ministry of Justice got worried by the deteriorating situation in judiciary. Together they prepared a report about the causes and remedies for the state of the judiciary (hereinafter: Report 2002). Their conclusion was that the most important factor in the declining state of the judiciary in the 90s was the decline in the productivity of judges, as can be seen from the graph below.[24]

24 It should be pointed out that the Supreme Court, who is in »charge« of all the courts did not have a president from 1995 until end of 1997: http://www.sodisce.si/vsrs/predstavitev/2010112509152870/.

*Graph 3: Productivity of judges – important cases*




Source: Report 2002, 11

According to the Report 2002 the reasons for the deteriorating productivity of judges were manifold. The first among the mentioned was the transition from the communist to capitalist system (and therefore all the accompanied changes of the legislation and additional legislation needed for the functioning of the capitalist system and legislation which was enacted in order to remedy all the injustices of the communist regime), the implementation of the judiciary reform in 1994–1995, which disrupted the flow of work, negligence in following the statistical data and therefore lack of any reaction to the deteriorating situation, lack of experienced judges, lack of interest in becoming a judge since the option for lawyers increased by making private sector jobs more lucrative and changes in the society which consequently resulted in more complex cases.[25] Furthermore, the report found that judges were burdened with administrative work, that the procedural legislation in civil (including enforcement procedure) and criminal matters, despite many improvements, is to a large degree still inefficient. The Report 2002 criticized the under-regulation of the duties of judges as per the quantity and quality of the work that is required, the same goes for promotion of judges.[26]

They proposed that the number of personnel increases to unburden the judges of administrative work and that the number of judges decreases. They stressed that the management of courts should be improved, since presidents of courts have sufficient supervisory power, but they are not executing it to their fullest degree and that procedural laws should be amended in order to improve the efficiency of procedures. The report concluded that courts had sufficient funds in order to function properly and that the legal status of judges

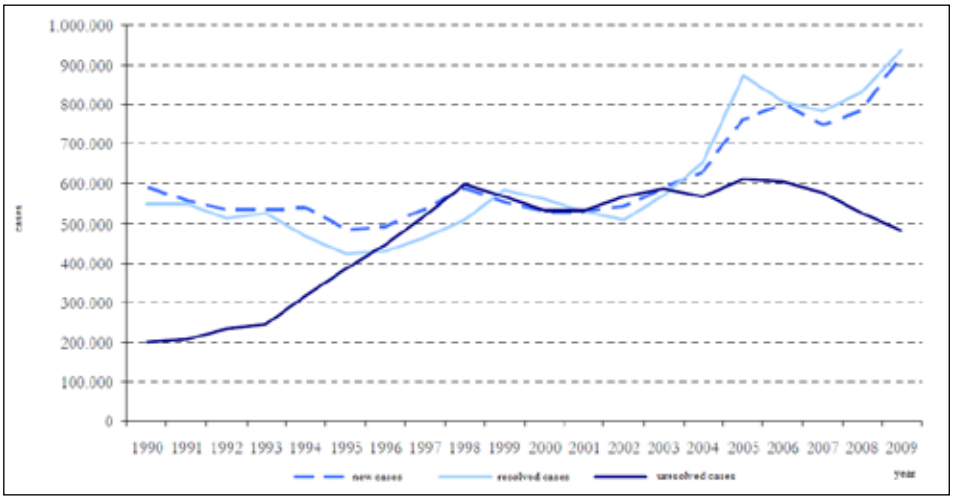
25 A lot of senior judges decided to pursue more lucrative careers, such as joining the bar, becoming notary publics or joining commercial companies to head their legal departments.

26 It could be a coincidence but the Report claims that the imposition of the norms on the judges coincided with the resolution of more cases.

and courts should not be a cause of low productivity of judges, since the legal framework guarantees them independence as executive and legislative branch do not have, except in small part in the judicial administration, no influence on the judiciary.[27]

Even though matters got slightly better in the following years after 2000, they are still far from perfect as can be seen from the below graph.

*Graph 4: All cases in all courts from 1990 to 2009*




Source: Audit Court Report, 2011, 14

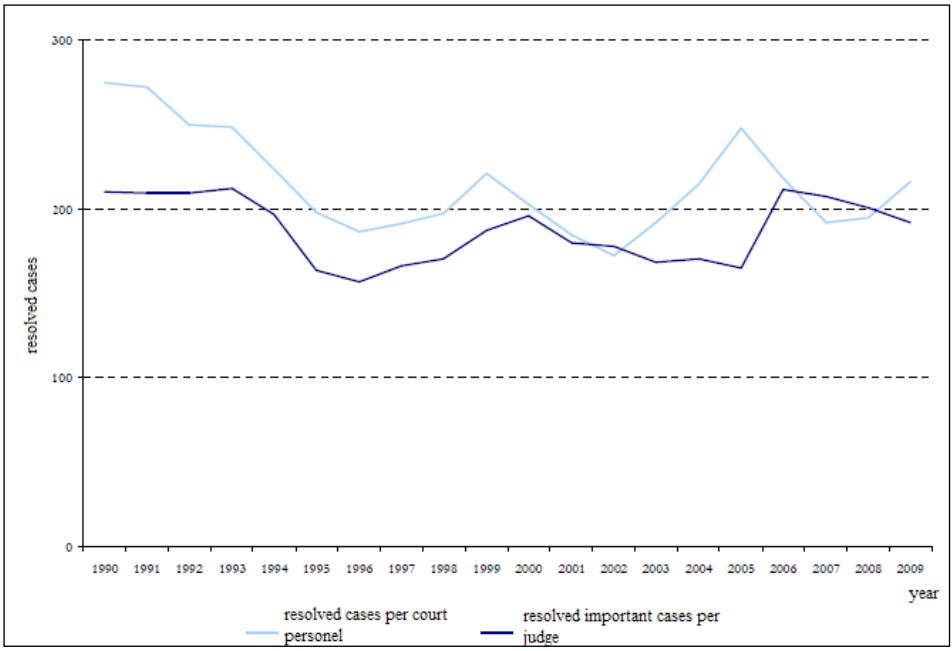
Even though the influx of new cases decreased in the late 1990s, it started to slightly increase after the year 2000 but in the last years the influx of cases, at least important cases, which influence the productivity of judges, is declining again. Productivity of judges slightly increased after the year 2000, with a sharp drop in 2006 and some years after but it never reached the productivity of judges before 1995. It should be pointed out that the matters are improving in the Slovene judiciary, and the number of the unresolved cases is decreasing over time. Also, courts manage the new influx of the cases and solve more than they get to adjudicate and the time to dispose cases is decreasing steadily.[28] However what we should see is the improvement in the productivity of judges, which is still not at the desired level or improving a lot.[29]

27 The number of funds available to the judiciary incerased for 210% in real terms between 1993 and 2002. Similar conclusions were reached by Vehovar (2000).

28 See Otvoritev sodnega leta 2014 and the Yearly report on judiciary made by the Judicial Council for the year 2013.

29 At the end of 2012 Slovenia had 982 judges and 3.608 court personnel, the highest number per capita in

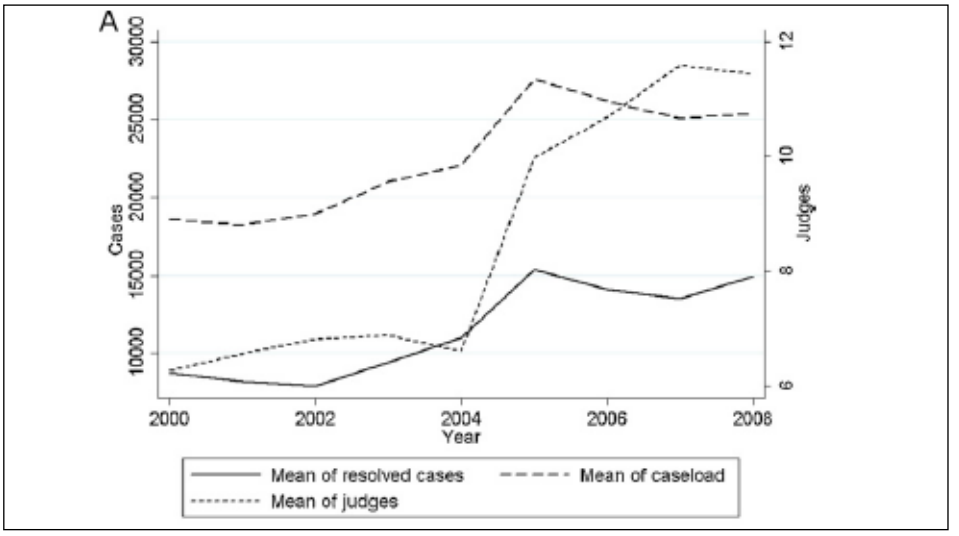
*Graph 5: Productivity of judges and all employees in the period 1990 – 2009*




Source: Audit Court Report 2011, 18

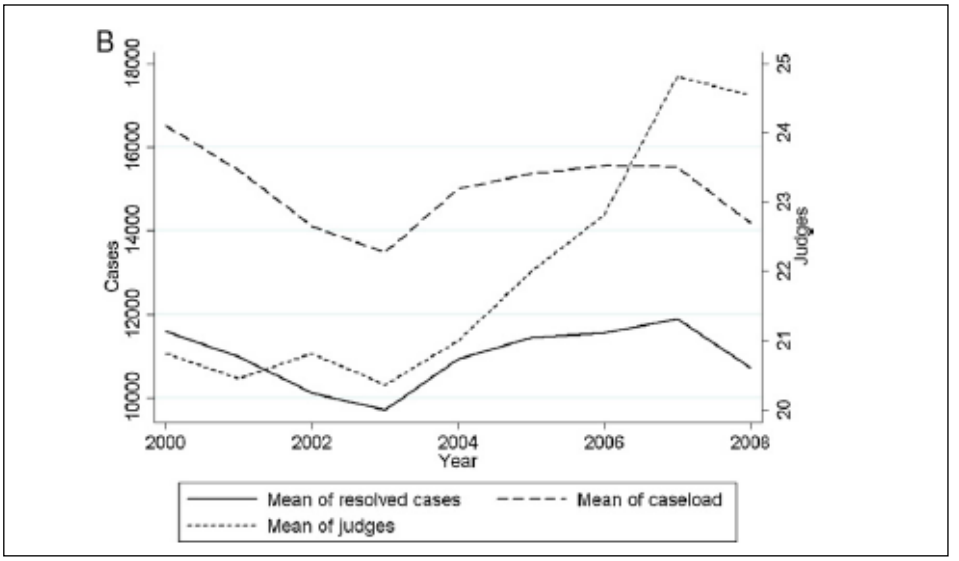
Europe. There were 1,128.246 cases filed at all courts in 2012, with the exception of the Constitutional Court, and courts disposed of 1.198.428 cases. The judiciary ended the year 2012 with 358.110 unresolved cases. The influx of "important" cases was 167.563 and judges solved 186.441 important cases in 2012. For example, the courts ended the year 2012 with 119.034 unresolved important cases, which is almost as much as in 1992 when the year ended with 100.049 unresolved "important" cases. As long as the number of the influx of cases is decreasing, and the judges handle all the new cases and some small amount of backlogs, the number of unresolved cases overall will decrease, even though the productivity of judges does not improve. In ideal world, bot should happen, the number of influx should decrease and the productivity of judges should increase.

*Graph 6: Mean of resolved cases, mean of caseload and mean of judges 2000–2008, Local courts*




Source: Dimitrova-Grajzl, 2012a

*Graph 7: Mean of resolved cases, mean of caseload and mean of judges 2000–2008, District Courts*




Source: Dimitrova-Grajzl, 2012a

### 3.3. Independence of slovene judiciary

Before 1991, courts in Slovenia were not independent, but part of the one-branch government. However, as the new Slovene Constitution was passed in Parliament in 1991, judiciary became an independent branch of government. Theory predicts that judiciary is independent, apart from when there is political competition, when it has budget autonomy, when stable and uniform jobs with guaranteed wages are secured for judges together with retirement, when appointment process is credible, transparent and keeps judges in office for a prolonged time if not for life, when credible and transparent procedures for disciplinary procedures, including the impeachment are in place, and when regulating the judiciary is not very easy. Additionally, the more there is competition among political parties, the better the chances that the judiciary is independent. Has Slovenia achieved all these?

Slovenia legislated the independence of judges in Article 125 of the Slovenian Constitution that was published in the Official Gazette of the Republic of Slovenia in 1991.[30] The Constitution also determined life-tenure for judges and the impeachment possibility. The Constitution mandated that all matters pertaining to judges or judicial services need to be prescribed by law and not regulated by other means. The budget of the judiciary is determined by the budget of the Republic of Slovenia, which is passed by Parliament. Judges are elected by the Parliament and proposed by the Judicial Council of the Republic of Slovenia, which reviews information on judges based on public tender information and recommendation of the presidents of the respective courts. Mandatory retirement age for judges is 70 years. They are (or not, if the evaluation states that they are not eligible) promoted every 3 years, based on the evaluation of the Personnel Committees at the respective courts. Judicial Council promotes judges based on the evaluation of judges by the personnel committees at the respective courts and based on the criteria defined in the Judiciary Services Act. There are 3 levels of promotion, regular, "fast" and "exceptional" and there is an option to gain a title of "senior" judge when judges reach a certain age and have a good track record.

On paper judges in Slovenia gained strong independence. They have life tenure, they are elected in a transparent and credible fashion, promotions are guaranteed, if their evaluations are up to the standards, their salaries cannot be changed but with the passage of the law and they have a mandatory retirement age at age 70. Judges are also accountable since they face either impeachment or disciplinary procedures.[31, 32] What about in practice?

30 Official Gazette of the Republic of Slovenia, No. 33/1991 and further changes and amendments.

31 Eight judges were impeached in the last 13 years according to the information received from the Judicial Council of Slovenia.

32 For example, in 2011 three disciplinary procedures were completed, with one judge reprimanded and two judges got suspension of promotion for one year period. In 2012 one reprimand was issued (data on file with the Supreme Court of the Republic of Slovenia).

### *3.3.1. War on wages*

In 2002 the Public Sector Salary System Act (hereinafter: Act)[33] was passed and judges claimed that the Act infringed on their (material) independence with regard to the new system by which the wages of judges were determined.[34] The matter went to the Constitutional Court. The Court decided that the Act infringes on the independence of judges: [35]

*"Firstly, it found that in accordance with the principle of the independence of judges (Article 125 of the Constitution), it is appropriate that judges' salaries be regulated only by law. Therefore, the challenged provisions of the Judicial Service Act and the Public Sector Salary System Act, which determine that judges' salaries be regulated by an ordinance of the National Assembly, the collective agreement for the public sector, and a Government decree, as well as the provisions of the Ordinance on Officials' Salaries, which regulates judges' salaries as a regulation, are inconsistent with the aforementioned constitutional principle.*

Secondly, since the government did not state convincing reasons for the alleged disproportion between the officials' salaries in the individual branches of power, the Ordinance on Officials' Salaries can also be found to be inconsistent with the principle of the separation of powers determined in the second paragraph of Article 3 of the Constitution.

*Finally, it is inconsistent with the constitutional principle of the independence of judges if the legislature ensures judges only protection against a reduction in the basic salary and if it allows that additional instances of a reduction of judges' salaries be determined by an ordinance of the National Assembly. Furthermore, the statutory regulation according to which judges' salaries may be reduced during their term of office due to a reduction in the additional allowance for years of employment or due to a temporary reduction in judges' basic salary in the event of a change in grades is inconsistent with the aforementioned constitutional principle."*[36]

The Constitutional Court mandated the Parliament to incorporate the changes in the Act. The executive branch prepared the change of the Act in 2007 and 2008. However, judges claimed that even the changed Act still infringes on their independence. In the period between 09.06.2008 and 11.06.2008 there were approximately 78,3% of judges on a three – day strike. Since the executive branch and the legislative branch did not react by

33 The Act was published in the Official Gazzete of the Republic of Slovenia, No. 56/2002, but went into effect on March 1, 2006. However, the Constitutional Courts withheld the Law for judges and decided that the wages should be calculated based on the Law that was in effect before 2006 (Constitutional Court decision U-I-60/06–12).

34 Official Gazette of the Republic of Slovenia, No. 56/2002 and further changes and amendments.

35 Constitutional Court decision No. U-I-60/06.

36 See memorandum (on file with the author) prepared by Jaša Vrabec, Judicial Councillor in the President's Office at the Supreme Court of Slovenia, October 2011.

starting to initiate the changes of the Act, approximately 70% of judges went on a "white" strike which ended 142 days after and culminated in an agreement between the executive branch and judges in how the legislation regarding the wages should be changed.[37] In the meantime, it was again for the Constitutional Court to decide whether the provisions on the remuneration of the judges were constitutional. It again decided that the wages of the judicial branch were not comparable to the executive and judicial branch and found them unconstitutional, because they encroached judicial independence and ordered the Parliament to change the Act:[38]

> *"Firstly, the placement of judges just one salary class higher did not remedy the unconstitutionality of the provisions regarding the salaries and the principle of the separation of powers (the second paragraph of Article 3 of the Constitution), as it did not ensure judges remuneration which would be comparable with the remuneration of the officials of the other two branches of power.*[39]

Secondly, the prohibition of only the reduction of a judge's basic salary is unconstitutional, as it follows already from decision U-I-60/06 that the prohibition against a reduction should not refer only to the basic salary.

Thirdly, the regulation of the amount of the bonus for years of service, inasmuch as it refers to judges, is inconsistent with the principles of judicial independence and of the protection of acquired rights, due to the fact that the reasons for the reduction are not consistent with the constitutional requirements for the reduction of judges' salaries.

37 See article in newspaper Dnevnik, July 1st, 2008. http://www.dnevnik.si/clanek/330390.

38 Constitutional Court decision No. U-I-159/08.

39 Decision U-I-159/08, paragraphs 28 and 29: 28. The constitutional equality of the judicial power in comparison with the legislative and executive powers, *inter alia*, requires that the position of the judicial power and judges as bearers of this power is treated and regulated in an appropriately comparable manner as the other two branches of power, such that judicial independence as well as the integrity and dignity of the judicial branch of power are ensured. The Constitutional Court has already stated in Decision No. U-I-60/06 that the requirement of the equality of the individual branches of power, which follows from the principle of the separation of powers determined in the second paragraph of Article 3 of the Constitution, also presumes a comparable remuneration of the officials of the different branches of power whose statuses are comparable. The three branches of power must namely be equal also regarding the economic status of their officials. 29. By the challenged regulation, in comparison with the former regulation, the legislature placed the offices of senior Supreme Court judge, senior higher court judge, senior local court judge, higher court judge, and local court judge one salary bracket higher. The legislature did not change the placement of other judicial offices. Moreover, the salary brackets of deputies and ministers did not change either. The above-mentioned entails that differences between the lowest placed office of a local-court judge and the lowest placed office of a deputy or a minister are still 15 or 22 salary brackets. Such differences are still unacceptable from the viewpoint of the constitutional requirement that all three branches of power must be constitutionally equal, which must also be reflected in the relative comparability of the amount of the remuneration of their officials. Furthermore, it is not admissible from the viewpoint of the second paragraph of Article 3 of the Constitution that the salary bracket of the office of Supreme Court judge is (still) the same as the salary bracket of the office of the lowest classified deputy.

*Fourthly, the Court found that the provisions concerning regular work performance and work performance due to an increased workload are defined in enough detail and are therefore not unconstitutional."*[40]

Again, the legislative branch (in the middle of June 2009) introduced some changes in the Act in order to align the provisions with the Constitutional Court decision and to protect the independence of judges.[41] However, the opposition wanted to have a referendum on the proposed changes, but the Constitutional Court decided that a referendum on the issue of judges' salaries would have unconstitutional consequences:[42]

*"The Constitutional Court decided that constitutional values which would be violated because of the rejection of laws at a referendum must be given priority over the right to a referendum. Maintaining the unconstitutional state of affairs which would be caused by the rejection of a law at a referendum would be intolerable from the constitutional point of view, and particularly from the point of view of the role which the judiciary plays in a state governed by the rule of law and especially in protecting human rights and fundamental freedoms."*

Due to the financial crisis, Parliament passed the Act on balancing the public finances in Spring 2012,[43] which went into effect on June 1st 2012.[44] The wages of judges were harmonized with wages of other two branches of the government and the Constitutional Court requests were finally satisfied.

### *3.3.2. Possible causes and consequences of the "war on wages"*

Was there political competition in Slovenia? After many years of one-party system, a competition among parties started to arise in 1988. The first free elections in Slovenia were held in April 1990, before Slovenia declared independence on June 25th, 1991 and seceded from Yugoslavia.[45] A center-right coalition of six parties called DEMOS won the first elections with 52.9% majority and Mr. Janez Peterle became the first Prime Minister of the independent Slovenia. In April1992 the DEMOS government fell and a new coalition of center and left parties was formed and new elections were held in December 1992 (Pleskovič and Sachs, 1994). The LDS[46] party under the Prime Minister Mr. Janez Drnovšek formed a coalition with mostly left and some right parties, among them SDS,

40 See memorandum (on file with the author) prepared by Jaša Vrabec, Judicial Councillor in the President's Office at the Supreme Court of Slovenia, October 2011.
41 Official Gazette of the Republic of Slovenia, No. 48/09.
42 Constitutional Court decision U-II-2/09.
43 Official Gazette of the Republic of Slovenia, No. 40/2012.
44 See memorandum (on file with the author) prepared by Jaša Vrabec, Judicial Councillor in the President's Office at the Supreme Court of Slovenia, October 2011..
45 Slovenia was recognized a souvereign and independet country by EU on January 15th 1992.
46 Liberalna demokracija Slovenije – Liberal Democracy of Slovenia.

the biggest rival of the LDS in the years to come.[47] However, SDS left the coalition in 1994 after Mr. Janez Janša, the defense Minister at the time, was forced to resign from his position as a Defense Minister. In 1997 LDS again was able to form a coalition, even though it was with only one vote that defected from the right positioned parties. However, the LDS government held on until April 2000, when it was voted out and on April 2000 a new government from the center – right parties was formed. It lasted only 6 months. In November 2002, LDS, again with Prime Minister Mr. Janez Drnovšek, was able to form a government that lasted up to 2004. In 2004 a new center – right government was formed with Mr. Janez Janša as a Prime Minister. In 2008 a left government was formed but was voted out of power in the middle of 2011 and the government again was in the hands of the left wing parties. In the last twenty years, the left wing parties held power most of the time, except half a year in 2000 and then from 2004 until 2008. There were interpellations and some tight moments for the left position parties during the period that they stayed in power, and the opposition was pretty fierce, but they held power for most of the time. Even though there were some times when the left wing parties were challenged by the opposition, the political competition in Slovenia could be termed as was pretty weak as opposed to the competition in other Eastern European Countries (Gryzmała-Busse, 2007). Based on this evidence we could conclude that the there was a fertile ground for encroachment on the judiciary by the executive and legislative branch of the government, however the extent of the political competition in Slovenia needs to be examined further.

What about the consequences of encroachment on the independency of judges by lowering their wages in a described fashion? Independency of judges has many faces and material independence is one of them. By making judges' salaries fixed or at least rigid downward other two branches of the government are prevented to either bribe or punish the judges for their work. However, beside the consequences of influenced or bribed judges, which are adjudication in order to please the wage increasers or to punish the wage decreasers, there are also the secondary effects on their productivity. In line with the judges' utility function (Posner, 1994), judges will on average work less when wages decrease and work more if wages increase.[48] Empirical results show that the productivity of judges did indeed steeply decrease in the middle of 2006 when the Act went into effect for judges. Could the decrease in wages be the cause? There was a white strike going on as mentioned above for at least 142 days and should have some effect on the productivity of judges. Also, all the uncertainty about the setting of the wages and ping – pong between the legislative branch of the government and the Constitutional Court might help the fact that the productivity of judges was low in 2008 and 2009 and further on. However, not all judges were on strike in 2006 and there are also other causes of the decreases judges productivity, such as implementation of new legislation, to mention just one of them. Also, as empirical results show (Dimitrova-Grajzl et al., 2012a) that judges tend to work less when more judges are appointed and the Lukenda project that started in 2004 appointed

47 Slovenia has a parliamentary system.

48 When wages change the quantity of labor supplied changes. The increase in wages increases the quality of labor supplied and the decrease of wages decreases the amount of work supplied (Bajt & Štiblar, 2004).

many judges in the following years. However, beside increase in the number of judges, there were no major legislative changes or additions going on in Slovenia. The majority of regime changing laws were enacted together with the required legislative changes in order to join the EU in 2004. Whether or not the sharp decline in the productivity of judges is indeed the consequence of the "war on wages# needs to be examined further to rule out coincidence.

## 4. CONCLUSION

The independence of judiciary is the cornerstone of democracy. It upholds private agreements and makes promises credible and at the same time keeps in balance all three branches of the government. Literature claims that there are two ways to reach judicial independence, either by bargaining among political parties or by imposing rules. The latter seems to be less effective. Since new democracies around the world are building their institutions, it makes sense to explore whether judiciaries are independent and to what degree.

Slovenia is a young country, which is still building institutions, among them the independence of judiciary. It seems that all the caveats (legal rules) that the literature requires are in place in Slovenia and that was confirmed by the report prepared by the Supreme Court of Slovenia and the Ministry of Justice in 2002. However, the situation changed after 2002, when the Public Sector Salary System Act was passed. The situation was remedied in the middle of 2012 with the passage of the Act on balancing public finances. The literature claims that independence of judges increases the ex ante price that legislators can extract from the interest groups buying the legislation and therefore the independence of judges is valuable to politicians. One of the possible conclusions for Slovenia is that there was lack of political competition in Slovenia, which puts the three branches in disequilibrium and decreased the rule of law by decreasing the independence of the judiciary and also decreased the productivity of judges. Another conclusion is that the encroachment of the independence was not intentional and the sharp drop in productivity should be the consequence of other forces at work and not encroachment on the independence of judges . Both of the conclusions needs to be furthertested empirically. However, the fact remains that at least for six years legislative and executive branch encroached the independence of the judicial branch.

Katarina ZAJC: INDEPENDENCE OF JUDICIARY IN SLOVENIA: ECONOMIC AND HISTORIC PERSPECTIVE, 741–764

# NEODVISNOST SODSTVA V SLOVENIJI: EKONOMSKA IN ZGODOVINSKA PERSPEKTIVA

*Katarina ZAJC*
Univerza v Ljubljani, Pravna fakulteta, Poljanski nasip 2, 1000 Ljubljana, Slovenija
e-mail: Katarina.zajc@pf.uni-lj.si

*POVZETEK*

*Članek analizira neodvisnost slovenskega sodstva po odcepitvi od Jugoslavije in spremembi družbenega režima po letu 1991. Postavi se vprašanje ali je Slovenija vzpostavila neodvisnost sodstva kot enega temeljev pravne države. Za analizo neodvisnosti sodstva je uporabljen Landes – Posner model neodvisnosti pravosodja ter teorija neodvisnega sodstva. Članek zaključi, v skladu z ugotovitvami Vlade in Vrhovnega sodišča iz leta 2001, da je slovensko sodstvo po črki zakona neodvisno. Dogodki povezani s sprejetjem Zakona o sistemu plač v javnem sektorju ter drugih predpisov, skupaj s tremi odločitvami Ustavnega sodišča, pa puščajo dvom o neodvisnosti slovenskega sodstva v letih 2006–2012. Članek zaključi, da je morebitni poseg v materialno neodvisnost sodstva mogoče razložiti na dva načina. Poseg je lahko posledica šibke politične konkurence v Sloveniji, kar daje izvršilni in zakonodajni oblasti motivacijo za poseg v neodvisnost sodstva. Po drugi strani pa je lahko poseg v neodvisnost sodstva v Sloveniji naključen in nima negativnih posledic, kar pa je potrebno še preučiti z nadaljnjo empirično analizo.*

*Ključne besede: neodvisnost, sodniki, sodstvo, place, politična konkurenca, Slovenija*

SOURCES AND BIBLIOGRAPHY

**Act on balancing the public finances:** Official Gazette of the Republic of Slovenia, No. 40/12, 105/12, 25/2013 Constitutional Court Decision No. U-I-186/12–34 and 47/13.

**Allesina, A. & G. Tabellini (1990):** A Positive Theory of Fiscal Deficits and the Government Debt. Review of Economic Studies, 57, 3. Oxford, 403–414.

**Aronson, P. H. (1990):** Models of Judicial Choice as Allocation and Distribution in Constitutional law. Brigham Young University Law Review, 3. Utah, 745–826.

**Bajt, A. & F. Štiblar (2004):** Ekonomija, ekonomska analiza in politika. Ljubljana, Gospodarski Vestnik.

**Barro, R. J. (1991):** Economic growth in a cross section of countries. The Quarterly Journal of Economics, 106, 2. Cambridge, 407–443.

**Botero, J.C., Lopez-de-Silanes, F., La Porta, R., Shleifer, A. & A. Volokh (2001):** Judicial Reform, mimeo, background paper for the World Development Report 2002. The World Bank. http://elibrary.worldbank.org/doi/abs/10.1093/wbro/lkg005?journalCode=wbro. (22.02.2014).

**Brzezinski, M. F. (1993):** The Emergence of Judicial review in Eastern Europe: The Case of Poland. The American Journal of Comparative Law, 41, 2, Michigan, 153–200.

**Burbank, S.B. (1999):** The Architecture of Judicial Independence. Southern California Law Review, 72, Los Angeles, 315–352.

**Buscaglia, E.Jr., Dakolias, M. & W. Ratliff (1995):** Judicial Reform in Latin America, A Framework for National Development. Stanford, Hoover Institution on War, Revolution and Peace, Stanford University.

**Buscaglia, E. & P.B. Stephan (2005):** An empirical assessment of the impact of formal versus informal dispute resolution on poverty; A governance-based approach. International Review of Law and Economics, 25, 1, 89–106.

**Cabrillo F.& S. Fitzpatrick (2008):** The Economics of Courts and Litigation. New Horizons in Law and Economics. Great Britain, Edward Elgar Publishing.

**Carothers, T. (2004):** Critical Mission: Essays in Democracy Promotion. Washington, DC, Carnegie Endowment for International Peace, 131–144.

**Carothers, T. (2006):** Promoting the Rule of Law Abroad: The Problem of Knowledge. Washington D.C., Carnegie Endowment.

**Carothers, T. (2007):** The Sequencing fallacy. Journal of Democracy, 18, 1, Baltimore, 12–27.

**Choi, S.J., Gulati, M.G. & E.A. Posner (2009):** Are Judges overpaid? A skeptical response to the judicial salary debate. Journal of Legal Analysis, 1, 1. Oxford, 47–117.

**Constitution of the Republic of Slovenia,** Official Gazette of the Republic of Slovenia, No. 33/91, 42/97, 66/00, 24/03, 69/04, 69/04, 69/04, 68/06, 47/13 and 47/13.

**Constitutional Court Act, Judicial Services Act and Judiciary Act,** Official Gazette of the Republic of Slovenia, No. 15/94 and No. 19/94.

**Constitutional Court Decision No. U-I-60/06-200, U-I-214/06-22, U-I-228/06-16,** Official Gazette of the Republic of Slovenia, No. 1/07.

**Constitutional Court Decision No. U-I-159/08,** Official Gazzete of the Republic of Slovenia, No. 120/08.

**Constitutional Court Decision No. U-II-2/09-9,** Official Gazzete of the Republic of Slovenia, No. 91/09.

**Dimitrova – Grajzl, V.P., Grajzl, P., Šušteršič, J. & K. Zajc (2012a):** Court Output, Judicial Staffing, and the Demand for Court Services: Evidence from Slovenian Courts of First Instance. International Review of Law and Economics, 32, 1, 1–196.

**Dimitrova – Grajzl, V.P., Grajzl, P., Zajc K. & J. Šušteršič (2012b):** Judicial Incentives and Performance at Lower Courts: Evidence from Slovenian Judge-Level Data. Review of Law & Economics, 8, 1, 215–252.

**Djankov, S., La Porta, R., Lopez-de-Silanes, F. & A. Shleifer (2003):** The New Comparative Economics. Journal of Comparative Economics, 31, 595–619.

**Epstein, R.A. (1990):** The Independence of Judges: The Uses and Limitations of Public Choice Theory. Brigham Young University Law Review, 3. Utah, 827.

**Euroepan Bank for Reconstruction and development (2012):** The Business Environment and Enterprise Performance Survey (BEEPS). http://www.ebrd.com/english/pages/research/economics/data/beeps.shtml (27.12.2013).

**Faundez, J. (1997):** Good Governance and Law: Legal and Institutional Reform in Developing Countries. New York, St. Martin's Press.

**Feld, L. P. & S. Voigt (2003)**: Economic growth and judicial independence: cross-country evidence using a new set of indicators. European Journal of Political Economy, vol. 19, 497–527.

**Gryzmała-Busse, A. (2007):** Rebuilding Leviathan: Party Competition and State Exploitation in Post-Communist Democracies. Cambridge, UK, Cambridge University Press.

**Gupta, P., Kleinfeld, R. & G. Solinas (2002):** Legal and Judicial Reform in Europe and Central Asia. The World Bank Operations Evaluation Department, The World Bank, http://ieg.worldbank.org/Data/reports/legal_judicial_reform_eca.pdf (12.12.2013).

**Haggard, S. & L. Tiede (2010):** The Rule of Law and Economic Growth: Where are We? World Development, 39, 5, 673–685.

**Hammergren, L. (1998):** The Politics of Justice and Justice Reform in Latin America: The Peruvian Case in Comparative Perspective. Boulder, Westview Press.

**Hammergren, L. (2002a):** Do Judicial Councils Further Judicial Reform? Lessons from Latin America. Carnegie Paper No. 28, Carnegie.

**Hammergren, L. (2002b):** Reforming Courts; The role of empirical research. The World Bank Notes, 65. The World Bank. http://www1.worldbank.org/prem/PREMNotes/premnote65.pdf (13.12.2014).

**Hammergren, L. (2007):** Envisioning Reform: improving judicial performance in Latin America. Pittsburgh, Pennsylvania State University Press.

**Hanssen, F.A. (2004):** Learning about Judicial Independence: Institutional Change in the State Courts. Journal of Legal Studies, 33. Chicago, 431–73.

**Hayek, F.A. (1960):** The Constitution of Liberty. Chicago, University of Chicago Press.

**Havrylyshyn, O. & R. van Rooden (2000):** Institutions Matter in Transition but so do Policies. Washington, D.C., International Monetary Fund Working Paper WP/00/70, IMF.

**Knight J. & L. Epstein (1996):** On the Struggle for Judicial Supremacy. Law & Society Review, 30, 1. 87–120.

**Hellman, J.S. (1998):** Winners take all: The Politics of Partial Reform in Postcommunist Transitions. World Politics, 50, 2, 203–234.

**Landes, W. & R. Posner (1975):** The independent judiciary in an Interest-group perspective. The Journal of Law, Economics & Policy, 18. Virginia, 875.

**La Porta, R., Lopez-de-Silanes, F., Pop-Eleches, C. & A. Shleifer (2004):** Judicial Checks and Balances. Journal of Political Economy, University of Chicago Press, 112, 2. Chicago, 445–470.

**Larkins, C.M. (1996):** Judicial Independence and Democratization: A Theoretical and Conceptual Analysis. American Journal of Comparative Law, 44. Michigan, 606.

**Lawyers Committee for Human Rights (1996):** Halfway to Reform: The World Bank and the Venezuelan Justice System. New York, Lawyers Committee for Human Rights.

**Legal Vice Presidency, The World Bank (2004)**: Initiatives in Legal and Judicial Reform. The World Bank. http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/03/01/000012009_20040301142827/Rendered/PDF/250820040Edition.pdf (22.2.2014).

**Malgaes, P.C. (1999):** The Politics of judicial Reform in Eastern Europe. The Journal of Comparative Politics, 32, 1. New York, 43–62.

**McCubbins, M.D. & T. Schwartz (1984):** Acongressional Oversight Overlooked, Police Patrols versus Fire Alarms. American Journal of Political Science, 28, 1, 165–179.

**The Official Travel Guide by Slovenian Tourist Board (2013):** http://www.slovenia.info/en/spoznajte-slovenijo.htm?spoznajte_slovenijo=0&lng=2 (10.12.2013)

**Public Sector Salary Act,** Official Gazzete of the Republic of Slovenia, No. 56/2002 and further changes and amendments.

**Perssson, T. & L.E.O. Svensson (1989):** Why a Stubborn Conservative Would Run a Deficit: A Policy of Time-Inconsistent Preferences. The Quarterly Journal of Economics, 104, 2. Oxford, 325–345.

**Pleskovič, B. & J. Sachs (1994):** Political Independence and Economic Reform in Slovenia. National Bureau of Economic Research. The Transition in Eastern Europe, 191–220.

**Posner, R.A. (1994):** What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does). Supreme Court Economic Review, Vol. 3, 1–41.

**Posner, R.A. (2000):** Is the ninth circuit too large? A statistical study of judicial quality. Journal of Legal Studies, 29, 2, Chicago, 711–719.

**Přibáň, J., Roberts, P. & J. Young (eds.) (2003):** Systems of justice in transition: Central European experiences since 1989. Aldershot, Burlington, Ashgate.

**Public Sector Salary System Act,** Official Gazette of the Republic of Slovenia, No. 56/02, 72/03, 126/03, 70/04, 53/05, 14/06, 68/06, 1/07 Constitutional Court Deci-

sion No. U-I-60/06-200, U-I-214/06-22, U-I-228/06-16, 57/07, 17/08, 58/08, 80/08, 120/2008 Constitutional Court Decision No. U-I-159/08-18, 20/09, 48/09, 91/09, 98/09, 107/09 Constitutional Court Decision No. U-I-10/08-19, 8/10 Constitutional Court Decision No. U-I-244/08-14, 13/10, 16/10 Constitutional Court Decision No. U-I-256/08-27, 50/10 Constitutional Court Decision No. U-I-266/08-12, 59/10, 85/10, 94/10, 107/10, 35/11, 110/11, 27/12 Constitutional Court Decision No. U-I-249/10-27, 20/2013 Constitutional Court Decision No. U-I-128/11-18 and 46/13.

**Ramseyer, M.J. (1994):** The Puzzling Independence of Courts: A Comparative Approach. Journal of Legal Studies, XXIII, Chicago, 721–747.

**Reiling, D., Hammergren, L. & A. Giovanni (2007):** Justice Sector Assessment Handbook. Washington D.C., The World Bank. http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JSAHandbookWebEdition_1.pdf (22.02.2014).

**Rose, C.V. (1998):** The 'New' Law and Development Movement in the Post–Cold War Era: A Vietnam Case Study. Law and Society Review, 32, 1. Salt Lake City, Utah, 93–140.

**Shleifer, A. & R.W. Vishny (1994):** Politicians and Firms. The Quarterly Journal of Economics, 109, 4, 995–1025.

**Sodni svet Republike Slovenije (2014):** Letno poročilo o učinkovitosti in uspešnosti sodišč, leto 2013. http://www.sodni-svet.si/images/stories/datoteke/LPSS2013.pdf (17.07.2014).

**Stephenson, M.C. (2003):** The Political Foundations of Independent Judicial Review. The Journal of Legal Studies, 32, 1. Chicago, 59–89.

**Stephenson, M.C. (2007):** Judicial Reform in Developing Economies: Constraints and Opportunities. Annual World Bank Conference on Development Economics –Regional 2007: Beyond Transition. Washington D.C., The World Bank, 311–328.

**Svejnar, J. (2002):** Transition Economics: Performance and Challenges. The Journal of Economic Perspectives, 16, 1, 3–28.

**Tabellini, G. & A. Alesina (1990):** Voting on the budget deficit. American Economic Review, 80, 37–49.

**Upham, F. (2002):** Myth Making in the Rule of Law Orthodoxy. Carnegie Endowment Working Papers, Rule of Law Series, Democracy and Rule of Law Project, 30.

**Vehovar, U. (2001):** Sodstvo na Slovenskem : političnosociološki esej o položaju in vlogi sodstva na Slovenskem v času trojnega prehoda (Zbirka Znanstvena knjižnica, 44). Ljubljana, Fakulteta za družbene vede.

**Voigt, S. & N. El Bialy (2013):** Identifying the Determinants of Judicial Performance: Taxpayers' Money Well Spent? Http://ssrn.com/abstract=2241224 or http://dx.doi.org/10.2139/ssrn.2241224 (07.12.2013).

**Vrabec, J. (2011):** Mimeo on judges' salaries, Judicial Councillor in the President's Office at the Supreme Court of Slovenia.

**Vrhovno sodišče Republike Slovenije:** Otvoritev Sodnega leta 2012: http://www.sodisce.si/mma_bin2.php?nid=2012021314361045&static_id=20120213142603.(15.07.2014) 2013: http://www.sodisce.si/usrs/objave/2013021116031043/. (15.07.2014) and 2014: http://www.sodisce.si/vsrs/objave/2014021110034017/ (15.07.2014).

**Vrhovno sodišče Republike Slovenije in Vlada Republike Slovenije (2002):** Sodni zaostanki v Republiki Sloveniji (analiza vzrokov in predlogi za zmanjšanje in odpravo). Ljubljana. http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/PDF/Sodna_statistika/sodni_zaostanki.pdf (12.05.2014).

**Vrhovno sodišče Republike Slovenije (2013):** http://www.sodisce.si/vsrs/predstavitev/2010112509152870/(05.12.2013)

**Vukelič, M. (2010):** Branko Masleša: Trditve so, z izjemo ene, neresnične http://www.delo.si/clanek/126621. (07.12.2013)

**The World Bank (2002):** The World Bank Development Report. The World Bank. http://web.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTWDRS/0,,contentMDK:22295291~pagePK:478093~piPK:477627~theSitePK:477624,00.html (12.05.2014).

**The World Bank and European Bank for Reconstruction and development (2012):** The Initiatives in justice sector, 1992–2012. The World Bank. http://documents.worldbank.org/curated/en/2012/01/16461574/initiatives-justice-reform-1992-2012 (12.05.2014).

**The World Bank (2013):** Doing Business Report, The World Bank. http://www.doingbusiness.org/ (27.12.2013)

**Zajc, K. & L. Markelj, L. (2010):** Učinkovitost sodstva – primerjalni pogled. Podjetje in delo, 36, 8. Ljubljana, 1569–1592.

**Zajc, K. & M. Kovač (2011a):** What do European Judges Strive for – an Empirical Assessment. International Journal of Court Administration, 6th Issue.

**Zajc, K. & M. Kovač (2011b):** Kaj motivira sodnike – ekonomska analiza prava. Podjetje in delo, 37, 5, Ljubljana, 852–867.

**Zajc, K. (2012):** Slovensko sodstvo med leti 1990 in 2011. In: Prunk, J., Deželan, T. (eds.): Dvajset let slovenske države. Zbirka Dialogi, 13, 1st edition. Maribor, Ljubljana, Aristej, Fakulteta za družbene vede, Center za politološke raziskave, 247–262.

Received: 2014-01-27
Original scientific article
UDC 347.736:330.342(091)(497.4)

# CORPORATE INSOLVENCY LAW – A NECESSITY OF MARKET ECONOMY, LESSONS FROM HISTORY AND SLOVENIA

*Jaka CEPEC*
University of Ljubljana, Faculty of Economics, Kardeljeva ploščad 17, Ljubljana, Slovenia
e-mail: jaka.cepec@ef.uni-lj.si

*ABSTRACT*

*Using comparative - historical analysis of the legal development of corporate insolvency law in the world and in Slovenia, with an emphasis on the development of insolvency reorganization procedures, the author developed a thesis, that corporate insolvency law is directly related to the country's economic system, it's economic development and the public relation to the fact of "failing a business." His thesis is additionally supported by the analysis of ex post (in)efficiency of the Slovenian corporate insolvency law, which is in the author's opinion directly comparable to the Slovenian level of economic development.*

*Key words: insolvency law, bankruptcy law, financial reorganization, history, Slovenia, efficiency*

# DIRITTO FALLIMENTARE (DELLE SOCIETÀ COMMERCIALI) – UN BISOGNO DI ECONOMIA DI MERCATO, LEZIONI DALLA STORIA E DALLA SLOVENIA

*SINTESI*

*Mediante un'analisi storico-comparativa dell'evoluzione giuridica del diritto fallimentare societario nel mondo e in Slovenia, in particolare, ponendo l'accento sullo sviluppo e sulle caratteristiche delle procedure di riorganizzazione finanziaria, l'autore dimostra che il diritto fallimentare societario è direttamente correlato al sistema economico del paese e le norme di diritto fallimentare sono create e modificate a seconda dello sviluppo economico del singolo paese nonché dell'impatto che le situazioni di insolvenza hanno sulla collettività. La tesi dell'autore è ulteriormente suffragata da una breve analisi ex post sull'efficienza della legislazione slovena in materia di diritto fallimentare, in cui si dimostra che il livello di (in)efficienza della legislazione fallimentare societaria slovena è direttamente comparabile al livello di sviluppo dell'economia slovena ovvero del suo sistema economico.*

*Parole chiave: diritto fallimentare, riorganizzazione finanziaria, storia, Slovenia, efficienza*

## INTRODUCTION

The purpose of this paper is to show that the insolvency law is an integral part of the economic system and that it changes in accordance with countries economic development and the public relationship to the fact of "failing a business." Author supports its thesis with four connected arguments, using historical, comparative, descriptive and empirical methods. Each argument is presented in a separate chapter.

The chapter on the evolution of corporate insolvency law, shows the historic evolution of corporate insolvency law which can directly relate to the economic development and according to the needs of business practice. More focus was given to the evolution of the financial reorganization proceedings. Even though winding up[1] procedures are by far more often, it's the legislator's attitude towards saving insolvent debtors and/or their going concern value with preventing piecemeal liquidation that tells as much more about the relationship between economic development and the evolution of corporate insolvency law.

The second chapter strengthens the fundamental thesis with the case study of development and changes in corporate insolvency law on the territory of today's Slovenia. The development can be divided into three major parts. The first being the development until the Second World War in which Austrian legislation had a major role, with gradual development in accordance with the development in Europe. The second period was the time of SFRY and the socialist regime. As private companies more or less didn't exist in the socialist regime and market economy was replaced by administratively planned economy and later with the theory of associated labor and failing companies were a rare unwanted disorder in the system, insolvency law played a very marginal role. The third period represents the evolution of insolvency legislation of Slovenia after the Independence in 1991.

After using historical, comparative and descriptive methods in the first two chapters the third chapter is devoted to the comparative empirical analysis of *ex post* efficiency of insolvency law. Empirical results show that also efficiency of insolvency law can be linked with the economic development of countries.

The last chapter presents a positive analysis of the Supreme Court of Slovenia case law on corporate insolvency law. The findings can be summoned into a conclusion that the case law has been important, but that it rarely had any effect on the legislator to change the corporate insolvency policy.

## EVOLUTION OF CORPORATE INSOLVENCY LAW – FROM WINDING UP TO FINANCIAL REORGANIZATION

Corporate insolvency law could not be developed prior to the development of modern limited liability companies (companies limited by shares, hereinafter company).[2] There-

1 Winding up is an English term for an insolvency procedure that ends with the liquidation of the company. In US terms this would be called liquidation, but that can be confusing, as liquidation in Europe can mean a regular ending of a company that can pay all its debt. Winding up is therefore a liquidation procedure of a company that cannot repay all its debt.

2 The basic characteristic being, that shareholder, members, are not responsible for the debts of the company.

fore the development of corporate insolvency law is directly linked to the development of modern companies. Even though the first companies were developed in medieval Italy (Company of Saint George, *Casa delle compere e dei banchi di San Giorgio)* or at least during the development of transatlantic maritime trade (for example: the English Muscovy Company[3] and *East India company* or the Dutch *Vereenigde Oostindische Compagnie*[4] *and the American Harvard University*[5]) the true development of modern companies began from mid-18th century.[6] Before that, companies had many distinctive features, (especially the royal powers and monopoly entitlements) so they simply cannot be compared with modern companies. The breakthrough was made in 1844 when the English Parliament enacted the Joint Stock Companies Act and later in 1862 with the Companies Act of 1862 (Goode, 2011, 11). Both Acts removed the concession system of establishing companies and enabled free establishment of companies.[7] Even though France,[8] Germany and some other countries from the Continental Europe adopted commercial codes before England, the English Act, with the abolition of the concession system of establishing companies and a relatively rapid increase in the number of companies, represented a significant evolutionary change.[9]

The English example was followed by France in 1867 and Germany in 1870, both of which introduced a regulatory system for setting up limited liability companies. The evolution of limited liability companies through Europe was primarily linked to the need

3 According to Micklethwait and Wooldridge, 2005, the English Muscovy Company, established by Royal Decree in 1555 was the first company with a limited liability of its members. The company had a monopoly on trade with the Russia respectively Russian ports.

4 V.O.C. was the first company that has been established for more consecutive commercial ship operations (the members made an agreement to participate on financing twenty one commercial fleets) and also the first company which articles of associations clearly stated that the shareholders are not liable for the debt. It is also the first company whose shares (shares) were admitted to trading on a regulated market. Micklethwait, Wooldridge, 2005.

5 *Harvard University* was established in 1634. It was the first established limited liability company on American soil (Micklethwait, Wooldridge, 2005, 42).

6 Similarly Micklethwait, Wooldridge, 2005. They think that the modern limited liability company was developed after 1820 in England. They referred to Robert Lowe, English and Australian statesman as the father of modern company law.

7 Limited Liability Company could be established by at least seven persons. The company had to state in its name that it is a limited liability company, which warned business partners on the fact that the members are not liable for the debts of the company (Micklethwait, Wooldridge, 2005, XVI).

8 Under *Code de Commerce* adopted in 1808 Frenchman could establish either: *societe anonymes* – Company limited by shares or *commandite par action – partnership limited by shares. Societe anonyme* could be established only with an authorization of the government. Between 1807 and 1867 less than 650 companies were registered. The *société en commandite* could be established without an authorization of the government and could take two different forms: simple or with shares. In both configurations, it was composed by two types of partners: the managing partners (*commandités*) who were in charge of the administration of the firm and bore unlimited liability, and the sleeping partners (*commanditaires*) who only invested money but were not allowed to intervene in the management. If they respected this disposition, their liability was limited to their initial contribution (Rochat, 2009, 6–10).

9 From 1856 till 1862 more than 25.000 companies were established in UK. From 1856 to 1883 more than one third of companies established in that period went bankrupt. The average life span of a company was less than five years.

for large quantities of capital due to the maritime trade and especially the development of railroad infrastructure (Pretnar, 1990, 25–26). In the same period a significant development occurred also in the United States. In 1830, the Supreme Court of the State of Massachusetts ruled that corporations with limited liability do not necessarily need to perform operations associated with public services. The Supreme Court of the State of Connecticut in 1837 ruled that corporations with limited liability can be set up without specific statutory basis or permission (Micklethwait, Wooldridge, 2005, 47–50).

The French Commercial Code (Code de Commerce) from 1808 contained the first modern codification of insolvency law. Virtually all other European countries, with the exception of England, introduced a system of insolvency law modeled after the French Code (Hautcoeur, Di Martino, 2010, 6). Code de Commerce based its insolvency law on the tradition of Roman law and the rules of bankruptcy procedures from medieval Italy. Insolvency law was under the responsibility of the judiciary. The commencement of the insolvency procedure by a court, led to a suspension of the rights of individual creditors to individually collect the debt. This is a rule known as "automatic stay." It's aimed at avoiding a debt collection run on any debtor suspected of suffering liquidity problems. At the same time, in order to protect creditors, the debtor lost his rights to dispose of his property and was often dispossessed of them. The basic objective of insolvency procedures was to obtain information about the amount of debt and the number of creditors. The public procedures thus resulted into lists of bankrupted debtors which were made public by the courts and subsequently published, so creditors could claim their claims. Claims were already at that period divided into secured, preferential and ordinary (Hautcoeur, Di Martino, 2010, 6).

In England the enactment of the Joint Stock Companies Act in 1844 was followed by the Joint Stock Companies Winding-Up Act 1844, which enabled a company to be made bankrupt in the same way as an individual. Corporate insolvency law got a truly distinctive status at the advent of limited liability for members of a company with the enactment of the Limited Liability Act 1855 and especially with the enactment of the first modern company law statute the Companies Act 1862, which contained detailed winding up provisions, including a provision for *pari passu* distribution (Goode, 2011, 11–12). In the famous English case Salomon A. v. Salomon & Co Ltd [1897] AC 22, the House of Lords confirmed, at the time a revolutionary view, that a company is a separate legal personality from its members and that consequently debts of even a single member limited liability company are separate from the assets of its members (shareholders) and as a result, members (shareholders) and managers are not liable for the debts of an insolvent company.[10]

10 Lord Herschell, expressed this view in the following terms: »It may be that a company constituted like that under consideration was not in the contemplation of the legislature at the time when the Act authorizing limited liability was passed; that if what is possible under the enactments as they stand had been foreseen a minimum sum would have been fixed as the least denomination of share permissible; and that it would have been made a condition that each of the seven persons should have a substantial interest in the company. But we have to interpret the law, not to make it; and it must be remembered that no one need trust a limited liability company unless he so please, and that before he does so, he can ascertain, if he so please, what is the capital of the company and how it is held.«

This very significant moment in corporate law history meant, that the financial burdens of corporate failure would be thrown on to the creditors (Rajak, 2008, 36).

Although all the development was made, repressive instruments were still very often used. Failed debtors were still jailed at least for a short exemplary period, and rehabilitation was highly conditional. Shame and infamy were part and parcel of contractual discipline. At that time, many argued (in today's language) that due to limited liability moral hazard would become uncontrollable and that credit markets would decline. Even though in most countries it was finally agreed that the unconditional, hard–headed defense of creditors' rights – whatever the instruments – might not always be consistent with economic development. Whereas no country in 1866 had yet suppressed prison for debt, thirteen countries, of all legal traditions, had taken that step in 1877 (Sgard, 2006, 399). This was due to a new wave of reforms beginning in 1870's. The goal of these reforms was to find alternative procedures to liquidations of over-indebted companies. The reforms were a consequence of awareness that market economy has economic cycles and that over-indebtedness can also occur through no fault or fraud of the debtor. The reforms were also a result of awareness that the going concern value of a company may be worth substantially more than its piecemeal liquidation value. Therefore, for the benefit of creditors and the economy as a whole, a new procedure, that could help to preserve the companies going concern value and that could help efficient companies to overcome temporary financial difficulties with some kind of a financial restructuring, was needed.[11]

The financial reorganization procedure was "born" in the United States after a severe financial crisis caused by the railroad companies.[12] The railroad network had grown exponentially in the mid-19th century. The railroads were not built by the states or federation but by private companies. Due to vast amount of capital needed for financing the railroad network, almost every company involved in the construction of the railroad system ran into liquidity problems. The only legal solution for companies who were not able to meet their financial obligations was winding up (liquidation), which soon proved to be completely inefficient in the case of railroad systems. Liquidation means that the debtor's assets are sold piecemeal. Selling railroad tracks piecemeal makes no sense since piles and piles of unconnected tracks have no real value respectively the value is much lower than a connected system of railroads. Additionally, the issue of the "to big to fail" problem arose. The whole railroad business of U.S. was simply too important for the national economy to be just left to collapse. Since legislation was not yet familiar with the concept of financial reorganization, the solution was found by the commercial practice supported by the U.S. courts. The management of the debtor negotiated with the creditors and shareholders of the debtor an agreement, a plan for financial reorganization of the debtor. The interested parties were formed into different groups (shareholders, bondholders, suppliers, subcon-

11 England 1883, France 1889, Italy 1903 etc. These Acts were relatively very different, but they share a common denominator, a system of a financial reorganization with the goal that the company does not cease to exist.

12 The first U.S. insolvency act, The Bankruptcy Act of 1800 was a direct copy from the Statute of Anne in English law. The Act was repealed three years later by Congress. Between 1803 and 1898 there were at least six major reforms of the U.S. insolvency law before in 1898 a more lasting Bankruptcy Act was enacted.

tractors etc.) and each group had an active role in the preparing of the reorganization plan. The plan was mainly based on a partial remission of debt and extending the maturity of repayment. After the plan was prepared the management of the debtor, in accordance with the law, filled an application for the commencement of the insolvency procedure (winding up). In the winding up process the whole business was sold on a public auction. Since the debtor, its shareholders and creditors had an agreement for a financial reorganization (partial remission of debt and extension of the maturity of repayment) they (as a whole group) were the best bidders for buying the business, since other bidders could not count on the partial remission and maturity extension. The court upheld the scheme, since it was an efficient solution for a temporary problem of otherwise sound business models of railroads, and a model for a financial reorganization was born.[13] The Congress, backed by the commercial practice and Court decisions, enacted a new Bankruptcy Act in 1898 which was in force until 1978. The Bankruptcy Act of 1898 was in the three central dimensions of debtor-creditor law an opposite of English law. While English insolvency law was creditor-oriented (creditor friendly) with a particularly favorable treatment of banks and with a potential liquidation bias, the U.S. act was debtor-friendly and reorganization prone with a strong bias against banks (Berglof et al., 2001, 17). It became a model law for debtor friendly insolvency regulations and a model of how to introduce financial reorganization plans into insolvency laws.

At the end of the 19th Century some kind of financial restructuring procedure was adopted in almost all insolvency laws of the major legal systems.[14] The new insolvency procedures (various kinds of financial reorganizations) had some common characteristics. The basic mechanism for resolving insolvency of the debtor was a partial remission of his debt. The debtor had to obtain creditors consent. The required majority of creditors was measured both by the number of creditors and the percentage of the debt they represented. The required majority was usually more the half of the creditors and between ½ and ¾ of the creditor's claims. If the majority was reached, the financial reorganization had to be approved by the court. Another common feature was that the reorganization procedures could be in principle proposed only by the debtors themselves (Sgard, 2006, 398).[15]

13 For more on this topic see Skeel, 2011, 58–61. For a detailed overview of U.S. Insolvency law evolution and history see Skeel, 2011 or Noel, 1919.

14 England 1883, France 1889, Italy 1903 etc. These Acts were relatively very different, but they share a common denominator, a system of a financial reorganization with the goal that the company does not cease to exist.

15 Countries, that's insolvency law system was based on German Law (Germany, Austria, Hungary, Sweden, The Netherlands) didn't use two separate procedures but used a single procedure technique within which either winding up or reorganization was possible (Sgard, 2006, 407). German Insolvency Act (*Konkursordnung*) from 1877 was a very modern Act, relatively debtor friendly, without any repressive features and modelled as an almost purely procedural and problem-solving instrument. It had an early form of a debtor-in-possession provision ("*Eigentumsvorbehalt*"). The debtor remained owner of his property in bankruptcy, and only lost his rights to manage it freely. Due to modern techniques it was considered as a model for other insolvency laws across Europe (Sgard, 2006, 402). *Konkursordnung* was based on the premise that insolvency usually occurred due to unexpected events, external factors and bad luck and not because of deception, fraud or moral hazard of the debtor. The insolvency procedure was basically a system of a single procedure within which the court could decide, upon the proposal of the debtor, if the procedure should

## EVOLUTION OF CORPORATE INSOLVENCY LAW IN SLOVENIA

In 19th century when Corporate Insolvency Law was born, the majority of today's Slovenia was under the government of the Habsburg monarchy. The development of corporate insolvency law on the territory of Slovenia was accordingly until the end of the First World War in 1918 directly linked to the development of the corporate insolvency law in the Habsburg monarchy.

The first Insolvency Act (*Konkursordnung)* in the Habsburg Monarchy (further one Austria) was introduced in 1781. In 1868 the first modern Insolvency act was introduced and it was in force until 1914 (Prelič, 1999, 34). The Austrian code was widely regarded as highly creditor-friendly. It strived to minimize the involvement of courts on the insolvency procedure and to maximize creditor autonomy. The Code was much influenced by the ancient Italian statutory (Berglof et al., 2001, 29). Austrians believed that Insolvency law is a part of civil law and the guiding principle of civil law is that everybody shall look after his own rights: "The state does not make up their minds for responsible citizens." (Berglof et al., 2001, 6).[16] Austria implemented a new insolvency Law in 1914. It was codified with two statutes: (a) the Insolvency Act (*Konkursordnung*) and (b) the Settlement and Recomposition of Debts Act (*Ausgleichsordnung*).[17] The *Konkursordnung* was primarily creditor oriented and had regulated the liquidation (winding – up) procedure, which was basically a proceeding involving the realization of the debtor's assets and the subsequent distribution of the proceeds among the creditors. The proceeding regulated in the *Ausgleichsordnung*, on the other hand, provided for court controlled reorganization (*Ausgleich*) of the debtor (Klauser, 2002, 8). Its goal was to rescue the insolvent debtor's business by enabling the debtor to continue its business activities and eventually to be discharged from a part of its debt. The conditions for a discharge of residual debts were quite strict. The main requirements were that (1) the debtor undertook to pay to its creditors, over a maximum period of two years, a minimum of 40 percent of its debt, and that (2) the creditors accepted the debtor's plan by a majority vote. A similar reorganization proceeding was available under the *Konkursordnung*. A proceeding that originally began as a bankruptcy proceeding could be converted into a reorganization proceeding (1) if the debtor undertook to pay to its creditors over a maximum period of two years, a minimum of 20 percent of its debt and (2) if the creditors accepted this by a majority vote. This special type of reor-

end with liquidation or financial reorganization. The debtor was allowed to propose a financial reorganization (more or less a compulsory settlement - *Zwangsvergleich).* The proposal had to be accepted by the debtors whose debt accounted for at least ¾ of the whole debt and upon that by the court (Konkursordnung 1877, par. 169). The major role was attributed to the bankruptcy court and to the bankruptcy administrator ("Konkursverwalter"). The creditors had a minor role. The *Konkursordnung* was, compared to its predecessors, relatively debtor-friendly. In fact, the main criticism leveled against the code at the time of its enactment was that it was "a child of Manchesterian ideas" and tailored to the needs of big business. Until the code's repeal in 1998, the extremely low recovery rates in German bankruptcies were often blamed on its debtor-friendliness (Berglof et al., 2001, 28).

16 Berglof cited an Austrian scholar Rudolf Pollak.

17 Both statutes have been amended many times since, but they are still valid.

ganization proceeding was – if translated literally - called "compulsory reorganization" (*Zwangsausgleich*) (Klauser, 2002, 8–9).

After 1918 the territory of today's Republic of Slovenia became part of the State of Slovenes, Croats and Serbs and after a month joined with the Kingdom of Serbia to form the Kingdom of Serbs, Croats and Slovenes (renamed in 1929 into Kingdom of Yugoslavia). After 1918 Slovenians continued to use the Austrian law of 1914 (Politeo, 1929, 6). The Austrian Law was transferred to the whole territory of the Kingdom in 1921. Due to harsh resistance of economy as well as legal theory the rules of debt discharge (*Ausgleich* and *Zwangsausgleich*) were abolished in 1925. The Belgrade Chamber of Commerce had thought that debt discharge was expanding economic immorality, the Serbian and Croat associations of lawyers had meant that rules of debt discharge could be useful but that they cause too much fraud and immorality (Politeo, 1929, 174). After the abolishment of debt discharge procedure the number of winding up procedures rose very quickly from 106 in 1924 to 384 in 1925 and up to 823 in 1926. The Legislator was faced with the reality that a certain amount of abuse of the debt discharge procedure is still better than to have no procedure at all, so they started to prepare a new insolvency Act (Politeo, 1929, 176).

The first Insolvency Act of the Kingdom of Yugoslavia was enacted in 1930. The insolvency law was following the example of Austrian law of 1914 and was composed of two Statues: (a) the Insolvency Act (*Stečajni zakon za kraljevinu Jugoslaviju)* and (b) Settlement and Recomposition of Debts outside of bankruptcy Act (*Zakon o prinudnom poravnanju van stečaja, further one Settlement Act*). Both Statutes were modeled on the Austrian insolvency law and were extremely similar to it. The winding – up proceeding was more or less a creditor friendly procedure that consisted out of proceedings involving the realization of the debtor's assets and the subsequent distribution of the proceeds among the creditors. The debt discharge proceeding could be initiated by a petition of an insolvent debtor (par. 1 of Settlement Act) until the court's decision to start the winding up. In the petition the debtor had to submit a list of all creditors and their claims and make a proposal of the percentage of repayment and the extension of the maturity of repayment. The debtor's proposal had to offer to pay to its creditors at least 40 percent of its debt in a maximum period of one year or a minimum of 50 percent of its debts in a maximum period of a year and a half (par. 4; see also Politeo, 1929, 196). Secured and preferred debt could not be discharged. With the court's decision to allow the beginning of the proceeding the court named a bankruptcy administrator whose basic duty was to monitor debtor's acts and to give consensus to debtor acts and running its business. Central moment of the proceeding was a hearing at which the debtor explained the reasons for his insolvency, presented his accounting and other business books and gave a sworn statement, that all accounting data is true, complete and accurate (par. 34 and 36). Debt discharge proposal was accepted if it was accepted by the majority of creditor whose claims represented more than ¾ of the whole debt. If debtor proposed to pay more than 50 percent of claims proposal was accepted by the majority of creditors present at the hearing whose claims represented at least 2/3 of the whole debt (par. 46).[18] If only majority of creditors was

18 Only creditors whose debt could get discharge had voting rights. This meant that secured and preferred

achieved but they did not represent majority of debt, the court could decide to postpone the hearing for 15 days. In the meantime the court urged creditors to vote. Debtor could also improve the proposal of repayment to improve chances of success.[19] If required majority was reached debt discharge had to be confirmed by the court.

After the Second World War, Slovenia became a federal part of the Socialist federative Republic of Yugoslavia. SFRJ had a federal Insolvency law (Prelič, 1999, 36). Until 1952 the SFRY economy was based on the idea of centrally Planned Economy and administrative management which meant, that insolvency of businesses was conceptually not possible. In 1951 a federal Regulation on winding up of enterprises was adopted according to which companies could only cease to operate on the basis of a decision of the economic administration authority.

With the transition to a new economic system (planned market socialism) in which companies became independent economic units, a need of insolvency law emerged. Consequently in 1953 a federal Regulation of liquidation of companies and establishments was enacted. The Regulation enabled two ways of companies dissolution. It could be liquidated via a voluntary liquidation, which was ordered and carried out by the competent municipality or via compulsory liquidation carried out by the competent district court (Prelič, 1999, 37–38). In 1965 the first Insolvency Act of SFRY (Zakon o prisilni poravnavi in stečaju) was enacted (Official Gazette of SFRY No.15/65). The Act regulated two procedures: winding up and debt discharge reorganization procedure. Winding up was allowed only if the company was unable to make a financial rehabilitation or if the debt discharge reorganization wasn't successful (article 4 of SFRY Insolvency Act). This provision was abolished by amendments of the law in 1969, but they were re-established in 1972. If petitioner (creditor, debtor, municipality, Social Accounting Service) filed a request for the beginning of a winding up procedure, the court had to introduce a pre-procedure with a court hearing. The court hearing was intended to check if financial rehabilitation or the debt discharge reorganization would be possible. The Court could even hire an expert witness to determine whether reorganization is feasible (articles 58 to 67 of SFRY Insolvency Act).[20]

The debt discharge reorganization procedure of 1969 was very similar to the Insolvency Act of 1930. The debtor had to offer to pay his creditors at least 50 percent of its debt in a maximum period of one year or a minimum of 60 percent of its debt in a maximum period of two years. Secured and preferred debt could not be discharged (article 12 of SFRY Insolvency Act). The debt discharge proposal had to be accepted by a majority of creditors whose claims amounted for more than on half of all claims.[21] In following decades four more Acts were enacted, each of them more or less as a reaction to changing socio-economic conditions in SFRY. In the 1970s economy was reorganized according

creditors could not vote.

19 For details see also Politeo, 1929, 263.

20 More on the topic of Insolvency Act of 1965 for example in: Gamberger and Juhart, 1971.

21 Not counting the secured and preferred debt. Of course only creditors whose debt could get discharge had voting rights. This meant that secured and preferred creditors could not vote.

to Edvard Kardelj's theory of associated labor in which the right to decision-making and a share in profits of workers-run companies was based on the investment of labor. All companies were transformed into organizations of associated labor. The smallest, basic organization of associated labor roughly corresponded to a small company or a department in a large company. These were organized into enterprises which in turn associated into composite organizations of associated labor. Following this idea meant that the ordinary insolvency procedures are insufficient and new law had to be enacted. In 1972 Act on the conditions and procedure for rehabilitation of organizations of associated labor was adopted (Official Gazette of SFRY No. 39/72), following by the Act on the conditions and procedure for rehabilitation in 1976 (Official Gazette of SFRY No. 58/76) and the Act on the procedure for rehabilitation and liquidation of organizations of associated labor in 1980 (Official Gazette of SFRY No. 41/80) and 1986 (Official Gazette of SFRY No. 72/86) respectively.[22]

The first modern Insolvency law (Zakon o prisilni poravnavi, stečaju in likvidaciji) based on market economy was enacted in 1989 (Official Gazette of SFRY No. 84/89). The new Act regulated two different proceedings, the winding up and the debt discharge proceeding. Both proceedings could be commenced only if the debtor was already insolvent (Šlibar, 1991, 9). The Act of 1989 was debtor friendly as debt discharge was intended to be the primary proceeding. Even in the winding up proceedings, the court had to examine whether there existed a possibility to save the company with a debt discharge proceedings and if it thought that it was plausible the court had to make a proposal to the debtor to prepare a debt discharge plan. The debt discharge proceeding could be proposed by the debtor, creditors or the court. The proposal had to be confirmed by creditors whose claims represented the majority of the whole debt, excluding the secured and preferential debt.[23] If debt discharge was not accepted the court could reschedule the voting hearing and allow the debtor to propose a new debt discharge plan. Even if the plan was not accepted and the winding up proceeding already begun, it could be stopped if the debtor made a new debt discharge proposal. The only condition being, that the plan had to be more favorable to the creditors that the previous one (Šlibar, 1991, 13–17). The debt discharge proceeding was not yet a modern financial reorganization procedure as only debt discharge and/or extension of the maturity of repayment were possible. Debt to equity transformation or other mechanisms for financial reorganization were still not possible (Šlibar, 1991, 6).

Due to declaration of independence of the Republic of Slovenia in 1991, the Act of 1989 was in force for only a short time. After the independence companies faced an extreme economic situation, since they basically lost their entire market of ex-Yugoslavia. Consequently the whole economy was faced with a major economic crisis which lasted until 1993 and was named a phase of transformative depression (Mencinger, 1997, 225). On 5th of July 1991 in order to prevent an avalanche of insolvency proceedings, the Slovenian government adopted a Decree on the moratorium on all insolvency proceedings. The Decree regulated that the Public Accounting Service of the Republic of Slovenia

22 More on the peculiarities and issues of the insolvency law in time of associated labor for example: Finžgar, 1977;

23 As secured and preferential debt was not discharged in those creditors were not included in the procedure.

shall not propose a commencement of an insolvency procedure even though companies were insolvent. Since the Public Accounting Service was by far the most common initiator of insolvency proceedings (84,2 % in 1991), the number of new insolvency proceedings was considerably lower than it would be without the adopted Decree (Tajnikar, 1997, 256; Žnidaršič Kranjc, 1992, 474).[24] Parallel to establishing new markets for Slovenian companies and resolving the crisis from 1991, Slovenian companies had also to deal with the issue of ownership transformation from social ownership in socialism to private ownership in the new economic system[25] which was in progress during the 90's. After the initial two years of Independence and after the big economic shock was over, the first Slovenian Insolvency Law (Zakon o prisilni poravnavi, stečaju in likvidaciji, Insolvency Act 1993, Official Gazette of RS, No. 67/1993) was adopted on the 23rd of November in 1993. The Insolvency Act of 1993 was amended twice in 1997 and in 1999. It was in force until October 1st 2008, when the current insolvency act The Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju, Official Gazette of RS, No. 126/2007) entered into force.

The proposal of the Insolvency Act 1993 was very modern and based on German and Austrian Law, with a financial reorganization procedure, called compulsory settlement, which was considerably based on the U.S. Chapter 11 (Ude, 1992, 513). In the process of adopting the Act the proposal was substantially revised and at the end the adopted Insolvency act of 1993 was very similar to the Insolvency Act of 1989. The financial reorganization procedure was very debtor friendly, but still consisted more or less only out of debt discharge and extension of maturity of repayment.[26] Following the U.S. Chapter 11 procedure, the debtor had, after the commencement of the procedure, a two month moratorium on debt enforcement of his creditors. In this time he had to prepare the financial reorganization proposal. The debtor had to offer to pay the creditors at least 50 percent of its debt in a maximum period of one year or a minimum of 60 percent of its debts in a maximum period of two years.[27] The proposal had to be confirmed by creditors whose claims represented at least 60 percent of the whole debt. Since secured and preferred debt

24 At the end of 1991, almost 600 Slovenian companies, with almost 100.000 employees met the conditions for the commencement of an insolvency proceeding. To prevent the systematic failure of Slovenian economy the economic needs once more adopted insolvency law to its interests.

25 We have to differ between socialist ownership – the collective appropriation of ownership by all working people and private ownership, where also the State or a Community can be a private owner. This means that ownership transformation from the socialist ownership system to a capitalist – private property system, does not necessary mean also privatization in the sense of finding private owners for companies, which are State owned.

26 The reform of 1997 had finally brought a system of financial reorganization which enabled debt to equity transformation, company consolidations, mergers and acquisitions and all other forms and actions that can prevent a piecemeal winding up.

27 Prerequisites for the plan were a copy – paste from the 1969 Insolvency Act. The reform in 1997 further reduced requirements for the reorganization plan. Under the 1997 law, the debtor had to offer: (a) 20 percent repayment in a maximum period of 1 year, (b) 40 percent repayment in a maximum period of 2 years, (c) 60 percent repayment in a maximum period of 3 years, (d) 80 percent repayment in a maximum period of 4 years or (e) 100 percent repayment in a maximum period of 5 years.

could not be discharged, those creditors could not vote and their claims were not included (Plavšak, Prelič, 2000, 253–262).

Insolvency Act of 1993 also allowed for the commencement of financial reorganization once winding up procedure already begun. Article 172 stated that till the hearing for the main distribution of debtor's assets, the insolvency administrator, shareholders or creditors' committee could propose to commence a financial reorganization procedure. If the financial reorganization was carried out in the winding up procedure, the minimum repayment requirements stated above did not apply, which meant, that the debtor could offer to repay less or in longer periods (Prelič, 1999, 198).

After a thorough analysis of theoretical and expert articles, legal commentaries and jurisprudence I can conclude, that at the time of adoption of the Act of 1993 and in the years following the adoption of the Act, there was no noticeable mentioning or arguing that the ownership transformation from socialist to private ownership or the initial economic shock of losing the major market for Slovenian companies had any real impact on the design of the Insolvency Act of 1993 or its two amendments in 1997 and 1999.[28] The important exception to this statement was the reform of 1999 in the part where it abandoned the *ex offo* initiation (initiation by the court, without any requests form the debtor or its creditors) of a winding up.[29] Due to inter-enterprise indebtedness of Slovenian companies that meant, that more than 6.000 winding up proceedings would have to be initiated. Due to unforeseen consequences of such an avalanche of insolvency cases, the legislator, upon the urge of theory and experts, decided to abandon the possibility of an *ex offo* initiation of insolvency proceedings.[30]

In 2008 the new insolvency act, The financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act came into force (further one Insolvency Act of 2008). The Insolvency Act of 2008 was until today already amended six times.[31] More or less each of the six reforms was turning the insolvency law into a more creditor friendly insolvency system. A comparison between the Insolvency Act of 1993 and today's valid law shows an extremely large shift from having a very debtor friendly insolvency law, into having very creditor friendly insolvency legislation.[32] The major points of a debtor

28 There were some specific provisions in the Act of 1993 about persons who may propose the initiation of proceedings but otherwise, nonprivatized companies were legally treaty equally to already privatized ones.

29 The court had to initiate a winding up proceeding if a company was unable to pay salaries for a period of three months or if the company has had blocked banking accounts for a period of at least twelve months.

30 See more in Plavšak, Prelič, 2000, 823–829.

31 For an overview of the reforms first for reforms see for example Zajc, Cepec, 2012. The main reasons for the reforms were: (a) Constitutional court decision and protection of personal data (Amendment Act A); (b) public pressure (Amendment Acts D and partially E); (c) strengthening the position of creditor (Amendment Acts C, D, E, F), (d) enabling more flexible financial restructuring proceedings (Amendment Act F) and (e) as a reaction to the global financial crisis and consequently an economic crisis in Slovenia (Amendment Acts E and F).

32 The modern trends in the World are contrary. All major legal systems are trying to find a more flexible insolvency law that would enable more financial reorganizations. Following these international trends two reforms of the Slovenian financial reorganization have to be mentioned. One is the simplified financial reorganization of small and micro companies, that's less expensive and less complex as the regular financial reorganization procedure. The other is a preventive financial reorganization procedure for medium and big companies that for the first time in the Slovenian history allow a formal procedure for companies that are

friendly insolvency law are: (a) exemptions of the absolute priority rule, (b) debtor in possession principle and (c) preservation of the company as a separate goal that is equally important or has even priority to the repayment of creditors (Blazy, Chopard in Fimayer, 2008, 258).[33] The main points of the reforms that in my opinion shifted the whole paradigm of the Slovenian insolvency law in a creditor friendly insolvency law are:

- the absolute priority rule also governing the financial reorganization proceedings,[34]
- the possibilities of creditors to change the management of the debtor,[35]
- because of reasons (a) and (b) managers and shareholders have no incentives to initiate a financial reorganization proceeding,
- no more possibility of a financial reorganization in the winding up proceeding[36] and
- minimum repayment requirements.[37]

---

only in danger of becoming insolvent (See Amendments to the Insolvency Act »E« in May 2013 and »F« in December 2013)

33 See below for more explanations on these three points.

34 The absolute priority rule (APR) is a rule which insists that a creditor's claim have an absolute priority over a shareholder's claim and that senior class of creditor have absolute priority before any payments can be made to junior creditors. Until the reform in 2014 APR was in use only in the winding up procedure, while in the financial reorganization proceeding APR principle did not apply and the existing shareholders of the debtor could remain shareholders after the reorganization was successfully accomplished. The transformation was graduate and begun with the regulation on debt to equity swap in 2010. Insolvency Act of 2008 regulated the debt to equity swap relatively the same as the previous act allowing the debtor to propose to its creditors that a part or the whole debt can be transformed in companies equity. The 2010 reform enabled the creditors to make an increase in the share capital from new contributions without the consent of debtor's shareholders. The reform in May 2013 enabled creditors to make a forced debt to equity swap transforming part or all of the debt in equity of the debtor without consent of debtor's shareholders. The forced debt to equity also allows a simplified reduction in subscribed capital to zero. This means that the creditors can expropriate the old shareholders, thus eliminating all incentives for management and/or shareholders to even propose to commence a financial reorganization procedure (See also: Plavšak, 2013 or Ilić, Jan, Bratina, 2013). If the reform of 2013 stopped at the point of enabling creditors to make a forced debt to equity swap with a prior simplified reduction in subscribed capital to zero, the reform of 2014 made this as an absolute rule. Article 136 of Insolvency Act of 2014 states that an existing shareholder of the debtor may retain only such share of capital of the debtor, which corresponds to the value of the share, they would have received if the debtor would go into a winding up procedure.

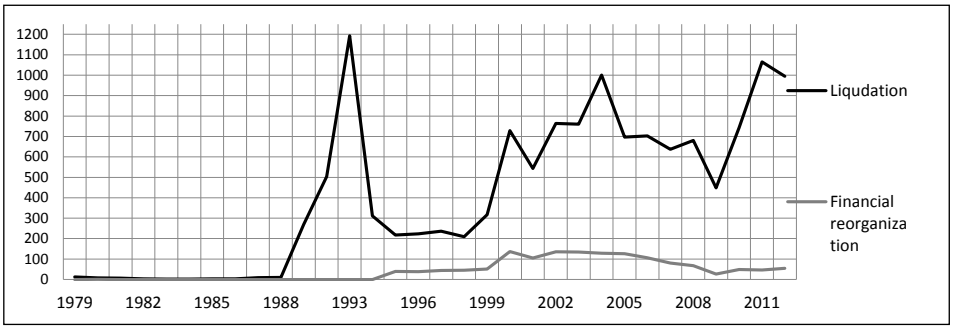
35 Prior to reforms in 2013 and 2014, Slovenian insolvency law in the financial reorganization proceeding had the US debtor in possession system, which means, that the existing managers of the debtor stayed in position and they cooperate and lead the negotiations and the whole process of debtors financial reorganization. Under the new rule in Article 199b each creditor, who has paid for new shares of the debtor or made a debt to equity swap, can request the court to grant him the authority to conduct the business of the insolvent debtor. This means that an active creditor can always demand from the court to replace the old management with new, elected by the creditor.

36 Once the winding up procedure begun there is no more possibility to request for a financial reorganization procedure inside the winding up proceedings.

37 Insolvency Act of 2008 abandoned the minimal repayment requirements and instead introduced a rule, that debtor has to show, that creditors will be paid better as they would be in a winding up. This very sensible rule was amended in 2011 due to pressure of public and especially the Chamber of craft and small business of Slovenia who thought that the lack of minimum repayment requirements causes economic immorality and fraud. They even called this rule: "a legalized theft" (The arguments were very similar to the arguments of the Belgrade Chamber of Commerce and the Serbian and Croat associations of lawyers in 1925! At again it took almost three years for the legislator to realize that he made a mistake). The amended Article 143 stated

## EVALUATION OF *EX POST* EFFICIENCY OF SLOVENIAN CORPORATE INSOLVENCY LAW

For a better assessment of Slovenian insolvency law this chapter is devoted to a brief empirical analysis of *ex post efficiency*[38] of Slovenian insolvency law. Firstly I will present data on the number of insolvency cases and on the "success" rate[39] of insolvency cases. Further a comparison of ex *post* efficiency of Slovenian insolvency law based on comparing the Doing business rankings for different legal systems will be done and finally, I will present a more detailed empirical assessment of *ex post* efficiency of Slovenian insolvency proceedings based on a primary data set gathered from different publicly available data. All data is gathered from the Court statistics yearbooks,[40] publically accessible e-portal AJPES[41] and from The Doing business report.




Source: Judicial statistical yearbooks; Own calculations.

*Figure 1: Number of insolvency procedures per year from 1979 till 2012*

that the debtor must offer a minimum repayment of 50 percent of claims in a maximum period of four years. The same Article has been again amended in May 2013 with an even harder rule on the debtor now requiring a minimum repayment of 50 percent in a maximum period of four years with an additional rule, that creditors have to receive at least a quarter of the whole repayment in each of those four years. Already in December 2013 the rules have been completely turned around for the third time in three years. The current version is back to the original law of 2008, which means that no minimum repayment requirements are necessary any more, but management and shareholders are bound by the absolute priority rule (explained above).

38 *Ex post* efficiency is mainly concerned with the maximization of debtor's total value available to be divided between creditors, which can be achieved through an efficient bankruptcy proceeding. It raises question about the relationship between reorganization and liquidation proceedings, the costs induced by the proceeding, the best way of selling debtors assets, especially the question of keeping the going concern value compared to piecemeal selling of assets etc. *Ex post efficiency* is empirically measured with three basic criteria: (a) length of the procedure, (b) rate of return for creditors and (c) costs of the proceedings. See more on *ex post* efficiency: Cabrillo, Depoorter, 1999; Hart, 1999; White, 2005; Rasmussen, Skeel 1995; Armour, 2001; Jackson, 2001; Baird, 1996, etc.

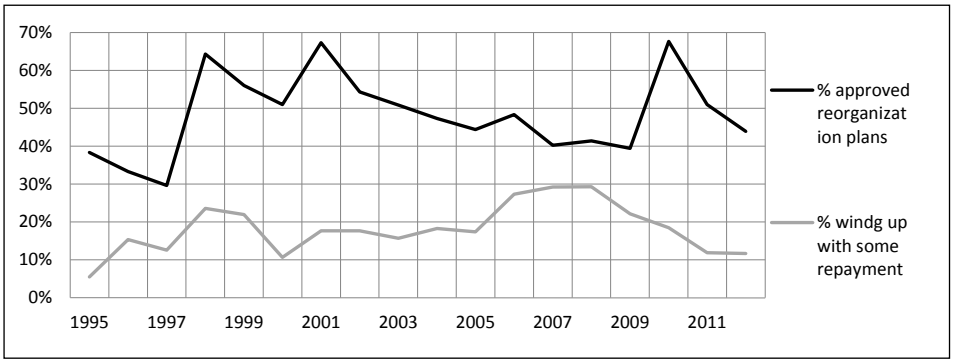
39 For the purpose of this paper a successful procedure is either a confirmed financial reorganization procedure or a winding up, where creditors ended up with at least some payment.

40 Supreme Court of Slovenian, Judicial statistical yearbook 1991 – 2013.

41 The web page of the Agency of the Republic of Slovenia for Public Legal Records and Related Services.

The Figure 1 shows that insolvency cases before the independence of Slovenian in 1991 were extremely rare, as the total number of procedures between 1979 and 1991 was only 60.[42] The other characteristic feature of the Figure 1 is the proof of the correlation of economic crisis and number of insolvency cases. The peaks 1993 and 2011 show that the number of insolvency procedures dramatically raises in times of financial crises but that the peak comes with a short delay.[43]

The figure also shows the relationship between the numbers of both kinds of proceedings. It can be seen that winding up proceedings are by far more common that the financial reorganization proceedings, which on average represent only 12 per cent of all proceedings.[44] The percentage is steadily decreasing from 1998 on and amounted to only five percent in 2012.




Source: Judicial statistical yearbooks; Own calculations.

*Figure 2: Percentage of "successful" proceedings*

Figure 2 shows the relation between successful reorganization and winding up proceedings. From the graph we can see, that until 2000 the relationship of success was more or less proportional, but this started to change and became more inversely proportional from 2001 on, with an exception in the period between 2005 and 2006. After the new Act in 2008 reorganizations started to get more successful until 2011 when the law was changed in the favor of creditors which, combined with the major financial crisis, obviously lowered the chance of a successful reorganizations. Due to presented data, the new act of 2008 and the global financial crisis combined had a very negative effect on the

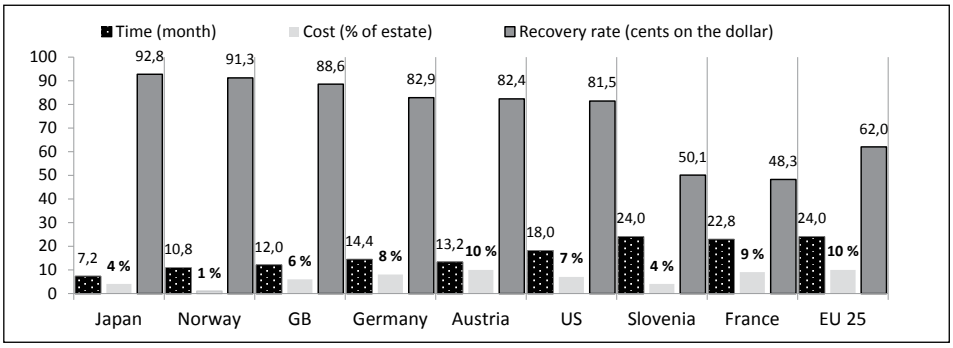
42 Out of those 60 only one was a financial reorganization proceeding.

43 The 1993 peak was even bigger because of the mentioned "moratorium" on initiation of insolvency proceedings by the Slovenian government in July 1991, which lasted until 1993.

44 The average in France is 33 per cent in US 20 per cent, Germany only 1 per cent and England about 12 percent.

winding up procedure, since the number of procedures with some repayment of creditors is steadily decreasing.

For a comparative analysis of the efficiency of insolvency laws of different countries around the world we can use the *Doing business report.* The *Doing business report* founded by The World Bank and International Finance Corporation (IFC) which measures the "ease of doing business" in 189 countries around the world,[45] has also developed an index of measuring *ex post* efficiency of insolvency procedures.[46] The index is very often used, because it is basically the only comparative index on insolvency efficiency in the world. But the index has a very serious drawback. The data about time, costs and recovery rate of insolvency proceedings is not gathered on real life cases in different countries but upon a simulation case. This means that the presented data does not represent the actual happening in different insolvency procedures around the world, but is based upon the opinions of different experts on insolvency law in each country about how the simulated case would finish.[47]




Source: doingbusiness.com

*Figure 3: Doing business Resolving Insolvency Index*

Figure 3 presents the results of the Doing Business Resolving Insolvency Index for all major legal systems,[48] including also Japan with the best index and EU 25 for a better comparison with Slovenia. The figure shows, that creditors in Japan and Norway would get paid most and creditors in Slovenia and France at least. The costs would be the highest in Austria and France and lowest in Norway, Japan and Slovenia. The duration of the case would be shortest in Japan and Norway and longest in Slovenia and France.

45 See more on www.doingbuisness.org.

46 The main three criteria for *ex post* efficiency of insolvency procedures are: (a) duration of the case, (b) costs of the procedure as a percentage of the estate and (c) the recovery rates for creditors.

47 See more on methodology on http://www.doingbusiness.org/methodology/resolving-insolvency.

48 I used US and UK as representatives of Common law legal family, Germany and Austria as representatives of German legal family, France as the representative of Roman legal family and Norway for the Nordic legal family. For more on the definition of legal families see Zweigert, Kötz, 1998.

I also made a comparison of *Doing business* data for a group of central and east European countries,[49] that joined EU in last 10 year. The correlation between the result of *ex post* efficiency of insolvency law and the GDP per capita for this countries, shows a very high correlation factor (r=0,8) between this two variables. This means that the efficiency of the insolvency law system in a country and its level of GDP per capita are importantly connected and positively related.

*Table 1: Correlation between efficiency of insolvency law and GDP per Capita*

| | CZ | PL | SK | SI | LV | LT | EE | HU | BG | HR | RO |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Doing business insolvency ranking | 29 | 37 | 38 | 41 | 43 | 44 | 66 | 70 | 92 | 98 | 99 |
| GDP per capita world ranking | 37 | 46 | 40 | 36 | 52 | 44 | 41 | 49 | 69 | 55 | 61 |
| Pearson correlation Factor[50] | 0,802 | | | | | | | | | | |

Source: doingbusiness.com; World Development Indicators database, World Bank[50]

Since data on insolvency proceedings in the Doing Business Index is not gathered with the analysis of real cases, I made an additional *ex post* efficiency analysis of Slovenian winding up procedures. I analyzed all 1251 liquidation insolvency cases in Slovenia that were finished in a time frame from 22nd of October 2008 and 28th of March 2013.[51] The average length of an actual insolvency procedure in Slovenia in the analyzed period was 739,2 days (2 years and 19 days; median 370 days). If creditors got paid at least one cent on the dollar the average length of the procedure was 1.564 days or four years, four months and four days (median 901 days).[52] The average rate of return for creditors was 6,8 percent.[53] The most unfavorable is the data on costs of the winding up proceedings which on average amounted 86 percent of all debtors' assets.[54]

49 Analyzed countries are: Czech Republic, Poland, Slovakia, Slovenia, Latvia, Lithuania, Estonia, Hungary, Bulgaria, Croatia and Romania.

50 Pearson correlation Factor is a measure of the linear correlation (dependence) between two variables X and Y, giving a value between +1 and −1 inclusive, where 1 is total positive correlation, 0 is no correlation, and −1 is total negative correlation.

51 The analysis was made as a part of my PhD thesis on Law and Economics of Insolvency law. The data was obtained on the publicly available website AJPES, using eINSOLV and eOBJAVE databases.

52 An average case in German lasts four years and a half (Kramer, Peter, 2012, 12).

53 71,5 percent of winding up cases were cases with no payment for creditors, which means, that the debtor did not have enough assets to cover the costs of the proceeding.

54 If we consider only cases where creditors got paid at least something (full proceedings) the average costs were one half (50 per cent) of all debtors assets.

Using linear regression I tested how different independent variables affect the duration of a wind up proceeding.[55] The results show, that the fact of a lawsuit connected with the insolvency procedure, on average, extended the duration of the bankruptcy proceedings for 1.140 days, with all other things being equal (ceteris paribus). The regression coefficient (β) is 1.140,4. Adjusted R square equals 0,339.[56]

*Table 2: Linear regressions of the determinants of the length of bankruptcy proceedings*

| **Independent variables** | β (regression coefficient) | **Standard error** | **R square** | **Adjusted R square** |
|---|---|---|---|---|
| Lawsuits (Yes ,No) | 1140,39*** | 63,124 | 0,599 | 0,59 |
| Number of creditors | 2,793*** | 0,260 | | |
| Division of assets (Yes/No) | 545,192*** | 63,509 | | |
| Amount of bankruptcy estate | 0,000*** | 0,000 | | |
| Recovery rate | 3,367** | 1,428 | | |
| Constant | 257,126 | / | | |

Legend: n=917; linear regression, *stepwise method*; *p≤0,05; **p≤0,01; ***p≤0.000

The presented model relatively very well explains the reasons and determinants of the duration of the winding up proceedings, as the adjusted R squared equals to 0.597. The main determinants of the length of the proceedings are the lawsuits and the fact of division of assets among creditors.[57] The number of creditors, the amount of the bankruptcy estate and recovery rate do not really affect the duration of the procedure.[58]

The linear regression analysis of costs in the winding up procedure proved that the duration of the proceedings does not affect the recovery rate of creditors and since regres-

55 Analyzed independent variables were (a) lawsuit connected with the insolvency procedure (Yes/No), (b) number of creditors, (c) division of assets (Yes/No), (d) recovery rate of all creditors and (e) the absolute amount of the bankruptcy estate.

56 In regression, the R square coefficient of determination is a statistical measure of how well the regression line approximates the real data points. An R square of 1 indicates that the regression line perfectly fits the data. Adjusted R square differs from the classical R square in that the adjusted R square eliminates the effect of increasing the number of independent variables in a potentially higher value of the index. All independent variables were checked for multicollinearity and they all fulfill the criteria for being used in a regression analysis (tolerance values are above 0.9).

57 Division of assets includes selling the debtor's assets and dividing the proceedings to creditors.

58 The comparison of the R square and adjusted R square demonstrate that the variables are relatively independent, and only increase the number of variables, does not increase the predictive power of the model

sion coefficient is 0. The main variable that defines costs is the fact of dividing the assets among creditors. The adjusted R square of the whole model equals 0,75.[59]

*Table 4: The influence of variables on the proportion of the costs of the bankrupt estate*

| **Independent variables** | β (regression coefficient) | **Standard error** | **R square** | **Adjusted R square** |
|---|---|---|---|---|
| Division of assets | -0,426*** | 0,009 | 0,751 | 0,750 |
| Length of the procedure | -0*** | 0,000 | | |
| Amount of bankruptcy estate | -0*** | 0,000 | | |
| Constant | 0,998 | / | | |

Legend: n=1097; ; linear regression, *stepwise method*; *p≤0,05; **p≤0,01; ***p≤0.000

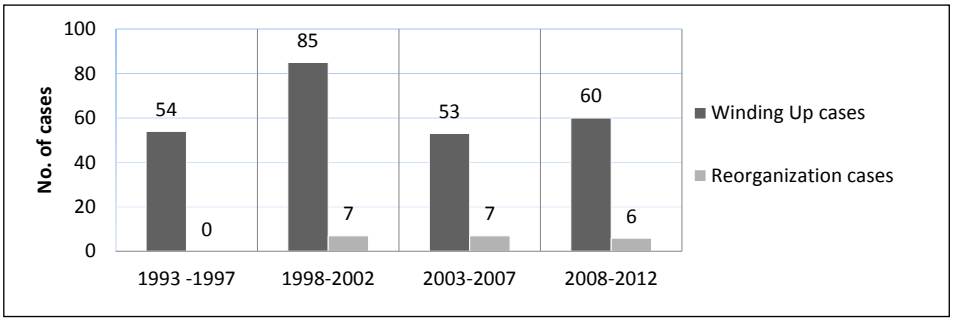
## SLOVENIAN SUPREME COURT CASE LAW ON INSOLVENCY LAW

In order to analyze the role of case law for development of insolvency law I analyzed all judgments of the Supreme Court of Slovenia concerning corporate insolvency law from 1993 till 2013 that were published on the web page sodnapraksa.si.[60] I collected the judgments by searching judgments on the field of insolvency law, published by commercial or civil departments of the Supreme Court of Slovenia. Using these technic I collected 284 judgments. Out of 284 judgments 264 were related to winding up procedures and 20 on the financial reorganization procedure. Out of 264 judgments on winding up procedure the majority of cases (100) were on the topic of voidable transactions, 55 on the questions about creditors' claims, 26 judgments were purely on procedural questions, 16 were on the topic of selling the property of the debtor, eight on the topic of insolvency administrators, six on the topic of set off and so on. If we divide the 20 years of case law into four five year periods, we can see, that from 1993 till 1997 the Supreme Court dealt with 54 cases (none about financial reorganization), from 1998 till 2002 with 92 cases (7 on the topic of financial reorganization), in the period from 2003 till 2007 with 60 cases (7 on the topic of financial reorganization) and in the period from 2012 till 2012 with 66 cases (6 on the topic of financial reorganization). In 2013 the Supreme Court published 12 judgments (none on the topic of the financial reorganization). The trend on the number of cases before the Supreme Court of Slovenia can be shown in a chart.

59 The results are a bit surprising but they can be explained with the rules of the insolvency law which determines the dynamics of payments to the creditors. Creditors are getting paid every time a certain amount of money accumulates and the payments are not postponed until the end of the procedure.

60 Sodnapraksa.si is a web search machine for all published judgments of Slovenian appellate courts and the Supreme Court of Slovenia. It contains 151.374 judgments.

*Table 6: Total number of cases on insolvency law before the Supreme Court of Slovenia*




Source: Sodnapraksa.si; Own calculations.

An evident conclusion can be that the Supreme Court case law on reorganization procedures is very rare. The first financial reorganization case before the Supreme Court of Slovenian didn't appear until 2000. First three cases have been on the question of limitation of individual enforcement of debt once financial reorganization procedure has begun respectively the relationship between those two procedures.[61] The next 17 cases from 2001 to 2013 have been very different topics, most of them more or less procedural question. Among the case law we can find questions about the effect of confirmed reorganization procedure[62] on different claims, about the role of the financial reorganization plan[63] etc.

Figure 4 shows the frequency of the four most common dispute topics of the Supreme Court case law in winding up procedure. Interesting but logical fact is that the percentage of cases which primary subject of dispute is a procedural question sharply rose after the adoption of new laws in 1993 and 2008 respectively. From the chart we can also see that the legal questions of the Supreme Court case law were more heterogeneous after the adoption of both new laws, especially after the adoption of the new law in 2008.[64]

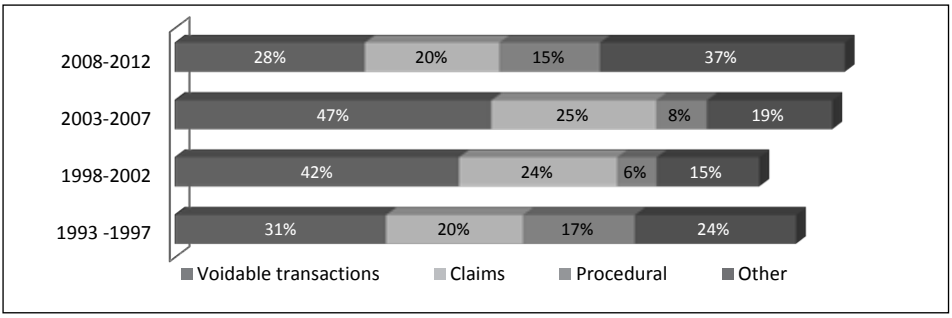
61 Supreme Court cases: Sklep II Ips 363/99, Sklep III Ips 188/99 and Sklep III Ips 46/2000, all from year 2000.

62 Supreme Court cases: Sklep III Ips 37/2001, Sklep II Ips 565/2002, Sklep II Ips 718/2005 and Sodba III Ips 120/2006.

63 Supreme Court cases: Sklep III Ips 37/2000, Sodba III Ips 27/2002, Sklep III Ips 38/2005 and Sodba G 52/2011.

64 In the 1998 – 2002 period only 15 per cent case were not connected with the most common four questions. In the period 2008 –2012 those case represented already 37 percent. In 2013 fifty per cent cases were not connected with the most common issues presented in the charts.

*Table 7: Distribution of "liquidation cases" based on the issue (subject of dispute)*




Source: Sodnapraksa.si; Own calculations

The most common disputes were about the voidable transactions. Generally voidable transaction are transactions made prior to the commencement of an insolvency procedure with which the debtor has given priority to repayment of claims of certain creditors or made a transaction for the benefit of certain creditors that harmed others. Since defining voidable transactions in connected with objective and subjective criteria and both of these criteria are designed as legal standards it's reasonable that case law is very important. Since voidable transaction can represent an important part of debtor's assets and debtors circumventions were quite often used, it even more explanatory, why the majority of case were on this topic.[65]

## CONCLUSION

In this article, using four different arguments, I was able to prove that insolvency law is an integral part of the economic system and that it changes in accordance with countries economic development and the public relationship to the fact of "failing a business."

In the first chapter I presented the main reasons for and the dynamics of the evolution of corporate insolvency law with an emphasis on financial reorganization proceedings. I showed that European countries have traditionally considered business failure as an immoral act. As they considered merchants to "make Bankrupt" and not "to become Bankrupt" (Levinthal, 1919) they were traditionally oriented toward a creditor oriented system of insolvency law. On the other side US has traditionally seen bankruptcy as a normal step in a life of an entrepreneur and as something that is often out of the entrepreneurs control and failing was not considered as immoral. As a consequence the development of Insolvency law was more debtor friendly oriented.

The presented case study of Slovenia has also shown that the development of insolvency law was directly linked to the economic system of various countries that ruled

65 For more on the topic of voidable transactions see Đorđević, 2003.

the territory of today's Slovenia. This reasoning continued also after the Independence in 1991. As a new country full of hope and dreams and with confidence in our economy and the market system after the phase of transformative depression from 1991 until 1993, we adopted a quite modern and fairly debtor friendly insolvency law. But as years have gone by and we gradually started to lose confidence in our national economy accelerated with unsuccessful manager takeovers and especially with the consequences of the financial crisis that started in 2008, public, different associations and especially the Chamber of Craft and Small Business of Slovenia, demanded a change in insolvency law system towards a more creditor friendly system. This shift of paradigm from a debtor friendly to a creditor friendly system of insolvency law happened as a result of the public pressure, who thought, that most of insolvent debtors became insolvent due to fraud or abuse of corporate law and that as a consequence they do not do not deserve to have any active role in the insolvency proceedings. Additionally the existing system of financial reorganization was often perceived or accounted for as a legalized theft. The additional reason for the paradigm shift was in the inefficiency of the existing (debtor friendly) system.

In the last five years because of a permanent pressure of the deteriorating economy and changing public attitude towards insolvency, six reforms were made in a very short period of time, with no space for proper scientific and expert debate and under a considerable public pressure. Since we basically had none empirical studies on Slovenian insolvency law the legislator was also not able to base the reforms upon empirical data and facts, but had to trust the judgment of ad hoc appointed groups of experts which had very little or no time to prepare the reforms.[66]

The comparative evaluation of the *ex post* efficiency of Slovenian insolvency law proved a very significant correlation between efficiency of insolvency systems and the GDP per capita, which directly supports the thesis of the connection between insolvency law and the economic development. It has also shown that the basic problems of Slovenian Insolvency law are the lawsuits connected with the insolvency proceedings and extremely high costs, which are surprisingly not directly connected with the length of the procedure.

The overview of the case law on corporate insolvency law of the Supreme Court of Slovenia was made to additionally prove, that development and characteristic of corporate insolvency law are directly linked to economic conditions and political development. The findings can be summoned into a conclusion that the Case Law has been important, but that it rarely had any effect on the legislator to change the corporate insolvency policy.

66 Even though the insolvency law reforms in comparative legal systems are relatively rare and almost always prepared in a longer time frame (US Bankruptcy Act from 1898 was in act until 1978 when the new Bankruptcy act, which is still valid, was adopted; German Konkursordnung was in force from 1877 till 1999, when the new Insolvenzurdnung was adopted after 21 years of preparation; the UK Insolvency Act of 1986 was adopted after decade long debate and different reports; etc.) the last two decades were very special, since almost all countries made at least one important reform and almost all of them were in the direction of creating a more flexible financial reorganization proceeding (Germany in 2001 and 2013; France in 2006 and 2012; UK in 2002 and 2010 etc.).

# KORPORACIJSKO INSOLVENČNO PRAVO – NUJEN ELEMENT TRŽNE EKONOMIJE, NAUKI IZ ZGODOVINE IN SLOVENIJE

*Jaka CEPEC*

Univerza v Ljubljani, Ekonomska fakulteta, Kardeljeva ploščad 17, Ljubljana, Slovenija

e-mail: jaka.cepec@ef.uni-lj.si

*POVZETEK*

*Članek preučuje vlogo korporacijskega insolvenčnega prava v gospodarskem sistemu in postavlja tezo, da je korporacijsko insolvenčno pravo integralni del gospodarskega sistema ter da se razvija v skladu z ekonomskim razvojem posamezne države in javnim odnosom do insolventnosti. Avtor svojo tezo dokazuje s tremi povezanimi argumenti.*

*Uvodni argument je zgodovinski razvoj in evolucija korporativnega insolvenčnega prava, ki je bilo neposredno povezano z ekonomskimi potrebami gospodarskih družb in odnosom do dejstva neuspeha oziroma prezadolženosti. Avtorjev drugi argument je študija primera razvoja korporacijskega insolvenčnega prava na današnjem ozemlju Slovenije. Od nastanka korporacijskega insolvenčnega prava v 19. stoletju do danes je bilo današnje ozemlje Slovenije pod jurisdikcijo številnih različnih držav z zelo različnim pravno ekonomskim sistemom: razvoj insolvenčnega prava je možno za vsako izmed teh zgodovinskih obdobjih neposredno povezati z ekonomskim sistemom in gospodarskim razvojem. Razvoj insolvenčnega prava v Sloveniji je mogoče razdeliti na tri obdobja. Prvo obdobje traja od nastanka insolvenčnega prava do druge svetovne vojne in je povezano s postopnim razvojem insolvenčnega prava pod okriljem avstrijskega pravnega sistema. Drugo obdobje je obdobje Socialistične federativne Republike Jugoslavije, v katerem zasebne gospodarske družbe bolj ali manj niso obstajale, tržno ekonomijo pa je nadomestilo plansko gospodarstvo in kasneje samoupravljanje. V tem obdobju je bil propad (insolventnost) gospodarske družbe redka in nezaželjena motnja v sistemu in insolvenčno pravo je imelo zelo marginalno vlogo. Tretje obdobje razvoja je povezano z nastankom samostojne Republike Slovenije, ponovno uveljavitvijo tržnega gospodarstva in postopnimi reformami insolvenčnega prava v smer modernih ureditev.*

*Tretji argument izhaja iz analize ex post učinkovitosti slovenskega insolvenčnega prava in iz primerjave ex post učinkovitosti med izbranimi tujimi pravnimi redi. Empirična analiza dokazuje, da obstaja zelo močna korelacija med razvitostjo gospodarstva posamezne države in učinkovitostjo njenega insolvenčnega prava. Avtorjev zadnji argument je analiza sodne prakse Vrhovnega sodišča Republike Slovenije, iz katere izhaja, da čeprav je sodna praksa pomemben element v insolvenčnem pravu, vendarle ni imela pretiranega vpliva na pripravo reform insolvenčnega prava, saj je sodna praksa Vrhovnega sodišča povezana predvsem s tehnično – procesnimi vprašanji insolvenčnega prava.*

*Ključne besede: insolvenčno pravo, finančna reorganizacija, zgodovina, Slovenija, učinkovitost*

SOURCES AND BIBLIOGRAPHY

**Armour, J. (2001):** The Law and Economics of Corporate Insolvency: A Review. ESRC Centre for Business Research, University of Cambridge Working paper No. 197. Http://www.cbr.cam.ac.uk/pdf/WP197.pdf (13.01.2014).

**Baird, D. G. (1996):** A world without Bankruptcy. In: Bhandari, J.S, Weiss, L.A: Corporate Bankruptcy, Economic and legal Perspectives. New York, Cambridge University Press, 29–39.

**Berglöf, E., Rosenthal, H. & E. L. Von Thadden (2001)**: The Formation of Legal Institutions for Bankruptcy: A Comparative Study of the Legislative History. Background paper for the *World Development Report*, The World Bank Working paper. Http://www.parisschoolofeconomics.eu/IMG/pdf/DiMartino-Hautcoeur_feb2011.pdf (16.02.2014)

**Blazy, R., Chopard, B. & A. Fimayer (2008)**: Bankruptcy law: a mechanism of governance for financially distressed firms. European Journal of Law and Economics, 25, 3. Dordrecht, 253–267.

**Đorđević, M. (2003):** Izpodbijanje pravnih dejanj stečajnega dolžnika (pravne osebe), doktorska disertacija. Ljubljana, Univerza v Ljubljani, Pravna fakulteta.

**Finžgar, A. (1977):** Nekateri problemi stečajnega prava. Pravnik, 33, 4–6. Ljubljana, 173–179.

**Gamberger, D. & J. Juhart (1971):** Poravnalno in stečajno pravo. Ljubljana, Pravna fakulteta.

**Goode, R. (2011):** Principles of Corporate Insolvency Law. London, Sweet & Maxwell.

**Hart, O. (1999):** Different Approaches to Bankruptcy. Harvard Institute of Economic Research Paper No. 1903. Http://www.nber.org/papers/w7921.pdf (13.02.2014).

**Hautcoeur, P. C. & G. Di Martino (2010):** Bankruptcy Law and Practice in Historical Perspective: A European Comparative View (C. 1880–1913). SSRN Working Paper Series. Http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1639469 (14.02.2014).

**Ilić, U., Jan, M. & M. Bratina (2013):** Delničarji vs. Upniki, Razmislek ob sprejemanju novele ZFPPIPP-E. Pravna praksa, 32, 13. Ljubljana, I–VII.

**Jackson, T. H. (2001):** The logic and limits of Bankruptcy law. Washington, D.C., Beard Books.

**Klauser, A. (2002):** Bankruptcy and a fresh start: stigma on failure and legal consequences of bankruptcy, Austria. European Commission, Enterprise and Industry. Http://ec.europa.eu/enterprise/policies/sme/files/sme2chance/doc/report_aust_en.pdf (14.02.2014).

**Mencinger, J. (1997):** Gospodarska politika prehoda. Slovenska ekonomska revija, 48, 3–4. Ljubljana, 219–244.

**Micklethwait, J. & A. Wooldridge (2005)**: The Company, A short History of a Revolutionary Idea. Paperback Edition. New York, Modern Library.

**Ministrstvo za pravosodje (1979 – 2013):** Sodna statistika. Ljubljana, Republika Slovenija, Ministrstvo za pravosodje.

**Noel, R. F. (2003):** A History of the Bankruptcy Law. C.H. Potter & Co., 1919. Reprint Buffalo, New York, William S. Hein & Co.

**Plavšak, N. & S. Prelič (2000):** Zakon o prisilni poravnavi, stečaju in likvidaciji (ZPPSL): s komentarjem, Zakon o finančnem poslovanju podjetij (ZFPPod): s komentarjem. Ljubljana, Gospodarski vestnik.

**Plavšak, N. (2011):** Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju (ZFPPIPP): z novelami ZFPPIPP-A do ZFPPIPP-D, uvodna pojasnila. Ljubljana, GV Založba.

**Plavšak, N. (2013):** Prisilna poravnava in novela ZFPPIPP-E: pomen novele ZFPPIPP-E in drugih predpisov (sprejetih ali v nastajanju) za učinkovito prestrukturiranje gospodarstva. Pravna praksa, 32, 22. Ljubljana, I–VIII.

**Politeo, I. (1929):** Stečajni zakon za kraljevinu Jugoslaviju. Zakon o prinudnom poravnanju van stečaja. Zakon o uvođenju u život obiju zakona: sva tri do 22. XI. 1929. Zagreb, Tipografija.

**Prelič, S. (1999):** Stečajno pravo, učbenik. Maribor, Pravna fakulteta Univerze v Mariboru.

**Pretnar, S. (1990):** Oris primerjalnega trgovinskega prava, 2. del, Trgovinske družbe. Ljubljana, Univerza v Ljubljani in Pravno - ekonomska fakulteta.

**Rajak, H.H. (2008):** Director and Officer Liability in the Zone of Insolvency: A Comparative Analysis. Potchefstroom Electronic Law Journal, 11, 1. Potchefstroom, 31–66.

**Rasmussen, R. K. & D. A. Skeel (1995):** The Economic Analysis of Corporate bankruptcy Law. American Bankruptcy Institute Law Review, 3, 1. Horsham, 85–115.

**Rochat, J. (2009):** The various uses of law: The société anonyme in France 1807 – 1867. Eighth Conference of the European Historical, Economics Society (EHES), Geneva. Http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international_history_politics/users/stefano_ugolini/public/papers/Rochat.pdf (13.02.2014).

**Sgard, J. (2006):** Do legal origins matter? The case of bankruptcy laws in Europe 1808–1914. European Review of Economic History, 10, Cambridge, 389–419.

**Skeel, D. A. (2001):** Debt's Dominion: A History of Bankruptcy Law in America. Princeton, Princeton University Press.

**Šlibar, J. (1991):** Pravne posledice začetka postopka prisilne poravnave. Pravosodni bilten, 12, 3/4. Ljubljana, 13–18.

**Tajnikar, M. (1997):** Prestrukturiranje realnega sektorja v slovenskem gospodarstvu v devetdesetih letih. Slovenska ekonomska revija, 48, 3–4. Ljubljana, 256–269.

**Ude, L. (1992):** Osnovne značilnosti in koncept nove stečajne zakonodaje. Dnevi slovenskih pravnikov od 15. do 17. oktobra 1992 v Portorožu. Podjetje in delo, 18, 6. Ljubljana, 512–524.

**White, M. J.(2005):** Economic Analysis of Corporate and Personal Bankruptcy and Law. National Bureau of Economic Research (NBER) Working Paper 11536. Http://www.nber.org/papers/w11536 (13.02.2014).

**Zajc, K. & J. Cepec (2012):** Globalna finančna kriza in novele Zakona o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju. Podjetje in delo, 38, 6/7. Ljubljana, 1290–1303.

**Žnidaršič Kranjc, A. (1992):** Moratorij na stečaje – komu je z manj stečaji lažje. Teorija in praksa: družboslovna revija, 24, 5/6. Ljubljana, 473–484.

**Zweigert, K. & H. Kötz (1998):** An Introduction to Comparative Law. New York, Oxford University Press Inc.

Received: 2014-05-28 UDC 347.962(73+4)
Review article

# THE JUDGE'S TENURE
# A HISTORICAL AND CONTEMPORARY OVERVIEW

*Rado BOHINC*
University of Ljubljana, Faculty of Social Sciences, Kardeljeva ploščad 5, 1000 Ljubljana, Slovenia
e-mail: rado.bohinc@fdv.uni-lj.si

*ABSTRACT*

*In this article, using comparative and historical methods, we analyze and present some historical and contemporary legal issues related to the tenure of Judges. We present historical roots of life tenure in the USA and pillars of independent judiciary in USA constitutional tradition. Further we present European legal tradition on this field and related international and EU legal documents. The case of Slovenia, as a post transition country, historical, constitutional and other legal aspects of life judge's tenure is elaborated in the context of current political initiatives for abolition of judge's tenure. The question we try to answer is, if public expression of dissatisfaction with the court decision (judgment) is a convict's human right, even when he or she is an influential politician who uses party machinery for discrediting of judiciary, and at what circumstances such behavior affects judicial independence.*

*Key words: independent judiciary, judicial tenure, appointment and election of judges, removal of judges, Constitution of U.S.A., permanent mandate, abolition of life tenure, constitutional changes*

## IL MANDATO DEL GIUDICE. IL QUADRO STORICO E CONTEMPORANEO

*SINTESI*

*Nell'articolo, utilizzando metodi comparativi e storiografici, analizziamo e presentiamo alcune questioni giuridiche, storiche e attuali legate alla permanenza in carica dei giudici. Presentiamo le radici storiche del mandato permanente negli Stati Uniti e i pilastri della magistratura indipendente nella tradizione costituzionale statunitense, inoltre la tradizione giuridica europea in questo campo, i documenti internazionali e quelli giuridici communitari. Nel caso della Slovenia – paese nella fase della post-transizione – gli aspetti storici, costituzionali e quelli giuridici del mandato permanente del giudice vengono elaborati nel contesto delle attuali iniziative politiche per la sua abolizione. La domanda alla quale proviamo a dare una risposta è se l'espressione pubblica di insoddisfazione per la decisione del giudice (sentenza) sia un diritto umano di un condannato,*

*anche quando quest'ultimo è un politico influente che usa dei metodi per screditare il potere giudiziario, e in quali circostanze tale comportamento influisce sull'indipendenza giudiziaria.*

*Parole chiave: sistema giudiziario indipendente, termine del mandato dei giudici, la nomina e l'elezione dei giudici, il richiamo dei giudici, la Costituzione degli Stati Uniti, un mandato permanente, emendamenti costituzionali*

## HISTORICAL ROOTS OF LIFE TENURE IN THE USA

Article III, §1, of the Constitution of the U.S.A. provides that the judicial power of the United States, is vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The Supreme Court of the United States was created on September 24, 1789.

The Supreme Court of the U.S.A. consists of the Chief Justice of the United States and such number of Associate Justices as may be fixed by Congress. The number of Associate Justices is currently fixed at eight (U.S.A. Constitution, §1). Power to nominate the Justices is vested in the President of the United States, and appointments are made with the advice and consent of the Senate.

Article III, §1, of the U.S.A. Constitution further provides that the judges, both of the supreme and inferior courts, hold their offices during good behavior, and receive for their services, a compensation, which may not be diminished during their office. No time limitation of judges' tenure is therefore stipulated in U.S.A. Constitution.

According to Martha Andes Ziskind (1969), the representatives of the several States meeting to revise the Articles of Confederation in May, 1786, agreed on the importance of an independent judiciary, but they differed on the degree of this independence and on whether the judiciary were to be ultimately responsible to the executive, to the legislature, or only to the people themselves. Arguments over the length of judicial tenure and the method of removal essentially concerned this fundamental issue.

The Constitutional Convention settled the provisions for the new federal judiciary, stipulating, that the judicial power of the United States is vested in one Supreme Court, and in a number of inferior courts (defined by the Congress). It was ultimately decided at that time, that the judges (both of the supreme and inferior courts), shall have life tenure; they shall hold their offices during, so called, good behavior. This decision became Article III. Section 1 of the U.S.A. Constitution.

At the same time the method for **removing judges**, was defined. The Article II, § 4, provides that the President, Vice President and all civil officers of the United States, are removed from office on **impeachment** for conviction of treason, bribery, or other high crimes and misdemeanors. Article I, § 2, gives the House of Representatives the sole power of impeachment. Judges are considered to be Civil Officers of the United States, therefore, the way of removal them from the office is impeachment.

For much of **England's history**, judges held their offices **during the king's pleasure**. The dismissal of Sir Edward Coke by King James in 1616 is the most famous example of judicial displacement by the Crown. To remove judges from just political pressure, Parliament provided in the Act of Settlement in 1701 that upon address of both houses of parliament, judges may be **removed by impeachment** by the commons in parliament. During the colonial period, for the most part, judges held their offices during the pleasure of the royal governor (Ziskind, 1969).

## APPOINTMENT OF JUDGES AND LIFE TENURE IN SOME STATES OF THE USA

According to Ziskind (1969), great majority of the States' Constitutions with some exceptions, provide for judges to be appointed by the Assembly and/or President or Governor, having tenure during good behavior and to be removed on impeachment when found guilty of misbehavior only.

**Delaware** Constitution empowered the governor and the general assembly to appoint three justices; the tenure of all judges was to be during good behavior. They could be removed on impeachment by the house of assembly, if offending against the state by maladministration, corruption, or other means, on conviction of misbehavior at common law, or upon address of the general assembly.

In **New Jersey,** the judges of the state supreme court were appointed **for seven-year** terms by the governor and assembly. Judges could be removed before the expiration of their term of office when found guilty of misbehavior by the council or on impeachment by the assembly.

**New York,** on the other hand, provides tenure during good behavior or until age sixty for the chancellor, the judges of the Supreme Court, and for the judges of the county courts.

According to the **Pennsylvania** Constitution of 1776 judges were appointed by the president and five council men for seven-year terms. Reappointment was possible and so was removal for maladministration.

The **Virginia** constitution as adopted in 1776 the stipulated that legislature appoints by joint ballot of the two houses, Judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney-General, to be commissioned by the Governor, and continue in office during good behavior.

The **Massachusetts** constitution of 1780 stipulated tenure during good behavior for all judges, but the governor, with the consent of the council, could remove them upon the address of both houses of the legislature.

## INDEPENDENT JUDICIARY IN U.S. CONSTITUTIONAL TRADITION

Secure tenure for judges was in the U.S. history not essential just to the maintenance of political freedom. It was essential to the **preservation of the rights of every individual**, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges, as

free, impartial and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that judges hold their offices as long as they behave themselves well (See: Herron, Randazzo, 2002 and Di Tullio, Schochet, 2004).

Tenure during good behavior was during the history unacceptable to many, due to the vagueness of the term "good behavior." It was pointed out, that it could be carried out applying preferential treatment of those expecting good behavior and discrimination to others. Many preferred direct election of justices by the people for a fixed term. They objected to tenure during good behavior arguing judges were made independent both of the legislature and of the people. But **critics of life tenure in** the U.S. constitutional history **never prevailed.**

Life tenure was for Founding Fathers, of the US Constitution (specifically Alexander Hamilton) essential to assuring the absolute independence of the judiciary from the influence of the political branches[1].

Of course, there were other opinions. According to Powe (1995), long term life tenure (such as eighteen years) will generally avoid problems, while still maintaining sufficient independence and expertise.

As it is generally known, the Twenty-Second Amendment to the Constitution of the USA, limits presidents of the USA to two terms in office. Critics of the life tenure offer this limitation as an argument for limiting the term of office of members of the Supreme Court also to a specified number of years.

There is a common understanding of all critics of life tenure for judges, that experiences deriving from life tenure could be addressed only if the solution does not endanger judicial independence. There were several attempts in the history to cope with this problem.

A number of proposals through the years, particularly since President Franklin Roosevelt's ill-fated 1937 Court-packing plan, have sought to end life tenure on the Supreme Court. From proposals advocating a mandatory retirement age to others that recommend expanding the Court's membership or appointing justices to fixed terms, etc. The best way to address these three problems without sacrificing judicial independence was considered to replace life tenure on the Supreme Court with a system of staggered, nonrenewable eighteen-year (Carrington, 1999, 397, 453–57).

According to Shugerman (2003, n. 281), in 2002 a constitutional amendment which would limit Supreme Court justices to eighteen-year, nonrenewable terms, with one term expiring every two years was proposed. Under the proposed amendment, each justice would be appointed to a particular term, and one term would expire every two years, on January 3 of each even-numbered year. The Court's entire membership would be replaced over an eighteen-year cycle. Unlike proposals for shorter, renewable terms, the proposed amendment would preserve the Court's independence

1 Article III of the United States Constitution states that "Judges, both of the supreme and inferior Courts, shall hold their Offices during Good Behavior.

LIFE TENURE OF JUDGES, SOME EU COUTRIES EXPIRIENCE

## Tenure of Judges as a Component of Judicial Power

As defined in Herron and Randazzo (2002), judicial independence is the degree to which judges believe they can decide and do decide consistent with their own personal attitudes, values and conceptions of judicial role (in their interpretation of the law). Development of an independent judiciary can be constrained by a weak institutional legacy, limited training and support for judges, and the strength of other political actors.

According to Smithey and Ishiyama (2000) index, the nature of judges' terms and conditions for judicial removal are two of the six components of judicial power, in addition to the following: whether decisions can be overturned, the presence of a priori review, number of actors involved in judicial selection, establishment of court procedures.

The Smithey and Ishiyama (2000) analysis demonstrates that the political power of the executive branch directly influences the exercise of judicial review in post-communist states. Strong presidents impose substantial constraints on judicial behavior, and courts may be affected by presidential power in two ways. On one hand, judges are less likely to invalidate legislation or governmental actions in countries possessing strong presidents. Additionally, if the president appears before the court as an appellant, courts may be more likely to acquiesce to executive authority (Herron, Randazzo, 2002).

Countries in transition (post socialist and communist countries) are confronting with the challenges of this kind provoked by law maturity and understanding of pillars of democracy like independence of judges and independence of judiciary are.

## Independence of the Judiciary, International Prospective

The independence of the judiciary is a prerequisite for correct and lawful implementation of rights and freedoms. It is condicio sine qua non of the right of an individual to have his/her rights and freedoms determined by an independent judge.

Like the Universal Declaration of Human Rights, 1948[2] (Article 10) declares, everyone is entitled in full equality to a fair, and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Basic Principles on the Independence of the Judiciary, United Nations General Assembly, 1985 state, that the independence of the judiciary must be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2 The Universal Declaration of Human Rights, which was adopted by the UN General Assembly on 10 December 1948

The Bangalore Principles of Judicial Conduct of 2002 (Value 1: INDEPENDENCE) declare that Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial[3].

**Independence of the Judiciary, European Prospective**

Also at the European level there exist a large number of texts on the independence of the judiciary; the right to an independent and impartial tribunal is first of all guaranteed by Article 6 of the European Convention on Human Rights, 1950 (everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…). In addition, the following are essential (Venice Commission Report 2010):

- Recommendation (94)12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges;
- Opinion No. 1 of the Consultative Council of European Judges (CCJE) on standards concerning the independence of the judiciary and the irremovability of judges;
- Consultative Council of European Judges (CCJE) Opinion no. 6 on Fair Trial within a Reasonable Time, no. 10 on the "Council for the Judiciary in the Service of Society"
- Consultative Council of European Judges (CCJE) Opinion no. 11 on the Quality of Judicial Decisions;
- European Charter on the Statute of Judges (Directorate of Legal Affairs of the Council of Europe in Strasbourg in July 1998).

According to Venice Commission Report 2010 the independence of the judiciary is not a personal privilege of the judges but justified by the need to enable judges to fulfil their role of guardians of the rights and freedoms of the people. The Venice Commission strongly supports the approach, that basic principles ensuring the independence of the judiciary should be set out in the Constitution or equivalent texts, like it is the case in many countries including Slovenia.

Venice Commission Report 2010 provides that Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of the term of office, considering in addition, that setting probationary periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way.

The Venice Commission strongly recommends that ordinary judges be appointed permanently until retirement. Probationary periods for judges in office are problematic from the point of view of independence (Venice Commission Report, 2010, par. 38).

The **EU Court of Justice** is an exception as far as the tenure is concerned. The reason for limited tenure lies in the mission and jurisdiction of the Court and the specificity

3 It is further said that a judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason; a judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

referring to the procedure on the appointment of EU Court judges. Namely, main jurisdiction of the EU Court of Justice is to interpret EU law and to make sure it is applied in the same way in all EU countries and to settle legal disputes between EU governments and EU institutions, individuals and companies. EU Court of Justice is composed by one judge from each EU country. Each judge and advocate-general is appointed **for a term of six years**, which can be renewed. The governments of EU countries agree on whom they want to appoint.

The judges of The **European Court of Human Rights** are for the same reason appointed for the limited period of time. The European Court of Human Rights is a supranational or international court established by the European Convention on Human Rights. The Convention was adopted by Council of Europe on the basis of Article 19 of the European Convention on Human Rights, and all of its 47 member states are contracting parties to the Convention. Protocol 14 (1 June 2010) amended the Convention, so that judges would be elected **for a non-renewable term of nine years**, whereas previously (before the Amendment), judges served a six year term with the option of renewal.

## Tenure of Judges in some EU Countries

There is no uniform concept on the length of tenure and the way of appointment and removal of judges in EU countries. No harmonization of EU legislation takes place in this field. Despite, life tenure is applied in the **majority of EU countries**. Obviously life tenure has become as one of the generally accepted principle of EU law, being applied in the majority of EU countries Constitutions and as such became a part of EU primary legislation.

Analyzed EU countries follow the principle of judicial independence guaranteed by secured tenure of judges. In addition in most of the countries legislation are very sensitive to the principles of division of powers in governance the state, applying the rule of appointment of judges by professional and politically neutral bodies.

There are several combinations in the respective national legislations depending on the conditions that must be fulfilled by the candidate for judge in order to be appointed in life tenure like probation period, appraisal, experience, appointment and retirement age, etc, and depending on the body responsible and the procedure to appoint and remove judges.

Judges in **Bulgaria**[4] are according to European e-justice, Legal Profession and Justice Networks, appointed, promoted and demoted, transferred and relieved of office by decision of the Supreme Judicial Council. Subject to a positive comprehensive appraisal of their performance, judges acquire tenure by decision of the Supreme Judicial Council after five years in office.

Judges in **Czech**[5] are appointed by the President of the Republic and take office. Appointment as a judge is not limited in time, but judges may be released from their duties temporarily by the Minister of Justice. Judges' tenure ends at the close of the year in which they reach the age of 70. Preparation to become a judge involves three years' service as a

4 https://e-justice.europa.eu/content_legal_professions-29-BG-sl.do?clang=en

5 https://e-justice.europa.eu/content_legal_professions-29-CZ-sl.do?clang=en

trainee judge in the courts. On completion of their preparatory service, trainees sit a special judicial examination (European e-justice, Legal Profession and Justice Networks).

In England and Wales, judges of differing judicial status (also in terms of tenure) in both full-time and part-time posts sit in the various courts and tribunals. The Judicial Appointments Commission (JAC) is an independent commission that selects candidates for judicial office in courts and tribunals. Part-time judges are usually appointed for a period of not less than five years, subject to the relevant upper age limit (European e-justice, Legal Profession and Justice Networks)[6].

In **Estonia**, judges are appointed to office for life. The Minister for Justice has no right of command or disciplinary authority over judges. A judge can be removed from office only on the basis of a court judgment that has entered into force. Judges may serve until the age of 67, but this may be extended (European e-justice, Legal Profession and Justice Networks)[7].

In **Finland,** judges are members of an independent judiciary. They hold office in the Supreme Court, courts of appeal and district courts, the Supreme Administrative Court and administrative courts, as well as the Insurance Court, the Labor Court and the Market Court. Judges are state officials and cannot be removed from office. A judge may not be suspended from office, except by a judgment of a court of law. In addition, a judge cannot be transferred to another office without his or her consent. According to the law, the provisions governing leave of absence, admonition, termination of employment and temporary dismissal of other civil servants do not apply to judges. According to the State Civil Servants Act, a judge is obliged to resign from office once he reaches the statutory retirement age (for judges this is 68), or upon becoming permanently incapacitated (European e-justice, Legal Profession and Justice Networks)[8].

Professional judges in **France** *(magistrats)* are **career judges,** and are divided into **adjudicating judges,** who try law cases, and the **law officers who work for the State Counsel's Office** *(ministère public* or *parquet)*. Adjudicating judges are not subject to instructions from any higher authority, and enjoy security of tenure, in that they cannot be given a new posting without their consent. The Supreme Council of the Judiciary puts forward nominations for the posts of adjudicating judges at the Court of Cassation, first presidents of the courts of appeal *(cours d'appel),* and presidents of the regional courts *(tribunaux de grande instance).* Other adjudicating judges can be appointed only with its **assent.** In France the judges of the local courts *(juges de proximité)* were introduced by the Justice System Framework and Planning Act *(loi d'orientation et de justice)* of 9 September 2002, supplemented by Act No 200547 of 26 January 2005; they are appointed by order *(décret),* with the assent of the Supreme Council of the Judiciary, for a term of seven years, which may not be renewed (European e-justice, Legal Profession and Justice Networks)[9].

6 https://e-justice.europa.eu/content_legal_professions-29-EW-sl.do?clang=en
7 https://e-justice.europa.eu/content_legal_professions-29-EE-sl.do?clang=en
8 https://e-justice.europa.eu/content_legal_professions-29-FI-sl.do?clang=en
9 https://e-justice.europa.eu/content_legal_professions-29-FR-sl.do?clang=en

According to Seibert-Fohr (2012) in **Germany**, one aspect of personal independence of judges is the appointment for life until retirement which is usually at the age of 65. As a general rule, judges should be full-time and in a permanent position. There are exceptions: Temporary appointment is allowed on the basis of a legal act and only for functions specified by law. Judges on a tenure track are appointed on probation for at least three years and need to be appointed for life after five years in office. Specific rules apply to the Federal Constitutional Court: The term of office of the judges of this court is twelve years without the possibility of re-election. In any case, the term ends when a judge reaches the age of 68.

The Constitution of **Hungary** (European e-justice, Legal Profession and Justice Networks)[10] stipulates that judges are independent; they make decisions on the basis of the law and in harmony with their convictions, and they may not be influenced and directed in making their judgments. The right to appoint judges lies with the President of Hungary (köztársasági elnök). Candidates for judges must have at least one year's experience as a court clerk (bírósági titkár) or district attorney clerk (ügyészségi titkár), or as a constitutional court judge, military judge, prosecutor, notary public, attorney at law or legal counsel, or in a position at a central administrative agency (központi közigazgatási szerv) for which a bar examination is required.

The Judicial Appointments Advisory Board in **Ireland** identifies and informs the Government of the suitability of persons for appointment to judicial office. The Judicial Appointments Advisory Board (JAAB) was established pursuant to the Court and Courts Officers Act 1995. Judges are appointed from the legal professions of qualified solicitors or barristers with certain years of practicing experience (not research). For the District Court, Section 29(2) of the Courts (Supplemental Provisions) Act 1961 provides that a person who is a practicing barrister or solicitor of not less than ten years' standing is qualified for appointment as a judge of the District Court. Under the Constitution, Judges of the High Court and Supreme Court can only be removed from office for stated misbehavior or incapacity after resolutions have been passed through both houses of the Oireachtas (Irish for Parliament). The Courts of Justice Act 1924 and Courts of Justice (District Court) Act 1946 provide similar statutory provisions for judges of the Circuit and District Courts(European e-justice, Legal Profession and Justice Networks).[11]

The Constitution of **Luxemburg** guarantees the political independence of adjudicating judges. Their appointment is permanent. An adjudicating judge can be deprived of his or her position or suspended only by a court judgment. Moreover, an adjudicating judge can be transferred only by appointing him or her to a new position and only with his or her consent. Nevertheless, in the event of disability or misconduct, adjudicating judges can be suspended, dismissed or transferred, in accordance with the conditions laid down by the law (European e-justice, Legal Profession and Justice Networks).

**Judges and Magistrates** in **Malta** are appointed by the President of the Republic. They are independent of the executive and enjoy security of tenure. They can be removed

10 https://e-justice.europa.eu/content_legal_professions-29-HU-sl.do?clang=en

11 https://e-justice.europa.eu/content_legal_professions-29-IE-sl.do?clang=en

from office by the President in the event of proven inability to perform the functions of their office (whether arising from infirmity of body or mind or from any other cause) or proven misbehavior, upon an address by the House of Representatives supported by the votes of not less than two-thirds of all members thereof (European e-justice, Legal Profession and Justice Networks)[12].

**Permanent judges** (*ordinarie domare*) in **Sweden** are appointed by the Government on recommendation by an independent state advisory body, the Judges Proposals Board (*Domarnämnden*). In principle, a judge cannot be dismissed other than in cases set out in the constitutional document known as the Instrument of Government (*regeringsformen*). Most permanent judges work as district court or administrative court judges, or as judges at courts of appeal or administrative courts of appeal (European e-justice, Legal Profession and Justice Networks).[13]

## THE CASE OF SLOVENIA

### Historical Overview on Appointment of Judges in Former Yugoslavia

Although it the principle of separation of government powers was not strictly established in the former Yugoslavia, the Constitutional Law of 1954 sets out the powers of the Federal Assembly to appoint judges of the Federal Court. The Law on Federal Courts followed that constitutional rule. According to Constitution of Yugoslavia of 1963 and its amendment of 1958, all the courts (except Federal Court and military courts) were under the jurisdictions of republics. Additional steps in this direction were made by the Constitution of Yugoslavia 1974, when the rules and principles of election by parliamentary power, of autonomy and independence, including the immunity of judges were consistently set out by the Constitution rather than implemented in real life.

Judges of all kinds of courts (regular courts, courts of associated labor, self-management courts etc.) in former Yugoslavia were appointed by the assembly of the respective socio political communities (on municipal, republic and federal level).

According to the Law on Regular Courts, judges in former Yugoslavia were appointed on a proposal made by Judicial Council, followed by the public tender, organized by the ministry responsible for justice.

Judges in former Yugoslavia were appointed for limited period of time, namely for the period of eight years, with the right to be reappointed. Judges could be removed from the office for serious violation of legislation or ethics.

It is important to add that the described rules on appointment of judges by the parliament were applied in the political context of monoparty political system. The influence of the sole party monopoly power, evidently could have not been avoided.

12 https://e-justice.europa.eu/content_legal_professions-29-MT-sl.do?clang=en

13 https://e-justice.europa.eu/content_legal_professions-29-SE-sl.do?clang=en

## The Tenure of Judges in the Constitution of Slovenia

According to article 2 of the Constitution of the Republic of Slovenia (herein after RS Constitution), Slovenia is a state governed by **the rule of law**.

The principle of the separation of legislative, executive and judicial powers is introduced in Slovenia. As it is declared in the article 3 of the RS Constitution, in Slovenia power is vested in the people. Citizens exercise this power directly and through elections, consistent with the principle of the separation of legislative, executive and judicial powers.

There are other constitutional rules related to the rule of law principle and judiciary independence, like:

- **Equality before the Law**; In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance. All are equal before the law (Article 14.)

- **Exercise and Limitation of Right**; Judicial protection of human rights and fundamental freedoms, and the right to obtain redress for the violation of such rights and freedoms, shall be guaranteed (Article 15).

- **Equal Protection of Rights**; Everyone shall be guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities and bearers of public authority that decide on his rights, duties or legal interests (Article 22).

- **Right to Judicial Protection;** Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law(Article 23).

- **Right to Legal Remedies**; Everyone shall be guaranteed the right to appeal or to any other legal remedy against the decisions of courts and other state authorities, local community authorities and bearers of public authority by which his rights, duties or legal interests are determined (Article 25).

As for the Judiciary, the Constitution of the RS explicitly declares independence of Judges: Judges shall be independent in the performance of the judicial function. They shall be bound by the Constitution and laws (Article 125).

**Permanence of Judicial Office** is one of the most important tools of independence of Judges in the Constitution of RS. It is stipulated in the RS Constitution, that the office of a judge is permanent. The age requirement and other conditions for election are determined by law. The retirement age of judges is also determined by law. It is therefore constitutionally permitted to define by law the issues related to judge tenure like age requirement and retirement age and in addition other possible condition for judge's position (Article 129).

Constitution also defines several issues related to the status and tenure of the judges in the Republic of Slovenia, as follows: the way judges are elected, the way of termination and dismissal from judicial office, incompatibility of judicial office and immunity of judges (Article 130, Article 131, Article 132, Article 133, Article 134 of the RS Constitution).

As for **election of Judges**, it is stipulated, that judges are elected by the National Assembly on the proposal of the Judicial Council. The Judicial Council is composed of eleven members. The National Assembly elects five members on the proposal of the President of the Republic from among university professors of law.

A judge **ceases to hold judicial office** where circumstances arise as provided by law. If in the performance of the judicial office a judge violates the Constitution or seriously violates the law, the National Assembly may dismiss such judge on the proposal of the Judicial Council. If a judge is found by a final judgment to have deliberately committed a criminal offence through the abuse of the judicial office, the National Assembly dismisses such judge.

According to the RS Constitution, **judicial office is not compatible** with office in other state bodies, in local self-government bodies and in bodies of political parties, and with other offices and activities as provided by law.

**Immunity of judges** is based on the principle that no one who participates in making judicial decisions may be held accountable for an opinion expressed during decision-making in court. But, if a judge is suspected of a criminal offence in the performance of judicial office, he or she may not be detained nor may criminal proceedings be initiated against him without the consent of the National Assembly.

In addition to the articles 125 to 134 of the Constitution of the RS, the status of **judges** is in more details governed by the Judicial Service Act (*Zakon o sodniški službi*). Judges are officials who are elected by the National Assembly (*Državni zbor*) on the basis of a proposal from the Judicial Council (*Sodni svet*). The office of judge is permanent, and the age limit and conditions for election are laid down by law. Atwo-thirds majority vote of all Judicial Council members is required for decisions on proposals concerning the election of judges, appeals against the decision to transfer or appoint to a judicial position, to a judicial function or to the position of senior judge and the dismissal of judges;

**Political Initiatives on Abolition of Judges tenure in Slovenia**[14]

Political parties in Slovenia have, provoked by daily political interests and events, been rather active in discussing the issue of permanent judge's tenure.

The most explicit and persistent in requiring the abolition of the permanent tenure for judges have been Slovene Democratic Party (SDS) whose leader was recently finally convicted for corruption and the Slovene National Party (SNS) whose leader and visible members have also found themselves in different court trials; one of their member of parliament was sent to prison for bribery.

The SDS has recently, stimulated by court conviction of their party president for crime, proposed in the parliament the general discussion on the situation in judiciary, which would certainly be taken as a provocation and political pressure on judges' independency.

14 Positions of political parties of Slovenia are taken from the minutes of the discussion on the Session of Constitutional committee, while having the debate on constitutional's amendments to Constitution of the Republic of Slovenia in regular parliamentary procedure, 17. 10. 2011.

Those two parties have constantly underlined that permanent judge's term of office is the main culprit for the alleged critical state of the judiciary. The parties have also previously been repeatedly proposing limited mandate, since as for SNS, judges are the sole appointed officials who are appointed for life.

The Citizens List (DL), the party to which minister of justice belongs, proposes sort of renewable and experimental judge's term of office. By the amendment of the Constitution, DL proposes to introduce so called experimental term; only after the successful completion of the probation period, the judge would be appointed to the permanent tenure.

The Slovene Peoples Party (SLS) explains that the first instance judges could operate more effectively if their mandate would be renewable: The judges will be re-elected to the judges' mandate while meeting the technical requirements, performance and other criteria. The judges will still be elected by the National Assembly on the proposal of the Judicial Council, but only for the first appointment. For further election judicial council, which will be composed of the members appointed by Parliament, and judges themselves, will only be competent.

The idea of a trial term of office for judges, which was already filed in constitutional's amendment procedure has not received a sufficient number (2/3) of deputies' votes, but serious discussion is going on in all political parties.

In the Democratic party of Pensioners (Desus), they support the phasing in of judges life tenure; that would mean that a young judge should prove himself to be a conscientious, professional and moral judge who is worthy of trust of the public and only then could get a permanent tenure. They propose a trial period of five years, during which the judge demonstrates that he or she is qualified to perform the duties of judge in an ongoing mandate. However, it should be tightened criteria for waiver of the permanent judges of the mandate, if it turns out that the judge is unable to judge fairly, honestly and in accordance with the Constitution and laws.

In the New Slovenia Party (NSI) they support the probationary period for judges too. Their position is, that only after successful expiry of this period the judge may candidate for the permanent tenure.

Other parties like Social Democrats (SD), and other left wing oriented parties and movements strongly oppose the abolition of the permanent judge's tenure as the one of the pillars of the judge's independence. According to their positions, permanent judge's tenure protects judges against political pressure and interference and against the judge's temptation to make decisions that are expected of those who are to grant the continuation of the judicial mandate.

Political Initiatives on abolition of judges tenure in Slovenia have to do with current judicial adventures of some political leaders. Judicial independency is certainly threatened if the highest political leaders publicly express contempt and distrust in judiciary, due to personnel involvement in a judicial process and finally convicted to prison. Is the public expression of dissatisfaction with the court decision (judgment) a convict's human right, even he or she is a public opinion maker and influential politician?

## CONCLUSIONS

There is general agreement today among scholars and even politicians on the importance of an **independent judiciary**; but the differences soon break out on the degree, ways and key tools of judicial independence. As well, there are also differences on whether and to what extent the judiciary is to be ultimately responsible to the executive, and/or to the legislative power of governance, and to what extent directly to the people themselves and how does this relationship influences the judiciary position. Arguments over the length, conditions, limitations and/or permanency of **judicial tenure** and the method of removal of judges, essentially concerns this fundamental issues.

Permanent tenure is one of the elements of the independence of the judiciary and precondition for the independence of judges. Abolition would open up the possibility of political interference in the trial of the cases and disciplining judges.

However, to the fact that judges are elected by the parliamentary branch is further discussable. This, by no means exposes judges to actual party coalition pressures and interference, that could be avoided if they would rather be appointed by the President of the Republic instead.

Deep historical roots and long democratic tradition of Life tenure in USA and European legal civilization show how important pillar of the rule of law this democratic tool is. Constitutional changes of this kind, provoked by individual's personnel experience even or because of the fact that this is a politician's personnel experience, are contrary to interest of nation and the state and as such unsuitable and unacceptable.

Permanent tenure is a »fuse" from political abuse of the judicial branch of government, so it should be carefully guarded. It protects judges primarily against politics. But at the same time it protects citizens against politically influenced judicial decisions.

Abolition of permanent mandate could be recognized as a serious and highly non democratic interference in the independence of judges and expose judges to political pressure. Political pressure against the permanent tenure is an unacceptable intervention to basic democratic principle of judiciary independence based on division of powers as one of the most important achievement of modern civilization; when it is caused by daily political interests it shows lack of statesmanship wisdom of the involved factors.

Judges must be independent of the current policy. Poor quality of work, non-transparency and low productivity are not enough good arguments for abolition of life tenure. Instead, other measures to overcome bad performance should rather be taken. Abolition of life tenure in the framework of the efforts to improve the quality and speed of judicial decision-making of justice, is the wrong choice and wrong path.

Understanding the permanent Judges mandate as one of the fundamental acquisition of a democratic society, of course, should not result in the failure to recognize the reality that the judges also are fallible; they are only human beings with all human characteristics and weaknesses. Therefore, the introduction of the institution of permanent Judge's mandate should be accompanied by systemic correctives to prevent, eliminate, or at least mitigate this type of errors and deviations. Not only through effective supervision system over the quality of functioning of appeal and review instances in judiciary related to the

ordinary and extraordinary remedies, but also in other areas. For example, a profound reflection on entry threshold of the permanent judges' mandate related to necessary acquired knowledge and experience is needed. In addition a constant concern for comprehensive development of human resources in the judiciary, which includes not only the continuous updating of legal knowledge, but also the components of professional ethical stance and elemental fairness should be a part of that.

To conclude, permanent tenure is one of the most important acquisitions of the human progress in the judiciary. The independence of the judge would become an empty principle if the judge should behave the way to overcome the process of re-election.

# SODNIŠKI MANDAT. ZGODOVINSKI IN SODOBNI PREGLED

*Rado BOHINC*

Univerza v Ljubljani, Fakulteta za družbene vede, Kardeljeva ploščad 5, 1000 Ljubljana, Slovenija

e-mail: rado.bohinc@fdv.uni-lj.si

*POVZETEK*

*O pomenu neodvisnega sodstva se strinja tako stroka kot tudi politika. Vendar do razhajanj pride kaj kmalu glede vprašanj o stopnji in o načinih zagotavljanja in ključnih orodjih neodvisnosti.*

*Zgodovinske okoliščine trajnega sodniškega mandata so močno povezane z zgodovino prava ZDA. Teoretični sklepi, povezani z neodvisnostjo sodstva in trajnim mandatom sodnikov v precejšnji meri temeljijo na številnih primerih in študijah Ameriškega Vrhovnega Sodišča, ki ustvarjajo temeljne vire ustavnega prava ZDA. Ustava ZDA določa, da je sodna oblast v ZDA, v rokah enega vrhovnega sodišča s sodniki s trajnim mandatom. Prav tako je v večini držav za sodnike določen trajni mandat. Velika večina ustav držav ZDA z nekaterimi izjemami, določa, da sodnike imenuje parlament in/ali predsednik ali guverner, z mandatom za čas lepega vedenja in da so lahko odpoklicani z ustavno obtožbo, ko so spoznani za krive za kaznivo dejanje.*

*Danes lahko govorimo o tem, da je trajni mandat sodnikov civilizacijska pridobitev demokratičnih držav. V državah članicah EU sicer ni enotnega koncepta o dolžini mandata ter načinu imenovanja in odpoklica sodnikov. Kljub temu se v večini držav EU uporablja trajni mandat.*

*Politične pobude o odpravi trajnega sodniškega mandata v Sloveniji imajo na žalost svoje vzroke tudi v tem, da so se nekateri aktualni politični voditelji sami znašli v sodnih postopkih. Če najvišji politični voditelji javno izražajo prezir in nezaupanje v sodstvo, zaradi lastne vpletenosti v sodni postopek in pravnomočne obsojenosti na zaporno kazen, je to nedvomno poseg v neodvisnost sodstva. Javno izražanje nezadovoljstva z odločitvijo sodišča (sodbe) je sicer človekova pravica obsojenca, toda, če je obsojenec visok politični voditelj, ima takšno obnašanje elemente pritiska na neodvisnost sodstva.*

*Ukinitev trajnega mandata bi se v takšnih okoliščinah lahko štelo kot ne demokratično vmešavanje v neodvisnost sodnikov in izpostavljanje sodnikov političnemu pritisku.*

*Ključne besede: neodvisno sodstvo, sodniški mandat, imenovanje in volitev sodnikov, odpoklic sodnikov, ustava ZDA, trajni mandat, ustavne spremembe*

SOURCES AND BIBLIOGRAPHY

**Carrington, P. D. (1999):** Restoring Vitality to State and Local Politics by Correcting the Excessive Independence of the Supreme Court. Alabama Law Review, 50, 2, 397–463.

**Di Tullio, J. E. & J. B. Schochet (2004):** Saving this Honorable Court: A Proposal to Replace Life Tenure on the Supreme Court with Staggered, Nonrenewable Eighteen--Year Terms. Virginia Law Review, 90, 1093–1149.

**Herron, E. S. & K. A. Randazzo (2002):** University of Kentucky, The Relationship Between Independence and Judicial Review in Post-Communist Courts. The Journal of Politics, 65, 2, 422–438.

**Powe, L.A. Jr (1995):** Old People and Good Behavior. Constitutional Comment, 12. University of Minessota, 195–197.

**Seibert-Fohr, A. (2012):** Constitutional Guarantees of Judicial Independence in Germany. 267–287: http://www.mpil.de/files/pdf3/constguarantjudindep_germany.pdf

**Shugerman, J. (2003):** A Six-Three Rule: Reviving Consensus and Deference on the Supreme Court. Georgia Law Review, 37, 893–936.

**Smithey, S. & J. Ishiyama (2000):** Judicious Choices: Designing Courts in Post-Communist Politics. Communist and Post-Communist Studies, 33, 163–182.

**Ziskind, M. A. (1969):** Judicial Tenure in the American constitution: English and American Precedents. The Supreme Court Review, 1969, 135–152.

**Documents**

**Basic Principles on the Independence of the Judiciary, United Nations General Assembly, 1985:** Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

**European Convention on Human Rights, 1950:** European Convention on Human Rights, and Fundamental Freedoms, Rome, 4.XI. 1950, as amended by the provisions of Protocol No. 14 (CETS no. 194) as from its entry into force on 1 June 2010.

**The Bangalore Principles of Judicial Conduct of 2002:** The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25–26, 2002.

**U.S.A. Constitution:** The Constitution of the United States of America. A Transcription: http://www.archives.gov/exhibits/charters/constitution_transcript.html

**Universal Declaration of Human Rights, 1948:** http://www.un.org/en/documents/udhr/

**Venice Commission Report, 2010:** Report on the Independence of the Judicial System Part I: The Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12–13 March 2010).

## Home Pages

https://e-justice.europa.eu/content_legal_professions-29-BG-sl.do?clang=en
https://e-justice.europa.eu/content_legal_professions-29-CZ-sl.do?clang=en
https://e-justice.europa.eu/content_legal_professions-29-EE-sl.do?clang=en
https://e-justice.europa.eu/content_legal_professions-29-EW-sl.do?clang=en
https://e-justice.europa.eu/content_legal_professions-29-FI-sl.do?clang=en
https://e-justice.europa.eu/content_legal_professions-29-FR-sl.do?clang=en
https://e-justice.europa.eu/content_legal_professions-29-HU-sl.do?clang=en
https://e-justice.europa.eu/content_legal_professions-29-IE-sl.do?clang=en

## NAVODILA AVTORJEM

**1.** Revija ACTA HISTRIAE objavlja **izvirne** in **pregledne** znanstvene članke s humanistično vsebino, zlasti s področja zgodovinopisja. Temeljno geografsko območje, ki ga publikacija pokriva, je Istra in mediteranska Slovenija ter vsebine, ki se na podlagi interdisciplinarnih in primerjalnih preučevanj povezujejo s sredozemskimi deželami. Uredništvo uporablja za vse članke obojestransko anonimen recenzentski postopek.

**2.** Sprejemamo članke v slovenskem, italijanskem, hrvaškem in angleškem jeziku. Avtorji morajo zagotoviti jezikovno neoporečnost besedil.

**3.** Članki naj obsegajo do 36.000 znakov brez presledkov. Članek je mogoče oddati na e-naslov ActaHistriae@gmail.com ali na elektronskem nosilcu (CD) po pošti na naslov uredništva.
Avtor ob oddaji članka zagotavlja, da članek še ni bil objavljen in se obvezuje, da ga ne bo objavil drugje.

**4.** Naslovna stran članka naj vsebuje naslov in podnaslov članka, ime in priimek avtorja, avtorjeve nazive in akademske naslove, ime in naslov inštitucije, kjer je zaposlen, oz. domači naslov vključno s poštno številko in naslovom elektronske pošte. Razen velikih začetnic in kratic pisati z malimi črkami.

**5.** Članek mora vsebovati **povzetek** in **izvleček.** Izvleček je krajši (max. 100 besed) od povzetka (cca. 200 besed).
V *izvlečku* na kratko opišemo namen, metode dela in rezultate. Izvleček naj ne vsebuje komentarjev in priporočil.
*Povzetek* vsebuje opis namena in metod dela ter povzame analizo oziroma interpretacijo rezultatov. V povzetku ne sme biti ničesar, česar glavno besedilo ne vsebuje.

**6.** Avtorji naj pod izvleček članka pripišejo ustrezne **ključne besede (5–7)**. Potrebni so tudi **angleški (ali slovenski) in italijanski prevodi** izvlečka, povzetka, ključnih besed, podnapisov k slikovnemu in tabelarnemu gradivu.

**7.** Zaželeno je tudi (originalno) **slikovno gradivo**, ki ga avtor posreduje v ločenih datotekah (jpeg, tiff) z najmanj 300 dpi resolucije pri želeni velikosti. Največja velikost slikovnega gradiva je 12x15 cm. Vsa potrebna dovoljenja za objavo slikovnega in arhivskega gradiva (v skladu z Zakonom o avtorski in sorodnih pravicah) priskrbi avtor sam in jih predloži uredništvu pred objavo članka. Vse slike, tabele in grafične prikaze je potrebno tudi podnasloviti in zaporedno oštevilčiti.

**8.** **Vsebinske** *opombe*, ki besedilo še podrobneje razlagajo ali pojasnjujejo, postavimo *pod črto*.
**Bibliografske** opombe, s čimer mislimo na citat – torej sklicevanje na točno določeni del besedila iz neke druge publikacije, sestavljajo naslednji podatki: *avtor*, *leto izida* in – če citiramo točno določeni del besedila – tudi navedba *strani*. Bibliografske opombe vključimo v glavno besedilo. Primer: (Pirjevec, 2007, 219) ali (Pirjevec, 2007).

Celotni bibliografski podatki citiranih in uporabljenih virov so navedeni v poglavju *Viri in literatura* (najprej navedemo vse vire, nato literaturo). Pri tem avtor navede izključno dela ter izdaje, ki jih je v članku citiral.
Popolni podatki o tem delu v poglavju Literatura pa se glasijo:
**Pirjevec, J. (2007):** "Trst je naš!" Boj Slovencev za morje (1848–1954). Ljubljana, Nova revija.
Če citiramo *več del istega avtorja iz istega leta*, poleg priimka in kratice imena napišemo še črke po abecednem vrstnem redu, tako da se navedbe med seboj razlikujejo. Primer:
(Pirjevec, 2007a) in (Pirjevec, 2007b).
Bibliografska opomba je lahko tudi del vsebinske opombe in jo zapisujemo na enak način.
Posamezna dela v isti opombi ločimo s podpičjem. Primer:
(Pirjevec, 2007a; Verginella, 2008).

**9.** Pri **citiranju arhivskih virov** *med oklepaji* navajamo kratico arhiva, kratico arhivskega fonda / signaturo, številko tehnične enote in številko arhivske enote.
Primer: (ARS-1851, 67, 1808).
V primeru, da arhivska enota ni znana, se dokument citira po naslovu *v opombi pod črto*, in sicer z navedbo kratice arhiva, kratice arhivskega fonda / signature, številke tehnične enote in naslova dokumenta. Primer:
ARS-1589, 1562, Zapisnik seje Okrajnega komiteja ZKS Koper, 19. 12. 1955.
Kratice razložimo v poglavju o virih na koncu članka, kjer arhivske vire navajamo po abecednem vrstnem redu. Primer:
**ARS-1589** – Arhiv republike Slovenije (ARS), Centralni komite Zveze komunistov Slovenije (fond 1589).

**10.** Pri citiranju **časopisnih virov** med tekstom navedemo ime časopisa, datum izdaje ter strani:
(Primorske novice, 11. 5. 2009, 26).
V primeru, da je znan tudi naslov članka, celotno bibliografsko opombo navedemo pod črto:
Primorske novice, 11. 5. 2009: Ali podjetja merijo učinkovitost?, 26.
V seznam virov in literature izpišemo ime časopisa / revije. Kraj, založnika in periodo izhajanja:
**Primorske novice**. Koper, Primorske novice, 1963–.

**11. Poglavje o virih in literaturi** je obvezno. Bibliografske podatke navajamo takole:
- Opis zaključene publikacije kot celote – knjige:
Avtor (leto izida): Naslov. Kraj, Založba. Npr.:
**Šelih, A., Antić, G. M., Puhar, A., Rener, T., Šuklje, R., Verginella, M. & L. Tavčar (2007):** Pozabljena polovica. Portreti žensk 19. in 20. stoletja na Slovenskem. Ljubljana, Tuma - SAZU.
V zgornjem primeru, kjer je *avtorjev več kot dva*, je korekten tudi citat:
(Šelih et al., 2007)

Če navajamo določeni del iz zaključene publikacije, zgornjemu opisu dodamo še številke strani, od koder smo navedbo prevzeli.
- Opis prispevka v **zaključeni publikaciji** – npr. prispevka v zborniku:
Avtor (leto izida): Naslov prispevka. V: Avtor knjige: Naslov knjige. Kraj, Založba, strani od-do. Primer:
**Darovec, D. (2011):** Moderna štetja prebivalstva in slovensko-hrvaška etnična meja v Istri. V: Darovec, D. & Strčić, P. (ur.): Slovensko-hrvaško sosedstvo / Hrvatsko-slovensko susjedstvo. Koper, Univerzitetna založba Annales, 129-142.
- Opis članka v **reviji:**
Avtor (leto izida): Naslov članka. Naslov revije, letnik, številka, strani od-do. Primer:
**Čeč, D. (2007):** Nasilne detomorilke ali neprištevne žrtve? Spreminjanje podobe detomora v 18. in začetku 19. stoletja. Acta Histriae, 15, 2, 415-440.
- opis ustnega vira:
Informator (leto pričevanja): Ime in priimek informatorja, leto rojstva, vloga, funkcija ali položaj. Način pričevanja. Oblika in kraj nahajanja zapisa. Primer:
**Žigante, A. (2008):** Alojz Žigante, r. 1930, župnik v Vižinadi. Ustno pričevanje. Zvočni zapis pri avtorju.
- opis vira iz internetnih spletnih strani:
Če je mogoče, internetni vir zabeležimo enako kot članek in dodamo spletni naslov ter v oklepaju datum zadnjega pristopa na to stran:
**Young, M. A. (2008):** The victims movement: a confluence of forces. In: NOVA (National Organization for Victim Assistance). Http://www.trynova.org/ victiminfo/readings/VictimsMovement.pdf (15. 9. 2008).
Če avtor ni znan, navedemo nosilca spletne strani, leto objave, naslov in podnaslov besedila, spletni naslov in v oklepaju datum zadnjega pristopa na to stran.

**12.** **Kratice** v besedilu moramo razrešiti v oklepaju, ko se prvič pojavijo. Članku lahko dodamo tudi seznam uporabljenih kratic.

**13.** Pri **ocenah publikacij** navedemo v naslovu prispevka avtorja publikacije, naslov, kraj, založbo, leto izida in število strani (oziroma ustrezen opis iz točke 10).

**14.** Prvi odtis člankov uredništvo pošlje avtorjem v **korekturo.** Avtorji so dolžni popravljeno gradivo vrniti v enem tednu. Širjenje obsega besedila ob korekturah ni dovoljeno. Druge korekture opravi uredništvo.

**15.** Za dodatna pojasnila v zvezi z objavo člankov je uredništvo na voljo.

UREDNIŠTVO

## ISTRUZIONI PER GLI AUTORI

**1.** La rivista ACTA HISTRIAE pubblica **articoli scientifici originali e rassegne** relativi alla sfera degli studi umanistici, in particolare la storiografia. L'area geografica di base coperta dalla pubblicazione include l'Istria e la parte mediterranea della Slovenia, nonché tutti gli altri temi che si ricollegano al Mediterraneo in base a studi interdisciplinari e comparativi. Tutti gli articoli vengono recensiti. La recensione è completamente anonima.

**2.** La Redazione accetta articoli in lingua slovena, italiana, croata e inglese. Gli autori devono garantire l'ineccepibilità linguistica dei testi.

**3.** Gli articoli devono essere di lunghezza non superiore alle 36.000 caratteri senza spazi. Possono venir recapitati all'indirizzo di posta elettronica ActaHistriae@gmail.com oppure su supporto elettronico (CD) per posta ordinaria all'indirizzo della Redazione.
L'autore garantirà l'originalità dell'articolo e si impegnerà a non pubblicarlo altrove.

**4.** Ogni articolo deve essere corredato da: titolo, eventuale sottotitolo, nome e cognome dell'autore, denominazione ed indirizzo dell'ente di appartenenza o, in alternativa, l'indirizzo di casa, nonché l'eventuale indirizzo di posta elettronica. Tranne sigle e acronimi scrivere in minuscolo.

**5.** I contributi devono essere corredati da un **riassunto** e da una **sintesi**. Quest'ultima sarà più breve (max. 100 parole) del riassunto (cca 200 parole).
Nella *sintesi* si descriveranno brevemente i metodi e i risultati delle ricerche e anche i motivi che le hanno determinate. La sintesi non conterrà commenti e segnalazioni.
Il *riassunto* riporterà in maniera sintetica i metodi delle ricerche, i motivi che le hanno determinate assieme all'analisi, cioè all'interpretazione, dei risultati raggiunti. Si eviterà di riportare conclusioni omesse nel testo del contributo.

**6.** Gli autori sono tenuti ad indicare le **(5–7) parole chiave** adeguate. Sono necessari anche le **traduzioni in inglese (o sloveno) e italiano** della sintesi, del riassunto, delle parole chiave, delle didascalie, delle fotografie e delle tabelle.

**7.** L'eventuale **materiale iconografico** (originale) va preparato in formato elettronico (jpeg. / tiff) e consegnato in file separati alla definizione di 300 dpi a grandezza desiderata, purché non ecceda i 12x15 cm. Prima della pubblicazione, l'autore provvederà a fornire alla Redazione tutte le autorizzazioni richieste per la riproduzione del materiale iconografico ed archivistico (in virtù della Legge sui diritti d'autore). Tutte le immagini, tabelle e grafici dovranno essere accompagnati da didascalie e numerati in successione.

**8.** Le **note a piè di pagina** sono destinate essenzialmente a fini esplicativi e di contenuto. I **riferimenti bibliografici** richiamano un'altra pubblicazione (articolo). La nota bibliografica, riportata nel testo, deve contenere i seguenti dati: *cognome dell'autore*, *anno di pubblicazione* e, se citiamo un determinato brano del testo, anche le *pagine*. Ad es.:
(Isotton, 2006, 25) oppure (Isoton, 2006).

I riferimenti bibliografici completi delle fonti vanno quindi inseriti nel capitolo Fonti e bibliografia (saranno prima indicate le fonti e poi la bibliografia). L'autore indicherà esclusivamente i lavori e le edizioni citati nell'articolo.
I dati completi sulle pubblicazioni nel capitolo Fonti e bibliografia verranno riportati in questa maniera:
**Isotton, R. (2006):** Crimen in itinere. Profili della disciplina del tentativo dal diritto comune alle codificazioni moderne. Napoli, Jovene.
Se si citano *più lavori dello stesso autore* pubblicati nello stesso anno accanto al cognome va aggiunta una lettera in ordine alfabetico progressivo per distinguere i vari lavori. Ad es.:
(Isotton, 2006a) e (Isotton, 2006b).
Il riferimento bibliografico può essere parte della nota a pié di pagina e va riportato nello stesso modo come sopra.
Singole opere o vari riferimenti bibliografici in una stessa nota vanno divisi dal punto e virgola. Per es.:
(Isotton, 2006; Massetto, 2005).

**9.** Le **fonti d'archivio** vengono citate nel testo, *tra parentesi*. Si indicherà: sigla dell'archivio - numero (oppure) sigla del fondo, numero della busta, numero del documento (non il suo titolo). Ad es.:
(ASMI-SLV, 273, 7r).
Nel caso in cui un documento non fosse contraddistinto da un numero, ma solo da un titolo, la fonte d'archivio verrà citata *a piè di pagina*. In questo caso si indicherà: sigla dell'archivio - numero (oppure) sigla del fondo, numero della busta, titolo del documento. Ad es.:
ACS-CPC, 3285, Milanovich Natale. Richiesta della Prefettura di Trieste spedita al Ministero degli Interni del 15 giugno 1940.
Le sigle utilizzate verranno svolte per intero, in ordine alfabetico, nella sezione "Fonti" a fine testo. Ad es.:
**ASMI-SLV** – Archivio di Stato di Milano (ASMI), f. Senato Lombardo-Veneto (SLV).

**10.** Nel citare **fonti di giornale** nel testo andranno indicati il nome del giornale, la data di edizione e le pagine:
(Il Corriere della Sera, 18. 5. 2009, 26)
Nel caso in cui è noto anche il titolo dell'articolo, l'intera indicazione bibliografica verrà indicata *a piè di pagina*:

Il Corriere della Sera, 18. 5. 2009: Da Mestre all'Archivio segreto del Vaticano, 26.
Nell'elenco Fonti e bibliografia scriviamo il nome del giornale. Il luogo di edizione, l'editore ed il periodo di pubblicazione.
**Il Corriere della Sera**. Milano, RCS Editoriale Quotidiani, 1876–.

**11.** Il capitolo **Fonti e bibliografia** è obbligatorio. I dati bibliografici vanno riportati come segue:
- Descrizione di un'opera compiuta:
autore/i (anno di edizione): Titolo. Luogo di edizione, casa editrice. Per es.:
**Cozzi, G., Knapton, M. & G. Scarabello (1995):** La Repubblica di Venezia nell'età moderna – dal 1517 alla fine della Repubblica. Torino, Utet.
Se *gli autori sono più di due*, la citazione è corretta anche nel modo seguente:
(Cozzi et al., 1995).
Se indichiamo una parte della pubblicazione, alla citazione vanno aggiunte le pagine di riferimento.
- Descrizione di un articolo che compare in un volume miscellaneo:
autore/i del contributo (anno di edizione): Titolo. In: autore/curatore del libro: titolo del libro. Luogo di edizione, casa editrice, pagine (da-a). Per es.:
**Clemente, P. (2001):** Il punto sul folklore. In: Clemente, P., Mugnaini, F. (eds.): Oltre il folklore. Roma, Carocci, 187–219.
- Descrizione di un articolo in una **pubblicazione periodica – rivista**:
autore/i (anno di edizione): Titolo del contributo. Titolo del periodico, annata, nro. del periodico, pagine (da-a). Per es.:
**Miletti, M. N. (2007):** La follia nel processo. Alienisti e procedura penale nell'Italia postunitaria. Acta Histriae, 15, 1, 321–342.
- Descrizione di una fonte orale:
informatore (anno della testimonianza): nome e cognome dell'informatore, anno di nascita, ruolo, posizione o stato sociale. Tipo di testimonianza. Forma e luogo di trascrizione della fonte. Per es.:
**Predonzan, G. (1998):** Giuseppe Predonzan, a. 1923, contadino di Parenzo. Testimonianza orale. Appunti dattiloscritti dell'intervista presso l'archivio personale dell'autore.
- Descrizione di una fonte tratta da pagina internet:
Se è possibile registriamo la fonte internet come un articolo e aggiungiamo l'indirizzo della pagina web e tra parentesi la data dell'ultimo accesso:
**Young, M. A. (2008):** The victims movement: a confluence of forces. In: NOVA (National Organization for Victim Assistance). (15. 9. 2008). Http://www. trynova.org/victiminfo/readings/VictimsMovement.pdf
Se l'autore non è noto, si indichi il webmaster, anno della pubblicazione, titolo ed eventuale sottotitolo del testo, indirizzo web e tra parentesi la data dell'ultimo accesso.
La bibliografia va compilata in ordine alfabetico secondo i cognomi degli autori ed anno di edizione, nel caso in cui ci siano più citazioni riferibili allo stesso autore.

**12.** Il significato delle **abbreviazioni** va spiegato, tra parentesi, appena queste si presentano nel testo. L'elenco delle abbreviazioni sarà riportato alla fine dell'articolo.

**13.** Per quanto riguarda le **recensioni**, nel titolo del contributo l'autore deve riportare i dati bibliografici come al punto 10, vale a dire autore, titolo, luogo di edizione, casa editrice, anno di edizione nonché il numero complessivo delle pagine dell'opera recensita.

**14.** Gli autori ricevono le **prime bozze** di stampa per la revisione. Le bozze corrette vanno quindi rispedite entro una settimana alla Redazione. In questa fase i testi corretti non possono essere più ampliati. La revisione delle bozze è svolta dalla Redazione.

**15.** La Redazione rimane a disposizione per eventuali chiarimenti.

LA REDAZIONE

## INSTRUCTIONS TO AUTHORS

**1.** The journal ACTA HISTRIAE publishes **original** and **review** scientific articles from the sphere of humanities, historiography in particular. The basic geographic areas covered by this publication are Istria and Mediterranean Slovenia, as well as other topics related to the Mediterranean on the basis of interdisciplinary and comparative studies. All articles are reviewed. The review process is entirely anonymous.

**2.** The articles submitted can be written in the Slovene, Italian, Croatian or English language. The authors should ensure that their contributions meet acceptable standards of language.

**3.** The articles should be no longer than 36,000 characters (without spaces). They can be submitted via e-mail (ActaHistriae@gmail.com) or regular mail, with the electronic data carrier (CD) sent to the address of the editorial board. Submission of the article implies that it reports original unpublished work and that it will not be published elsewhere.

**4.** The front page should include the title and subtitle of the article, the author's name and surname, academic titles, affiliation (institutional name and address) or home address, including post code, and e-mail address. Except initials and acronyms type in lowercase.

**5.** The article should contain the **summary** and the **abstract,** with the former (max. 100 words) being longer than the latter (c. 200 words).
The *abstract* contains a brief description of the aim of the article, methods of work and results. It should contain no comments and recommendations.
The *summary* contains the description of the aim of the article and methods of work and a brief analysis or interpretation of results. It can contain only the information that appears in the text as well.

**6.** Beneath the abstract, the author should supply appropriate **(5–7) keywords**, as well as the **English (or Slovene) and italian translation** of the abstract, summary, keywords, and captions to figures and tables.

**7.** If possible, the author should also supply (original) **illustrative matter** submitted as separate files (in jpeg or tiff format) and saved at a minimum resolution of 300 dpi per size preferred, with the maximum possible publication size being 12x15 cm. Prior to publication, the author should obtain all necessary authorizations (as stipulated by the Copyright and Related Rights Act) for the publication of the illustrative and archival matter and submit them to the editorial board. All figures, tables and diagrams should be captioned and numbered.

**8.** **Footnotes** providing additional explanation to the text should be written at *the foot of the page*. **Bibliographic notes** – i.e. references to other articles or publications – sho-

uld contain the following data: *author, year of publication* and – when citing an extract from another text – *page*. Bibliographic notes appear in the text. E.g.: (Friedman, 1993, 153) or (Friedman, 1993).
The entire list of sources cited and referred to should be published in the section *Sources and Bibliography* (starting with sources and ending with bibliography).

The author should list only the works and editions cited or referred to in their article.
In the section on *bibliography*, citations or references should be listed as follows:
**Friedman, L. (1993):** Crime and Punishment in American History. New York, Basic Books.
If you are listing *several works published by the same author in the same year*, they should be differentiated by adding a lower case letter after the year for each item.
E.g.:
(Friedman, 1993a) and (Friedman, 1993b).
If the bibliographic note appears in the footnote, it should be written in the same way.
If listed in the same bibliografic note, individual works should be separated by a semicolon. E.g.:
(Friedman, 1993; Frost, 1997).

**9.** When **citing archival records** *within the parenthesis* in the text, the archive acronym should be listed first, followed by the record group acronym (or signature), number of the folder, and number of the document. E.g.:
(ASMI-SLV, 273, 7r).
If the number of the document could not be specified, the record should be cited *in the footnote*, listing the archive acronym and the record group acronym (or signature), number of the folder, and document title. E.g.:
TNA-HS 4, 31, Note on Interview between Colonel Fišera and Captain Wilkinson on December 16th 1939.
The abbreviations should be explained in the section on sources in the end of the article, with the archival records arranged in an alphabetical order. E.g.:
**TNA-HS 4** – The National Archives, London-Kew (TNA), fond Special Operations Executive, series Eastern Europe (HS 4).

**10.** If referring to **newspaper sources** in the text, you should cite the name of the newspaper, date of publication and page:
(The New York Times, 16. 5. 2009, 3)
If the title of the article is also known, the whole reference should be stated *in the footnote*:
The New York Times, 16. 5. 2009: Two Studies tie Disaster Risk to Urban Growth, 3.
In the list of sources and bibliography the name of the newspaper. Place, publisher, years of publication.
**The New York Times**. New York, H.J. Raymond & Co., 1857–.

**11.** The list of **sources and bibliography** is a mandatory part of the article**.** Bibliographical data should be cited as follows:

- Description of a non-serial publication – a book:

Author (year of publication): Title. Place, Publisher. E.g.:

**Barth, F., Gingrich, A., Parkins, R. & S. Silverman (2005):** One Discipline, Four Ways. Chicago, University of Chicago Press.

If there are *more than two authors*, you can also use et al.:

(Barth et al., 2005).

If citing an excerpt from a non-serial publication, you should also add the number of page from which the citation is taken after the year.

- Description of an article published in a **non-serial publication** – e.g. an article from a collection of papers:

Author (year of publication): Title of article. In: Author of publication: Title of publication. Place, Publisher, pages from-to. E.g.:

**Rocke, M. (1998):** Gender and Sexual Culture in Renaissance Italy. In: Brown, I. C., Davis, R. C. (eds.): Gender and Society in Renaissance Italy. New York, Longman, 150–170.

- Description of an article from a **serial publication:**

Author (year of publication): Title of article. Title of serial publication, yearbook, number, pages from-to. E.g.:

**Faroqhi, S. (1986):** The Venetian Presence in the Ottoman Empire (1600–1630). The Journal of European Economic History, 15, 2, 345–384.

- Description of an oral source:

Informant (year of transmission): Name and surname of informant, year of birth, role, function or position. Manner of transmission. Form and place of data storage. E.g.:

**Baf, A. (1998):** Alojzij Baf, born 1930, priest in Vižinada. Oral testimony. Audio recording held by the author.

- Description of an internet source:

If possible, the internet source should be cited in the same manner as an article. What you should add is the website address and date of last access (with the latter placed within the parenthesis):

**Young, M. A. (2008):** The victims movement: a confluence of forces. In: NOVA (National Organization for Victim Assistance). Http://www.trynova.org/ victiminfo/readings/VictimsMovement.pdf (15. 9. 2008).

If the author is unknown, you should cite the organization that set up the website, year of publication, title and subtitle of text, website address and date of last access (with the latter placed within the parenthesis).

If there are more citations by the same author(s), you should list them in the alphabetical order of the authors' surnames and year of publication.

**12.** The **abbreviations** should *be explained* when they first appear in the *text. You can also add a list of their explanations at the end of the article.*

**13.** The title of a **review article** should contain the following data: author of the publication reviewed, title of publication, address, place, publisher, year of publication and number of pages (or the appropriate description given in Item 10).

**14.** The authors are sent the **first page proofs**. They should be returned to the editorial board within a week. It is not allowed to lengthen the text during proof-reading. Second proof-reading is done by the editorial board.

**15.** For additional information regarding article publication contact the editorial board.

EDITORIAL BOARD