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ORIGINAL SCIENTIFIC ARTICLE / *IZVORNI NAUČNI RAD*

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"Io Lanzilago dieto Pribislavo Vuchotich chavalier de Bosina
san de la mente per la gratia de Messer domenedio,
ma infermo del corpo voio che questo sia el mio ultimo testamento (...)"

MEDIEVAL BOSNIA AND *IUS COMMUNE*: ANALYSIS OF THE TESTAMENT OF THE KNIGHT PRIBISLAV VUKOTIĆ

The subject of this paper is a historical and legal analysis of contents of the knight Pribislav Vukotić, written in Padua in 1475. As a merchant, renowned diplomat and advisor to Grand Duke Stjepan Vukčić Kosača, Vukotić acquired a considerable amount of property during his lifetime, which is the subject of his disposition. Based on fragments from Vukotić's testament, in the literature so far, conclusions have been drawn in relation to what law looked like in medieval Bosnia, which without a deeper understanding of ius commune can easily lead to errors. The author points out the necessity of great caution in such an approach. The author concludes that Vukotić's testament fits into the European ius commune in terms of its form, style and Christian influence, while the application of private law institutes (appointment of a substitute, protection of the unborn child, the issue of dowry and execution of the testament) is determined by various factors.

Key words: Pribislav Vukotić; Testament; Padua; Bosnia; Roman law; *Ius commune*; Legal culture.

1. INTRODUCTORY NOTES

In Padua, on March 21. 1475, testament of Pribislav Vukotić, Bosnian diplomat and advisor to Grand Duke Stjepan Vukčić Kosača, was drawn up by the notary Nicola Pini, who, like many other people from Bosnia, found his refuge in one of the neighboring countries.

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Vukotić's testament was preserved in notarial collection of Pini's papers and in the 19th century it was discovered by B. Cecchetti, former director of the Venice Archives, who first mentions it in his work *La donna nel medioevo a Venezia: note*.[1] L. Thallóczy[2] first has published the testament in its entirety. The transcript can also be found in the *Codex diplomaticus regni Bosnae*.[3] The most impactful work on the life of Vukotić himself was created through analysis of a significant number of fragments, scattered primarily through the Dubrovnik archives, and written by S. Ćirković.[4]

The testament was written in spirit typical for Late Middle Ages in Europe, which played a significant role in the historical development of European law, and it is best reflected in the testament's form, style, as well as its distinct Christian influence.[5] During this period, scientific analysis of Roman law, its interpretation, elaboration of practical applicability and connection with canon law, led to formation of a unique, Roman-canonical legal culture – *ius commune*.[6]

[1] B. Cecchetti, *La donna nel medioevo a Venezia: note*, Visentini, Venezia 1886.

[2] L. Thallóczy, *Studien zur Geschichte Bosniens und Serbiens im Mittelalter*, Duncker&Humblot, München&Leipzig 1914, 436–439.

[3] E. Kurtović *et al.* (eds.), *Codex diplomaticus Regni Bosnae – povelje i pisma stare bosanske države*, Mladinska knjiga, Sarajevo 2018, 861–864.

[4] S. Ćirković, „Počteni vitez Pribislav Vukotić", *Collection of papers of the Faculty of Philosophy* 10-1/1968, 259–276.

[5] About the importance of Roman Law for European Legal Culture: R. Zimmermann, *Roman Law, Contemporary Law, European Law*, University Press, Oxford 2001; F. Wieacker, "Foundations of European Legal Culture", *The American Journal of Comparative Law* 38-1/1990, 1–29; G. Hamza, "Reflections on the role of Roman law and Comparative law in the process of harmonization and unification of private (civil) law in Europe", *Revista da Faculdade de Direito da UFMG* 67/2015, 279–294; L. Solidoro-Maruotti, *La tradizione romanistica nell diritto europeo*, vol. 2: *Dalla crisi dello ius commune alle codificazioni modern*, Lezioni, Torino 2003; M. Petrak, „Rimska pravna tradicija i hrvatska pravna kultura", in: Peter Stein, *Rimsko pravo i Europa – Povijest jedne pravne kulture*, Golden marketing-Tehnička knjiga, Zagreb 2007, 169–182.

[6] More about the development of *ius commune*, its structural elements and significance in the Middle Ages: R. Zimmermann, "Roman Law and European Culture", *New Zeland Law Review* 2/2007, 363–365; G. Hamza, "Das römische Recht und die Privatrechtsentwicklung in Ungarn im Mittelalter", *Journal on European History of Law* 1/2010, 17; J. W. Cairns, J. P. Du Plessis (eds.), *The Creation of the Ius Commune. From casus to regula*, University Press, Edinburgh 2010; P. Grossi, *L' Europa del diritto*, Gius. Laterza&Figli, Roma&Bari 2011, 52 *et seq*.; R. Caenegem, *European Law in the Past and the Future. Unity and Diversity over Two Millennia*, University Press, Cambridge 2004, 13 *et seq*.; M. Bellomo, *The Common Legal Past of Europe 1000-1800*, The Catholic University of America Press, Washington 1995, 55 *et seq*.; G. Ermini, *Corso di diritto comune, vol. 1 Genesi ed evoluzione storica, elementi constitutivi e fonti,* Giuffrè, Milano 1962; F. Calasso, *Introduzione al diritto commune*, Giuffrè, Milano 1970; A. M. Stickler, "L'utrumque ius nella dottrina dei glossatori riguardante le relazioni tra Chiesa e Stato", in: *Il diritto comune e la tradizione giuridica europea, Il diritto comune e la tradizione giuridica europea*, L'Università degli Studi di Perugia, Perugia 1980, 417–431.

The universality of *ius commune* was not based on the unification of legal norms nor the unification of legal practice. *Ius commune*, as we understand it today, is based on a common university legal tradition, which contributed to building unique assumptions about the value of law and its interpretation. Possible elements of unification could be visible in certain forms and patterns, which was a direct consequence of a unified approach to legal education. In the thus formed "European general law spirit", Roman law occupied a very significant place, as Grossi states, representing "a key authority, a valuable tool, a necessary element of comparison, a conceptual model, a source of ideas, techniques, but compared to the complexity and intertwining of other structural elements it was only a thread of cloth".[7] Contrary to the general legal system set up in this way, the "spirit" of the European legal Middle Ages, in the areas of local territories, in accordance with the principle of legal particularism, heterogeneous local rights existed, based on customs and/or statutes.

Accordingly, recognizing the importance of this testament as part of our legal heritage, in this paper we will make some historiographical and new legal contribution to its further study through the context of medieval *ius commune*.[8]

2. ABOUT PRIBISLAV VUKOTIĆ AND HIS PROPERTY

Pribislav Vukotić was originally from Foča. Ćirković assumes that he is a descendant of a merchant family and that he spent most of his life in trade business. From the middle of 15th century, he conducted trading business and various diplomatic missions for Grand Duke Stjepan Vukčić Kosača, whose chamberlain he will become around 1458. He was knighted at foreign courts.[9] After Grand Duke's death, he served in the service of Grand Duke Vlatko Kosača until around 1472, when he settled in Padua. He died sometime after 1475.[10]

[7] P. Grossi, 54.

[8] Author's note. The oversight created by the misreading of Vukotić's testament was recognized in the work of Ljubović, who writes about the first mention of the noble family Vučetić and their Bosnian origin, stating that the memorial of the family is in the testament of Pribislav "Vuchetich", a knight of Bosnia, as called bellow. (Cf. E. Ljubović, „Brinjska i senjska plemenita obitelj Vučetić – Vuchetich", *The Anthology of Senj - contributions to geography, ethnology, economy, history and culture* 32-1/2005, 78. Also, in the process of drafting this paper, we noticed that the distinguished Professor Babić, in mentioning Vukotic's testament, incorrectly indicated the location of his residence and the making of the testament. Venice was cited instead of Padua (Cf. A. Babić, *Diplomatska služba u srednjovjekovnoj Bosni*, International Center for Peace, Sarajevo 1995, 93.

[9] Cf. E. O. Filipović, „O aragonskom viteškom redu Stole i vaze u srednjovjekovnoj Bosni", *Journal – Institute of Croatian History, Faculty of Philosophy Zagreb* 52-3/2020, 74.

[10] S. Ćirković, 271.

A general examination of Vukotić's testament shows that during his life he gained great reputation and wealth. He owned real estate in Padua, plenty of valuable jewelry and money.

He left most of his property to his wife Doratia. Those include various dresses, silver-plated belts, gold rings - four diamonds and three rubies, a flag with a dragon of the Hungarian king's army, a gold uniform with five pearls, which he received from King Alfonso of Naples, some other diamonds and rubies; weapons; a necklace with pearls and precious stones, which he received from the King of Cyprus.[11] He also left her land worth 1,000 ducats.[12] To Rafael, the emancipated son from his first marriage, he had previously gifted a rather modest house and up to 500 ducats and additional ducats for rent, while respecting the emancipation decision.[13] To his sons Petar and Đorđe he left 500 ducats each and to his daughters Katarina, Barbara and Ana 600 ducats each, while also leaving Katarina one large silver and gilded belt made in the Bosnian manner.[14]

In addition to all of the above, including a large number of *pro anima legata* intended for the Church, which we will further analyze below, Vukotić also mentions a sword, spurs, a belt, 16 plates, one of silver-plated wood, a gold belt, a gold robe sewn in the Bosnian manner, one gold and one silk coat, colorful velvet robe, worn damask robe, beech marten's fur blanket, satin, turquoise silk underskirt, eight silver coasters, three forks, silver plated sword, silver plated dagger, gilded silver spurs, six carpets, gold ring, gold rug and silk blankets.[15]

Vukotić gained his wealth by performing various functions throughout his life.

The beginnings of his career, long before he became a knight, duke and chamberlain, are noted in archival records of the debt repayment of

[11] Test. P. V. *Ala qual io lasso tute le soe veste, le qual se sano esser soe. E tutte le soe centure de sovra inarzentade. E tuti soi anjel doro: quatro diamanti, e tre rubinj. Item lasso una insegna che ha el Dragon Arma de Re d'Ungaria ala dite: Item lasso la divisa che me dono Re Alfonso doro con cinque perle, E do diamanti e tre rubinj. Item lasso ala dita una arma che pende avantj, la Colaina che me don ore Cipro con una perla. E con certe pierre.*

[12] Test. P. V. *Item lasso ala dita Derotia mia moier uno livello el qual io comprai da Madonna Catarina Buzacharini per mille ducati libero e francho*.

[13] Test. P. V. *Item lasso a Rafaele mio fiolo de la prima donna Ducati Cinquecento, dei qual Ducati Cinquecento luj ha recevudo dami Ducati trexento cinquanta doro, et una Caxa che fo comprada da Masser Matio Balbi per Ducati cento i quaranta. E cusi luj habudo deli Ducati Cinquecento io li lasso de sopra Ducati quatrocento e novanta per rata, come apar per lo Instrumento de la mancipasson.*

[14] Test. P. V. *Item lasso a mio fio Piero Ducati Cinquecento. Item lasso a mio fio Zorzi Ducati Cinquecento. Item lasso a Catarina, Barbara et Anna mie fie Ducati seicento per cadauna. (...) Item lasso a Catarina mia fia una mia Centura granda darzento dorado fata al muodo de Bosina.*

[15] Cf. *Codex diplomaticus*, 862–863.

1440.[16] Ten years later, it is evident that he did serious business for Grand Duke and that he exported considerable quantities of his goods[17] to Italy. In 1449, Vukotić paid 50 ducats of duty to Dubrovnik on the wax he was exporting, which greatly angered Grand Duke, who in protest, seized the goods of some Dubrovnik merchants, demanding refund of duty.[18] During the period of Grand Duke's war with Dubrovnik (1451-1454), together with Đ. Čemerović and I. Vardić, Vukotić was on a diplomatic mission in Venice. The sources further reveal that in 1456 he exported Grand Duke'a crimson cloth to Apulia.[19] A year later, Grand Duke paid 600 ducats of ransom for him and his merchandise. Namely, on his return from Florence, Vukotić was captured by robbers from Genoa, who brought him to Dubrovnik on a boat and demanded a ransom.[20] During this period, he also stayed in Naples at the court of King Alfonso Aragon, to whom he conveyed certain Grand Duke's diplomatic messages.[21]

It is interesting to note that during this period he represented a noble knight and rector to King Alfonso, while the people of Dubrovnik would start addressing him the same only years later, when he was elected as Grand Duke's chamberlain.[22] In the testament, it is evident that he received very valuable gifts from King Alfonso.[23]

Not later than 1458, he became a chamberlain to Grand Duke Stjepan, since in 1459 he was recorded as the *dominus* of *Pribissaus camerarius et thesaurarius ... domini ducis*.[24]

In the documents of the Dubrovnik Archives, Vukotić's name was most frequently mentioned during his time of service to the Grand Duke, since he was one of his closest associates. Finally, alongside guest Radin, Metropolitan David, and the three nobles of Dubrovnik, Š. Žunjević, B. Gučetić and A. Sorkočević, Vukotić will also be named as the executor (*epitropi*)

[16] DSA, Div. Canc. LIV, 252 v, July 14th 1440. *Ser Damianus de Sorgo confessus fuit habuisse et recepisse a Pribissauo Vochotigh de Coza, dante nomine de Tuerdissa Miroscouigh de Coza, yperperis treginta pro parte debiti quod dictus Tuerdissa habent cum ipsi ser Damiano de quo debito dictum fuit apparere in libro citationum de foris sub* [-] *Renuntiando*. In later documents cf. DSA, Div. Not. XXXVII, 75v-78, Juni 7th 1453; DSA, Div. Not. XL, 135, 6th February 1456; DSA, Div. Not. LIV, 29, December 23rd 1469.

[17] Author's comment: Herzeg's goods.

[18] S. Ćirković, 266.

[19] DSA, Cons. Rog. XIV, f. 253. Januray 31st 1456. (Citation taken: S. Ćirković, 267).

[20] M. Šunjić, *Bosna i Venecija (odnosi u XIV. i XV. stoljeću)*, HKD Napredak, Sarajevo 1997, 317.

[21] S. Ćirković, 267.

[22] *Ibid.*, 269.

[23] Cf. footnote no. 11.

[24] DSA, Div. not. XLII, f. 52-53, January 22nd 1459. (Citation taken: S. Ćirković, 263).

of Grand Duke's testament. His conscientious performance of this function is confirmed by his appearance in front of the rector of Dubrovnik on May, 29th 1466. In his role as an *epitropi*, he made a statement to the rector, judges and consuls, all for the purpose of verifying the authenticity and credibility of Grand Duke's testament. He testified about Grand Duke's physical and spiritual condition at the time of writing the testament. He stated that Grand Duke was ill, but in good spirit, self-conscious, with clear reasoning and able to make his own mind. He confirmed that the testament was written by Metropolitan David at Grand Duke's command. He made a statement as to the time and place of the testament writing, as well as the information about the people who were present during the writing of the testament.[25]

Quoting an allegation from Trpković's dissertation, Ćirković assumes that Vukotić's career ended sometime in 1472, since his name was last mentioned in the documents presently kept within archival series *Consilium Rogatorum* at Dubrovnik State Archives (hereinafter: DSA) in 1471.[26] An insight into the material available to us from archival series *Diversa Cancellariae* DSA reveals that his name was last mentioned, at the end of 1471, in connection with the repayment of some borrowed money.[27]

[25] M. Sivrić, „Oporuka i smrt hercega Stjepana Vukčića Kosače", *Motrišta – glasilo Matice Hrvatske* 18/2000, 82–83.

[26] S. Ćirković, 261. Cf. V. Trpković mentions that in 1472 Vukotić had some dispute with Marin Cidilović. The matter was arranged in Dubrovnik by a messenger, and it is not clear from where Vukotić sent it (V. Trpković-Atanasovski, *Pad Hercegovine*, Institute for History, Belgrade 1979, 78, 87 and 150).

[27] DSA, Div. Canc. LXVIII, 56 v, January 29th 1463. *Spectabilis et generosus dominus Rector ser Nicola Ma. de Georgio cum suis judicibus ser Stefano de Zamagno, ser Damiano de Menze, ser Junio de Gradi, ser Nicola Si. de Bona et ser Dragoe de Sorgo, audita petitione spectabilis militis domino Pribissaui Vuchotich, petentis judicare et sentantiari Marinum Tho. Zidilouich, ibidem presentis et ad hoc vocatum ad sibi domino Pribissauo actori dandum et soluendum ducatorum auri quingentos, quos sibi Marino mutauerunt preteritis diebus. Et audita responsione dicti Marini, qui ibidem in judicio dixit et confessus fuit, quod est verum quod habuit et recepit a dicto domino Pribissauo mutuo dictis ducatorum quingentos. Et consideratus quod in confessus nulle sunt partes judici, nisi in sentenciando, visis statutis et ordinibus et omnibus visis, sedendo etc. Christi nomine inuocato etc, dixit, judicauit et sentenciauit dictum Marinum Tho. Zidilouich et omnia eius bona ad dandum et soluendum dicto domino Pribissauo actori, dictos ducatos auri quingentos, per eum actorem ut supra petitos ad omnem voluntatem dicti creditoris. Hoc declarato quod quoniam dictus debitor soluet predictos denarios dicto domino creditori, presens sentencia debet cassari et anullari et dicti denarii, videlicet, ducatorum quinquaginta debeant subscribi et notari sub quodam cirographo scripto manu ipsius Marini de 1458, 29 augusti, per quod cirographum apparet dictus Marinus, debitor dicti domini Pribissaui, dictorum denariorum et aliarum causarum, non quod dicto die lata sentencia dicti dominus Pribissauus restituit dictum cirographum dicto Marino et a dicto non quod denarium suprascripte sentencie quoniam soluentur fient pro receptis sub ista sentencia et cassabitur sentencia et non erit opus eos alibi subscribi*. With a side note: *Extra et datur domino Pribissauo, die V octobris 1471*.

3. LEGAL INTERPRETATION OF THE TESTAMENT THROUGH THE PRISM OF THE DEVELOPMENT OF LEGAL CULTURE

The legal-cultural approach is a modern concept in the study of law. Merryan defines legal culture as "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught. The legal tradition relates the legal system to the culture of which it is a partial expression."[28] Tradition consists in the acceptance of certain contents, such as social values, behaviors, educational style, style of legal thinking and argumentation, etc., all within the framework of collective legal awareness. Therefore, through these relatively stable patterns, we can observe the characteristics of each legal culture.[29]

Unlike normativistic orientation, which entails a methodological impotence when it comes to the breadth of cognition, the fundamental feature of the legal-cultural approach is its interest in the actual conditionality of legal systems and the real legal life, defined by many American theorists as *law in action*.[30] Legal culture can be studied narrowly (micro) or broadly (macro). Legal entities such as courts, education, science, or territory, or some legal branches and institutes, may be taken as units of culture. Relying on evolutionary theories on the development of law, according to which law is also an expression of culture and mentality of a society, this approach becomes interesting to us in the process of studying medieval legal history. It leaves us with sufficient possibilities in the process of document analysis, where, as a rule, we analyze very small fragments, establishing a connection and coming to an understanding of certain social phenomena determined by collective legal consciousness.

The complexity of understanding medieval European legal culture (*ius commune*) stems from its legal particularism, imbued with heterogeneity of legal sources and influences. A detectable link, if we are assessing legal culture in a broader context, was the common university legal tradition of the 12th century, which based on the processing of Roman law, built assumptions about the values of law and its interpretation. Therefore, some kind of legal unification can be observed only in certain forms, patterns and values as a consequence of unified approach to legal education. This was established by Ladić for the area of Dalmatia, stating that "Dalmatian wills

[28] J. Henry-Merryan, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, University Press, Stanford-California 1969, 2.

[29] F. Karčić, „Pravne kulture: koncept, izučavanje i klasifikacija", *Yearbook of Faculty of Law in Sarajevo* 48/2005, 291.

[30] R. Pound, *Jurisprudencija II* (Translation by: Đ. Krstić), CID, Podgorica 2000, 117.

do not differ in structure from other European medieval wills recorded by public notaries".[31]

The complexity of understanding medieval European legal culture (*ius commune*) stems from its legal particularism, imbued with heterogeneity of legal sources and influences.

In the context of the above stated, individual analyzes of medieval documents easily cause misconceptions about what the law of an area looked like. Thus, some authors, based on fragments of Vukotić's testament, presented theses on what the law looked like in medieval Bosnia, which, without a deeper understanding of *ius commune*, can lead to errors.[32] For example, they pointed out that the dowry in Bosnia was not common, which is not true and will be elaborated below.[33]

In medieval Bosnia, in which Vukotić spent most of his life, inheritance by testament was an exception. In accordance with customs, legal inheritance took absolute precedence, taking into account the collective nature of ownership and family organization in the form of cooperatives. Several testaments we "inherited", written outside of Bosnia, refer to the nobility and the question of the extent to which it can be reconstructed what hereditary law in Bosnia actually looked like.

In the wider European context, the Church played the most important role in spreading the concept of inheritance by testament. It sought to reach as many land holdings as possible and thereby strengthen its economic position. Using its authority, the Church tried to instill the institute of testament in "primitive" laws. The position of the testament is fully consolidated with the establishment of Church jurisdiction and the process of normalizing family law and inheritance law relations.[34]

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[31] Z. Ladić, *Last Will: Passport to Heaven. Urban Last Wills from Late Medieval Dalmatia with Special Attention to the Legacies* pro remedio animae *and* ad pias causas, Srednja Europa, Zagreb 2012, 73.

[32] V. Spaić, „Nasljedno pravo u srednjovjekovnoj Bosni", *Yearbook of Faculty of Law in Sarajevo* 1/1953, 114, 116–117.

[33] A. Huseinspahić, „Posebnost nasljedno-pravnih i bračnih odnosa u srednjovjekovnoj Bosni do druge polovine XV vijeka", *Social Perspectives – Journal for Legal Theory and Practice* 4-1/2017, 83; Dž. Drino, B. Londrc, „Povijesni aspekti uticaja prava istočnojadranskih gradova na pravo srednjovjekovne Bosne (europeizacija bosanskog prava?)", *Yearbook Croatian Academy of Legal Sciences* 8-1/2017, 50.

[34] Z. Janeković-Römer, „Na razmeđi ovog i onog svijeta. Prožimanje pojavnog i transcendentnog u dubrovačkim oporukama kasnoga srednjeg vijeka", *Otium – Journal of everyday-life history* 3-4/1994, 2; M. Kambič, *Recepcija rimskega dednega prava na Slovenskem s posebnim ozirom na dedni red Karla VI.*, Zgodovinski inštitut Milka Kosa ZRC SAZU, Ljubljana 2007, 47; Z. Ladić, 22, 40.

3.1. Church Legate

From of the perspective of legal culture, behavioral patterns of individuals are often shaped by the strong influence of the prevailing religious basis. In medieval testaments, the Christian spirit of the testator has always been strongly felt. Such spirit absolutely dominates Vukotić's testament. We base our thesis on his approach of making the testament itself, and large number of legates, which he chose to bequeath to Church for the salvation of his soul.

Legate in the Roman legal tradition represents a material gain that the heir from the legacy must, by order of the testator, assign to a third party.[35] They were mostly intended for the Church, but were also used to gift spouses and other relatives. When it comes to Church legates, they were left for masses, churches, monasteries, relics, individual clerics and other humanitarian purposes such as clothes for the poor, marriages of indigent girls, etc. Sometimes, we also encounter appropriations for the forgiveness of sins - *pro male ablato*.[36]

The principles of *praecedat ecclesia*, meaning - first to the Church, have been emphasized in all found testaments of Bosnian noblemen, therefore, the Church was regularly mentioned and rich legates were left.[37]

Vukotić, among the Church legates, designated 100 ducats for the altar of the Lord in the Church of St. George in Padua, near his tomb, in order to

[35] Flor. D. 30. 116. *Legatum est delibatio hereditatis, qua testator ex eo quod universum heredis foret, alicui quid collatum vellit.*

[36] Cf. V. Čučković, *Razvoj dubrovačkog naslednog prava do 1358. godine* (Unpublished doctoral dissertation), Faculty of Law University of Belgrade, Belgrade 1965, 139; Z. Janeković-Römer, 3–16; G. Ravančić, „Oporuke, oporučitelji i primatelji opručnih legata u Dubrovniku s kraja trinaestog i u prvoj polovici četrnaestog stoljeća", *Historical Contributions* 40/2011, 97–120.

[37] Cf. *Testament of Herceg Stjepan* (Novi, May 20th, 1466), in: A. Solovjev, *Odabrani spomenici srpskog prava*, Gece Kona, Belgrade 1926, 220–227; *Testament of Jelena Sandalj* (Dubrovnik, November 25th, 1442), in: S. Jalimam, *Izvori za historiju srednjovjekovne bosanske države*, Historical Archive, Tuzla 1997, 66–67; *Testament of Jelena, daughter of Vuk and widow of Vuk Hranić* (Split, March 18th, 1337), in: T- Smičiklas, *Codex diplomaticus Regni Croatiae, Dalmatiae et Slavoniae*, vol. X, Yugoslav Academy of Sciences and Arts, Zagreb 1912), 303–305; *Testament of Katarina Kosača* (Rome, October 11th 1478), in: Augustin Theiner, *Vetera monumenta Slavorum meridionalium*, vol. I, Academia Scientiarum et Artium Slavorum Meridionalium, Rome 1863, 509–511.

Author's note. Even the testament of Gost Radin is typical Christian testament, with mentions of some monastic practices that were present in the Bosnian Church, some authors have tried to find heresy, however, it is scientifically questionable. (Cf. Ć.Truhelka, „Testament gosta Radina" *Herald of the National Museum of Bosnia and Herzegovina in Sarajevo* 23/1911, 371–375; N. Rabić, „Prilog čitanju oporuke gosta Radina", *Historical Searches* 15/2015, 67–99.

buy tamaris for the altar and serve Holy Masses for his soul.[38] To the same altar he left a silk-clad suit, one silver chalice, one missal, and a mobile ivory chapel.[39] He also ordered the sending of *pro anima legata* to Rome, to the Basilica of the Holy Sepulcher and to the Church of St. James in Jerusalem.

Christian influence is also evident through the invocation of the testament, where it can be noticed that Vukotić "recommends his soul to the Lord God and holy mother Virgin Mary".[40]

Members of clergy, as a rule, played an important role in the preparation of testaments. Priests were often testament writers. They were involved in the preparation of the Vukotić testament. Two priests participated in the preparation of Vukotić's testament, as witnesses - Antonio Benedict, priest of St. Angel and Alexander, pastor of St. Marina's Church.[41]

From the aforementioned, especially from the recommendation of his soul and the large amount of *pro anima legata* to the Church, we can conclude that Vukotić was a very devoted Catholic.

3.2. Document form

In Italian cities since 12th century, legal acts in writing have become completely dominant. Although the dynamics of this development have not been the same in all environments, historians write about the "explosion of literacy" or its "revolution". Several factors have influenced such changes, and recent literature has cited population growth, increased trade, the emergence of paper as cheap material, and the development of university education and law schools focused on Roman law.[42] Within the law schools, which contributed to the intellectualization and professionalization of the legal profession, a special discipline *ars notariae* will be developed, through which a new layer of educated lawyers, future notaries will be created, one of whose primary tasks will be creating legal acts. Over time, such legal

[38] Test. P. V. *Item lasso al Altare de la Madonna che e in la Giexia de San Zorzi de Padoa, el qual e apruono (vicino) la mia sepultura Ducati Cento d'oro dei qual debi esser Comprado olivello o possession per dota de quello Altar.*

Author's note. Such formulations are visible in almost all medieval testaments. Cf. M. Karbić, Z. Ladić, „Oporuke stanovnika grada Trogira u arhivu HAZU" *Journal of Institute for Historical Sciences of the Croatian Academy of Sciences and Arts in Zadar* 43/2001, 168.

[39] Test. P. V. *Item lasso al dicto Altar un paramento fornado de seda, et un per anima mia, et qual habi per elemosina quello che piaxera alla mia dona et ali de sopraditi cavalieri.*

[40] Test. P. V. *In prima recommando l'anema mia a Messer doenedio et ala san madre verzene Maria ect.*

[41] Cf. footnote no. 85.

[42] N. Lonza „Pravna kultura srednjovjekovne Dalmacije između usmenosti i pismenosti" *Collected Papers of Zagreb Law Faculty* 63/2013, 1215–1216.

acts will gain the power of public faith. The influence of the Church will be quite noticeable here as well, primarily in the form of mediating models distinctive to the Roman legal tradition because the *ecclesia vivit lege romana*. Along these lines, the concept will be adopted in the process according to which the *ius cogens* norms will stipulate that the various documents will be written only by the municipal chancellors, i.e. notaries, who acquire public faith by exercising their public authority. Notarial books will, in fact, be municipal books, and the documents inscribed within them will acquire public faith along the aforementioned line.[43]

Notaries will play a very important role in the process of testament making. Their role will be reflected in the eternal pursuit of law, to stay in balance between substantive and formal arguments. The issue of form is closely linked to the stressed importance of the testament as a legal matter. The form will thus seek to strike a balance between the two elementary conditions - not to hinder the very process of creating the act, but also to exclude any possibility of fraud or unreasonable disposition.

Vukotić's testament is drawn up in the form of a specific notarial deed, as was customary for the Mediterranean, which was a direct consequence of unified education of notaries.[44] The text was recited to the notary in front of the witnesses and entered in the notary's books. An entry in the notary's book was also a key element for the validity of the testament in question.[45] Although no records of transcripts have been found, it does not exclude the possibility they have been made. Specifically, one or more transcripts of testament were most frequently compiled at the same time, which were handed over to the testator himself, his family, witnesses or executors, which is not visible in this testament.

3.3. Appointment of a substitute and protection of the unborn child

Substitution (*substitutio*) is a testamentary appointment of a second heir (*heres secundus, heres substitutus*) in case the first (*heres institute*) refuses or is unable to accept the inheritance for some other reason. Roman law distinguished three types of substitutions - vulgaris (*substitutio vulgaris*), pupillary (*substitutio pupillaris*) and quasipupillary (*substitutio quasi pupillaris*).[46] They can often be noticed in medieval testaments as well.[47]

[43] L. Margetić, *Rimsko pravo – izabrane studije*, Faculty of Law University of Rijeka, Rijeka 1999, 112–113; Z. Ladić, 75.

[44] L. Margetić, *Hrvatsko srednjovjekovno obiteljsko i nasljedno pravo*, Narodne novine, Zagreb 1996, 203 *et seq.*

[45] Cf. Stat. Padou. XVII, 194.

[46] Modest. D. 28. 6. 1. 1. *Heredis substitutio duplex est aut simplex, veluti: "Lucius Titius heres esto: si mihi Lucius Titius heres non erit, tunc Seius heres mihi esto": "Si heres non erit, sive erit et intra pubertatem decesserit, tunc Gaius Seius heres mihi esto".*

[47] V. Čučković, 188–189.

In medieval Bosnian legal heritage, substitutions, namely *substituti pupillaris*, are evident in Grand Duke Stjepan's testament, within which Vukotić held the honorable duty of executing the (*epitropi*). With his testament, Grand Duke Stjepan determined that "if Vlatko dies before Stjepan, Vlatko's and Stjepan's part to Stjepan, if Stjepan dies first, Stjepan's part to Vlatko, together with his part and my legacy."[48] The conclusion that this is a pupillary substitution is easy to draw, knowing that the Grand Duke's testament was drawn up in 1466 in Novi na moru (today's Herceg Novi).[49] At the time, his son Stjepan Hercegović Kosača was only 11 years old, since available data indicate that he was born in 1455.[50] As the executor (*epitropi*) of this testament, Vukotić was indisputably personally acquainted with this institute and it appears in a similar form in his testament.

There is a provision that states if one of his sons or daughters dies before the usual age, that part should be inherited by his and Doratia's descendants, those who are alive.[51] This is also a pupillary substitution, since Vukotić's descendants from his marriage with Doratia were underage at the time of drawing up the testament.[52] With the particular separation of his descendants with his wife Doratia, it is obvious that he wants to exclude Rafael, his son from his first marriage.[53] He was Vukotić's natural son with, for us, an unknown woman, and it was previously mentioned that Vukotić left him significant assets.

In the spirit of legal culture at the time, Vukotić also looked after his unborn child. He emphasized that his wife, Doratia, is pregnant at the time of writing the testament, and that if she gives birth to a son, he will leave him him 500 ducats from his property and if she births a daughter, she will inherit 600 ducats.[54] This is a Roman-canonical approach widespread in the period of the medieval *ius commune*.[55]

[48] A. Solovjev, 220–227.

[49] *Ibid.*, 220.

[50] S. Mičijević, „Od Kosača do Hercegovića", in: *Proceedings "Herceg Stjepan Vukčić Kosača i njegovo doba"*, BKZ Preporod, Mostar 2003, 167–169.

[51] Test. P. V. *Item se alguna de me fie over me fioli morise avanti la etade perfeta, voio che la parte de quello o de quello pervognia in quelle mie fie et fioli che vivi saranno, intendendo che siano fie o fioli de me e de Doratia.*

[52] A. Babić, 93.

[53] V. Ćirković, 209–276.

[54] Test. P. V. *Item per che la mia Donna Doratia al prexente e gravida, se la parturise un fio volio labj de miei beni Ducati cinquecento, se fia voio labj Ducati seicento.*

[55] In Dubrovnik this was regulated by the Statute. Cf. Stat. Rag. IV, 55. Visible in the legal practice of some Dalmatian cities, for example in the testament of Iurgii Osnouich, written in Trogir in 1372 – *In omnibus autem aliis suis bonis mobilibus et stabilibus, iuribus et actionibus ipsi testatori quoquo modo competentibus et competituris sibi heredem vniuersalem instituit et fecit ventrem sue uxoris si ad lucem peruenerit siue postumus fuerit seu posthuma* (M. Karbić, Z. Ladić, 217).

In Roman law the conceived but unborn child (*nasciturus*) was considered as part of the mother and as such, unborn child had no legal subjectivity. Nonetheless, in certain cases, legal subjectivity will be recognized to a conceived and unborn child. This was especially the case in hereditary law. Namely, because of the requirement that the heir must be alive in the moment of the decedent's death, conceived and unborn child (*postumus*) would be deprived of inheritance. Thus, a rule was created according to which a child in the mother's womb is considered born, insofar as his interests are concerned.[56] Of course, the interpretation clearly states that this rule does not establish the embryo as the basis of legal subjectivity, but rather protects the rights of the subject that should be granted to him if born alive.[57] Withdrawal of inheritance rights simply because the child was not born before the death of the father would not be a righteous solution. In the wake of this, Ulpian also stated that heirs can inherit, if they are alive or at least conceived at the time of the testator's death.[58] Discussions about this phenomenon have their roots in *Lex duodecim tabularum*, and the development was marked by the role of praetor and classical jurisprudence. The medieval period in the application of this institute was marked by the influence of Christian doctrine. According to Christian doctrine, the moment when God created a new soul in the body of a woman cannot be determined, but it is believed that this soul must be protected because God created it. Along these lines, the theory of *nasciturus* in Christian legal theory will be based.[59]

Summa summarum, it can be concluded that Vukotić was a caring parent. Through the testament, he sought to secure financially his entire progeny financially. In support of the thesis about his concern for posterity speaks the fact that he considers his sons' education to be of outmost importance. He emphasizes that he leaves his sword, spurs and belt to the son who is ed-

[56] Paul. D. 1. 5. 7. *Quae liberis damnatorum conceduntur. Qui in utero est, perinde ac si in rebus humanis esset custoditur, quotiens de commodis ipsius partus quaeritur: quamquam alii antequam nascatur nequaquam prosit.*

[57] See more: M. Horvat, *Rimsko pravo*, vol. I, Školska knjiga, Zagreb 1954, 85.

[58] Ulp. D. 38. 16. 1. 8. *Idem erit dicendum et si filius ex asse sub condicione, quae fuit in arbitrio ipsius, vel nepos sub omni institutus non impleta condicione decesserint: nam dicendum erit suos posse succedere, si modo mortis testatoris tempore vel in rebus humanis vel saltem concepti fuerint: idque et Iuliano et Marcello placet.*

[59] Author's note. In the thirteenth century, Pope Innocent III determined that the fetus becomes a living being as it begins to move in the abdomen. Therefore, after that moment, abortion becomes murder, which until then was considered a minor sin. At the end of the sixteenth century, Pope Gregory XIV reaffirmed this position and further reinforces it by stipulating that abortion is allowed within the first 116 days of conception. Sixto V is the first pope to declare all intentional abortions a homicide (A. Borovečki *et al.*, *Pravo na život – priručnik iz izbornog područja medicinske etike*, Faculty of Medicine University of Zagreb, Zagreb 2015, 16).

ucated and attains the degree of doctor or is knighted.[60] Such a provision in the testament of a Bosnian court official testifies his sense of importance for a complete education, but also clearly shows that Vukotić does not hold his nobility as hereditary, and that the social establishment of his descendants is very important to him.[61]

In addition, the act of marrying a daughter is very important to Vukotić, which was in accordance with the tradition and customs at the time, so he emphasizes that the one, who would marry without her mother's permission, loses the right to the inheritance that he has assigned to her.[62]

3.4. The question of dowry

Family law in medieval Bosnia was originally derived from Bosnian tradition and folk customs. Looking at it in a narrow sense, it was not subject to any Church (Canon) law. In the wake of this, Roman law did not exercise any significant influence either.[63] The collective ownership of land by the "household" as a legal entity and the restrictions on its disposal will greatly dictate all property relations within the family.

Thus, even with the dowry issue, the Church's (Roman) notion was not rooted.[64] In literature, we may often come across a quote from Vukotić's testament, in which he says that it is not a custom in Bosnia to bewed women with dowry, but to "be taken for the love, kindness and honor and reputation of their relatives."[65] He points out that he did not receive any dowry from Doratia and that he took her for the sake of her kindness and the fact that she comes from a respected family.[66] It was this particular paragraph that made him quoted and noted in today's literature. This quote was also noticed by Cecchetti during his first reading.[67] Based on this, it was often pointed out that dowry was not common in Bosnia.[68]

[60] Test. P. V. *Item se algun de miei fioli fosse Doctor o Chavalier che habia la mia Spada e mie spironi, e una centura.*

[61] A. Babić, 93.

[62] Test. P. V. *Item se alguna dele dite mie fie se maridasse che Dio non el vora come fano moite senga licentia de la madre in questo caxo non volio habj cosa alguna.*

[63] L. Margetić, „Brak na bosanski način ("si sibi placuit")" *Collected Papers of Zagreb Law Faculty* 3-4/2005, 717–731.

64 Cf. Paul. D. 23. 3. 56. 1. *Ibi dos esse debet, ubi onera matrimonii sunt*; Decrt. Gratiani 2. 30. 5. 6.

[65] Test. P. V. *Item in Bosnia non e usanza de tuor dota da donne, ma le se tuole es per amor et per bontade et per honor de parentadj.*

[66] Test. P. V. *Questo dico perche da la mia donna Doratia non havi cosa alguna in dota, ma io la tolsi per so bontade et per esser de bon parentade.*

[67] Cf. footnote no. 1.

[68] Cf. footnote no. 33.

As always, in historic-legal studies of the Middle Ages, this should be approached with caution as well. Bearing in mind different legal influences that have been reaching over time and contributing to the formation of a legal culture, this understanding has transformed. In addition, the nobleman sought to live in accordance with then established patterns of their surroundings, with which they came in contact through coastal communes and family ties. Accordingly, we support Spaić's view that, under Bosnian custom, the father was not compelled to give dowry to his daughter, and if that was the case, it would be out of love and for the sake of raising the reputation of his family,[69] with the additional note that the issue of "morality" was also changing , since the traditional concept has probably been abandoned earlier by the noblemen, in order to "Europeanize" family customs.[70] To summarize, the dowry institute was well known, and in the case of marriage of a member of the noblemen class in areas outside Bosnia, the dowry was implied.

Along with clothes, utensils, jewelry, and other commonplace things of the time, very valuable possessions were often given in dowry.[71] A well-known example is Princess Elizabeta, daughter of Stjepan II Kotromanić, who, by marrying Hungarian King Louis I, in 1353, brought a part of Hum from Cetina to Neretva in dowry. More recently, favorable scientific arguments in support of the thesis of the dowry institute in Bosnia were discovered, the most notable being the example of Elizabeth's dowry where it was stated that Tvrtko I, respecting her dowry, has never sought to conquer this area.[72] In examining this question, as well as the value of this dowry, Dautović questions the legal nature of dowry goods and notes well that in medieval law dowry still represents the property of a woman and her family.[73] Namely, since Justinian's rights, the principle according to which the dowry always returned in the event of death or divorce was applied. The husband could keep the dowry only in case the divorce was the wife's fault. It can be generally concluded that, since Justinian's right, the husband was formal-

[69] V. Spaić, 110.

[70] About the dowry in the eastern Adriatic cities and hinterland cf. Zdenka Janeković-Römer, *Rod i grad: Dubrovačka obitelj od XIII. do XV. st.*, Institute for Historical Sciences of Croatian Academy of Sciences and Arts in Dubrovnik, Dubrovnik, 1994; V. Čučković „Materijalno obezbjeđenje supružnika u dubrovačkom srednjevjekovnom pravu" *Yearbook of Faculty of Law in Sarajevo* 28/1980, 317–322; V. Stanimirović, *Brak i bračna davanja u istoriji*, Faculty of Law University of Belgrade, Belgrade 2006.

[71] Author's note. For example, the despot Mara-Jelena brought the relics of St. st. Luke the Evangelist to Bosnia as a dowry to the last king, Stjepan Tomašević, which she eventually sold, seeking refuge in the escape from the Ottomans in 1463.

[72] Dž. Dautović, „Bosansko-ugarski odnosi kroz prizmu braka Ludovika I Velikog i Elizabete, kćerke Stjepana II Kotromanića", in: Emir O. Filipović (ed.), *Žene u srednjovjekovnoj Bosni*, Stanak, Sarajevo 2015, 137–138.

[73] *Ibid.*,138.

ly considered the owner of the dowry, but the dowry actually belonged to wife.[74] By nature of the authority he had over dowry, the husband acquired a position similar to usufruct[75], where during the marriage he uses and enjoys the fruits of dowry.[76] In the event of woman dying first without having any children as heirs, the dowry, according to the principle of *paterna paternis*, *materna maternis* would be returned to wife's family.[77]

In the light of the afore mentioned, we can conclude that rigid conclusions on the issue of (non) existence of dowry in Bosnia, based on reading only Vukotić's testament, should be drawn with caution. The logical question arises as to what reasons have encouraged Vukotić to emphasize that there is no custom of giving dowries in Bosnia. It is our belief that him mentioning this custom in his testament served the purpose of avoiding questions regarding his allegation of not accepting dowry from his wife Doratia, which he considered necessary to mention in order to "legally" justify the enormous wealth he left her, presumably because of the great love and respect he felt for her.

Within the legal culture from which Vukotić originated, as well as the culture in which he wrote the testament, spouses were not legal heirs.[78] The widow was most often materially provided with her own dowry, which, as we have already indicated, represented her special property.[79] The dowry would be separated and given to her for her life costs. She could also bring it into a new marriage. With this approach, Justinian's reform also brought changes regarding the poor widow (*vidua inops*) who inherited quarter of her husband's property, and in the case of having common children, then only a portion of the property for use (*ususfructus*).[80]

Implying the existence of dowry, the wives most often received some legates in the testament, which is obviously not the case with Vukotić's wife Doratia. The deviation from the customs of the time is especially evident in

[74] Tryph. D. 23. 3. 75. *Quamvis in bonis mariti dos sit, mulieris tamen est, et merito placuit, ut, si in dotem fundum inaestimatum dedit, cuius nomine duplae stipulatione cautum habuit, isque marito evictus sit, statim eam ex stipulatione agere posse.*

[75] Paul. D. 7. 1. 1. *Ususfructus est ius alienis rebus utendi fruendi salva rerum substantia.*

[76] M. Horvat, 125.

[77] V. Spaić, 110. Author's comments: Bellomo have argued that widows had little chance to recover their goods in court, Klapisch-Zuber notes that widows from the fourteenth century had the law on their side, even if the restitution of the dowry could be a long and complex procedure. Cf. L. Guzzetti, "Dowries in fourteenth-century Venice" *Renaissance Studies* 16-4/2002, 431.

[78] Cf. Stat. Padou. XVI, 584. 16; L. Guzzetti, 430 *et seq.*, V. Spaić, 109.

[79] L. Guzzetti, 430–435.

[80] M. Hebib, „Primjena instituta rimskog prava u cilju materijalnog osiguravanja ženskih srodnika u zakonskom nasljeđivanju srednjovjekovnog Dubrovnika", *Yearbook of Faculty of Law in Sarajevo* 60/2017, 83–86.

the part of the testament in which Doratia gains valuable land, emphasizing that he is leaving it to her and that "no son or brother can contradict or prevent it"[81] and that he leaves the land "completely legal"[82], emphasizing that he "Wants her to have it at her will"[83]. It is quite clear that Doratia acquires land ownership here, including all the typical powers contained in this right - *possidere, uti, frui* and *abuti*.

Through discussion of the issue of dowry in Vukotić's will, it is clearly visible that through invoking the customary norms of the society from which he originated, he tries to justify certain views, contrary to the values of the area in which the testament was written.

3.5. Execution of the testament

Vukotić entrusted his wife Doratia[84] with the duty of sole executor (*sola commessaria*), further stating that he "wanted her to do everything he had ordered with the advice of Fr. Jocom Todesco, the Guardian of St. Francis of Padua, and Mr. Martin of Novi Brdo, their godfather".[85]

Doratia therefore represented the person in charge of the gratification of the provisions of his last statement of will. It is interesting that she also represents the legator in the case in question, so it remains unclear at first what exactly the motive was behind her appointment as executor. It was common for an executor to be appointed to take care of inheritance until the arrival of heirs who are not present, to prevent any possible conflicts regarding property mass, or most commonly in the European legal culture (*ius commune*), to protect the interest of the recipient of the legate. As it was mentioned earlier, legates were most often received by the Church, which, in order to further protect itself, promoted and encouraged the appointment of executors.[86] The ecclesiastical influence on Doratia's appointment in this case would be pointless since the family members are most often the ones who dispute the Church's legates. In this case, Doratia's appointment was only intended to ensure Vukotić's last will regarding their mutual children.

We suppose that, in order to satisfy the practice of the time and to honor the members of clergy, who most often acted as executors, Vukotić indicated that he took the advice of master Fr. Tedesco.

[81] Test. P. V. *(...) niun ni fio ni fradello li possi contradir ne dar impazo.*

[82] Test. P. V. *(...) la tuta la legalda.*

[83] Test. P. V. *(...) volio la le possi ordenar come li piace.*

[84] Test. P. V. *Item lasso Doratia mia moier delecta sola commessaria.*

[85] Test. P. V. *Voio che mandi al execution tutto quello che qui soto ordino consilio de Messer frate Jacomo Todesco Vardian de san Francesco de Padoa, e de Messer Martin da Nuovamonte nostro compare.*

[86] Z. Ladić, 76–77.

The institute of execution of the testament is not common in Roman law. Moreover, the oldest Roman law did not even know the institute of execution of testaments. The Gaius institutions state that "an invalid legate was written before the appointment of the heirs, because the testament, of course, derives its power from the appointment of the heirs, and therefore the appointment of the heirs is considered to be the head and foundation of the testament."[87] Without such a provision, the testament was null and void. Accordingly, the sole and direct executor of the testament was the heir, and the right of third parties to participate in the execution of the testament was excluded. Development in classical law will bring about significant changes. Certain *post mortem* jobs are permitted to be granted to persons who are neither heirs nor legatees. A specific type of institute was usually applied - *mandatum post mortem*, which was an integral part of the testament. Such mandates were not *de iure* executors, since they had no rights in relation to the inheritance, but based their powers on a mandate agreement rather than a provision of last will.[88]

Under the influence of Christianity, in further development of law, people whose task was to supervise the payment of legate will appear. These persons were appointed by the testator and were entitled to a specific *lucrum* from the inheritance. They were entitled to *lucrum* only if all the provisions of the last will of the testator concerning pious purposes (*pro anima, pia causa*) were obeyed. For pious purposes, in addition to giving for the benefit of the Church, giving in favor of captives (*captivi*) and giving in favor of the poor (*pauperes*) is also mentioned. The heirs were strictly forbidden to dispute the payment of such legates. In case the testator does not appoint a person in charge of the legatee's payment, the sources also mention the entrustment of this task to the bishop.[89] Despite the gradual development of the testament execution institute in the "western" part of Europe, this institute appeared in Byzantine law in the full sense of the word.[90] Byzantine law legitimized the testator's right to designate the executors of the testament, the so-called *epitropi*.[91] Their sole task

[87] Gai Inst. 2, 229. *Ante heredis institutionem inutiliter legatur, scilicet quia testamenta uim ex institutione heredis accipiunt, et ob id uelut caput et fundamentum intellegitur totius testamenti heredis institutio.*

[88] See more: M. Šarac, *Mandatum u rimskom pravu*, Naklada Bošković, Split 2011, 178–199.

[89] C. 1. 3. 28. *Imperator Leo - Nulli licere decernimus, si testamento heres sit institutus seu ab intestato succedat seu fideicommissarius vel legatarius inveniatur, dispositionem pii testatoris infringere vel improba mente violare, adserendo incertum esse legatum vel fideicommissum, quod redemptioni relinquitur captivorum, sed modis omnibus exactum pro voluntate testatoris piae rei negotio proficere.*

[90] V. Čučković, „Epitropi u starom dubrovačkom pravu", *Yearbook of Faculty of Law in Sarajevo* 11/1963, 262.

[91] K. Eduard, Z. Lingenthal, *Geschichte des Griechisch-römischen Rechts*, Weidmann, Frankfurt 1955, 163–164; T. Matović, „Epitrop (ἐπίτροπος) – izvršilac testamenta", *Journal of Institute for Byzantine Studies SASA* 51/2014, 187–214.

was to enable the payment of legates through the satisfaction of the last will of the testator. The Byzantine provisions regulated in detail the relations between the *epitropi* and the heirs. It was determined that the placement of *epitropi* should not affect the inheritance rights of the necessary heirs. The *epitropi* managed only the legatee's property, regarding the property of the heirs, they had no authority. The *epitropi* submitted reports on their activity. Manojlo Komnen introduced a special type of summary procedure for litigation related to *epitropi*.[92] An institute of the same name, and of similar legal nature, we encounter in legal cultures, which were directly influenced by Byzantium.[93]

On the other hand, Šufflay, in his scholarly work, repeatedly dealt with the analysis of Andrija's testament from 918. He points out that this testament bears similarities to the Lombard testaments. He pays special attention to the number of witnesses and the *commissarius* institute. Šufflay believes that the testament executor institute originates from Lombard law and that it meets the law of Dalmatian cities through the Lombard testaments and confirms the tradition of using this legal term. He explicitly states that both the Kotor and the Dubrovnik Statutes came from the Lombard Law Institute, and that the term *epitropi* is of byzantine origin.[94] We believe that such thesis should be approached with caution, bearing in mind the influences left by the Byzantine in these areas. In terms of both Dubrovnik and Kotor statutes, as well as their legal practice, the use of the term *epitropi* is absolutely dominant, while, for example in the Split or Trogir statutes, we may encounter the terms *commissarius, fideicommissarius*, *procurator* or *executor testamentii*.[95] Terminological differences between the south (Kotor and Dubrovnik) and the cities of central Dalmatia indicate a potentially different path of penetration of this institute, where in the southern parts the institute of byzantine origin was preserved, while in the northern parts reception occurred through Lombard law. Lombard law had an impact on the expansion of the institute in Italy, which indicates its identity on both sides of the Adriatic Sea.[96]

We have already mentioned that Vukotić was the executor of the testament of Grand Duke Stjepan, and he was undeniably familiar with this institute. Other people of Bosnian descent also used to appoint executors of testaments. Thus, Grand Duke Stjepan entrusts the execution of the testament "and thus I have willingly chosen my cordial friends (...) to be, above mentioned, tasked with fulfilling my word and my will, with dignity, as I have

[92] V. Čučković, (1963), 263.

[93] Cf. Stat. Rag. IV, 74; Stat. Cath. CLXXXVII.

[94] M. Šufflay, *Die Dalmatinische Privaturkunde*, Akademie der Wissenschaflten, Wien 1904, 135–136.

[95] Cf. Stat. Spal. III, 22; Stat. Trag. ref. I, 15.

[96] L. Margetić, (1996), 45–50.

designated in the testament."[97] Guest Radin stipulates "that the noble lords written and named above, rector Andruško Sorkočević and rector Tadioko Marojević, do all this in a good manner and distribution, and with them my two sons Vladislav and Tvrtko."[98] Radič Mišetić in his testament determines that the execution of his testament "will accompany Fr. Vladislav, the guardian of monastery of st. Mary's in Fojnica, and if he does not happen to be there and needs to be replaced, the eldest one to be found in the mentioned Church will replace him."[99] In this testament the presence of members of clergy is evident, whose task was to monitor a large number of Church legates. This practice was also typical in coastal communes, where often members of clergy swore to watch over the execution of *pro anima legata*.

In the Statute of Padua we did not notice any provisions that referred to the executors of testaments.[100] An examination of this phenomenon should constitute a specific scientific study, which will also focus on the analysis of Paduan jurisprudence related to this phenomenon. However, we believe that we should not rule out this phenomenon, appreciating the great interest of the Church in promoting the appointment of executors.[101]

The term *commissaria* was used in Vukotić's testament. This term was used in legislation as well as legal practice of some of the communes of the eastern Adriatic, but appreciating that it did not use the term *epitropi*, which was used in Dubrovnik and which was known to Vukotić, we believe that he did not contribute to the conceptual creation of the testament, but it is a matter of legal terminology spread among educated lawyers, also compilers of testaments. Notaries were mostly educated at the same universities, so the use of the same legal formulas and terms was part of a common university legal tradition.

What will certainly remain particularly noticeable is the position of his commissioner, as we understand the term *commissaria*. She was left with a wide range of authorization in the testament supervision process, with particular emphasis on her daughter's marriage and the education of her sons, which means that the protection of Church legates was not a key motive for her appointment.

With this appointment, the pan-European influence of the Church, is evident in Vukotić's need to indicate the taking the advice of mister Fr. Tedesco.

[97] A. Solovjev, 220–227.

[98] *Codex diplomaticus*, 856.

[99] *Codex diplomaticus*, 742.

[100] Cf. Stat. Padou. XV, 578–581.

[101] L. Margetić, (1996), 45–50.

4. CONCLUSIONS

A fundamental feature of the legal-cultural approach in historic-legal science is the expression of interest in the actual conditionality of legal systems. Applying this approach and looking at the context in which private law has evolved in Europe, the strong influences of the Church are indisputable. In hereditary law, the influence of the Church has been particularly pronounced in the process of disseminating the concept and institutional arrangement of testimonial inheritance. All preserved testaments that can be considered as part of the medieval Bosnian legal heritage, were written in neighboring countries and are quite similar in form, style, and Christian influence. The ecclesiastical presence, along with the Christian spirit of the testator himself, dominates Vukotić's testament. It is evident, firstly through Vukotić's recommendation of the soul to God and his holy mother Virgin Mary, and through the large quantities of legates intended to save his own soul. In addition, in the preparation of the testament, members of clergy participated as witnesses to its writing, and the introductory part mentions counseling with a Church friend. The testament is written in the form of a specific notarial document, after an oral statement before witnesses. By enrollment in the notary's book, it would acquire public faith necessary for the achievement of his purpose, that is, for the attainment of property interests by legatees and heirs. This approach was common in the Mediterranean countries and is the result of teachings of law schools that focused on Roman law, which enabled the professionalization of the legal profession in the medieval period.

From the contents of the testament, Vukotić's great concern for his entire progeny is evident. In addition to the large assets he distributes to them, he also emphasizes the importance of their education and reputation, so he gives special gifts to a son who attains a doctorate or is knighted. Regarding the daughters, in accordance with the customs of the time, he emphasizes the necessity of the mother's permission for marriage, and thus conditions the heredity. Part of the property, in accordance with the customs of the time, determined by Christian teaching, he also intended for his unborn child. Vukotić also identified substitutes in the event that one of the descendants ceases to reach adulthood or refuses or is unable to accept the inheritance for some other reason. Vukotić was already aware of the application of such an institute, since a similar provision was an integral part of the testament of the Grand Duke Stjepan Vukčić Kosača, within which Vukotić held the honorable duty of executor. Analyzing Vukotić's allegations of dowry, which is the most frequently quoted part of his testament, the analysis, through the contextualization process, indicated that caution is necessary when drawing such conclusions, especially when sternly concluding on the issue of (non)

existence of dowry in Bosnia, based on reading only Vukotić's testament. Logical questions were raised which prompted the testator to emphasize that there is no custom of giving dowries in Bosnia. In the first place, we believe that this custom was mentioned in the testament in order to avoid questions in relation to his allegation of dowry from his wife Doratia, as a way to justify the enormous wealth left to her.

On the other hand, an important segment of the testament is to entrust the duty of the executor to his wife, who is also a legatee. Our findings suggest that her appointment was intended solely to respect the last will towards mutual children, with very broad authorities when it comes to sons' education, daughters' marriages, etc, which is comprehensively in contrast to frequent practice where the primary role of the executor was to protect Church's interests.

During the Middle Ages, different places in Europe achieved different degrees of Romanization and integration into the general European legal culture (*ius commune*). This testament was written at the epicenter of legal education at the time, and in its content, form and style, imbued with Christian influence in its totality, clearly testifies that it is a significant legal act, shaped in the spirit of *ius commune*, which, based on the origin of the testator, we can proudly consider as a part of our cultural and legal heritage. On the other hand, the application of private law institutes (appointment of a substitute, protection of the unborn child, the issue of dowry and execution of the testament) is determined by various factors, primarily Vukotić's personal views on some legal values, which are not necessarily correlated with legal culture and established patterns of the area from which Vukotić originated, nor the area in which he wrote his testament.

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BOSNIA MEDIEVALE E *IUS COMMUNE*: ANALISI DEL TESTAMENTO DEL CAVALIERE PRIBISLAV VUKOTIĆ

Il sommario

Oggetto di questo articolo è l'analisi storica e giuridica dei contenuti di testamento del cavaliere Pribislav Vukotić, scritto a Padova nel 1475. In qualità di mercante, rinomato diplomatico e consigliere del Granduca Stjepan Vukčić Kosača, Vukotić acquisì una notevole quantità di proprietà durante la sua vita, che è oggetto della sua disposizione. Sulla base di frammenti del testamento di Vukotić, nella letteratura finora sono state tratte conclusioni su come appariva la legge nella Bosnia medievale, che senza una comprensione più approfondita dello *ius commune* può facilmente portare a errori. L'autore sottolinea la necessità di una grande cautela in tale approccio. L'autore conclude che il testamento di Vukotić si inserisce nello *ius commune* europeo per forma, stile e influenza cristiana, mentre l'applicazione degli istituti di diritto privato (nomina di un sostituto, tutela del nascituro, dote ed esecuzione del testamento) è determinato da vari fattori.

Parole chiave: *Pribislav Vukotić; Testamento; Padova; Bosnia; Diritto romano; Ius commune; Cultura giuridica*.

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SREDNJOVJEKOVNA BOSNA I *IUS COMMUNE*: ANALIZA OPORUKE VITEZA PRIBISLAVA VUKOTIĆA

Sažetak

Predmet članka je povijesno-pravna analiza sadržaja oporuke viteza Pribislava Vukotića, napisanog u Padovi 1475. godine. Kao trgovac, renomirani diplomat i savjetnik hercega Stjepana Vukčića Kosače, Vukotić je stekao veliku imovinu tijekom svog života, a koja je predmet oporučnog raspolaganja. Na temelju fragmenata Vukotićeve oporuke u dosadašnjoj literaturi izvedeni su zaključci o tome kako je izgledalo pravo u srednjovjekovnoj Bosni, što bez dubljeg razumijevanja *ius commune* može lako dovesti do pogrešaka. Autor naglašava potrebu za velikim oprezom u ovom pristupu.

Autor zaključuje kako je Vukotićeva oporuka svojom formom, stilom i kršćanskim utjecajem dio europskog *ius commune*, dok je primjena privatnopravnih instituta (imenovanje supstituta, zaštita nerođenog djeteta, miraz i izvršenje oporuke) determinirana različitim čimbenicima.

Ključne riječi: *Pribislav Vukotić; Oporuka; Padova; Bosna; Rimsko pravo; Ius commune; Pravna kultura*.