UDC: 352:347.67(497.16 Kotor)(091)

Историјски записи, година LXXXVI, 1-2/2013

ЧЛАНЦИ

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PROVISIONS OF THE MEDIEVAL CATTARO STATUTE ON TESTAMENT AND THEIR APPLICATION IN NOTARY PRACTICE

ABSTRACT: *Analyzing archive materials, mostly written in Latin alphabet, legal historians and romanists have come to a conclusion that the hereditary legal institutes treated, as welll as other institutes of the private law of the southern Adriatic communes, had a feature undertaken mainly from the classical roman Law, or recepted ius communae. Some deviations were present to a less or greater extent, and reflected direct and indirect influences of Slavic and Byzantine law that were coming from the Balkan Peninsula's inland to coastal centres.*

Further investigations on detailed sources of many issues are needed to make a mosaic of the dominant influences on the formation of Medieval private law in Adriatic coastal towns. This paper is a contiunation of my research on the institute of testament in Medieval Cattaro, and it is related to the analysis of the statutory provisions on testing freedom and obliged testaments forms, as well as the application of these form in order to determine a real influence and significance of the classical Roman law and similar ones, developed later on its normative arrangement and real legal life.

KEY WORDS: *Statute of Cattaro, Yustinian's Law, Law of Medieval coastal Adriatic towns, testament forms, testing freedom, limitation in testing, widow's right.*

The Hereditary law of the towns in the South seashore has not been elaborated completely. It has only be an partially studied in some monographies and special supplements of the experts in the Roman Law in the region

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of Medieval Budva and Cattaro[1]. It was Romnists to mainly analyze statutary and notary materials of these towns related to the basic calling for inheritance, and basic principles it originated from, whereas some other significant issues were not treated at all, or they were only designated. Here, it is very important to mention some issues related to the legal nature, i.e. type of solutions given to the legal inheritance institutions by the legislator.

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Statutary provisions on testing freedom

A testing freedom regulated by the provision 182 of the Cattaro Statute,*De ordinatione viri cum venerit ad mortem.* The provision prescribed the following:

„It is determined that a dying married man, having alive wife, can to his will dispose of one fourth of his both movable and immovable property; the rest of his property belongs to his successors, and if there is no one, he can dispose of all his property, but such a testors order is realized only after his wife's death".[2]

[1] *Ž. Bujuklić,* Pravno uredenje budvanske komune, *Nikšić 1988, str. 139-159; N. Bogojevié,* Zakonsko nasljedivanje po kotorskom Statutu, *Zbornik Pravnog fakulteta u Titogradu, br.1/1977, str. 137-157; N. Bogojević,* Forme testamenta u srednjovjekovnom kotorskom pravu, *Zbornik Pravnog fakulteta u Titogradu, br. 8/9, str. 179-195.*

[2] *Statuta et leges civitatis Cathari, Venetiis 1616 (in further text signed as Stat. Cath.,), cap. 182; „Cupientes per praesens Statutum, non solum viuentibus, verum eadam morientibus subuenire. Statuimus, ut si aliquis homo uxoratus venerit ad mortem, superuiuentem uxore, et suae voluerit animae prouidere, possit dimittere prò anima sua de bonis suis quantum sibi placuerit, usque ad quartam partem, tam de mobili, quam de stabili, et super quartam partem, quantum iurauerit habuisse de malo ablato, et residium sit heredum suorum, et si heredes non habuerit, post obitum uxoris, vadat totum factum suum, secundum quod ipse ordìnauerit".*

The father's testing freedom is directly regulated by the provisions 185 of the Statute, *Quod pater de suo potestatem omnimodam habeat dispodendi*" from 1359.

"*Father has all the power for his life and in case of death to dispose of, determines and does whatever he wants with his goods, as better as he can, having in mind that one son can not be given more than the other*".[3]

The same prohibition is repeated in the Article 139 of the Statute, *De patre volente diudere bona sua inter filios prima et ultima uxoris*.[4]

The text from the Article 185 of the Statute shows that it was the father in Medieval Cattaro family to exercise the right of distributing the property among his children during his life (i.e. to his sons as prescribed by the Statute), in a way that each of his sons got an equal portion.The father had a right to distribute and divide even 3/4 of his property belonging to his successors after his death, i.e. to his sons, at which the validity of such a disposition was determined in accordance with the respect of the statutary provisions on the right of all sons to an equal portion of inheritance.

There were reasons listed for such a father's right to divide his property during the life and in the case of death in the motivation of this provision[5]. It is the father to divide his property" *if his son does not respect his duty,if he is selfish and careless toward him, and if he behaves indecently*". It was not precized what improper behaviour was meant, whether it implied only such a treatment of a son toward his father or more persons were included, or relation itself,i.e.how the son behaved in the environment he was living and working in (behaviour judgement imposed by public opinion was meant). It is quite evident that the father's division and arragement of the property during his life was a „*condemnation*" of successors due to their bad conduct and way of life, in the family primarily,whereas an equal arrangement of the property among sons was a way of overcoming their mutual disagreements after their father's death.

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[3] *Stat. Cath, cap. 185: "De filij vestigijs inhaerendo, qui patri in manus suam spiritum commendauit, et dignum est ut patri ad filio reuerentia omnimodam, et honor debitus impendatur, qui quidem filij auaritiae cecitate commoti, salubri voluntati eiusdem patris, ne suae saluti prouideat, et honori contradicere nequeant; volumus, et firmamus, quod pater omnimodam potestatem habeat in vita, et in morte disponendi, et ordinandi et faciendi de bonis suis prout sibi melius, et salubrìus videbitur expedire, dummodo uni filio plus quam alteri aliquid dare non possit".*

[4] *Stat. Cath., cap. 139: „Si pater voluerit inter filios suos (...) sua bona (...) diuidere (...) possit hoc facere, etiam filijs nolentibus et partem contingentem (...) unicuique fiio assignare et si voluerit dum vixerit, apud se possit partes filiorum omnium retinere, et quod uni filiorum plus quarti alteri dare non possit, nisi tantum maiori filio lectum, secundum antiquam consuetudinem".*

[5] *Stat. Cath, cap. 185.*

The Article 144 of the Statute also refers to testing freedom, *Ex quibus causis potest pater exheredare filium*, which is not dated, but it must have been passed by the beginning of the 14th century, taken from context of the provision itself.This provision anticipated the possibility of full testing freedom existing in case of the successors exclusion from inheritance. Precise reasons for disheritance were prescribed by this provision:

"*Father can deprive his son of inheritance if he beats his father or mather, which means death penalty or physical injury, or if he tries to poison his father or mother, and this can be proved*"[6].

The provisions cited above show that the testament in Medieval Cattaro was a classical way of nominating a successor of the property in a limited number of cases. There existed a full testing liberty only in case a testor did not have any children.i.e. legal successors, or he had them, but there were statutary conditions to their exclusion from inheritance. In all other cases, there was a limit in testing. The limited testing freedom, according to the provisions of the Statute, meant that a testor had to leave to his children an undamaged portion of inheritance, and it included ¾ of the total both movable and immovable property of the deceased. Apart from this, a testor was obliged, conform to the statutary rules, in case of more male successors, to make such an arrangement of his inheritance as to leave an approximately equal value of his property to each of his legal successors. A significant limitation is also the provision by which all the disposition of a testor with no successors could be realized only after his wifes death, i.e. a woman in Medieval Cattaro had a right to enjoy the fruits of the property after her husbands death,so-called lectum, according to her will[7].

Statutary Rules on Testament Form

The testament is considered to be of great importance in all societes as it represents an expression of the testor and autonomy in disposition of the property or a portion of it. Thus, it is always submitted to a special form. There are justifiable reasons for that, to mention some of them-avoiding to be reckless at ordering the last will, make mistakes, frauds and coercion on

[6] *Stat. Cath., cap.* 144 :"*Statuimus, quod si filius paternorum beneficiorum oblitus patrem suum verberauerit, aut matrem, vel eumdem patrem coram Curia accusauerit, tali accusatione, quod probata accusatione, ammitteret pater uitam, vel membum, aut si vitae ipsius patris, vel matris per venenum, vel alio modo insìdiari tentauerit, et hoc plenem possit probari, pater talem possit exheredare totam ad hereditatem patrimonij sui, et ipsum facere absque partem ...*"

[7] *Stat. Cath., cap.* 194, *De uxore qua possidet lectum post mortem viri sui*.:" *…si contigit quod mulier post mortem mariti sui voluerit possidere lectum viri, statuimus quod possidendo lectum possideat omnia bona sua quondam fuerit viri; verumtamen per duos propinquores viri predicti cum epitropis si fuerint, diligenter inspectis et scriptis, mulier ut praedictum est possideat, habeat deliberationem ipsa mulier usque ad spacium unius anni, si vult maritare se, an non, quo anno complete….quod volo possidere lectum…".*

the part of the parties interested in, and to be sure when the rule imposed by the law itself was broken.

If the conditions stated above are taken into consideration, the testament in the Medieval Cattaro law was submitted to special formalities. For each will made in Cattaro to be valid, it was important to be introduced into notary books. This done, the last will of the testor got its full legal form and force. The testament could,even during the life of the testor, be introduced and registerd into notary books and acquired the form of a notary document. If not so, there was a general principle according to which witnesses or persons possessing a written testor's will were obliged to inform, in 30 days, the court on testor's will[8]. If the testament was made out of the City, the term was longer and ranged up to a month after one's arrival to Cattaro.[9]

According to earlier statutary provisions from the 13th century, for the testament to enter and be registered at court, there had to be stated the existance of an epitrope- testament executor, number of witness and their reliability and credibility of their statement in testor's inheritance. The testament was valid if the testor possessed factio active, and if he met the needs of formal conditions relating to the testament itself. Two witnesses from Cattaro had to be present at making the testament, for those made in Cattaro[10]. For those, however, made out of the City, one witness had to be the citizen of Cattaro , and only if needed they could both be foreigners.[11] According to the court procedure, witnesses had to take an oath on the fact that the testor had expressed their will in their presence, then thy would read the text on einheritance. Noone but witnesses, epitrope and judge could be present at this procedure. This done,the notary or the judge would read the text of the testament to be recorded and noted down into the notary book[12]. Thanks to his practice an abundant documentation on Cattaro testaments was saved.

[8] *Stat. Cath, cap*.183, *De forma testamenti in civitatem:*" *..quod quidem testamentum praesetentur infra triginta dies post obitum eius, qui testamentum condidit coram Notario et...".*

[9] *Stat. Cath, cap* 186, *De testamentis factis extra civitatem:"...volumus quod testes, vel epitropi, qui ad ipsum testamentum praesentes fuerint, infra unum mensem post quam venerit Catharum, possunt...*"

[10] *Stat. Cath, cap* 183: "*... Ut si quis nostrorum civium concere testamentum tali forma ordinet ipsum videlicet, cum duobus testibus et ponat epitropus, testamentum ubi duo testes non fuerint, nihil valeat, tamen si patronus cum uno alio viro, sufficiente interfuerint valeat...".*

[11] *Stat. Cath, cap* 186:"*... quod si fortem non fuerint nisi unus Catharinus cum uno foresterie, valeat testificatio ipsius foresteri et si ambo fuerint foresteri causa neccessitatis ubi Catharini non essent valeant dicta eorum, sicut si essent Catharini...".*

[12] *Stat. Cath*, cap 183: "*.. .cum Iudicibus ponat praesentatores testamenti ad sacramentum quod nec accreverent, nec deminaverunt in illa testatione, ex tunc notaràus publicet testamentum ipsum, nullus aiutem epitropus, seu testis de ijs quae sibi ad mortus, vel mortua dimitantur, testificari valeat, sed utilitatem aliorum epitroporum, vel aliarum personarum testificatio eius valeat, et scribatur. . " .*

As shown in notary books, testaments were not made uniformly. Thus,for instance, they were made in various ways in 1326. One would made in a way that the testament executor- an epitrope brought a note to the notary office and stated that it had been the last will of a Cattaro citizen, and it was the notary to, based on this note, write the testament in a prescribed form.[13] The other was made in the presence of one judge, an auditor and one witness, epitrope excluded.[14]The reason was the irregular work of epitropes that did not perfor their obligations properly in view of making a testament (this was also noted down in notary books).[15] There is a very interesting document dating as far as 1336, by which the testamenrt is certified by the court, not completely shown by the epitrope but rather in the parts judges found it safe to be done so. A doubtful cancelled space, " *in dicta cedula quedam cancellatura suspecta apparebat*", was rejected by the court.[16] . It seems that the existing statutary provisions were badly respected in the practice, caused by their incompleteness in regulating the conditions and rules needed for the form validity of the last testor's will. Due to such practical difficulties, the legislation corrected all the existing statutary provisions on the testament in 1428, and introduced, by passing a new position, a uniform procedure of making a testament, and an indentical request at correcting it, i.e. registering it into the notary book.[17]

Depending on the way the notary had been informed about the testor's inheritance, both oral and written testaments were used in Cattaro. The oral testament was reported to the notary by witnesses that were present at the last will expression. The oral testament made it possible for the testor to inform witnesses, two of them at least, about the allotment of their property,i.e. a portion to be disposed of freely. The value of the property the testor could make an oral testament, according to the provision from 1428, was up to 100 perpers.[18] Such a testament was usually made at hospital bed of the testor, attended regularly by the priest that could also be the witness of the testament. The testor's family and relatives could also be present at this disposition of property procedure, but they could not be testament witnesses, as an old rule was valid for this.[19]Wives could not be testament witnesses, confirm to gen-

[13] A. Mayer, *Monumenta Catarensia* I, Zagreb 1951, doc. 13

[14] Op.cit, doc. 365.

[15] I. Sindik, Komunalno uređenje Kotora od druge polovine XII do početka XV stoljeća, Beograd 1950, SANU, book. CLXV, pag. 134.

[16] A. Mayer, *Monumenta Catarensia* II, Zagreb – Podgorica 1982, doc. 1042, 1. IV 1336. god.

[17] *Stat. Cath, cap* 435, *De testamentis, et commisaries testamentores,correctionis ultimae*

[18] Stat. Cath, cap 435 :"…suum testamentum fieri facere ad mines duobus testibus Catharinus in Catharo, secundum antiquam consuetudinem..".

[19] Stat. Cath, cap.183: „.…ex tunc Notarius publicet testamentum ipsum, nullus autem epitropus, seu testis de ijs quae sibi ad mortuo vel rnortua dimittuntur , testificari valeat…".

eral provision on witnessing.[20]Also, there continued to be valid the provision that nobody could be a witness of the portion of inheritance, donated by the testor. This, however, did not imply an absolute exclusion of each legatee, as a witness of the whole testaments.[21]

Written testaments in Cattaro might have been less applied than oral ones. Literacy was the privilege of a limited number of people. Yet, written testaments were fairly frequent, and in two common forms-holographic and alographic testaments, i.e. oral testaments written by the testor himself and written testaments written by either the judge or notary. All the written testaments in Cattaro were public. It was only a testament written in testator´s own hand for the property amounting to the value of a hundered perpers and kept for himself to be safe that had a private form[22]. Such a testament was valid even without a witness´es presence[23]. Written in one´s own hand and valid could be a testament for disposition of a value above a hundered perpers, but the presence of either a judge or a notary was needed in that case[24]. Another form of a written testament consisted of a direct testament statement to a notary or a judge by a testor himself[25]. Both the Notary and Judge had to be invited by the testor to be present. If not, they were punished. No matter what the value of the property disposed of was, two witnesses were needed to confirm that the notary literally registered the statement of the testor himself[26].All the testaments exceedeing 100 perpers had to be signed, closed and sealed in the presence of witnesses, if testaments are noted down by a Notary or a Judge, or by the testor himself[27].

The rules of the procedure were related to the testaments written in the City of Cattaro[28]. As the region out of the City was a specific legal one, there were different rules applied. In such a case, the whole procedure at making of testament was carried out, according to the laws of the city or state it was written in. If all the regulations were respected and applied, and if it was the last testament, it was valid as if made in Cattaro. In thirty days since the arriv-

[20] Stat. Cath, cap 130: „… quod nulla mulier testis esse possit in aliquo, nec valeat testimonium eius...“

[21] Stat. Cath, cap 183 :“… sec ad utilitatem aliorum epitroporurn, vel aliarum personarum testificatici eius valeat, et scnibatur...“.

[22] Stat. Cath, cap 435 :”.. .aut in domo retinere, cum hoc conditione…”.

[23] Stat. Cath, cap 435 : ” … q u o d testamentum, si fuerit scriptum mamu propria testatoris, sdt validum sine testibus...”..

[24] Ibidem

[25] *Stat. Cath, cap* 435 *:”.. si vero querit manu Cancellarij, vel Notarij, sit fiirmum cum testibus … ”*

[26] Ibidem.

[27] *Stat. Cath, cap* 435.“*... quod testamentum sit bullatum, clausum, et suprascriptum manu Cancellarij, vel Notarij, aut propria testatoris...“*

[28] *Stat. Cath, cap*.183, *De forma testamenti in civitatem*

al at the City, such a testament was shown to judges, and a further procedure before court was the same as in case of the testaments written in the City[29].

Rules Application

Last will disposition acts are among the most numerous ones in the Cattaro Office. Written documents, they are said to be the disposition „ *pro anima sua*“[30] . Testamental property disposition was a common way of calling to inheritance, and it was more frequently used than inheritance *ab intestato*, according to the provision of the Cattaro Statute. The testament was rather legacy than an institution by its virtue. A testor, although limited to a disposition of one half of the property, fulfilled by the testament his own wishes in solving a series of legal issues on property related to inheritance and successors. It primarily aimed at donating some material benefit to some individual or institution, to the church, most often.

Besides the fact that the statute legalized a limited testing freedom[31], the testament was a widely applied institution. Making a testament was available to those fulfilling general legal conditions. Due to known conditions of socio-economic and social development of Medieval Cattaro primarily dealing with trade and navigation and was highly influenced by the church, it was accepted by both peasants and citizens , and there were foreigners who, dealing with trade and being often in Cattaro, made their own testaments in Cattaro notary Office. Notary books offer the data which enable us conclude that the property values disposed by the testament ranged from several up to a hundered or a thousand perpers, meaning the testament was made by both poor and rich people[32]. The notary books found in the Cattaro Archives from the 14th century, show that the people of Cattaro were determined to state in their last will , that their portion of property freely disposed of was left to their children or other closest consanguinities. Donating some money“ *for their own soul and keeping vigil*“ to the City churches and monasteries was also common in Cattaro[33].

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[29] *Stat. Cath, cap* 435 *(... testamentum extra nostram civitatem in alia civitate... fuerit factum secundum ordinem illius civitatis... et fuerit ult ra muro sit firmum et validum... quod testamentum postquam conditum fuerit in Catharo, infra dies triginta debeat praesentari...).*

[30] *Monumenta Catarensia I,* JAZU, Zagreb 1951 (in further text signed as *SN I),doc.* 13, 54, 74, 92, 190, 192, 225, 248, 258, 260, 338, 365, 372, 403, 409. 438, 626-629, 657. 680, 718, 732, 802, 815, 825, 862, 887, 928, 931, 982, 985, 986, 990, 998, 1017, 1132, 1228, 1231, 1233, 1273, 1326; *Monumenta Catarensia II,* Zagreb-Podgorica 1982, (in further text signed as *SN II), doc.* 10, 23. 57, 65. 129, 279, 382, 386, 394, 412, 421, 429, 521, 523, 532, 559, 601, 646, 647, 727, 879, 866, 897, 917, 1022, 1042, 1142, 1204, 1232, 1295, 1339, 1372, 1434-1436, 1604, 1616, 1632, 1634, 1726, 1751, 1755.

[31] Stat. Cath, cap 182, *De ordinatione viri veniente ad mortem.*

[32] See: Stat. Cath, cap.435; A. Mayer, SN I and SN II notary books with more than hundered testaments.

[33] See footnote number 30.

A testor without a successor would leave his property to his spouse to enjoy it for life[34]. After the spouse's death, the property was alloted in conformity with the testament. Nominating a wife to enjoy her husband´s property was, as noted in the documents, „ *an old and routine custom of the City*", included into the statutory law and was strictly respected in legal practice. In these cases, a wife was „ *domina*" and „ *patrona*" for all the jobs and all immovable things and goods of the deceased husband, explicitely stated in the testament of George Cerneli , dating from 14th March, 1336. By this testament, his wife was , at same time, appointed to be an epitrope- testament executor.[35] Similar is with the testament of Johan, Marin Glavatis son, a famous Cattaro landowner, who, in his last will, nominated his wife to be „*domina*" and „*patrona*", and she disposed of all his movable and immovable goods „ *de omni residio mobilium et immobilium ipsam institutioo patronam et dominam usque ad obitum suum*".[36]

A good illustration of how to exercise the widow's right to going on living in her husband's house is given by disputes led in Cattaro in the 14th century, to realize that right. In a document issued on 29th of July, 1335, Gile, a son of Nucie Gile, a municipal testament executor, brought charge against a widow named Vele, the wife of the deceased Berislav, to leave her husband's property to be able to execute the testament of the deceased Berislav. The accused widow-named Doma, pointed out that „ *she wants to enjoy her husband's property for life, as a right given to her by the Statute"*. The court, taking the statements of the accused as legally valid and grounded, met the needs for realizing that statutary established right[37].

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[34] SN II,doc.1*755„In primis volo et ordino, quod totum meum mobile et stabile intus ciuitatem et extra sit uxoris mee Rade in vita sua, sicut ipsa ordinaverit, verum tamen medietas mea domus, in qua maneo, sit fratris mei Iure post mortem dicte Rade...".*

[35] SN II, doc. 1616:"*Item volo, quod Desa, uxor mea, sit domina et patrona totius facti mei et omnium rerum in vita sua secundum consuetudinem civitatis. Epitropos autem meos constitutio ...et Desam, uxorem meam....".*

[36] SN II, doc.1042:"*Item ordino et volo, quod post mortem meam completo et satisfacto testamento meo, secundum quod hic continetur, uxorem meam, dominam Elenam,... Post obitum vero suum, teneatur et volo, quod ipsa distribuat prò anima mea et sua nostrorum defunctorum,totius mobilia, quam stabilia, secundum sibi gratiam a domino datam..".*

[37] SN II, doc. 927: „*...Coram nobis iudicibus iuratis predictis viniens Gillo, filius Nutii Gille, epitropus datus per curiam super testamentum Vali condam Berislaui dixit: „Sententiatum est michi per iudices priores, quod ego satisfaciam dictum testamentum de facto suo, sicut ordinationi est in eodam; dicendo Dome, uxori condam Vali predicti: „Et tu consensisti, quod satisfieret et etiam de pluri; unde volo, exeas de dicto facto, quia volo satisfacere". Que Dome respondens per adoucatum suum dixit: „Ymo consentio et volo, quod ultimi testamentum integre satisfaciat secundum ordinationem viri mei predicti, verum tamen volo possidere in vita mea secundum consuetudinem ciuitatis". Quare nos iudices sic audientes et videntes per statutum, quod uxor in vita eus mortuo marito, si vult possidere, potest, sententialiter diximus, quod idem Gillo cum collegis suis contentis in sua sententia*

The documents made daily in Cattaro notary Office confirm the fact that Cattaro citizens aware of the rules to be respected and the Statute as the base of the legal life in the commune. In some testaments, for example, it was emphasized that the testor arranged only ¼ of all the goods on which he could exercise the right of full testing freedom, or it was precized in the testament that ¼ of the goods freely disposed of had to be set apart. The testament of Mateo, of the deceased Tripun Jacob dated 30th April, 1336, stated that the testor" *sets apart the fourth portion of all his goods in the town and out of it, and he disposes of it on his own will, as prescribed by the Statute, this to save the rights of others to whom he is obliged*"[38].

Here we point out a typical wife's dowry disposition, as males right to dispose of their property indisputably, if compared to females was more widely treated in the Statute and applied in practice. The first document dated from 16th,June ,1332. It was noted down that Domka, the wife of Mateo Sarani, was making the testament in a way to set apart and allot ¼ of her dowry.[39] Another document relates to the document of Bosa, the daughter of Obrad Diale , by which she set apart and alloted on her own will ¼ of the dowry she had got once. She also disposed of freely with the rest of her dowry and left it to her successors, nominating their pupilar substitutes if the successors were under the age at the time of delation, „ *if my successors do not live until they can get their inheritance, all my dowry is to be entrusted to be kept by testament epitropes*"[40].

Most of the testors respected the statutary right of the heirs entitled to portion of inheritance to 3/4 of sucession, as well as the right of the wife to enjoy the deceased husband´s property for life. Not much was written in the notary books from the 14th century about the disputes on injured rights of the legal successors. Yet, some of them show that there existed some exceptions in practice. In the document from 31st of July,1335, there was noted down a dispute between Andrija Konstantinov, the testament executor of Rada, a widow of Marin Bruno, as a plaintiff and the accused Andrija Samator and Mate Abraev. The dispute was proceeded because the accused entered the possession of Marin's goods that Rada could eventually had right

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predicta, satisfatiat dictum testamentum secundum ordinatione viri antedicti, verum tamen dicta Dome in vita sua possideat, si vult secundum consuetudinem ciuitatis...".

[38] SN II, doc. 1726: " *Preterea volo, quod de tato facto meo intus ex extra ciuitatem extrahatur qurta pars...*"

[39] SN II, doc.23:"*extragantur de quarta parte parchiui mei perperi ducenti de quibus perperis volo, ut dentur perperi qitinquaginta nutricibus nutrientibus perperos meos.*".

[40] SN II,doc.1295:*"In primis volo, quod de valore vinee, quam Millosius vendidit Thome Dragonis, que data fuit in parchivio, item de domo, que est in territorio Sancti Luce et de valore de ruba et carcellis et de allis rebus datis in parchiuio de tota dote mea, quod extrahatur quartum ...*".

to, as her deceased husband's wife. The Court brought the sentence considering the reasons, given by the accused in defence, that they were the closest relatives to inherit Marin's property, this in accordance with the provision of the Statute, and that Rada, as a widow of deceased, did not have the right to dispose of her husband's property. She only had the right to, by statutary determined conditions enjoy the property belonging to the deceased.[41] Similar to this is dispute from 15th April,1332, between the daughter of the deceased Baldin, and Sergej and Matej Trifunov, testament executors of her deceased mother. Via the agent and her uncle, the daughter asked the Court to prevent the registration of her mother's testament as it contained the disposition above ¼ goods and the testor did not have such a right, in accordance with the Statute. After an insight into the Statute and consultations with older people from the town, the judge brought the sentence by which the testament executors were allowed to, in spite of the legal error stated in the contents, register the testament into the notary book, forbidding the testamentary executors to dispose of more than ¼ of the testor's goods.[42]

In case the testor disposed of his property in a way to favour his illegitimate children, legal successors have the right to deny the validity of such disposition, and their legitimate (statutary) right to the inheritance could be realized in the court proceedings. An illustration to this is a document on the dispute investigated on 29th of July, 1335, between Dživa of the deceased Petar Viti and Jovan, under an alias Muha. On behalf of her mother Klara,

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[41] SN II, doc.937:"*...Coram nobis iudicibus iuratis predictis conquestus est presbyter Johannes Constantini aduersus Andreas Samator et Mathe Abrae dicens: „Ego sum epitropis testamenti condam Rade, uxoris Marini de Bruno, et vos intrastis in factum olim dicti Marini. Volo ergo, quod exeatis de dicto facto, quia volo dispensare secundum testamentum diete Rade". Qui Mathe et Andreas dixerunt: „Dicium factum pertinet ad nos secundum formam statuti, quia nos sumus propinquiores dicti Marini, et Rade uxor ipsius Marini, non potuit testari de facto mariti sui". Quare nos dicti iudices sic audientes et videntes statutum diximus per sententiam, quod ipsi Andreas et Mathe habeant dictum factum Marini secundum formam statuti una cum Martholo Platonis, qui se dicit propinicum cum eisdem, et diuidant secundum quod unicuique procedit".*

[42] SN I, doc.982:*"...Coram nobis iuratis iudicibus Pascali Uartholi et Rase de Salite conquesta est filia quondam Balduini per aduocatum et auunculum suum Marcum Dragonis aduersus epitropos testamenti matris sue, scilicet Sergium et Matheum Triphonis Jacobi, Naie Cantaualli et Bene de Bise, dicens eis: „Mater mea fecit testamentum ultra quartam partem, quod non potuit facere secundum formam statuti. Volo ergo, quod ipsum testamentum, quod factum est contro statutum, non notetur". Qui epitropi respondentes dicebant: „Notetur testamentum, et si aliquis habet aliquid dicere super eum, nos sumus parati respondere". Et Marcus aduocatus predictus dicebat: „Non debet notari, quia statutum prohibet". Nos uero dicti iudices iurati videntes statutum habitoque Consilio cum senioribus terre sententialiter dicimus, quod dictum testamentum notetur et dicti epitropi ratione dicti testamenti non passint distribuere de facto uxoris olim dicti Balduini nisi quartam partem secundum formam statuti et relique tres partes sint filie dicti Balduini".*

Đžive asked her illegitimate niece to leave the real estate she had entered, as she did not have the right, conform to the Statute, to inherit it as an illegitimate child, and the represented Klara, as the sister of the deceased, had the statutary right to inherit her brother.[43]

The documents also abound with the data proving that the exclusion of legal successors from the testament was the practice of the time, not only for the reasons mentioned in the Statute, but also for not respecting the established obligations, on other grounds, between the deceased and his legal successors. A valid, illustrative example was kept in a document from 1334. It was said that Vita Kuli and Marin Golije, testament executors of Doma, the wife of Marin Panci, brought the testament to be copied and notarized, stating the following:

„I, Doma, the wife orf Martin Panci, at full consciousness and freely expressed will make this last testament on my things. First,I want Nikola, my grandson, to posses no things of mine, as he was not giving to me what he had to, during my life, i.e.clothes, footwear, and whatever I had needed".The text continues with the legasy of property distribution and nomination of the third person, not sanquinity, for successor of the property left.[44]

Similary, the illustration of such dispositions are within the document, the record of the court dispute proceeded on the 6th of April,1336, between Nikola, the son of Niksa Vilika, as a plaintiff, who, as stated before, was excluded from inheritance by his grandmother Doma Panci, and Prova, Bogdan's wife, as the accused. On that date, Nikola accused Prova and wanted her to leave the house, once possed by his grandmother Doma, to which he, according the notary chart present, had a right to be *„ given all the property after Prova's death, being obliged to buy her food and clothes during her life"*.The accused, in her defence, claimed that the house had been given to her on the grounds of Doma's testament, and heir maintanence of it was

[43] SN II, doc.934:*"Coram nobis indicibus iuratis Marino Golie, Base de Salue et Triphone Buchie conquestus est due condam Petri Viti prò Clara, matre sua, aduersus Johanem dictum Mucham dicens: „Tu tenes partem sdredbi Iessce, olim fratris matris mee predicte; volo, quod restituas eam michi, quia michi pertinet". Cui dictus Johannes dixit: „Ymo pertinet filie Ycessce predicti". Et dictus due dixit: „Non pertinet sibi, quia est bastarda". Et probauit eam esse bastardam. Qare nos dicti iudices videntes per statutum, quo bastardi non possunt posidere sdrebi, et Clara, mater Giue predicti, quia est propinquior, habeat eum secundum formam statuti...".*

[44] SN II, doc.646:"...*Ego Dome, uxor Martini de Pangi, infirma iacens et mori timens, tamen, habens sanam memoriam et loguelam, facio hoc meum (h)ultimum testamentum de rebus meis. In primis volo, quod Nycola, nepos meus, non habeat (nichil) de meis rebus, quia michi non dedit (nichil) de ilio, quod michi dare debeat in vita mea, videlicet calciamenta et vestimenta et omnia mea necessaria... Item volo, quod residium mee domus sit Peruica, servitrix mea et uxor Bogauice et suorum heredum sub tali forma, quod omni anno in meo obitu det denarios tres ecclesie Sancte Marie de flumine".*

in accordance with the positive regulations. The executors of Doma's testament, called to be Nikola's witnesses, favoured the accused, stating that the plaintiff did not have a right to inherit anything, as Doma had not nominated him to be an heir. Besides, the plaintiff could not prove that he had done the obligations according to the concluded agreement on maintenance for life, i.e. he brought food and clother for his granny Doma. Judges, judging according to the proofs brought a sentence *„ that Prova has a right to keep the house, as she posseses it according to a valid legal ground and Nikola can not disturb her any more, as for the house*".[45]It can be stated that the practice was in Cattaro for old and single people to agree on life maintenance by leaving their property to their close relatives, but, due to not performing their duties, they were excluded from the inheritance by the testament. In this case, the testor determinated and nominated her property universal successors, in spite of consanguinities existing, these being her servant and her children, as they took care about her, and most of her property was bequeated for religios purposes.

Legal Nature of the Institute of Testament in Medieval Cattaro

In view of the stated provision of the Cattaro Statute relating to testing freedom, testament forms, and right , and limitations of testor´s disposition in favour of heirs entitled to portion of inheritance, based on the anylisis of their application in everyday legal life of the City, it can be concluded that the inheritance of the Roman Empire legislature was dominant, which, in the Middle Ages, via the statutary law of medieval coastal towns was mainly respected in its contents. Some exceptions to the rules reflected local needs or they were simply overtaken from similar statutary rules of the surrounding towns regulating the same issues.

In view of testing freedom in Medieval Cattaro, Iustinian´s legal rules were applied. Iustinian´s Novella 115 from the year 542 determined legal

[45] SN II, doc. 985: *"...Coram nobis iudicibus iuratis predictis conquestus est Nycola, filius Nichce Veliche, aduersus Prove, uxorem Bogauice cum una una carta notarii, in qua continebatur, quod Dome de Panci dedit totum factum suum ipsi Nycole cum tali condìtione, quod ipse Nycola teneretur prouidere sibi toto tempore vite sue de victu et vestitu, dicens: "Tu tenes domum olim dicte Dome, que est mea secundum tenorem carte mee. Volo ergo, quod exeas et venumderis". Que Proue dixit: "Epitropi dicte Dome presentarunt michi dictam domum secundam tenorem testamenti dicte Dome. Non respondeo factum tibi, quia nolo intrare in placidum extraneum "Et ipse Nycola fecit vocari epitropos predictos. Qui epitropi dixerunt dicto Nycole": "Tu non dedisti victum et vestitum dicte Dome, ut obligasti te, et ideo domus predicta non est tua". Et quia idem Nycola non potuit probare se dedisse victum et vestitum secundum obligationem dicte carte, et presbyter Vita de Cucolo, epitropus dicte Dome, iurauit se audiuisse a dicta Dome in morte sua, quod nichil dedit sibi Nycola predictus, ideo nos dicti iudices, sic audientes et videntes, diximus per sententiam, quod dicta domus sit eiusdem Proue secundum testamentum eiusdem Dome, nec ipse Nycola uel alter prò eo possit eam de domo predicta perpetuo molestare".*

successors, i.e. heirs entitled to portion of inheritance had to be nominated successors in the testament (*honor institutionis*) ,or be excluded eventually, or they were left a portion of inheritence in whatever form. An exclusion to inheritance could arise only from the reasons stated in this Novella. Thus, if an heir entitled to a portion of inheritance did some actions against a testor, if he was heretical, if he neglected a testor during his insanity, if he did not redeemed him from captivity, or prevented him to make a testament, or even in case he intercoursed with the testor´s wife or concubine. The reason for exclusion had to be stated in the testament. If the excluded successor had denied the justification of the reasons, a tested heir had to prove it. Comparing the reasons for the inheritance exclusion in Iustinian´s to the Medieval Cattaro law, it could be noted that the reasons stated in Cattaro law were less numerous and related only to endangering parent´s physical integrity either by physical maltreatment on the part of a descendent, or even by instituting proceedings against parents, this leading to death penalty or bodily injury punishment[46].

Both in Medieval Cattaro Law and Iustinian Law, the testor had to leave the whole one fourth of his property in favour of his heirs entitled to a portion of inheritance. The three fourth left could be disposed on his own will, at which, almost in each testament, the testor would leave a portion of his movable property, especially money, for religious purposes.The Cattaro law also included the application of the rule taken from the Iustinian´s law, according to which an heir entitled to a portion of inheritance evaded with no reasons or excluded from inheritance, or he was not even given a due quota of the intested portion, had the opportunity of raising *querella inofficiosi testamenti*. Its force was to anul the nomination of all the successors to their full amount of the inherited portion, which was to belong to an heir entitled to a potrion of inheritance as an intested successor, i.e. those nominations were anulled and reduced to enable an heir entitled to a portion of inheritance to get his fully intested portion. Other provisions of the testament, if not reducing an entitled portion of a successor, remained valid. Illustration of this procedural means application can be found in a dispute on recognising the legal validity of one testament, which was carried out in 1335[47].

The Medieval Law of Cattaro differed in view of widow´s rights after her husband´s death from Iustinian´s Law, though, in its conceptual sence, some solution of Cattaro legislator could rely on those rules. Thus in Iustinian´s Novellas 53,c.6 and 117,c.5 a widow with no dowry(*mulier indotata*) had a right to one fourth of inheritance of a wealthy husband, amount-

[46] *Stat. Cath,* cap.144. See footnote number 6.More detailed:Nevenka Bogojevic-Gluscevic, *Iz pravne prošlosti Kotora*, Podgorica 1999, pag.65-85.

[47] SN II, doc.937.See footnote number 41.

ing to a hundred golden pounds. A supposition for exercising such a right was for a widow to have lived with the deceased husband in a vallide marriage until his death. She had that right, even though her husband had sanguinities. A husband could not deprive a widow of such a right. If a widow had realized such a right competing with more than three children of the deceased or his successors, she would have got only a *pro capite* portion, and, if children were also hers, she would have had a proportional portion to enjoy only. As stated in Novellas, the Cattaro Statute did not prescribe either the right of a widow to an obliged fourth portion of inheritance or its amount. According to the provisions of the Statute, her right was to enjoy all his property, after his death, for life. Only after her death was all disposition bequeathed by the will of the deceased in favour of his legal heirs entitled to a portion of inheritance got realized. The right of a widow to enjoy the fruits of her husband´s property could not be denied by any family member,i.e. legal successor. The only reason for losing such a right prescribed by the Statute was in case a widow expressed her will to leave her husband´s home to remarry within a year after his death[48]. Statutary rules of the Medieval Cattaro on the widow´s right to enjoy all the property after her husband´s death remind us, by their virtue, on the rules written down in Novellas.

In view of testament form, both Medieval Cattaro Law and Iustinian´s one demanded the fulfillment of some formalities[49]. As for these formalities during the 14th century, there existed a routine non- uniformity, both in view of registering a testament and the way of certifying the testor´s will statement[50]. Statutary rules of the 15th century corrected those partially said rules and there was a uniformity introduced in view of the testament registering into notary books, as well as the conditions for its validity[51].

Cattaro testaments, similar to Roman law, were either private or public by their virtue. Private testaments were either written or oral ones, whereas testaments were the ones taken down in the minutes of the Court, kept in the commune Office[52]. There were many similarities among Roman and Cattaro testaments regarding the concept of form regulation or even the rule itself, but there were some less deviations in view of concrete solutions. Both

[48] Stat. Cath, cap. 194. See footnote number 7.

[49] Stat.Cath, cap.183 (see footnotes numbers 8,10,12,19,21,28), cap.186 (see footnotes numbers 9,11).

[50] SN I , doc. 13, 54, 74, 92, 190, 192, 225, 248, 258, 260, 338, 365, 372, 403, 409. 438, 626-629, 657. 680, 718, 732, 802, 815, 825, 862, 887, 928, 931, 982, 985, 986, 990, 998, 1017, 1132, 1228, 1231, 1233, 1273, 1326; SN II, doc. 10, 23. 57, 65. 129, 279, 382, 386, 394, 412, 421, 429, 521, 523, 532, 559, 601, 646, 647, 727, 879, 866, 897, 917, 1022, 1042, 1142, 1204, 1232, 1295, 1339, 1372, 1434-1436, 1604, 1616, 1632, 1634, 1726, 1751, 1755.

[51] Stat. Cath, cap.435(see footnotes number 22-27,29)

[52] Stat.Cath, cap.183,186, 435.

Roman and Cattaro Laws asked for the witness presence to have a valid testament. What differred the two was the fact that the regular Roman private testament was made before seven witnesses[53], whereas in Cattaro Law only two witnesses from Cattaro were needed[54]. Unlike the Cattaro Law, the witnesses in the Roman law could not be those appointed to be successors by the testament, and the ones who were paternally related to the deceased[55]. In both laws, witnesses were „*testes rogati*", i.e. they had to be specially asked by the testor to be present, as witnesses, at the procedure of his will expression[56].The will was in both laws, expressed in the presence of witnesses with no interruption(unitas actus)[57], audibly and comprehensively said before witnesses[58]. In both laws, it was a testor to make a written testament, or it could be done by a third person. The holografic testament of the Roman Law that had to be written in one´s own hand and signed by a testor[59], also existed in Medieval Cattaro[60]. There was also a Roman rule applied in Cattaro, relating to the fact that signature was not necessary if it was written in the testament that a testor had written the statement on his own will[61]. The Olografic testament had to be signed in both laws[62].Will expression didn´t need to be signed before witnesses, but a testor had to show it to them and declare it to be his will. There was, in both laws, a witness´s obligation to sign (*subscribere)* a document and to put his seal on a closed document, the name of witness had to be added to it (i.e. the name of witness or an *epitrope* of testament, in Cattaro Law)[63].

A great number of the testaments of Cattaro Medieval office show that people of Cattaro of the 14th century used mostly the testaments made in the presence of two witnesses, testament executors, so- called epitropos, most commonly such a form of testament reminds on Roman oral testaments as a regular form of testament, with the difference in a number of witnesses only[64].

[53] Corpus iuris civilis, vol.I, Institutiones, edit stereotipa, Berolini 1872 (in further text signed as I); I,2,10,3 and 14

[54] Stat.Cath, cap.183,186, 435.

[55] I, 2,10, 6 and 9-11; Stat. Cath, cap.183.

[56] Corpus iuris civilis, vol.I, Digesta, edit stereotipa, Berolini 1872 (in further text signed as D); D.Celsus,28,1,27; D.Ulpianus, 28,1,21,2 ;Stat. Cath, cap.183 and 186.

[57] D.Ulpianus, 28,1,21,3;Stat.Cath, cap.186,435.

[58] Corpus iuris civilis, vol.II,Codex Iustinianus , edit stereotipa, Berolini 1872 (in further text signed as C); C,6,23,21,4 and C.6,23,6

[59] C.6,23,28,6

[60] Stat.Cath, cap.183,186, 435; SN II, doc.1755,1616,1042,1726.

[61] Ibidem.

[62] I, 2,10,3; Stat.Cath, cap. 183 and 435.

[63] D.Paulus,28,1,30; D, Ulpianus, 28,1,22,4; Stat. Cath, cap.183,186,435; SN I , doc.13,54,74, 92,190,192,225,409,438,815; SN II, doc.10,23,57,279,382,1204,1604,1751,1755.

[64] SN I , doc.657,680,802,815,931,990,998,1132,1233,1326; SN II, doc.886,917,1022,1232,1 339,1604,1616,1634.

In the 15th century, due to documents, people of Cattaro also used public form of testaments, along with oral and written private ones. There were such testaments dictated tp a notary or a Judge by a testor which was then registered into the notary testament book and kept in the Office[65]. These testaments resembled those of the Roman ones from the period of Iustinian, by which testors could express their last will, noting it down by the body in charge of making public documents[66].

In the end, it can be pointed out that the provisions of the Medieval Cattaro Statute relating to the testament itself, relied greatly on the provisions of the Roman Law of Iustinian´s times. These rules were, otherwise, mainly recepted into statutary laws of other Medieval towns on the Eastern and western coasts of the Adriatic[67]. Yet, it should be emphasized that each Medieval commune had its local pecularities. Thus, Cattaro itself was specific in view of different legal regimes being applied. The autonomous commune of Cattaro had one legal regime for urban, and another one for out of towns areas. This affected the forms of making testaments in the city and out of it. However, if a testament out of town was made according to rules of the original country, there followed a process of correction, conform to Cattaro statutary law[68]. That was quite an understandable rule of the Middle Ages.

Nevenka BOGOJEVIĆ-GLUŠČEVIĆ

PROVISIONSOF THE MEDIEVAL CATTARO STATUTE ON TESTAMENT AND THEIR APPLICATION IN NOTARY PRACTICE

Summary

In view of the stated provision of the Cattaro Statute relating to testing freedom, testament forms, and rights and limitations of testor´s disposition in favour of heirs entitled to a portion of inheritance, based on the analysis of their application in everyday legal life of the City, it can be concluded that the inheritance of the Roman Empire legislature was dominant, which, in the Middle ages, via the statutary law of Medieval coastal towns, was mainly respected in its contents.Some exceptions to

[65] State Archive of Cattaro, Acta notarilia, vol.IV, unpublished material : pag.9,23,56,78,94,103,146,154,161.

[66] C.6,23,18 and C.6,23,19 .

[67] More detailed by Nevenka Bogojevic-Gluscevic “Ricezione del diritto Romano nelle citta medievali dell Adriatico orientale”, Libro Secondo,Facolta di Giurisprudenza Universita del Montenegro, Grafo Crna Gora, Podgorica 2011, pag. 147.

[68] *Stat. Cath, cap*.183, *De forma testamenti in civitatem* and *Stat. Cath, cap*.186, *De testamentis factis extra civitatem* .

the rules reflected local needs or they were simply overtaken from similar statutary rules of the surrounding towns regulating the same issues.

In view of testing freedom in Medieval Cattaro, Iustinian´s legal rules were applied (Novella 115). Comparing the reasons for the inheritance exclusion in Iustinian´s to the Medieval Cattaro law, it could be noted that the reasons stated in Cattaro law were less numerous . The Cattaro law also included the application of the rule taken from the Iustinian´s law, according to which an heir entitled to a portion of inheritance evaded, with no reasons, or excluded from inheritance, or he was not even given a due quota of the intested portion, had the opportunity of raising querella inofficiosi testamenti. There were many similarities among Roman and Cattaro testaments regarding the concept of form regulation or even the rule itself, but there were some less deviations in view of concrete solutions. The autonomous commune of Cattaro had one legal regime for urban, and another one for out of towns areas.

The Medieval Law of Cattaro differed in view of widow´s rights after her husband´s death from Iustinian´s Law (Novellas 53,c.6 and 117,c.5), though, in its conceptual sence, some solution could rely on those rules.