CONCLUDING OF THE LEGAL AFFAIRS IN MEDIEVAL EASTERN ADRIATIC TOWNS

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The notary document had a constitutive character and represented a material and legal presupposition of the importance of some very significant legal matters in the life of the Adriatic coastal communes. That primarily refers to the turn over of immovable, personal and real provision of an obligation as well as establishing a dowry and wills.

Such attitudes in settling matters through notary maps came to the Adriatic Medieval towns from the towns of the Mediterranean area and represents acceptance of the reception Roman law (ius commune). In some less developed areas there were exceptions to these rules, which is quite understandable when the local specific characteristics are taken into consideration.

1. The statutes of the Coastal cities of the Mediterranean sea originating from the twelfth century are based on the rules of ius commune. The application of the rules of this law into statutory city rights is conditioned by the need to control the more intensive economic and legal traffic between the cities as well as the absence of the appropriate laws within the city itself. The more and more present private property and the right to make a contract with certain subject required a unique law regulation, first of all in the field of obligation law, for which the models, with all the rights were demanded and found in the Roman law. The statutes of the coastal Adriatic cities, such as Kotor, Budva, Dubrovnik, Split, Zadar and others on northerly, follow the general legal concepts of negotium and instrumentum, the questions to be discussed in this study.

First of all, there is not technical term for a legal transaction *stricto sensu*.

The word *negotium* which was often used in Rome meaning the contract was also used with the same meaning in the statutory laws, although not regularly.

The reason for that should be sought in the fact that this term was widely spread in both city and Roman laws, but with different meanings, therefore it was used for marking out other law activities beyond contractual law.

By this word in the statutes were also marked the activities of *tutor*, *curator* and *mandatory*, then economic activities of one person and some activities outside the area of the private law (public law activities of governmental officials).

The contract as the most frequent legal transaction is in the statutes usually regulated as a named contract within Roman law, or as being the case in the statutes of the cities of the South Adriatic region, was expressed through various legal and financial means and through the obligations of the contracting parties.

2. According to statutory rights of all the cities on the Adriatic coast the base of each contract was presented in the free will of contracting parties. Without an agreement of parties there is no obligation. It seems that cosensualism is basic idea of medieval law of obligation in those statutes.

It should also be pointed out that with such a rule concerning the contract, statutory laws contained regulations, establishing which agreement of the parties was legally relevant. If both parties respected those rules an agreement came into being which led to a contract having legal effect. Each contract was supposed, until it was proved to the contrary, to be signed *bona fide* by parties.

The rule of making *bona fide* contract was protected by certain law—proof for carrying out an obligation under oath. A basic protection of *bona fides* resulted that the presence of witnesses wasn’t considered as a constitutive element of the contract. However, in practice they are often present during the transaction for the sake of both creditors and debtors safety.

The frequency of maritime and business transaction in the twelfth and thirteenth century between contracting subjects in both foreign and internal trade as well as considerably

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started process of property differentiation between the population within the Mediterranean cities, required business certainly which couldn’t be provided only by *consensus*. Contracting parties are very often strangers, unknown to one another, people to the city harbors, are the transit places for negotiation with both domestic and foreign population. A solution to this problem in the rights of coastal and other developed medieval cities was harmful to the principle of consensus. All statutory rights without exception, beginning with the twelfth century introduced the obligation of drawing up documents, notary charts of the legal transaction being signed in all the cases when the object of transaction was above certain statutory monetary fixed value.11 Although in the statutes of some cities the standard wasn’t explicitly legal,12 the existence of that rule while making contract is uncontroverted for it or directed by other statutory standards or can be foreseen from the statute observed on the whole.13 The cart drawn up by the notary was marked as a carta according to the kind of transaction (*carta emptionis, venditionis, donationis, dotale*) or just *instrumentum*.14 *Instrumentum* enjoyed public faith- *fidem publicam* i.e. it was valid as a proof which couldn’t be refuted. A document made by notary *bonus ET legalize*, thus by an expert recognized by the municipality enjoyed its full legal strength. The only objection was of the falseness or the objection of payment of those contained in the document of debts with some other notary instrument of payment or canceled *instrumentum*.15 One of the widely used form was written contract. Written form was optional in early statutes, but from thirteenth century we could fine provisions making literal form obligatory. Sometimes, not only ordinary written form, but notary document was requested16.

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12 Statute of city Kotor wasn’t contain rules about making notary carts for each transaction. For example: Stat. Cath., & 78, De debito postulant o super mortuum sine carta; & 392, De nullius vidua quod non respondeat super bonis viri sui sine carta.

13 Stat. Cath., & 133, De testibus in quantum sunt recipiendi (“Volumus, quod si aliquid productus fuerit in testem de aliqua debito, vel obligationem, possit testificari a yperperis decem infra, videlicet, duo testes de debito, vel obligatione facta in ciuitate et unus de debito, vel obligatione facta extra ciuitatem, et ultra yperperos decem eorum testimonium nihil乎 habeatur”).

14 For example: Stat. Cath., & 386, Quod iudex et auditor se subscribant in cartis, aloquim non valeant.

15 Stat. Spal., liber V. & LXVIII.

16 In Kotor, for example, Statute provided that contracts dealing with value less than ten silver perpers should be drawn up in ordinary written form. For those exceeding that value should have also notary chart. Sources in books by Mayer. A., *Monumenta Catrensia, volumen*. I. Prva knjiga kotorskih notara, 1326-1331, Zagreb 1951. Jugoslovenska akademija nauka i umjetnosti; *Monumenta Catrensia, volumen* II, Druga knjiga kotorskih notara, 1327, 1333-1336. Crnogorska akademija nauka i umjetnosti and Jugoslovenska akademija nauka i umjetnosti Zagreb - Podgorica 1981.
The regulations of making obligatory notary charts for law affairs through certain values are in most cases respected judging by the notary material taken from the archive of the cities of northern and southern Adriatic region. Naturally, the introduction of such rules didn’t automatically abolish the practice of making of a contract without notary instrument—sine carta. As we could see from the documents from archives there were many problems which could be seen from the cases decided in the court. However, there isn’t an irrelevant number of documents stating the managing of complicated court disputes because of the absence of a chart about the transaction whether it is marked in before statutory period or from the statutory time when was marked the disputable legal transaction. Similarly, very often in the court disputes, especially in the cities of south Adriatic region, the statements of witnesses are used in the presentation of evidence as an element for verdict giving for the transaction signed above the fixed financial amount for which the statute issues obligatory chart. The statements of witness are also used for establishing the existence of some legal transaction and its validity. Speaking in general a level of application of statutory regulation about the obligatory introduction and appliance of notary charts for certain law affairs depended first of all on the commune development and its willingness to apply in practice its own regulations as well as on adaptability of law regulation to the relation governing in everyday life.

II

1. The main question asked in this study is whether the notary chart is a written form of a contract, hypothesis of its validity (forma ad sollemnitatem) or whether a document of a contract as source of evidence enjoying public faith—fides publica, which in case of a dispute proves the evidence of legal transaction (forma ad probationem). In other words, was there in the statutes of coastal Adriatic cities a notary chart in practice, as a source of evidence with which the parties in the court attain more steady assurance of their rights or whether the document had a dispositive character and presented a prerequisite for the appearance of legal transaction, or if it, in some cases had simultaneously both meanings.

2. All the statutes of the coastal Adriatic cities from the north to the south point out that the notary chart in everyday law concerning transportation mainly had the importance as a source of evidence about the contract (forma ad probationem), in all the cases of a contract containing a transaction above a specific financial value. With a notary chart as a written

17 For example: in Kotor statutory rule of public announcement of immovable selling, from 1312, was applied in practice through XIV century. Only four selling were without that form. Bogojević-Gluščević, N., Ugovor o kupoprodaji u Kotoru u XIV vijeku, Podgorica 1996, Kulturno prosvjetna zajednica, p. 37.
proof of a contract, the parties involved were given a complete legal confidence, that in case of a possible dispute they could accomplish their rights through regular procedure in court. Therefore a testimony in the court had the importance of evidence only for contracts up to the certain money amount.\textsuperscript{20} The kind of legal transaction – abstract or causal – was of no special importance for the contracting parties. Law circumstances are the same. The document is a guarantee that in case of a dispute a claim will be achieved in court.

City notary books show that very often in practice between contracting parties there charts were made showing the debts without quoting the aim of the transaction, a so-called abstract promissory note, possibly for the reason that in case of abstract work the diapason of possible dealing with different effects would be wider.\textsuperscript{21} In that way the possibility of various issues was open (which as shown in the disputes), existed in practice, indeed not in a great number. For the city conditions in the Middle Ages it was understandable.

As we see, notary books in medieval Adriatic cities show that very often between contracting parties were made \textit{charts} about the debts in which wasn’t marked \textit{iust\ a causa} of legal transaction. Abstract promissory note between parties would be enough. The document of transaction is a guarantee that in case of a dispute a claim will be achieved in court. With a notary chart as a written proof the parties could accomplish their rights through regular procedure in court. In this case the notary chart was \textit{form ad probationem} for legal transaction.

\begin{itemize}
\item[3.] For some legal transaction of exceptional values for the commune was used a special statutory regime. Notary books confirm the existence of a great number of documents made in such a way. That legal transaction are strictly formal, valid after special procedure - form whose realization is constitutive element for legal validity of the \textit{negotium}. In medieval law this procedure was used for buying and selling real estate\textsuperscript{22}, and for regulating pledges\textsuperscript{23}, a dowries\textsuperscript{24} and wills\textsuperscript{25}. This legal transactions were in the \textit{form of sollemnitatem}.

\begin{itemize}
\item[a)] Sale of real estate was legally valid if the parties had a notary \textit{chart} about transaction which was done after procedure of public announcement of selling (\textit{carta venditionis}). A notary \textit{chart} must exist if the parties want to make the transaction. A solemn announcement
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\textsuperscript{20} Stat. Bud., &. 113 and &. 235.

\textsuperscript{21} For example in medieval Kotor were many documents in which is written that someone “\textit{will bring}” or “\textit{will get}” or “\textit{brought}” or “\textit{got}” certain value of money. From the 1333 documents (1326-1331) above one hundred were abstract promissory notes. For more detail see: Bogojević-Gluščević, N., \textit{Statutarni propisi i pravna praksa u Kotoru u XIV vijeku}, Glasnik Odjeljenja društvenih nauka Crnogorske akademije nauka, Podgorica, 1977, No. 11, p. 193-211.

\textsuperscript{22} Terminology in the Statute and documents for this contract is same as in Roman law.

\textsuperscript{23} Statutory law used different term for pledge: roman (\textit{pignus, hypoteka}), greece (\textit{ipytēca}). The meanings of pledge is widely than in roman law. Details at Danilović J., \textit{Zaloga u starom dubrovačkom pravu}, Analı Pravnog fakulteta u Beogradu, 1987, No. 6, p. 640.

\textsuperscript{24} The statutory term for dowry is roman (“\textit{dos}”) and byzantine (“\textit{parchiium}”). In practice was opposite. The most of chart contained term “\textit{parchiiium}”, someone “\textit{dos}”. The influences of the different culture on legal life of medieval Adriatic towns are evident and its signed in each institute of laws. More information about that in: Jireček, K., \textit{Istoriya Srba}, tom II i III, Beograd 1973. Srpska akademija nauka, p. 255-279; \textit{Istoriya Crne Gore}, knjiga. II, tom 1, Titograd 1970, p. 28-45.

\textsuperscript{25} Terminology and rules for wills is only roman. In Statute, except wills were regulated roman institute “\textit{donatio mortis causa}”, “\textit{legatum}”, “\textit{codicil}” and “\textit{qualche alia ultima voluntas}”: For example: Stat. Spal., liber III. &.18, \textit{De testamentis et ultimis voluntatibus}.
occurring three times by the Municipality clerk was a usual procedure in most communes. The announcement was an obligatory part of the contract process. An incomplete, unclear or absent announcement nullified the sale. The notary chart as an important element of the form of contract making can be drawn after successfully carried out procedure for the public announcement of immovable.\textsuperscript{26} Public announcement of immovable selling and notary chart making and selling the same came into the statutory laws of Adriatic cities from the Italian coastal cities already from the thirteenth century.\textsuperscript{27} Such regulation at the end of the thirteenth century contains Dubrovnik,\textsuperscript{28} and from the first and second decade of the fourteenth century other cities of central and south region, Split, Budva, Kotor and Bar, as well as the cities of Istra region with a large spectrum of possibilities concerning the public sale announcement.\textsuperscript{29}


accomplish their rights in court. The document of the sale had an evidentiary effect-in case it comes to a court dispute it showed that an actual signed purchase and sale had taken place. This practice however proved to be as very ineffective in everyday legal life and was the reason for many law disputes in the communes. Making contracts in which *bona fides* parties were greatly relied upon slowly led to the evasion of *bona fides* principles and resulted in multiple documents describing the same sale.31 Besides, all buying and selling were not compulsorily signed "*in scriptis*" with a written proof that the buying and selling was dealt with. There were also in practice buying and selling as well as those without drawn up documents of the sale, for sale of immovable in everyday life of the cities was legally very insecure. Therefore in the communes new regulations were passed suitable to the newly-created city circumstances making the legal sales easier and secure32. In this way buying and selling went from an informal, to a strictly formal contract for whose making, apart from the free will of the parties. It was necessary to publically announce the sale, after which the registration into the notary books was done. This form carries within itself some solemn characteristics but despite that it's not abstract but causal one. Adequate is the expression of real practice needs and it is of the essential importance for free functioning of legal sales of immovable.

b) The medieval cities issued a special proceeding for contracting a real security of carrying out an obligation by means of pledge33 for the same reasons from which buying and selling of real estate was regulated in a new way. It was foreseen there to be several kinds of contracting real security with different legal consequences. Starting from the pledge in a form of so-called general mortgage on a debtors property34 up to the most difficult form of a pledge for a debtor to the pledge in a form of buying up to a certain time.35 Each of mentioned pledges required a necessary drawing up of a notary chart about the contracted. Without the existence of the notary chart, *carta pignoratio*nis, the contract about the pledge has no legal effect. The notary chart is a constitutive element for making a contract and

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32 More of these rules were given a beginning of XIV century. See footnote No. 29.

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it gave the right to the holder to realize such a pledge on the base of a special statutory regulations. The procedure was worked out very precisely and it required maximum respect of all foreseen formalities from the side of a pledge creditor. Despite the existence of the chart the pledge creditor loses his rights which, according to the pledge chart, belong to him unless he respected the statutory procedure. The pledge in a form so-called buying up to a certain time, whose subject is immovable, required, concerning the realization, the same procedure which was also carried out during buying and selling of immovable. The pledge creditor must announce in public the selling and draw up the chart about the announced sale as well as with buying and selling of immovable, so that only after such carried out procedure he could become the owner of the pledge matter. It's sure that in the cities each of pledge required a necessary drawing up of a notary cart about the contracted. The notary cart (carta pignorationis) is a constitutive element for making a contract. Despite the existence of the chart pledge creditor loses his rights.

c) Under the term the dowry document “carta dotis”, “instrumentum dotis” the medieval statutory rights and legal practice of the coastal Adriatic cities meant two kinds of documents with different meaning. In the first often present meaning that is a document which is a necessary form for making a written contract of parties about the dowry and in this case the notary document has the meaning of a form of sollemnitatem. In another case...
the document describing the giving of the dowry had the character of showing proof of specific performance. By this document it is proved that the husband received the dowry—the document of handing the dowry over as the act of carrying out a contract.\textsuperscript{41} Such a document has a character of a receipt as a paid and owed obligation, of a cessation which was owed by the pledge giver.\textsuperscript{42} By this document it is proved that the husband received the dowry and that according to that he has nothing to require from the pledge giver. In practice there were often present the cases when the moment of signing a contract about the dowry coincides with the moment of its carrying out so that at the same time the document about the dowry had a double character—of both a form of making a contract and a receipt about the paid off debt.\textsuperscript{43} There aren’t an irrelevant number of notary documents about dowry signed in a form very similar to abstract obligations where the obligation of paying off a certain sum of money or handing over some other matter is stated. It is about the cases when the dowry giver didn’t or did only partially satisfy the contracting obligation.\textsuperscript{44} In contrast to the abstract obligations these documents usually contained the \textit{iusta causa} and are used in court as a proof of debt existence.\textsuperscript{45}
The wills, as the act of handling the last will of a testator had a special importance in statutory rights. According to statutory regulations each testament in order to be valid and to cause the derived legal effect, had to be reduced in a public form by the notary according to the procedure which is very precisely arranged by the statutory regulations. If a testator made the will personally it was necessary to deliver it in a written form (cedula testamentis) closed and sealed to the notary of the commune in the presence of witnesses and executors of the will-examinator. The will could be the valid legal document if it were made before the notary and in presence of two witnesses and the will executor. The wills could also be made outside the city. That is outside the city office where its publicity had to be provided by the procedure a bit stricter than for the wills made in city itself. The existence of any questionable part in a written form delivered by a testator or a witness or any other lack in the witness statement gave the notary the right to contest the validity of the will and all this can be an incontestable proof of the validity and respect of the notary chart in the transaction mortis causa.

III

From everything above mentioned it could be concluded that the statutory law and legal practice in those cities accepted and respected the legal validity of the notary instruments: both as a proof of a legal transaction and as the constitutive element for the origin and legal validity of the negotium. In this way the cities are following the usual medieval practice from the rest of the Mediterranean.

At the end of the thirteenth century, the document appears with a new meaning. Such regulations are caused by the state of legal disorder and insecurity because of misuses in using the notary instruments and violation of principles of honest and conscientious behav-

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50 For example in Kotor notarius verified the will after omission the doubtful texts. Mayer, A., Monumenta Catarensa, volumen. II, Crnogorska akademija nauka i umjetnosti and Hrvatska akademija nauka i umjetnosti, Zagreb-Podgorica 1981., doc. 1042 ("...coram nobis notario infrascripto quandam cedulam presentarunt dicendo eam fore ultimum testamentum dedit Giue, et rogando eam reduci in publicam fornam ut est moris.Cuius tenor intracibitur. Verum quia in dicta cedula quedam cancellatura suspecta apparebat, ubi mentio fierat de aliqua possessione emenda... que per nos expresse requisita dicto testamento et omnibus contentis in ea concensit, ipsum approbando et ratificando, quantum in ea est, volens, quod ultra, quam sit expressum in dicto testamento, supplendo cancellaturam antedictam, que omittitur in publicatione testamenti memorati,debeat...").

ior of contracting parties while making legal transaction. For same important legal transaction (such as will, sale of immovable, pledge, dowry) the statutes introduced the obligatory existence of the notary chart as the form for making the contract. In some statutory rights the regulations like these have been stated because of the special importance which some of this transaction had in the legal life of the cities. The statutory norms by which the dispositive character of a document "was introduced had some real effects in practice because they practically enabled incorporation of law with the document whose handling means 'the alienation of law". In the variation of the notary document existence only as a proof about the making legal transaction, that wasn’t possible to provide. For the satisfaction of such needs in practice, the documents with dispositive meaning have been introduced into the legal transaction. It was considered to be forma ad solemnitatem. Such rule of law, according the documents of archives was followed by practice.

**SOURCES:**

1. *Acta notarilia*, vol. III, 1395-1400, Historic Archive of Kotor (manuscript unpublished source)

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52 For example in Kotor in Statute’s provision 256 is describe the reason for bringing this role 1312 year ("... quis multi possessiones suas vendeant occultum, propter quod vendieant litis, et damna, volumus praesenti statuto firmantes...").
55 Astuti, G., I contrati obligatori nella storia del diritto Italiano, parte generale, Milano 1952, p. 205.
BIBLIOGRAPHY

1. Astuti, G., I contrati obligatori nella storia del diritto Italiano, parte generale, Milano 1952
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