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Family Law in Medieval Serbia

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Abstract
Until the beginning of 13th century family relations in mediaeval Serbia were based on customary law. Entering into marriage was very simple and the majority of population lived in so-called „wild marriages". After the promulgation of autocephalous Serbian Archbishopric (1219), Serbian authorities tried very hard to introduce ecclesiastical rules in the matter of family law. With a translation of Byzantine legal miscellanies (*Procheiron* of Basil I and *Syntagma* of Matheas Blastares) and articles 2 and 3 of Dušan's Law Code the old Roman concept of marriage disappeared and the Christian concept of marriage as a holy sacrament or mistery prevailed and was fully accepted. Dissolution of marriage was possible in the cases of death, prolonged absence, enslavement and divorce. Among the institues refering to matrimonial property Serbian legal sources mention gift before marriage (Roman *donatio ante nuptias*) and dowry. Beside immediate family, consistig of a father, mother and their children, in mediaeval Serbia existed extended family, so-called *zadruga*, as well.

Keywords
Marriage, *Procheiron, Syntagma, Dušan's Law Code,* divorce, dowry, *zadruga*

Introduction

The aim of this paper is to examine provisions on family law in mediaeval Serbia, during the epoch when the State was independend (1180-1459). After 1459, Serbia became a part of Ottoman Empire and Sharia law system was in force. We will discuss the following questions: a) marriage; b) matrimonial property; c) dissolution of marriage, and d) extended family, so-called-*zadruga.* Family law is a branch of law concerned with such subjects as marriage, adoption, divorce, separation, paternity, custody, support and child care.

Although Serbs were converted to Christianity between 867 and 874[1], family relations were based on customary law. It seems that until the beginning of 13th century entering into marriage

[1] According to the story of Byzantine Emperor and historian Constantine VII Porphyrogennetos (911-959), conversion of the Serbs to Christianity started in the 7th century, during the reign of Emperor Herakleios (610-641), just after their arrival in the Balkans. Constantine Porphyrogennetos wrote (*De administrando imperio,* c. 32, 27-29, edition Moravcsik, Gy./ Jenkins, R. J. H., Budapest 1949, new edition *Dumberton Oaks,* Washington D. C. 1967, pp. 154-155) that *the Emperor* [Herakleios] *brought elders from Rome and baptized them* [Serbs] *and taught them fairly*

was very simple and that the majority of population lived in so-called „wild marriages" – irregular unions in which promises were exchanged between the parties without an official ecclesiastical representative present. Such unions were customary among serfs, villagers, slaves and Vlachs[2], who simply paired by order of their lord or master. No particular form was needed for a declaration of divorce (*repudium*). Saint Sabba[3] and his brother Stefan the First Crowned (Serbian „Prvovenčani")[4] tried very hard to introduce ecclesiastical rules in the matter of family law. However, a gap between old ideas, inherited from the pagan epoch, and complicate canon law provisions of Greek-Orthodox Church, exposed in translations of Byzantine legal miscellanies (*Procheiron*[5] and *Syntagma* of Matheas Blastares)[6], was very wide[7]. What was in practical use?

1. Marriage (γάμος, *nuptiae, matrimonium*, бракь)

1.1. The Concept of Marriage

The definition of marriage was given by the famous Roman lawyer Modestinus in the first book of his *Regulae* (*libro primo regularum*), and *Digest* editors placed it at the beginning of Chapter II of Book XXIII under the title *De ritu nuptiarum.* The said definition is as follows: *Nuptiae sunt coniuctio maris et feminae et consortium omnis vitae, divini et humani iuris*

to perform the works of piety and expounded to them the faith of the Christians (οὓς ὁ βασιλεὺς πρεσβύτας ἀπὸ Ῥώμης ἀγαγὼν ἐβάπτισεν, καὶ διδάξας αὐτοὺς τὰ τῆς εὐσεβείας τελεῖν καλῶς, αὐτοῖς τὴν τῶν Χριστιανῶν πίστιν ἐξέθετο). However, it seems that the complete conversion to Christianity ended in the 9th century, during the reign of Emperor Basil I (867-886), or more precisely between 867 and 874, when the sources mention the first Serbian Prince with a Christian name – Peter (Petar, Serbian Cyrillic Петар). See Radojičić, Đ., „La date de la conversion des Serbes", *Byzantion* 22 (1952), pp. 253-256.

[2] In the mediaeval Serbia term *Vlachs* (Serbian *Vlasi*, *Власи,* singular *Vlah*, *Влах,* in Greek documents Βλάχοι) designated first of all dependent shepherds, who were, besides *meropsi* (villagers, serfs) the most numerous category of rural population. The word *Vlach* comes from the name of some Celtic tribes, that Romans called *Volcae* and Germans *Walchos.* In German language the expression became common for all Celts, and after romanisation of Gaul, for all Romans. South Slavs took the name *Vlachs* from Germans and used it for native population of Roman origin, who lived in litoral cities and Balkan mountains. See Šarkić, S., „Pravni položaj Vlaha i otroka u srednjovekovnoj Srbiji" („Legal Position of Dependent Shepherds and Slaves in Mediaeval Serbia"), *Zbornik radova Pravnog fakulteta u Novom Sadu* (*Collected Papers, Novi Sad Faculty of Law*) XLIV/3 (2010), pp. 37-51.

[3] Saint Sabba or Sava (Сава) of Serbia (1175-1235), founder and organizer of the autocephalous Serbian church. Baptismal name Rastko, youngest son of Stefan Nemanja, founder of Serbian dynasty Nemanjid (Nemanjić).

[4] Grand Župan of Serbia (1196-1217) and the first Serbian King (from 1217 till his death 1227), the middle son of Stefan Nemanja.

[5] *Procheiron* or *Procheiros Nomos* (Πρόχειρος Νόμος, Handbook" or „The Law Ready at Hand"), a law book divided into 40 titles that used to be dated 870-879 (more precisely 872, under Basil I), but must be regarded as a revision of the *Epanagoge/Eisagoge* ordered by Leo VI in 907. *Zakon gradski* (literally "The Law of the City") in Serbian translation, incorporated in *Nomokanon* of Saint Sabba (Chapter 55).

[6] *Syntagma kata Stoicheion* (Σύνταγμα κατὰ στοιχείον) or *Alphabetical Syntagma*, nomocanonic miscellany put together in 24 titles, each title has a sign of one of Greek alphabet letter, of Matheas Blastares, a monk from Thessalonica. *Syntagma* was composed in 1335, and translated in Old Serbian language around 1348.Together with so-called "Justinian's Law", a short compilation of 33 articles regulating agrarian relations and Dušan's Law Code, promulgated in 1349 and 1354, Syntagma was part of the great codification of Serbian Emperor (Tsar) Stefan Dušan (1331-1355).

[7] See Bojanin, S., „Bračne odredbe Žičke povelje između crkvenog i narodnog koncepta braka" („The Marriage Provisions in the Charter of the Žiča Monastery Between the Church and the Popular Concept of Marriage"), *Vizantijski svet na Balkanu* (*Byzantine World in the Balkans*), *Institute for Byzantine Studies, Serbian Academy of Sciences and Arts, Studies,* № 42/2, Belgrade 2012, vol. II, pp. 425-442.

communicatio (*Marriage is a conjunction of a man and woman, a lifelong union, an institution of divine and human law*)[8]. In Justinian's *Institutions* there is a similar definition: *Nutpiae autem sive matrimonium est viri et mulieris coniunctio, individuam consuetudinem vitae continens* (*Marriage is a conjunction of a husband and wife, created to last for life*)[9]. The definition of Ulpianus found in Book L of *Digest,* Chapter VII entitled *De diversis regulis iuris antiqui,* also demonstrates the Roman idea of marriage: *Nuptias non concubitus, sed consensus facit,* i. e. *the essence of marriage is not sexual relation but consent* [to live in matrimony][10].

Procheiron accepted Modestinus' definition and translated it into Greek: Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ συγκλήρωσις πάσης ζωῆς, θείου καὶ ἀνθρωπίνου δικαίου κοινωνία[11]. As we can see the text is literally translated and fully corresponds to the Roman concept, that marriage is a social fact, not a civil law relation. It is interesting that neither *Procheiron* nor *Ecloga*, that preceded it, insisted on the formal proceedings of wedding as on the exclusive requirement for marriage, which one could be considered as usual in Orthodox Byzantium[12]. But later on, laws that were passed during the rule of Macedonian dynasty introduced innovations and inserted what was „omitted" by editors of *Procheiron.* Editors of *Epanagoge/Eisagoge* amended Modestinus' definition of marriage by omitting the wording θείου καὶ ἀνθρωπίνου δικαίου κοινωνία (*institute of divine and human law*), and by inserting the words εἴτε δι' εὐλογίας εἴτε διὰ στεφανώματος ἢ διὰ συμβολαίου, meaning that the marriage is to be effected either by wedding ceremony, or blessing or literal contract[13]. So, wedding ceremony, blessing and secular contract were considered equal. Leo VI proceeded one step forward and his *Novella* 89 (issued 893) prescribed Church benediction (ἐυλογία) as an obligatory form of entering into such a contract[14].

It seems that notwithstanding this provision numerous weddings were not performed following religious rites. Due to that fact Emperor Alexios I Comnenos (Αλέξιος Α' Κομνηνός, 1081-1118) issued in 1095 a *Novel* 35, that prescribed Church marriage as mandatory even for slaves[15]. Finally, in 1306 Emperor Andronicos II Palaiologos (Ανδρόνικος Β' Παλαιολόγος, 1282-1328) and Patriarch Athanasios (Αθανάσιος) issued a *Novel* 26 which required that wedding should be performed in the presence of an authorised clergyman[16].

The editors of Serbian legal miscellanies accepted Byzantine translations of Roman definitions of marriage. *Nomokanon* of Saint Sabba incorporated Modestinus' definition of marriage, which had been taken from *Procheiron* (like the other provisions about marriage). Here is the Serbian original: **Бракь ѥсть мѫжевы и женѣ сѣчетаніѥ, и сѣбытіѥ вь вьсѣки жиѯьны,**

[8] D. XXIII, 2, 1.

[9] *Iust. Inst.* I, , 1. In the text we find *nuptiae autem sive matrimonium.* Editors used two terms for marriage (*nuptiae* or *matrimonium*).

[10] D. L, 17, 30.

[11] *Procheiron* IV, 1, ed. Zepos, J. et P., *Jus Graecoramanum,* Athens 1931 (reprint Aalen 1962), vol. II, p. 124.

[12] See *Ecloga* II, 1, ed. Burgmann L., *Ecloga, das Gesetzbuch Leons III. und Konstantinos V*, Forschungen zur byzantinischen Rechtsgeschichte, Band 10, Frankfurt am Main 1983, p. 170.

[13] *Epanagoge* XVI, 1, Zepos, vol. II, p. 274.

[14] Ed. Noaille, P., /Dain, A., *Les Novelles de Léon VI le Sage,* Paris 1944, p. 295-297.

[15] Zepos, vol. I, pp. 341-346. According to Roman law marriages between slaves (*contubernium*) possessed no legal validity.

[16] Ibid. pp. 533-536.

божьствнєкже и уловѣчуьскыѥ правьды обьщенїе[17]. Matheas Blastares, like the translators of his *Syntagma* into Serbian language, took the modified Modestinus' definition of marriage from *Epanagoge/Eisagoge,* which is (G - 3): Γάμος ἐστὶν ἀνδρὸς καὶ γυναικὸς συνάφεια καὶ συγκλήρωσις πάσης ζωῆς, θείου τε καὶ ἀνθρωπίνου δικαίου κοινωνία, εἴτε δι' εὐλογίας, εἴτε διὰ στεφανώματος, ἢ διὰ συμβολαίου; **Бракь ѥсть моужа и жены сьвькоупльнїе и сьнаслѣдїе вь вьсеи жизни, божьствныѥ же и уловѣчуьскыѥ правины приобщенїе, любо благословенїемь, любо вѣнчанїемь, любо сь записанїемь**[18]. The definition from 9th century, which equalised a laic contract with blessing and marriage, was considered obsolete by the 14th century. Neither Matheas Blastares nor his Serbian translators incorporated in *Syntagma* Novels of Byzantine Emperors that required religious rites for marriage. The editors of the Law Code of Stefan Dušan[19] corrected such Blastares's „mistake", by putting articles 2 and 3 of the Code fully in conformity with the *Novellae* of Byzantine Emperors and with religious practice. We are going to quote them in a whole:

Article 2, *Of Marriage* (**ѻ женитвѣ**): *Lords and other people may not marry without the blessing of their own archpriest or of such cleric*[20] *as the archpriest shall appoint* (**Властѣле и прочїи людїи, да сѥ не женѥ, не благословивше сѥ оу своего а҃рхїереа, али оу тѣхзїи да сѥ благословѥ, кои сѳ избрали доуховникы а҃рхїереи**).

Article 3, *Of Weddings* (**ѻ свадбѣ**): *No Wedding may take place without the crowning, and if it be done without the blessing and permission of the Church, then let it be dissolved* (**И ни єдина свадба да сѥ не оучины без вѣнчанїа; ако ли сѥ оучины безь благословенїа, и оупрошенїа цркве, таковы да сѥ разлоучѥ**)[21].

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[17] Ed. Dučić, N., *Književni radovi Nićifora Dučića, knjiga 4,* Belgrade 1895, p. 258; ed. Petrović, M., *Zakonopravilo ili Nomokanon Svetoga Save, Ilovički prepis, 1262. godina (The Ilovica Manuscript from 1262),* Photoprint reproduction, Gornji Milanovac 1991, p. 270 b.

[18] Greek text according to the edition of Ράλλης, Γ. Α.,/ Πότλης, Μ., *Ματθαίου τοῦ Βλασταρέως Σύνταγμα κατὰ στοιχείον*, Ἐν Ἀθήναις 1859 (reprint Athens 1966), pp. 153-154; Serbian text according to the edition of Novaković, S., *Matije Vlastara Sintagmat. Azbučni zbornik vizantijskih crkvenih i državnih zakona i pravila, slovenski prevod vremena Dušanova,* Belgrade 1907, p. 160. Although Matheas Blastares took over definition of Modestinus from *Epanagoge/Eisagoge,* he did not omit words *institute of divine and human laws,* which was done by editors of *Epanagoge/Eisagoge.*

[19] The Law Code of Stefan Dušan in the narrow sence, was the third and most important part of the codification of Serbian Tsar, issued at State Councils (*sabor, сабор,* сьборъ) held in Skopje (actuel capital of North Macedonia) on 21 May 1349 (the first 135 articles) and in Serres (Σέρραι, modern Greek Σέρρες) five years later (articles 136-201). We know nothing about the procedure of the anectment and who were the redactors of the Code. Although Dušan's Law Code represents an original work of Serbian legislation, many of its provisions were undertaken from the Byzantine law, especially from the *Basilika,* a collection of laws completed ca. 892 in Constantinople by order of Emperor Leo VI. The other sources of the Code were already promulgated charters (from which were taken numerous rules concerning the social position of the nobles and villeins) and the treaties with the Republic of Ragusa (Dubrovnik, today in Croatia), from which were taken the provisions concerning the privileges of the merchants. The intention of legislator was to neglect completelly the customary law, but still some influence of customs reflected on the Code. Dušan's Law Code treats the law of persons, the constitutional law, the penal law and the legal proceedings. The rules concerning the law of property, the law of wills and successions and the law of obligation are very rare. Those provisions were mostly regulated by *Syntagma* of Matheas Blastares and so-called „Justinian's Law".

[20] *Duhovnik,* lit. „spiritual person".

[21] English text according to the transaltion of Burr, M., „The Code of Stephan Dušan, Tsar and Autocrat of the Serbs and Greeks", *The Slavonic (and East Europian) Review* 28, London 1949-50, pp. 198-199; Old Serbian text according to the edition of Novaković, S., *Zakonik Stefana Dušana, cara srpskog 1349-1354,* Belgrade 1898 (reprint 2004), pp. 7-8, and the edition of Serbian Academy of Science and Art, *Zakonik cara Stefana Dušana,* vol. III, Codd. Mss. Baraniensis, Prizrensis, Šišatovacensis, Rakovacensis, Ravanicensis et Sofiensis, editors Pešikan, M.,/ Grickat-Radulović, I.,/ Jovičić, M., Belgrade 1997, p. 98.

Article 3 makes clearly difference between *svadba* = wedding and *venčanje* = crowning. *Svadba* is entering into a marriage according to the old customs from pagan epoch with beautiful and well-formed ritual, survived till nowadays especially with Russians and South Slavs. *Venčanje* is religious rite (*consecratio*) with a central ceremony consisting of putting crowns on the heads of bride and groom (Greek στεφάνωμα, from στέφανος = crown, Serbian *venac, венац*).

By those articles of Dušan's Law Code the old Roman concept of marriage as of a laic contract finally disappeared, and the Christian concept of marriage as a holy sacrament or mystery (μυστήριον) prevailed and was fully accepted[22].

1.2. Lack of Disqualifications

In old Serbian language entering into marriage was designated by two terms: to take a wife is *da se ženi* and to take a husband is *da se muži* (Dušan's Law Code, article 154: **да се моужи и женїи**; King Stefan Dečanski's[23] charter confirming the gift of *kaznac* – tax collector Demetrios to the monastery of Saint Nicholas on the island of Vranjina (today in Montenegro): **И ако се кгова жена омоужии…; Ѩко ли се не омоужии…**)[24]. First expression survived in the modern Serbian language, while the second one is no more in use[25].

Husband and wife had to have reached the age of puberty – 14 in the case of the male, 12 in the case of female. *Ecloga* set a limit to 15 years in the case of male, and 13 in the case of female[26].

Chapter **B – 8** of Matheas Blastares' *Syntagma* under the title *On matrimonial degrees* (Περὶ τῶν τοῦ γάμου βαθμῶν, **О степенехь брака**) speaks minutely of all prohibeted degrees of relationship[27]. The essential provisions are:

a) *Blood relationship* (Περὶ τῆς ἐξ αἵματος συγγενείας, **О иже отъ крьвє раздѣлкнїа**) – Marriage between parties sharing a blood relationship was invalid. At no time might those with a lineal relationship marry. The law concerning collaterals prohibeted marriage to those up to eight degree (Τοῖς δὲ ἐκ πλαγίου ὁ ὄγδοος ἐφίησι τὸν γάμον βαθμός τοῦ ζ'. τοῦτον παντάπασιν εἴργοντος; **Отъ стране же соуштїимь осмы праштакть бракь степень: сеѓмомоу се отноудь вьѯбранлаюштоу**)[28].

[22] See Šarkić, S., „The Concept of Marriage in Roman, Byzantine and Serbian Mediaeval Law", *Zbornik radova Vizantološkog instituta* 41 (2004), pp. 99-103.

[23] Stefan Uroš III Dečanski, son of Stefan Uroš II Milutin, Serbian king (1321-1331), father of Stefan Dušan.

[24] Novaković, *Zakonik*, pp. 120-121; *Zakonik cara Stefana Dušana,* vol. III, p. 144; Novaković, S., *Zakonski spomenici srpskih država srednjega veka* (*Legal Sources of Serbian States from Middle Ages*), Belgrade 1912, p. 581, III, IV.

[25] In Serb, as in Russian, different words are used for marrying according to the sex of the person. The Serbian word for a man to marry is *oženiti se,* a reflexive verb from the word *žena* = woman. The word for a woman, in the modern language, is *udati se*, literally, to give oneself up, but in the Macedonian language the girls still use the old verb we have here, *mužiti se,* from the word *muž* = a husband. Cf. Burr, p. 529.

[26] *Ecloga* II, 1, ed. Burgmann, p. 170.

[27] Ed. Ralles / Potles, pp. 125-141; ed. Novaković, pp. 130-146.

[28] Ed. Ralles / Potles, p. 128; ed. Novaković, p. 132.

b) *Relationship by marriage or Affinity* (Περὶ τῶν ἐξ ἀγχιστείας, **О иже оть сватства**) – Step-parents and step-children, parents-in-law and children-in-law were disqualified from marriage. This law was later extended to include the former spouse of a brother or sister[29].

Among relationship by marriage Serbian charters mention only one impediment: marriage with a sister-in-law[30]. Such a provision contains Žiča charter:[31] *If someone took sister-in-law against law*[32]*, if he be a noble or a soldier, let him give to his master a fine of two oxen; if he be from poor people, bishop will take a half, then let it be dissolved* (**Ащє кто сватвиц8 прѣ ѯаконь 8ѯмє, ащє в8дєть wть властєль или wть воиникь, да 8ѯимаєть wсл8х8 господьств8ки по .в. воли; ащє ли wть 8богихь, то да 8ѯима свєтитєль половин8, а такови да се расп8щають 8 расп8стѣхь или 8 сватвиахь**)[33]. It seems that the marriage with *svastika* (sister-in-law) was allowed by Serbian customary law and that it was wide-spread. That was the reason why a legislator insisted on that impediment[34].

c) *Spiritual relationship* (*cognatio spiritualis,* πνευματικὴ συγγένεια, **дχовноє сьродьство**) – Already Justinian prohibeted the marriage of god-parents and god-children[35].

[29] Ed. Ralles / Potles, pp. 129-130; ed. Novaković, pp.134-135.

[30] Serbian word is *svastika* (*свастика*) = wife's sister.

[31] Charter was promulgated 1220 by King Stefan the First Crowned, to his foundation monastery Žiča (Serbian Cyrillic Жича), near modern city of Kraljevo (Краљево) in Central Serbia.

[32] The word *zakon* = law, used in the text designates custom (*consuetudo*), not legal rule (*lex*). In modern Serbian language the word *zakon* (*закон*) indicates the ultimate act of State power; it can be translated νόμος in Greek and *lex* in Latin, *Act* or *Statute* in English, *la loi* in French, *la legge* in Italian, *la ley* in Spanish, *das Gesetz* in German, and so on in other languages, whilst in other Slavonic languages it is virtually the same word. The term is of ancient derivation, being first mentioned in documents of the end of the 12th century. During the following centuries it can be found in numerous legal sources with one of two basic meanings, firstly as a legal rule in general (*regula iuris*) and secondly as the translation of the Greek νόμος, a law-making act of Byzantine Emperor. In its first meaning it occures in legal documents of Serbian origin, whereas in its second it can be found in Byzantine legal compilations translated and adapted for mediaeval Serbia. In the legal documents of Serbian origin *zakon* (Zakoпь) indicated a generally obligatory rule (*regula iuris*) which was usually not a result of the activity of a monarch as ultimate holder of State power. Even where a law was made by State authority such a legal rule had primarily the appearance of a customary legal provision, regulating the condition within one particular manor (Serbian, *vlastelinstvo, властелинство*) rather than within the whole national territory. Otherwise, such laws prescribed the legal position of different categories of inhabitants and identified particular rules of status. Sometimes a law would be introduced to regulate one particular problem. The concept of law in this period also includes a legal rule derived from custom or from a private contract. Each of these uses can be illustrated from many hundreds of cases from several sources. See Šarkić, S., *Zakon u glagoljskim i ćirilskim pravnim spomenicima od XII do XVIII veka* (*Law in Glagolitic and Cyrillic Legal Sources from 12th to 18th Century*), Novi Sad 2015. The author has been quoted all meanings of the term *zakon* that appear in Serbian legal documents.

[33] Mošin,V.,/ Ćirković, S.,/ Sindik, D., *Zbornik srednjovekovnih ćiriličkih povelja i pisama Srbije, Bosne i Dubrovnika* (*Collection of Mediaeval Cyrillic Charters and Letters from Serbia, Bosnia and Dubrovnik*), vol. I 1186-1321, Belgrade 2011, p. 95.

[34] Charter presented by King Stefan Uroš II Milutin to the monastery of Saint Stephen in Banjska (today in Kosovo) between 1313 and 1316 and King Stefan Uroš's III Dečanski charter to the monastery Dečani (1330, today also in Kosovo) forbid marriages between villagers and Vlachs, because social position of Vlachs was much better. However, this kind of impediment had more social and economical reasons. See Mošin,/ Ćirković,/ Sindik, *Zbornik,* pp. 464 and Ivić, P.,/ Grković, M., *Dečanske hrisovulje* (*Dečani Chrysobulls*), Novi Sad 1976, p. 134.

[35] Ed. Ralles / Potles, pp. 138-139; ed. Novaković, pp. 143-144.

d) *Existing marriage* – An existing lawful marriage prevented either partner entering another marriage relationship. Bigamy was punished.

e) *Guardians and Wards* (Περὶ ἐπιτρόπου καὶ ἀφηλίκων, **О приставѣницѣ**) – Guardians (*tutor*, ἐπίτροπος, **приставѣникь**) were not allowed to marry their wards (*pupillus*, ὀρφανός, **сирѹю**). Tutelage came to an end when the *pupillus* reached the age of thirty and then guardian can marry his female ward. However, mother of the female ward (ἐπιτροπευθείσης, **приставлкнїємь**) can marry her daughter even before that term[36].

f) *Widows* – Where a widow married within twelve months of the death of her husband, the marriage was not invalidated, but it brought *infamia* (ἀτιμοῦται, **обесчьстѣваѥть сѥ**) upon her. She can inherit nothing from the matrimonial property of ex-husband and she can give only the third part of her estate to her second husband, in the case that she has no child. If a widow is delivered of a child within eleven months of the death of her husband, it would be considered as a debauchery (πορνεία ἐστὶ τὸ γεγονὸς, **блоудь ѥсть бывшеѥ**) and she will get nothing from inheritance[37].

g) *Marriages with Heretics* were strictly forbidden and Matheas Blastares speaks on that topic in the Chapter Γ – 12, under the title, *On why not to enter into marriage with heretics* (Ὅτι οὐ δεῖ γάμους συναλλάττειν μετὰ αἱρετικῶν, **Ꙗко не подобаѥть брака ꙁамѣновати сь еретиꙁи**)[38]. However, the idea of heretics was much broader and under that term were considered Jews, Hellenes (Greeks, i.e. pagans, heathens) and Latins (Roman-Catholics) as well: *We call heretics those persons, who accept the secret* [of Baptism] *with some mistakes, by which they differ from Orthodox people; Jews are Christ's murderers, and Hellenes are obviously infidels and infected by idol-worshipping* (αἱρετικοὺς μὲν τοὺς τὸ καθ' ἡμᾶς δεχομένους μυστήριον λέγων, ἓν τισι δὲ σφαλλομένους, παρὸ καὶ διαφερομένους τοῖς ὀρθοδόξοις· Ιουδαίους δὲ, τοὺς Χριστοκτόνους, καὶ ἕλληνας, τοὺς περιφανῶς ἀπίστους καὶ εἰδωλομανίαν νοσοῦντας; **еретикы оубо иже вь нась прикмлюштихъ таиньство глаголѥ, вь нѣкыихъ же погрѣшающихъ по кмоуже и раꙁньствоують сь православными; Іоудеѥ же Христоу оубїице и Ꙗ҆ллинѥ ѥвѣ невѣрныѥ и идолобѣсикмь недоугоующихъ**). *If heretic or infidel promises that he shall become an Orthodox, marriage shall be postponed until the transformation begin… Latins have to do the same thing if they wish to marry an Orthodox woman* (Εἰ δ' ἴσως ὁ αἱρετικὸς, ἢ ὁ ἄπιστος συνθέσθαι τῇ ὀρθοδόξῳ ἐπαγγέλλεται πίστει, τὸ μὲν συνάλλαγμα προβαινέτω... Ταῦτα καὶ τῶν Λατίνων ποιεῖν εἰσπράττονται, οἱ ὀρθοδόξους ἀγαγέσθαι γυναῖκας αἱρούμενοι; **Ꙗште ли жѥ оубо еретикь или невѣрны сьприложити сѥ православнѣи обештаваѥть сѥ вѣрѣ, ѥже оубо замѣнкнїѥ да творить сѥ… Сїіа и соуштн оть Латинь творити истеꙁаѥмыи соуть, иже православныѥ покти жены волеште**)[39].

[36] Ed. Palles / Potles, pp. 139-140; ed. Novaković, pp. 144-146.
[37] Ed. Ralles / Potles, p. 141; ed. Novaković, p. 146. Cf. *Basilika* XXVIII, 14, 1.
[38] Ed. Ralles / Potles, pp. 173-175; ed. Novaković, p. 181-183.
[39] Ed. Ralles / Potles, p. 173; ed. Novaković, p. 181.

Dušan's Law Code in the article 9 says: *And if anywhere a half-believer*[40] *take a Christian*[41] *woman to wife, let him be baptised into Christianity. and if he will not be baptised, let his wife and children be taken from him and let a part of the house be allotted to them, but he shall be driven forth* (**И ако се наиде полѵвѣ́рць, оузьмь христїаниц8, ако ѵзлюби да се крьсти оу христїа́нство. ако ли се не крьсти, да м8 се оузмѣ жена и дѣца и да имь даа дѣль wт коукѵ, а wнь да се иждене**)[42].

The intention of the article 9 was to prevent marriages between Greek-Orthodox and Roman-Catholics, although in Serbia before the promulgation of the Code existed mixed marriages and the consorts could retain their religion. Well-known example is Helen of Anjou (French *Hélèe d'Anjou*)[43], spose of the Serbian King Stefan Uroš I (1243-1276), who was adressed in a papal letter as *Helena regis Rassiae illustris* and *Carissime in Christo filiae Elenae… lumini catholice fidei*[44]. It is obvious that she remained Roman-Catholic even after her marriage[45]. However, the Code mentions only a case when a Catholic takes „a Christian woman". If he does not want „to be baptised into Christianity" (i. e. to accept the Orthodox faith), the penalty would be very rigorous (*let his wife and children be taken from him… and he shall be driven forth*). Such a provision, so strict and inhuman, could not be found in the sources of Byzantine canon law. But, why the opposite case – when an Orthodox man takes to wife a Catholic woman – was not regulated by the Code? First supposition might be that a Catholic wife could easily accept the religion of her husband. According to the second hypothesis, the Code has accepted a rule that „presumptions arise from what generally happens" (*ex eo quod plerumque fit*): marriages between Catholic men, living in Ragusan and Saxon colonies[46], and Serbian Orthodox women were frequent and Tsar was afraid that Orthodox women might became Roman-Catholics. It seems that marriages between the Catholic women and Serbian Orthodox husbands were rare and that is why the Code kept silent.

2. Matrimonial Property

2.1. Gift Before Marriage (*donatio ante nuptias,* **προγαμιαία δωρεά, прѣ́ждебрачнє дарь**) and Gift on Account of Marriage (*donatio propter nuptias,* **ὑπόβολον, подлогъ**)

In Roman law *donatio ante nuptias* took the form of a settlement on the wife made by the husband and intended as his share of the expenses of the marriage. So that the prohibition of gifts between spouses might not take effect, the *donatio* was made before the marriage. On the

[40] The „half-believer" is a „Latin", i. e. Roman-Catholic, one who is not completely Christian nor yet pagan. See the article „Poluverci" (Bubalo, Đ.), *Leksikon srpskog srednjeg veka* (*The Lexicon of Serbian Middle Ages*), editors Ćirković, S., / Mihaljčić, R., Belgrade 1999, p. 549.

[41] The "Christian" in Dušan's Law Code designates always an Orthodox.

[42] Burr, p. 200; Novaković, *Zakonik*, p. 13; *Zakonik cara Stefana Dušana,* vol. III, p. 100.

[43] In the charters of Charles I and Charles II of Anjou, Helen was called *consaguinea nostra carissima, cognata nostra, affinis nostra carissima.* See Rački, F., "Rukopisi tičući se južnoslovinske povijesti u arkivih srednje i donje Italije" ("Manuscripts Regarding South-Slavs History in the Archives of Middle and South Italy"), *Rad Jugoslavenske Akademije Znanosti i Umjetnosti* 18 (1872), pp. 219-225.

[44] Purković, M., *Avinjonske pape i srpske zemlje* (*Avignon Popes and Serbian Lands*), Belgrade 1934, p. 11.

[45] On the life and personality of Queen Helen, see Popović, M., *Srpska kraljica Jelena između Rimokatoličanstva i pravoslavlja* (*Serbian Queen Helen Between Catolicism and Orthodoxy*), Belgrade 2010.

[46] Merchants from the small City-Republic of Ragusa (or Dubrovnik, today in Croatia) controlled the trade in mediaeval Serbia. Miners of German origin, who since 13th century worked in Serbia, were called *Sasi* (*Cacu*) = Saxons. They were both Roman-Catholics.

husband's death, or in the case of divorce without fault on the wife's part, the donatio passed to her. If there were children, they received the ownership of the *donatio* and a wife received a usufruct. Under Justinian a settlement might be made before or after the marriage (*donatio propter nuptias*). There was rarely a transfer of property; the husband merely contracted to make a gift[47].

Among Byzantine legal miscellanies *Procheiron* contains the Chapter VI, under the title *On gifts before the marriage* (Περὶ προγαμιαίας δωρεᾶς, **О прѣждебрачнемѣ дарѣ**)[48], which repeats the provisions from Justinian's legislation. Emperor Leo VI in his *Novella* 20 (between 886-910) prescribed that neither husband nor wife can acquire nothing else, but *hypobolon* (*donatio propter nuptias*) in the case of death of one or another (Περὶ τοῦ μὴ λαμβάνειν τὸν ἄνδρα ὥσπερ τὴν γυναῖκα εἰς τὰ παρὰ τοῦ ὑποβόλου ἐκ προτελευτῆς θατέρου μέρους)[49].

Matheas Blastares introduced in his *Syntagma* just a short fragment from Emperor's Leo VI *Novella* 20, saying that dowry has to be of greater value than the gift on account of marriage (*hypobolon*). If the husband dies without child, a wife will acquire dowry and *hypobolon.* If the wife dies, their heirs will get dowry and husband his *hypobolon* (Ἡ τοῦ σοφοῦ Λέοντος Νεαρὰ, πλείονα δεῖ εἶναι, φησὶ, τὴν προῖκα, τοῦ ὑποβόλου· τοῦ δὲ ἀνδρὸς ἀτέκνου τελευτήσαντος, ἄν μὴ παρῇ σύμφωνον, ἀνακομίζεται ἡ γηνὴ τήν τε προῖκα καὶ τὸ ὑπόβολον, καὶ πλέον οὐδέν· εἰ δὲ τὴν γυναῖκα ὁ θάνατος διασπάσει, τῆς μὲν οἱ κληρονόμοι τὴν προῖκα λαμβανέτωσαν· ὁ δὲ ἀνὴρ, τοῦ ἰδίου μὴ ἀποστερείσθω ὑποβόλου; **Прѣмоудраго Льва Новаꙗ множак подобакть быти рече прикїи отъ подлога: моужеви же весчедноу оумьр҃шоу, аште не боудеть съгласїа, вьсприкмлкть жена прикїю и подлогъ и множак ничтоже; аште ли женоу съмрьть оттрьгнеть, онок оубо наслѣдници прикїю да прикмлють. моужь же своѥго подлога да не лишит сѥ**)[50].

Serbian legal sources do not contain rules on gifts before marriage and gifts on account of marriage.

2.2. Dowry (*dos*, προῖκα, προίξ, вѣно, прикїа, прикиꙗ, тьстнина)

Although Roman lawyers in their books did not give a single definition of dowry, they considered dowry (*dos*) as the property which on marriage, by a special agreement (*pactum*), is transferred by the wife herself or by another to the husband with a view of diminishing the burden which the marriage will entail upon him. It was of three kinds. *Profecticia dos* is that which is derived from the property of the wife's *pater familias*, her father or paternal grandfather. *Adventicia* is termed that *dos* which is not *profecticia* in respect to its source, whether it is given by the wife from her own estate or by the wife's mother or a third person. It is termed *recepticia dos* when accompanied by a stipulation for its reclamation by the constitutor on the termination of the marriage[51].

[47] See Curzon, L. B., *Roman Law*, London 1966, p. 45.
[48] Zepos, vol. II, p. 129; ed. Dučić, p. 266; ed. Petrović, p. 273 a.
[49] Ed. Noaille / Dain, pp. 77-83.
[50] Ed. Ralles / Potles, p. 483; ed. Novaković, p. 511.
[51] *Ulpiani regularum liber singularis,* VI, 3-5, ed. Romac, A., Zagreb 1987 (*Latina et Graeca Liber XI*), pp. 32-34: *Dos aut profecticia dicitur, id est quam pater mulieris dedit; aut adventicia, id est ea, quae a quovis alio data*

The property ower dowry was a very complicated question and Roman lawyers discussed this legal institute at large. In a fragment from the *Digest* we can find opinion of the famous Roman *iurisconsultus* Paulus, who considers that *dos*, throughout the continuance of marriage, is the property of the husband (*Idem* [Paulus] *respondit constante matrimonio dotem in bonis mariti esse*)[52]. The frequency of divorces in Roman society, however, imposed the issue whether the dowry should be given back to a wife upon termination of the marriage. That was the reason why the Roman lawyers gradually developed the idea that *dos* was still the property of a wife, that was expressed by Tryphoninus as follows: „Though the dowry is in husband's estate, it still belongs to the wife" (*quamvis in bonis mariti dos sit, mulieris tamen est…*)[53].

In the later Roman history *dos* got a great importance in property-rights relations between consorts, so that Roman lawyers discussed it at large, creating a great number of rules, which can be summarized as follows: after the death of the husband, the dowry belongs to the wife. In case of a divorce, a husband has to give back the dowry to his wife, but he can retain some parts of a dowry, for example for the interest of his children (*propter liberos*). If the marriage relation has been dissolved due to the proved fault of the wife, the husband can retain one or more sixth parts of the dowry (depending on the number of children they have), but not exceeding half the dowry. From moral laws (*propter mores*), for example if a wife commits adultery, a husband can retain sixth parts of the dowry. If the wife dies before her husband, a *dos profectitia* has to be returned to the wife's father, but the husband can keep one fifth of the dowry for each child[54].

The legislation of Justinian insists that the dowry (*dos*) is the wife's property and those provisions were taken over first in *Procheiron* and, after its translation in old Serbian language, in the *Nomokanon* of Saint Sabba. The editors of *Procheiron* gathered the provisions on dowry in Chapter VIII entitled *On the law of dowry* (Περὶ δικαίου προικός) and in Chapter IX entitled *On demand of dowry and its burdens* (Περὶ ἐκδικήσεως προικὸς καὶ τῶν βαρῶν αὐτῆς)[55]. The old Serbian translation of the Chapter VIII is *On effecting of the dowry* (**О исправьлкныи вѣна**) and of the Chapter IX *On demand of dowry and its burdens* (**О wтьмьщєнїи вѣна и тєжєсти єго**)[56].

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est… Adventicia autem dos semper penes maritum rimanet, praeterquam si is, qui dedit, ut sibi redderetur, stipulatus fuit; quae dos specialiter recepticia dicitur.

[52] D. L, 1, 21, 4.

[53] D. XXIII, 3, 75.

[54] The majority of rules concerning the dowry were presented by the lawyers of Justinian in three titles of *Digests'* Book XXIII: third title *De iure dotium* (*On the Law of Dowry*), which contains 85 fragments from the works of Roman lawyers; fourth title *De pactis dotalibus* (*On Dotal Pacts*), containing 32 fragments, and fifth title *De fundo dotali* (*On Dotal Land*), containing 18 fragments.

[55] Ed. n, vol. II, pp. 139-143.

[56] Ed. Dučić, pp. 279 - 186; ed. Petrović, pp. 278 b and 279 a. It is interesting that Serbian translators of *Procheiron,* for the Greek word προίκα, προίξ = dowry, use the Old Slavonic term *veno* (vħno), while in the legal sources from 14th centnury we find the expression *prikia*. See Šarkić, S., „Jedan pravnoistorijski prilog o Zakonopravilu Svetoga Save" („A Contribution to the Study of the *Nomokanon* of Saint Sabba from the Perspective of Legal History"), *Nasleđe i stvaranje, Sveti Ćirilo – Sveti Sava, 869-1219-2019* (*Sanctorum Cyrilli et Sabbae patrimonium – posterioras quae eo structa sunt, DCCCLXIX-MCCXIX-MMXIX*). Belgrade 2019, pp. 461-470. Both terms are obsolete today. In modern Serbian language the word *miraz* is used for dowry, which originates from Arabic, penetrating in Serbia during the Turkish occupation (Arabic *mīrāṯ*, Turkish *miras*). See Škaljić, A., *Turcizmi u srpskohrvatskom-hrvatskosrpskom jeziku* (*Turkisms in Serbo-Croatian Language*), Sarajevo 1985, p. 464.

Matheas Blastares placed the rules on dowry in two chapters: Chapter Δ (Д) – 2 entitled *On lenders and loans and pledges* (Περὶ δανειστῶν, καὶ δανείου, καὶ ἐνεχύρων, **О ѯакмницѣхъ и ѯаимѣ и ѯалоѯѣхъ**) and Chapter Π – 20 entitled *On dotal property* (Περὶ προικῶν πραγμάτων, **О прикїиниχъ иманїиχъ**)[57]. He has retained the rules from *Procheiron,* i. e. from the legislation of Justinian, and those are the following provisions: the husband can use the dowry, but he has no right to sell it. The wife is not allowed to give her dowry in a loan for the debts entered by her husband[58]. If a husband becomes insolvent, because of his debts, a wife has the right to reclaim the dowry, and she has even a priority regarding a state („imperial") demand (τοῦ δημοσίου χρέυς; **оть народнаго дльга, рекше царскаго**)[59]. After wife's death, the dowry belongs to the children. The husband could not inherit the dowry. If the wife dies having no children, the dowry has to be returned to her family[60]. The agreement between consorts, establishing the right of a husband to inherit the dowry, is null and void. Such agreement, however, is allowed, if it is entered into between the father of the bride and the bridegroom, because the father of the bride has the disposal right on the dowry[61]. Husband has the right to demand the promised dowry with interest in judicial trial, if the dowry has not been disbursed to him on time[62].

The short survey of Greaco-Roman law provisions on dowry shows that this private-law institute has penetrated in mediaeval Serbia by translation of Byzantine legal miscellanies. But, to what extent and over what period all those rules were actually applied? Were they in accordance with Slavonic customary law on family? The answer is, however, unknown, due to the absence of any surviving legal decisions, the only material which could resolve these questions[63].

However, dowry was mentioned in several fragments of Serbian legal sources from 14th century, what undoubtedly means that this private-law institute, under the influence of Byzantine law, was very well known in Serbian mediaeval law[64]. For example, in the charter presented by King Stefan Uroš Milutin II (1282-1321) to the monastery of Saint George on the river Serava

[57] Ed. Ralles / Potles, pp. 204 and 440; ed. Novaković, pp. 214 and 466.
[58] Ed. Ralles / Potles, p. 204; ed. Novaković, p. 214.
[59] Ed. Ralles / Potles, p. 204; ed. Novaković, p. 214.
[60] Ed. Palles / Potles, p. 441; ed. Novaković, p. 466.
[61] Ed. Ralles / Potles, p. 441; ed. Novaković, p. 466.
[62] Ed. Ralles / Potles, p. 441; ed. Novaković, p. 466.
[63] According to Karl Kadlech, a Czech scholar who studied the primitive Slavonic customary law (*Prvobitno slovensko pravo pre X veka, translated and supplemented by Teodor Taranovski,* Belgrade 1924, p. 82), those rules were in discordance with the old Slavonic custom, which provides that the bride gets no dowry, only some garments and tinsel.
[64] The influence could come from the maritime towns on the Adriatic coast, which in the 14th century were part of Serbian mediaeval State (Kotor, Budva, Bar, Ulcinj, today all of them in Montenegro) and from Ragusa (Dubrovnik) as well. For example, Chapter 149 of the Statute of the City of Kotor from 1316, was entitled *De dote et parchivio* (*parchivium,* from Greek word προίξ = prikija, dowry), which expresses the ideas from the legislation of Justinian, i. e. that dowry is the wife's property (*Statuta Civitatis Cathari, Statut grada Kotora,* reprint of the original text published in Venice 1616, Kotor 2009, vol. I, p. 89; see also Sindik, I., *Komunalno uređenje Kotora od druge polovine XII do početka XV stoleća* (*The Municipal Organization of Kotor from the Second Half of 12th till the Beginning of 15th Century*), Belgrade 1950, p. 130). The principle that dowry is the wife's property was more explicity expressed in the Statute of Dubrovnik from 1272: *Intentionis enim nostrae est, ut semper et in omni casu dos sive perchivium mulieris sit salvum* (Liber IV, Cap. I; edition of Latin text by Bogišić, V.,/ Jireček, C., *Liber statutorum civitatis Ragusii compositus anno 1272,* Monumenta historico-juridica Slavorum Meridionalium, vol. IX, Zagreb 1904; new edition contains Latin text according to Bigišić,/ Jireček's edition and the translation on modern Croatian language: *Statut grada Dubrovnika,* editors Šoljić, A., Šundrica, Z., Veselić, I., Dubrovnik 2002, p. 240).

(near City of Skoplje, actuel capital of North Macedonia), we read: *And Dragoslav camerarius gave* [to the monastery] *from the estate acquired from his father-in-law, the vineyard Mavrovo in Butela* (**И Драгославь каѯньць даде wт тьстѝнинє си виноградищє Маврово ѕ Боутели**)[65]. The editors of the charter emphasize that *camerarius* Dragoslav gave the vineyard to the monastery as a donation from the property that he acquired from his father-in-law (*tastnina,* from Serbian term *tast* = father-in-law), what was probably a dowry. The same charter mentions *tastna prikija* (**тьстна прикиꙗ**), i. e. the dowry (*prikija*) obtained from the father-in-law (*tastna*); the dowry was acquired by a certain Manota, who was the son-in-law of a certain Dragota (**Манота ѯеть Драготинь**)[66].

Articles 31 and 32 of so-called „*Justinian's Law*" mention dowry using the Greek word *prikija.* Article 31: *If someone takes a wife according to the law, with or without dowry, and a husband dies and a woman remains without a child, to her property shall be added the fourth part of husband's dowry* (**Ꙗще кто женоу оуѯметь по ѯаконоу или с прикїѡм или беѯ прикїе и оумрѣть моуь, а жена wстанеть бесчедна, да сє придаст ки кь всемоу нкинѕ и wт мѕжевнє прикїе четврьти дѣль**)[67]. Article 32 orders: *If a husband agrees with his consort to inherit her after her death, as regards that a dowry remains his property, any other consent is not necessary* (**Ꙗщтє ли сьгласить мѕжь сь женою свокю да оумирающи wнои наслѣдить кю, рекшє да wстанеть прикїа оу нкга. Съгласиє непотрѣбно кст**)[68].

The Law Code of Stefan Dušan mentions dowry (*prikija*) only in article 44, speaking on *otroci* (slaves): *And such slaves as a lord has, they shall be part of his estate and to his heirs for ever. Only a slave may not be given as a marriage portion* (**И отроке що имаю властѣлє, да им́ сѕ оу бащинѕ, и ныχ дѣце оу бащинѕ вѣ́чнѕ. нъ отрокь оу прикыє да сє нє дає никъда**)[69].

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[65] Mošin / Ćirković / Sindik, *Zbornik,* p. 319.

[66] Ibid. p. 324. Above mentioned examples show us that the general principle of Byzantine law, that even the immovable things could be given as a dowry (which was not explicitly mentioned in the *Syntagma* of Matheas Blastares), was accepted in the region of Skoplje (today in North Macedonia). Cf. Solovjev, A., *Zakonodavstvo Stefana Dušana, cara Srba i Grka* (*Legislation of Stefan Dušan, Tsar of the Serbs and Greeks*), Skoplje 1928, p. 131 = Klasici jugoslovenskog prava, knjiga 16, Belgrade 1998, p. 439. To confirm that fact Solovjev quotes a fragment from King Milutin's charter to the *pyrgos* (Greek πύργος, a fortification tower) of Hilandar (Χελανδάριον, Serbian monastery on Mount Athos, so-called Holy Mountain), saying that the Serbian King has got the whole region of Skoplje as a dowry of Princess Simonis, from her father Byzantine Emperor Andronikos II Palaiologos (...i po tomь bxhь zetь blagovĥr'nomou i samodrь`avnomou carü k√rь Andronikou Paleologou, i da mi onouzi zemlü ou prikiü; *Zakonski spomenici*, p. 477, II). In my opinion it is not to be about the dowry as a private-law institute, rather to be about the diplomatic policy; in order to save their reputation, the Byzantines give to Serbian King the territories which have been already conquered by Milutin, under the cover of dowry.

[67] Edited by Marković, B., *Justinijanov zakon, srednjovekovna vizantijsko-srpska pravna kompilacija* (*Justinian's Law, Byzanto-Serbian Medieval Legal Compilation*), Belgrade 2007, pp. 60-61.

[68] Ibid. p. 61. However, the wording of the article 32 is not clear enough. It seems that a clerk confused dowry with heredidary rights.

[69] Burr, p. 207; Novaković, *Zakonik,* p. 39; *Zakonik cara Stefana Dušana,* vol. III, p. 110. The *otroci* occupied the lowest rung on the social ladder. They were the chattels of their owners, probably being conquered autochtonous people, or prisoners of war or bought persons, but they had certain personal rights. The word *otrok* is obsolete in Serbian, but survives in Slovenian, Russian and Polish as a word for a child or a boy, and in Czech as the normal word for a slave. Trying to explain a strange decree that a slave (*otrok*) may not be given as a dowry, Alexander Solovjev pointed at the old Roman and Byzantine custom, that existed in Dubrovnik and Kotor, that only a female slaves (*ancilae*) could be given as a marriage portion. According to the author's interpretation the article 44 of Dušan's Code forbids only giving as a dowry of a male *otrok,* wishing to stop the reduction of manpower on manors (Solovjev, A., *Zakonik cara Stefana Dušana 1349 i 1345* [*The Law Code of Tsar Stefan Dušan from the Years 1349 and 1354*],

Serbian legal sources very often use the expression *prikisati* (**прикисати**) or *u prikiju dati* (**ѕ прикию дати**), both meaning *to give as a dowry,* generally when they speak of the different ways of alienation of a thing (transfer of the property). Those are the following documents: so-called „*Tapiya* from Prizren"[70], Tsar Uroš's[71] charter granting Mljet Island (today in Croatia) to Bivoličić and Bučić, noblemen from Kotor[72], and the charter of Despot[73] Đurađ Branković[74] in favour of headman (*čelnik*)[75] Radič[76].

It is interesting that the article 40 of Dušan's Law Code, proclaiming the right of noblemen to dispose freely of their inheritances, does not mention giving as a dowry (*prikisati*) as a way of alienation of a thing (transfer of property): *And those charters and decrees which my majesty hath granted and shall grant, and those inheritances, are confirmed, as also those of the first Orthodox Tsars: and they may be disposed of freely, submitted to the Church, given for the soul or sold to another* (**И въси хрисоволіѣ, и простаѓме, що ѥсть комѕ оучинило царство ми, и що ке комѕ оучинити и тезіи бащине да сѕ тврьдѣ, каконо и прьвыих правовѣрныих царь; да сѕ волѧны ными и под црьковь дати, или за доушѕ wдати, или иномѕ продати комѕ любо**)[77]. However, it is hard to believe that the noblemen could not dispose with that right, because the contemporary charters mention this way of alienation[78]. Besides, article 174 says: *Workers on the land who have their own inherited property, land, vineyards or purchased estate, are free to dispose of their own lands and vineyards,*

Belgrade 1980, p. 211). Nikola Radojčić finds that the prohibition of giving an *otrok* as a marriage portion was a high level of personal rights. It was a guarantee that *otrok* will stay on the place where he was born; otherwise his social position could become even worse (Radojčić, N., „Oko Dušanova Zakonika" [„On Dušan's Law Code], *Istorijski časopis* V, Belgrade 1955, p. 11). However, as Lujo Margetić noticed, this decree could be very easy tricked: the *otrok's* master could give as a present the male *otrok* to his daughter or to his son in law. Or, he could „sell" the *otrok* with a very law price to his son in law (Margetić, L., „Bilješke o meropsima, sokalnicima i otrocima" [„Notes on Villagers, Sokalniks and Otroks"], *Zbornik radova Pravnog fakulteta u Novom Sadu* XXV, 1-3, Novi Sad 1991, p. 111).

[70] „Tapiya from Prizren" is a popular name for sale contract speaking on certain Dobroslava and her children, who sales her house in the City of Prizren (today in Kosovo), to a certain Mano, brother of Dragitza (1346-1371). *Tapiya* (Serbian Cyrillic *manuja*) is a Turkish word (*tapu*), meaning land-registry certificate, title deed. Latest edition of the document by Bubalo, Đ., *Srpski nomici* (*Serbian Nomiks*), Belgrade 2004,, pp. 250-252. Cf. Šarkić, S., „Sale Contract in Serbian Mediaeval Law (Concerning the Influence of Byzantine Law), ΑΡΕΤΗΝ ΤΗΝ ΚΑΛΛΗΣΤΗΝ, *Mélanges en l'honneur de Kalliope (Kelly) A. Bourdara,* édités par Tzamtzis, I. E.,/ Antonopoulos, P.,/ Stavrakos, Ch., Athina – Thessalonike 2021, pp. 839-851.

[71] Serbian Emperor (1355-1371), son and successor of Stefan Dušan .

[72] Ed. Mihaljčić, R., „Mljetske povelje cara Uroša" („Mljet Charters of Tsar Uroš"), *Stari srpski arhiv* (*Old Serbian Archive*) 3 (2004), pp. 71-87.

[73] Initially the Greek word δεσπότης corresponded to the Latin term *dominus* and in Later Roman Empire it became the popular name used for Roman (Byzantine) Emperors. Since 1163 it was transformed into a special title, the highest in rank, after the Emperor's one. However, in some cases the Byzantine writers even after 1163 use the term δεσπότης to designate the Emperor, foreign rulers and some ecclesiastical dignitaries. After Dušan's proclamation for the Emperor (Tsar) in 1346, the most important Byzantine court titles (including despot) were introduced in Serbia. Tsar started to give the title of despot to his relatives and the great lords. See Ferjančić, B., *Despoti u Vizantiji i južnoslovenskim zemljama* (*Despots in Byzantium and South Slavic Countries*), Belgrade 1960.

[74] Despot Đurađ Branković, lord of Serbia from 1427 till 1456.

[75] *Čelnik* (*ѳelnikъ*) was a local governer in mediaeval Serbia who had also military power. The name comes from Serbian word *čelo* (*чело*) = forehead, front.

[76] Ed. Novaković, S., *Zakonski spomenici,* 334. Radič Postupović (Радич Потуповић) was aSerbian nobleman that had a title og Great Čelnik, in 15th century the highest dignity after the Serbian monarch (Despot).

[77] Burr, p. 207; Novaković, *Zakonik,* p. 36; *Zakonik cara Stefana Dušana,* vol. III, p. 110.

[78] Cf. Solovjev, *Zakonodavstvo Stefana Dušana,* p. 132.

to give them as dowries, to give them to the Church, or to sell them… (**Людїе земланє кои имаю своюѭ бащинѫ, землю и виноградѣ, и коуплєнице да сѫ волны wт своихъ виноградь и wт землє оу прикїю wтдати, или црькви подложити, или продати…**)[79]. So, as the commoners (*sebri*) had the right to alienate their hereditary estates by giving them as a dowry, it is not probable that noblemen class did not dispose with the same right as well. As the Dušan's Law Code did not survive in its original text, non-appearance of the above mentioned provision could be due to the negligence of the copyist. Otherwise we probably have a defective transcript of the Law Code[80].

3. Dissolution of Marriage

Marriage could be dissolved by death, prolonged absence, enslavement and divorce.

a) Death – Marriage was dissolved by death. In some cases a widow was not free to remarry immediately.

b) Prolonged Absence – This could have the same effect as death on marriage. The absence of news from a spouse for a considerable period, and circumstances from which death might be presumed could end a marriage.

c) The Enslavement of a spouse terminated the marriage.

d) Divorce (*divortium, repudium, difarreatio,* λύσις, διαζύγιον, **разрѣшєнїє)** is the legal separation of man and wife, effected by the judgment or decree of a court, and either totally dissolving the marriage relation, or suspending its effects so far as conserns the cohabitation of the parties.

First Serbian legal document that treats divorce was the charter presented by King Stefan the First Crowned to his foundation, monastery of Žiča. The charter exposes a concept that divorce is impossible, saying: *And the Testimony, followed by the Church constitution and tradition, forbids a separation of man from wife, and wife from man* (**И по томоу божьствни съ ѕаконь наѫчивъше по црьковномоу ѫставѫ и прѣдани, и господско ѕапрѣщєниѥ бысть: нє раѕлоучати сє моужоу wт жєнє и женѣ wт моужа**)[81]. Marriage could be divorced only by judical process and the only ground that was mentioned was adultery (**Юниктоже да нє wставлаѥть божьствьнаго сего ѕакона, раѕвѣ словесє прелюбодѣинаго, и тои истинно да испитаєть сє сь расѫжденикмь**)[82]. Everyone who turns a deaf ear to this orders, which our charter calls „frightful command" (**сию страшноую ѕаповѣдь**), will be fined in cattle, according to his legal status[83]. Charter speaks separately on responsibility of wife and wife's parents: if a wife self-willed abandons her husband, she would be punished with a fine, if she had her own property; if she had not her own property, a husband could beat her up at pleasure and return her to the home; if he does not wish to do that, he could sell his wife to anyone (**Ащє ли w себѣ сама имѣть бѣсновати сє, wставлающи своєга мѫжа, да ащє**

[79] Burr, p. 533; Novaković, *Zakonik,* p. 136; *Zakonik cara Stefana Dušana,* vol. III, p. 150.

[80] Solovjev, *Zakonodavstvo Stefana Dušana,* p. 132. See also Šarkić, S., „Provisions of Roman Law on Dowry in Serbian Mediaeval Law", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung,* 125. Band, herausgegeben von Knütel, R. / Thür, G. / Köbler, G. / Oestmann, P. / Rückert, J. / Becker, H.-J. / De Wall, H. / Thier, A., Wien-Köln-Weimar 2008, pp. 682-687.

[81] Mošin / Ćirković / Sindik, *Zbornik,* p. 94.

[82] Ibid. p. 95.

[83] Ibid. p. 94.

има добитькь добитькомь да наказ8кт се, аще ли добытка не има, то своимь тѣломь да наказ8кт се, такоже б8детъ изволениѥ м8жа ѥе. Наказавь ю, да ю водить; аще ли не боудеть км8 8годьна водити, то наказавь ю да ю продасть камо кмоу годѥ)[84]. A husband, who would chase his wife, would be fined and forced to return her to his home. If he would not obey God's Commandment „the Divine Church will tie such a person and he will be not in loving-kindness" (**Ѥм8ж кои б8детъ п8стиль жен8, да ю вьзврати вь домь свои; аще ли сего не иметъ послушати, то такови и отъ божьствьниѥ црькве да б8детъ завезань и отъ господина еи да не б8детъ 8 милости)**[85]. Who took a second wife had to give adequately indemnity to the first wife (**И аще второ8 жен8 поиметъ, да дасть осл8х8 подобн8 прьвои)**[86]. Beside a husband who took a second wife, a person who had married him with a second wife, will be punished as well (**Ѥили кто таковомь жен8 дасть, иже не име хьтѣти своѥ вьзлещи, то и ты да 8падаѥть 8 такоже наказаниѥ, такоже и п8стивии)**[87]. Such a marriage had to be dissolved. If the parents or some other kinsmen would kidnap married woman, they would be punished according to their legal status (**Аще ли котора родители отемлет се или инѣмь коимь симь, то такови да наказоукт́ се против8 сан8 своѥм8)**[88].

Beside Žiča chrysobull provisions on divorce contains *Zakonopravilo* or *Nomokanon* of Saint Sabba, created almost in the same period. At the beginning we find the rules of canon law. *Nomokanon's* Chapter XIII, 4 has a title *On those who are divorcing from their wifes* (**Глава .д. о распоущающихь се сь женами)**[89]. *Apostolic Rule 48* exposes a provision of canon law on indissolubility of marriage: *Layman who left his wife and took another, or took for wife a divorcee – let him be excommunicated* (**Мирьски человѣкь свою женоу поустивь и дроугоую покмь или поущеницею оженивь се отьлоучень)**[90]. Rule 87 of the *Council of Trullo* (*The Quinisex Council* from the year 691-692) says: *A wife, left by her husband, who took for husband another man, adulteress is; and whoever has left his wife and has taken another, he has made adultery, according to the Words of Lord* (**Иже отъ моужа поущена бывшиі жена, за дроугы поидеть, прѣлюбодѣица ѥсть. и поустивыи женоу свою и иноую поимь, прѣлюбы творить, по господию гласоу)**[91]. However, the greatest number of provisions concerning divorce contains the translation of *Procheiron* (Chapter 55 of *Nomokanon*). Chapter XI of *Procheiron* has a title *On divorce and its grounds* (Περὶ λύσεως γάμου καὶ τῶν αἰτιῶν αὐτοῦ; **Ѡ раздрѣшеныи брака и о винахъ его**) and contains 21 provisions of Graeco-Roman law[92].

The most sytematic exposition on divorce and its grounds, contains the *Syntagma* of Matheas Blastares in the Chapter Γ -13, under the title *What are the Grounds for Divorce* (Ὁ γάμος ἐκ ποίων αἰτιῶν λύεται; **Бракь оть которыхь винь раздрѣшаѥть се**)[93]. At the very beginning of the Chapter 13, Matheas Blastares says that *Procheiron* (*Zakon gradski*) on several places speaks on

[84] Ibid. p. 95.
[85] Ibid. p. 95.
[86] Ibid. p. 95.
[87] Ibid. p. 95.
[88] Ibid. p. 95.
[89] *Zakonopravilo Svetoga Save I,* edited by Petrović, M. M.,/ Štavljanin, Lj., Belgrade 2005, p. 100.
[90] Ibid. p. 138.
[91] Ibid. p. 466.
[92] Ed. Zepos, vol. II, pp. 145-150; ed. Dučić, pp. 288-296; ed. Petrović, pp. 281 b – 287 a.
[93] Ed. Ralles / Potles, p. 175; ed. Novaković, p. 183.

divorce, but the Justinian's *Novella* entirely explained all grounds for divorce[94], asked either from husband or from wife. It was necessary, says Blastares, because in antiquity laws permited to people to divorce without any ground; a husband would simply say to his wife: „*Woman, do on your own way" and she to him „Man, do on your own way"* (Γύναι, πράττε τὰ σά· καὶ ταύτην ἐκείνῳ· Ἄνερ, πράττε τὰ σά; **Жено, дѣи своꙗ; и тои ономоу: Моужоу, дѣи своꙗ**)[95]. As such a practice was suspended to Christians, „pious Tsars" exposed exactly all grounds for divorce: everything exept quoted was considered as unlawful divorce (ἀθέμιτον διασπᾶν; **безаконѥ ѥсть сьи растрьзати**)[96].

At the beginning were cited the grounds for divorce, caused by wife's fault (Αἰ αἰτίαι τῆς γυναικός; **Вины жены**). The text starts with the following words: *A husband sands to his wife the repudium*[97] *and keeps the dowry, as it was said, from the following grounds* (Καὶ ὁ μὲν ἀνὴρ πέμπει ῥεπούδιον τῇ γυναικὶ, καὶ τὴν προῖκα ταύτης ἀποκερδαίνει, ὡς εἴρηται, διὰ τὰς αἰτίας ταύτας; **И оубо моужь посилаѥть книгоу женѣ и прикыю тоѥ придобываѥть, ꙗкоже реѵе сѥ, ѕа сихъ ради винь**):

1) If a wife comes to know that some persons threaten imperial power (τῇ βασιλείᾳ ἐπιβουλεύοντας; **на царство навѣты**), and does not inform her husband;

2) If a wife was accused for adultery (μοιχεία; **прѣлюбодѣиство**) and was lawfully proved that she really made adultery;

3) If she, in any way, brings into danger a life of her husband or comes to know that some other people do that, and does not inform him.

4) If [a wife] goes with the unkown male persons and without consent of her husband, to the feast or watering-place (συμποσιάζῃ ἤ συλλούηται; **или с ними банꙗѥть сѥ**).

5) If [a wife] stays without consent of her husband out of her house, except if she is with her parents; or, if the husband, from above mentioned grounds, throws her out of the house and she, having no parents, spent a night out of the house.

6) If [a wife] goes to watch horse-races, or to the theatre, or to the games with beasts (Ἐὰν ἱππικοῖς, ἤ θεάτροις, ἤ κυνηγεσίοις παραγένηται, ἐπὶ τῷ θεωρῆσαι ; **Ащє на конѥрисканиѥ, или на позорι, или на ловлкнїа, сырѣчь на напоущенїа ѕвѣреи прїидеть ѕрѣти**), without knoledge of her husband or inspite his prohibition.

The Scripture says that the adulteress has not to go back to her husband, meaning that he does not desire to accept her back. If the husband forgives her sin, it is not forbidden that he accepts her back, within two years, according to the Novels of Justinian and Leo the Wise[98].

After exposition of the grounds for divorce, caused by wife's fault, we find the grounds caused by husband's fault (Αἰ αἰτία τοῦ ἀνδρός; **Вины моужевиѥ**). A wife sends to her husband *repudium,* from the quoted grounds, and she can take her dowry and gift on account of marriage

[94] Justinian's *Novella* CXVII, 8 and CXVII, 9.

[95] Ed. Ralles / Potles, p. 176; ed. Novaković, p. 184.

[96] Ed. Ralles / Potles, p. 176; ed. Novaković, p. 184.

[97] In Roman law, *repudium* was a breaking off of the contract of espousals, or of a marriage intended to be solemnized. Greek text of the *Syntagma* used the word ῥεπούδιον, from Latin *repudium,* while Serbian translation used the expression kniga = lit. „a book", but also decision, command.

[98] Ed. Ralles / Potles, p. 176; ed. Novaković, p. 184. Cf. Justinian's *Novella* CXVII, 8.

(τοὺς γάμους δωρεὰν τοῦ ἀνδρος; **и иже браковь ради дарь моужевны**) that she got from her husband; beside, she has a right to administer the property, granted to her children.

The ground for divorce, caused by husband's fault, are the following:

1) If he [a husband] plots against imperial power, or knows that someone else hatchs a conspiracy, and does not inform, directly or indirectly, imperial authorities;

2) If he, in any way, brings into danger a life of his wife;

3) If he stains her honesty, encouraging her [his wife] on adultery with other men;

4) If a husband was unfaithful to his wife with another woman, and he does not want to break this relation;

5) If a husband in the same house or in the same town has a relationship with another woman and does not want to break it, inspite the warning of his wife, or her parents, or someone else.

Next title reads: *Divorces without indemnity and on dissolution of marriage because of entering a monastery* (Λύσις γάμου ἀζήμιος, καὶ περὶ τοῦ δι' ἄσκησιν λυομένου γάμου; **Раꙁдрѣшенїа брачнаа беꙁь тьштети и о иже постинуьства ради раꙁдрѣшакмоу бракоу**).

1) Marriage will be divorced, without paying indemnity, when husband can not have sexual intercourse with his wife within three years, even if he does not want to do that. A husband keeps a gift before marriage (*donatio ante nuptias*)[99].

2) Marriage will be divorced when one of the spouses wants to accept tonsure (ἄσκησις, postin∂ьstvo)[100]. This kind of divorce is possible even without consent of one of consorts „and we say that the marriage was divorced by Divine grace" (καὶ λέγομεν ἀγαθῇ χάριτι τὴν διάζευξιν γίνεσθαι; **и глаголкмь благою благодѣтїю распреженїю бывати**); „remaining person" (τὸ περιλειφθὲν πρόσωπον; **оставшек лице**) can enter freely into second marriage relationship[101].

3) Marriage will be divorced when either man or woman are in captivity and it is not clear, within five years, whether they were alive[102].

The following text exposes what kind of punishments will deserve those who had the impertinence to dissolve the marriage from any ground which was not quoted. Such persons will be imprisoned in the monastery and their property will be distributed to their descendants; as long as they are in monastery, they can dispose only with a small part of their property. However, the legislator did not say what quantity of property the offenders had on their disposal and whether this property was sufficient for their sustenance in monastery. If they do not have any descendant or elder relative, their property will belong to the monastery in which they were imprisoned. Those persons who composed such illegal contracts (ἀθέμιτα συμβόλαια; **беꙁаконїнаа ꙁаписанїа**) shall be punished with corporeal punishment (it was not mentioned what kind of corporeal penalty shall be apply) and shall be exile (εἰς σῶμα ποιναῖς ὑποβάλλεσθαι, καὶ εἰς ἐξορίαν πέμπεσθαι; **тѣлеснои каꙁни прѣдати се и вь ꙁаточенїѥ отсилати се**)[103]. If the divorced persons expressed a wish to live

[99] This provision was taken from *Basilika* XXVIII, 7, 4.

[100] From Latin *tonsura*, a shaving, of *tondere* = to shave. The act of clipping the hair or of shaving the crown of the head. In the Roman Catholic and Orthodox Eastern churches, the first ceremony used for devoting a person to the service of God and the Church.

[101] Cf. Justinian's *Novella* CXXIII, 40.

[102] Ed. Ralles / Potles, pp. 177-178; ed. Novaković, p. 187.

[103] Ed. Ralles / Potles, p. 178; ed. Novaković, p. 187. Greek text mentioned a penalty of ἐξορία = exile, while Serbian text speaks on *zatočenije* = captivity. „Exile" as a punishment seems to me more probable, because Byzantine law does not know for long-lasting deprivation of freedom.

together again, before they enter a monastery, they will be free to do that, punishment will be pardoned and they could enjoy their property. If one of consorts wishes to restore a marriage union, and the second does not want that, the punishment shall remain. At the end of the text we read: *We order to be like this, according to the decision of God-loving bishops* (ταῦτα δὲ κελεύομεν γίνεσθαι καὶ κατὰ πρόνοιαν τῶν θεοφιλεστάτων ἐπισκόπων; **сїа же повелѣваємь бывати и промыслоу боголюбивыихъ епископь**)[104].

Divorce by mutual consent was allowed if both consorts wish to enter a monastery. However, if one of spouses enter into a marriage or fornicates, the whole his property will belong to the children. If there were no children, the property will receive imperial treasury (τὸ δημόσιον αὐτὴν διαδὲξεται; **цасрина сїе прѣиметь**)[105].

However, it is not possible to say whether such a detailed rules, concerning the grounds for divorce, were applied in mediaeval Serbia, because we do not dispose with relevant legal sources[106].

4. Extended Family so-called *Zadruga* (*Задруга*)

Besides the immediate family, called *inokosna* or *inokoština* („individual family"), consisting of a father, mother and their children, in Serbian mediaeval law existed also the extended family, called *zadruga*[107]. A *zadruga* refers to a type of rural community similar to Roman *consortium* which is historically common among Southern Slavs. Originally formed by one extended family or a clan of related families, the *zadruga* held its property, herds and money in common with usually the oldest member *(patriarch*, Serbian *starešina, старешина*, *pater familias* of Roman *consortium*) ruling and making decisions for the family, thouhg at times would delegate this rights at an old age to one of his sons[108]. Within the *zadruga*, all of the family members worked to ensure that the needs of every other member were met[109].

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[104] Ed. Ralles / Potles, p. 179; ed. Novaković, p. 187. The provision was taken from *Basilika* XXVIII, 7, 6.

[105] Ed. Ralles / Potles, p. 179; ed. Novaković, p. 187. The provision was taken from *Procheiron* XI, 4 (ed. Zepos. vol. II, p. 146), i. e. Justinian's *Novella* CXXIII, 40.

[106] See Šarkić, S., „Die Gründe für die Ehescheidung im serbischen mittelalterlichen Recht" („Grounds for Divorce in Serbian Mediaeval Law"), *Rechtstransfer in der Geschichte, Internationale Festschrift für Wilhelm Brauneder zum 75. Geburtstag,* herausgegeben von Gábor Hamza / Milan Hlavačka/ Kazuhiro Takii, Peter Lang GmbH, Berlin 2019, pp. 349-358.

[107] *Zadruga* is similar to Roman *consortium.*

[108] Vuk Stefanović Karadžić (1787-1864), philologist and linguist, major reformer of the Serbian language in his *Serbian Dictionary, Paraleled with German and Latin Words* (*Српски рјечник истумачен њемачкијем и латинскијем ријечима*), Vienna 1852 (reprint Belgrade 1972), explaned *zadruga* as *Hausgenossenshaft, plures familiae in eadem domo* (p. 173). On *zadruga* see also Peisker, J., „Die serbische Zadruga", *Zeitschrift für Sozial-und Wirtschaftsgeschichte* 7 (1900), pp. 211-326 and Nedeljković, B., „Postanak zadruge" („Genesis of Zadruga"), *Pravna misao u čast Živojina Perića,* god. 3, br. 11-12 (1937), pp. 595-604 = *Selected Works of Branislav Nedeljković,* Podgorica 2005, pp. 453-462.

[109] Serbian lawyer Jovan Hadžić (1799-1869), the author of the *Serbian Civil Code* (*Српски грађански законик*) of 1844, defined extended family (*zadruga*) as follows. Article 507: *Zadruga exists wherever a community of life and property is established and determined by ties of blood relationship or adoption* (*Задруга је онде, где је смеса заједничког живота и имања свезом сродства или усвојењем по природи основана и утврђена*); article 508: *All real estate and property found within a zadruga is not owned by one person but by all; and anything one person living in a zadruga acquires, is not acquired for his own self but for all* (*Што је год имања и добара у*

Serbian 13th and 14th century charters mention *zadruga*, but without using that term[110]. The expression designating extending family was *kuća* (*кућа*) = house. Among Serbian charters, Dečani chrysobull is especially rich with information on villager's *zadrugas:* on monastery's manor existed more than 2000 commoner's houses. According to the researches of Stojan Novaković, who analysed data given by Dečani charter, the greatest number of houses had between 7 and 11 men, and only a few had between 13 and 16 males. The largest *zadruga* was of certain family Lačković from the village of Seroš (**Сѣрошь**), consisting of 19 males[111]. Here is the list of family males, presented by Dečani chrysobull: *Tolislav, and his sons Radoslav and Bogoje, and Radoslav's sons Otmič and Vladislav and Krušac, and Bogoje's son Božić, and Tolislav's male cousins: Grade and Priboje and Vojsil, and Grade's sons Vitomir and Bogoslav; Priboj had a son Baldovin, and Tolislav's* [another] *male cousins: Dobroslav and Smilj and Miloš and Stepan; Dobroslav had a son Očinja and Hranislav Desimirović, and their grandfather was Lačko* (**Толиславь а синь моу Радославь и Богоѥ а Радославоу синь Ѡмиуь и Владиславь и Кроушићь а Богою синь Божикь. а Толиславоу братань Градѣ и Прибоѥ и Воисиль а Градѣтеви синь Витомирь и Богославь. оу Прибоꙗ синь Балдовинь. а Толиславоу братань Доброслав и Смиль и Милошь и Стѣпань оу Доброслава синь Ѡчиниꙗ и Хранославь Десимирикь а дѣдь им Лаўко**)[112]. So, the structure of this *zadruga* was: head of the family was Tolislav, and he was the most senior person. Second generation represents Tolislav's sons Radoslav and Bogoje and Tolislav's male cousins Grade, Priboje and Vojsil, who were sons of one of Tolislav's deceased brother and also Dobroslav, Smilj, Miloš and Stepan, who were sons of second Tolislav's defunct brother. Third generation of the same *zadruga* consists of Tolislav's grandsons: Otmič, Vladislav and Krušac (sons of Radoslav) and Božić, son of Bogoje; also grandsons of one deceased Tolislav's brother, Vitomir and Bogoslav (sons of Grade) and Baldovin, son of Priboj; finally Očinja, son of Dobroslav and grandson of second defunct Tolislav's brother. Hranislav Desimirović, who was mentioned at the end of the list, obviously was not born as Lačković and he entered into *zadruga* by marriage. Grandfather Lačko was common ancestor of the family. In the momment when the list was done, Lačko was not alive. Other-wise his name would be quoted at the beginning of the record[113].

задрузи, није једнога но свију, и што год који у задрузи прибави, није себи но свима је прибавио). The fact that 19th century *Civil Code* regulates *zadruga* means that such kind of extended family still existed in Serbia and Hadžić dedicated to it Chapter XV (articles 507-529), entitled *On the Law of Succession and Relations in Zadruga* (*О наследним правима и односима у задрузи*). We have to remark that *Austrian Civil Code* (*Österreichs Allgemeines Bürgerliches Gesetzbuch*) of 1811, which was the role model for *Serbian Civil Code*, does not contain a chapter concerning *zadruga.* See Avramović, S., „The Serbian Civil Code of 1844: A Battleground of Legal Tradition", *Konflikt und Koexistenz. Die Rechtsordnungen Südosteuropas im 19. und 20. Jahrhundert, Band II, Serbien, Bosnien-Herzegowina, Albanien,* Herausgegeben von Thomas Simon unter Mitarbeit von Gerd Bender und Jani Kirov, Frankfurt am Main 2017, pp. 379-482.

[110] Recent works have pointed that the word *zadruga* itself originated only in 1818.

[111] Novaković, S., *Selo* (*Village*), with supplement of Ćirković, S., Belgrade 1965, pp. 159-161.

[112] Edition Ivić, P. / Grković, M., pp. 119-120.

[113] Cf. Taranovski, *Istorija srpskog prava u nemanjićkoj državi* (*History of Serbian Law in Nemanjid's State*), vol. II, Belgrade 1931-1935, pp. 52-53 = *Klasici jugoslovenskog prava, knjiga 12*, Belgrade 1996, pp. 583-584).

Similar data could be found in Saint Stephen's charter, King Milutin's charter presented to the monastery of Hilandar, and Saint Archangels' chrysobull[114]. However, all those families were not so large like the Lačković's *zadruga*[115].

It was obvious that Serbian rulers tried to break extended families, because the taxes were payed per house and the intention was to increase the number of taxpayers. It is clear from the text of King Vladislav's charter issued to the church of Holy Virgin Bistrička (1234-1243), where we read: *A son, after his marriage, has to live with his father for three years; after three year he has to start a personal service to the church. If he is only son, monastery superior (hegoumenos) has to give him assistent who will support him* (**и сынь сь wтьцемь да сѣди wженив се три годища. Конь трєхь годищь да постоупа оу wсобноу работоу црькви. Ѩко ли к кдинакь, да моу игоумень даа стищника кога разоумѣ**)[116]. However, one century later we can see that *zadrugas* were still present in villagers' life (Dečani charter from 1330).

It seems that in 14th century *zadrugas* went into decline, and the individual families were *de facto* separated. However, they pretended to live together with a purpose to avoid exessive tributes and customary labour services.

For that reason the article 70 of Dušan's Law Code says: *If there dwell in one house either brothers or father or sons, or any other, independent by bread or property but yet dwelling in one hearth, let him do service like other small people*[117](**И кто се wбрѣте оу єдинои коукѣ, или братеи́ции, или wтьць wт сыновь, или инь кто wдєльнь хлѣбомь и иманїємь; и ако боудѣ на єдиномь wгнищїи, а тєм́зїи wдѣлкнь, да работа ѥако инїи малїи людїє**)[118].

5. Conclusion

In mediaeval Serbia existed two types of provisions regarding the family law: rules taken from Byzantine law which could be found in Byzantine legal collections, translated from Greek and accepted in Serbia, and rules of customary law that survived from pagan epoch. The intention of the legislator was to conform the existing lay marriage tradition to the basic concepts of church marriage introducing the idea of a lifelong indissoluble marriage according to the New Testament. For this reason, fines were prescribed as well as the treath of excommunication for the person who would persist in his decision to divorce or leave his or her spouse.

In the matter of matrimonial property legal sources mention gift before marriage (only in Byzantine miscellanies, exposing rules of Roman law) and dowry.

[114] Crysobull (Greek χρυσόβουλλον, generic name for several types of documents bearing the Emperor's gold bulla) issued 1348 by Tsar Stefan Dušan to his foundation monastery of Saint Archangels Michael and Gabriel, near the City of Prizren (today in Kosovo).

[115] The examples were minutely analysed by Novaković, S., *Selo*, pp. 159-162.

[116] Mošin / Ćirković / Sindik, *Zbornik,* p. 167.

[117] The expression *small people* means commoners or villagers.

[118] Burr, p. 211; Novaković, *Zakonik,* p. 57; *Zakonik cara Stefana Dušana,* vol. III, p. 118.

Besides the immediate family (individual family), consisting of father, mather and their children, in mediaeval Serbian law existed extended family, called *zadruga,* that refers to a type of rural community, similar to Roman *consortium* common among Southern Slavs. It seems that in 14th century *zadrugas* went into decline, and the individual families were *de facto* separated.

The question of application of all those provisions (especially provisions of Graeco-Roman or Byzantine law) is very dificcult: the problem lies in the lack of additional, relevant legal sources (verdicts), which could serve as evidence of the application of family law provisions.

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