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ABOUT THE RECEPTION OF ISAURIAN *EKLOGE*  
IN BYZANTINE ITALY: AN EFFORT OF COMPARISON  
WITH SLAVIAN WORLD AND MAINLY STEFAN DUŠAN'S  
SERBIAN EMPIRE\*

Aim of the contribute is to offer a new key to analyse the matter concerning the influence of Byzantine law sources on the development of the legal system in Southern Italy. In addition to a historical and juridical survey about the reception process of the Isaurian *Ekloge* in the territories controlled by the Byzantines, a comparison is tried considering the diffusion of the compilation also in the Slavian world and especially in the Balkan regions: to study the reasons, which persuaded Stefan Dušan to use the text to compose his *Zakonik*, could be very useful to understand the characters — totally different because of political grounds — of the preservation of the Isaurian *Ekloge* in the manuscripts coming from Southern Italy.

*Key words:* Byzantine Law, Isaurian Ekloge, Southern Italy, Dushan's *Zakonik*, Mutual Comparison.

Taken all the precautions necessary to neutralize the risks hidden behind every harsh chronological division,<sup>1</sup> we could probably state that the history of the Byzantine law in the Italian regions under the control of the eastern Roman empire<sup>2</sup>

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<sup>1</sup> See *B. H. Stolte*, Is Byzantine Law Roman Law?, *Acta Byzantina Fennica* 2 (2003/2004, but 2005) 111–126 and before *D. Simon*, Die Epochen der byzantinischen Rechtsgeschichte, *Ius Commune* 15 (1988) 73–106.

<sup>2</sup> The matter was widely deepened by the Italian doctrine. After *R. Perla*, Del diritto romano giustiniano nelle province meridionali d'Italia prima delle Assise normanne, *Archivio Storico per le Province Napoletane* 10 (1885) 130–185, mainly 131–132, appeared *F. Brandileone*, Il diritto

— of course, in a changeable manner across the centuries<sup>3</sup> — started with the promulgation of the famous *Pragmatica sanctio*<sup>4</sup>, which was issued on the 13<sup>th</sup> August 554 at the end of the terrible war against the Goths<sup>5</sup>.

greco-romano nell'Italia meridionale dall' VIII al XII secolo, Archivio Giuridico 36 (1886) 238–291 (= Napoli 1987) (*C. Calisse*, Il governo dei Bizantini in Italia, Rivista Storica Italiana 1, 1885, 265–335, during the same year; see also Il diritto romano nelle leggi normanne e sveve del regno di Sicilia, Torino 1884), continued by Il diritto bizantino e la storia del diritto italiano, con riguardo speciale ad un contraddittore, Rivista di storia del diritto italiano 1 (1928) 337–345 (against, *G. Salvio*, Storia del diritto italiano, 8th edition totally revised on the 6th, Torino 1921, 74 sq.; see also Manuale di storia del diritto italiano dalle invasioni germaniche ai nostri giorni, Roma 1890) and L'Italia bizantina e la sua importanza nella storia del diritto italiano, Studi in onore di Pietro Bonfante nel quarantesimo anno d'insegnamento, Milano 1930, II 215–233 (both in Scritti di storia giuridica dell'Italia meridionale, ed. *C. G. Mor*, Bari 1970); moreover we remember, besides *V. La Mantia*, Cenni storici su le fonti del diritto greco-romano e le assise e leggi dei re di Sicilia, Palermo 1887, *L. Siciliano-Villanueva*, Sul diritto greco-romano in Sicilia, Rivista di storia e filosofia del diritto 2 (1901) 286–389, with Diritto bizantino, Enciclopedia Giuridica Italiana V, Milano 1912, 39–95 and *G. Ferrari dalle Spade*, La legislazione dell'Impero d'Oriente in Italia, Scritti giuridici, Milano 1956, III 51–77 (original in Atti del Regio Istituto Veneto di Scienze, Lettere e Arti, 96, 1936/37, 171–202; see also Infiltrazioni occidentali nel diritto greco-italico della Monarchia normanna, Rivista di storia del diritto italiano 12, 1939, 5–37 and Diritto bizantino, Enciclopedia Italiana, Roma 1930, 141–148 and Nuovo Digesto Italiano, Torino 1938, 915–920, both in Scritti giuridici, Milano 1954, II 467–492 and 493–505). We cannot forget the strong polemic between *Ciccaglione* (Le istituzioni pubbliche e sociali dei ducati napoletani, Napoli 1892) and *Schupfer* (Il diritto dei popoli barbari con speciale riguardo all'Italia, Città di Castello 1907–1909, in four volumes), exactly about the preservation of Byzantine law in Southern Italy: *F. Ciccaglione*, Il carattere del diritto longobardo e la pretesa sua penetrazione nell'Italia bizantina: poche parole ad un ostinato complicatore, Archivio Storico per la Sicilia Orientale 14 (1917) 270–277 and *F. Schupfer*, Liquidazione definitiva di ubbie che vorrebbero essere storia (Poche pagine ad un semplicista irriducibile), Rivista italiana per le scienze giuridiche 59–60 (1917) 97–122, with Le leggi locali napoletane e siciliane del basso medioevo e le pretese tracce di diritto germanico, Archivio Storico per la Sicilia Orientale 14 (1917) 1–54; see moreover, in addition to L'Italia bizantina negli studi di storia del diritto italiano, Foro Napoletano. Rivista del circolo giuridico 2 (1898) 5–8, Diritto giustiniano e diritto bizantino nell'Italia meridionale durante il Medio Evo, Atti del Congresso Internazionale di Diritto Romano, Pavia 1934, I 17–32, where also *R. Trifone*, Il diritto giustiniano nel mezzogiorno d'Italia, 1–15, with Il diritto romano comune e i diritti particolari nell'Italia meridionale, Ius Romanum Medii Aevii IV.2, Milano 1962. Other important contributors, quoting *A. Albertoni*, Per una esposizione del diritto bizantino con riguardo all'Italia, Imola 1927, are *P. S. Leicht*, Varietà di leggi e di consuetudini nelle provincie italiane legate all'Impero bizantino, Rivista di storia del diritto italiano 24 (1951) 127–146 and Il processo italo-bizantino nell'Italia meridionale, Atti del Congresso Internazionale di diritto romano e storia del diritto, ed. *G. Moschetti*, Milano 1953, IV 329–341, *C. G. Mor*, Considerazioni minime sulle istituzioni giuridiche dell'Italia meridionale bizantina e longobarda, Atti del III Congresso Internazionale di studi sull'Alto Medioevo, Spoleto 1959, 139–152 and *A. D'Emilia*, Il diritto bizantino nell'Italia meridionale, Atti del convegno internazionale sul tema L'oriente cristiano nella storia della civiltà (Roma 31 marzo — 3 aprile 1964 e Firenze 4 aprile 1964), Roma 1964, 343–378.

<sup>3</sup> See *F. Bulgarella*, Bisanzio in Sicilia e nell'Italia meridionale: i riflessi politici, Storia d'Italia. III. Il Mezzogiorno dai Bizantini a Federico II, Torino 1983, 127–248 and *V. von Falkehausen*, I bizantini in Italia, I bizantini in Italia, Milano 1982, 3–136, in addition to *T. S. Brown*, Gentlemen and officers. Imperial administration and aristocratic power in Byzantine Italy. A.D. 554–800, Roma 1984; see moreover *A. Guillou*, Studies on Byzantine Italy, London 1970 and Culture et société en Italie byzantine (VIe–XIe siècles), London 1978.

<sup>4</sup> Corpus Iuris Civilis. III. Novellae, ed. *R. Schoell* — *W. Kroll*, Berlin 1899, as Appendix Constitutionum Dispensarum, VII, 799–802.

<sup>5</sup> See *V. Bierbrauer*, Zur ostgotischen Geschichte in Italien, Studi medievali 14 (1973) 1–37, but also Teoderico il Grande e i Goti d'Italia, Atti del XII Congresso internazionale di studi sull'Alto Medioevo, Spoleto 1993, in two volumes; see moreover *Z. V. Udal'cova*, Italija i Vizantija v VI veke,

Italy, on emperor Justinian's will and on pope Vigilius' request,<sup>6</sup> was finally subjected to the *Corpus Iuris*, according to an ideological view in which the law played a fundamental role:<sup>7</sup> indeed, despite the legal significance of the constitution is yet not totally clear,<sup>8</sup> we have to admit that it appears as one of the most direct and resounding instrument to blind the western Mediterranean world to the new order rising in Constantinople.<sup>9</sup>

So, if it is true that the military successes of the armies led by the generals Balisarius and Narses did not survive for a long time, it is also difficult to challenge that the irradiation<sup>10</sup> sprung by the recovery of the Byzantine culture and hence of the legal system belonging to that world,<sup>11</sup> started right then to run over the Italian peninsula, far away from the capital of the empire and forgetful of the ancient glory, with the aim to bring it back into the stream of the eastern romanity.<sup>12</sup>

Along this historical trajectory, the period of the Isaurian dynasty, marked by episodes of extreme danger for the survival of the imperial structure and even of the Byzantine state, can not pass unnoticed. Like the consequences produced by the attempt to impose the results of the fight against the holy images in the Italian territories,<sup>13</sup> also Leo III's (717–741) and Constantine V's (741–775, associated

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Moskva 1959, in addition to *S. Weber*, *Zwischen Antike und Mittelalter: Italien in der ersten Hälfte des sechsten Jahrhunderts*, Leipzig 1990 (Univ. Diss.).

<sup>6</sup> See *C. Sotinel*, *Autorité pontificale et pouvoir imperial sous le règne de Justinien: le pape Vigile*, *Mélanges de l'École française de Rome. Antiquité* 104 (1992) 439–463.

<sup>7</sup> See *R. Dannebring*, *Arma et leges: über die justinianische Gesetzgebung im Rahmen ihrer eigener Zeit*, *Acta Classica* 15 (1972) 113–137.

<sup>8</sup> See *G. G. Archi*, *Pragmatica sanctio pro petitione Vigilii*, *Festschrift für Franz Wieacker zum 70. Geburtstag*, ed. *O. Behrends*, Göttingen 1978, 11–36 (= *Scritti*, Milano 1981, III 1971–2010) and *G. Hartel*, *Zur Problematik der pragmatischen Sanktionen, spez. zur Sanctio pragmatica pro petitione Vigilii*, *Iura* 27 (1976) 33–49, but mainly *R. Bonini*, *Caduta e riconquista dell'impero romano d'Occidente nelle fonti legislative giustinianee*, *Felix Ravenna* 111–112 (1976) 293–318 and *L'ultima legislazione pubblicistica di Giustiniano (543–565)*, *Il mondo del diritto nell'epoca giustiniana. Caratteri e problematiche*, ed. *G. G. Archi*, Ravenna 1985, 139–171; see moreover *P. Pescani*, *Pragmatica sanctio pro petitione Vigilii*, *Novissimo Digesto Italiano XIII*, Torino 1966, 552–554 and *G. Wesener*, *Pragmatica Sanctio*, *Pauly-Wissowa Real-Encyclopädie. Supplementband XIV*, München 1974, 460–466.

<sup>9</sup> See for bibliographical references *G. Tate*, *Justinien: l'épopée de l'Empire d'Orient (527–565)*, Paris 2004, but also *O. Mazal*, *Justinian I. und seine Zeit. Geschichte und Kultur des byzantinischen Reiches im 6. Jahrhundert*, Köln 2001.

<sup>10</sup> See *C. Mango*, *La culture grecque et l'Occident au VIIIe siècle, I problemi dell'Occidente nel sec. VIII*, Spoleto 1973, 683–721, but also *A. Pertusi*, *Bisanzio e l'irradiazione della sua civiltà in Occidente nell'Alto Medioevo. Centri e vie d'irradiazione della civiltà nell'Alto Medioevo*, Spoleto 1964, 74–133.

<sup>11</sup> See in particular *L. Burgmann*, *Das byzantinischen Recht und seine Einwirkung auf die Rechtsvorstellung der Nachbarvölker, 277–295*, *Byzanz und seine Nachbarn*, ed. *A. Holweg*, München 1996, 277–295.

<sup>12</sup> See *R. Bonini*, *Giustiniano e il problema italico, Bisanzio, Roma e l'Italia nell'Alto Medioevo*, *CISAM XXXIV*, Spoleto 1988, I 73–92; see in general *Romanità orientale e Italia meridionale dall'antichità al medioevo: paralleli storici e culturali. Atti del II convegno di studi italo-romeno*, Bari 2000.

<sup>13</sup> See *A. Carile*, *L'iconoclasmo tra Bisanzio e l'Italia, Culto delle immagini e crisi iconoclasta. Atti del Convegno di studi*, Catania 1986, 13–54, but also *A. Carile*, *Roma e Romània dagli Isaurici ai Comneni, Bisanzio, Roma e l'Italia nell'Alto Medioevo*, Spoleto 1988, II 531–582.

by the year 720 on the throne with the father) legal policy produced important repercussions:<sup>14</sup> target of the contribute is to analyse the phenomenon of the reception of the *Ekloge*<sup>15</sup> in the regions administered by the Byzantines or more simply included in their influence, trying to arrange the problem and offer some new reflections;<sup>16</sup> moreover, for this reason we will compare our experience with another one, lived by the legal text among the Slavian countries in the Balkans.

It is known that the *Ekloge* was issued, most likely, in march 741.<sup>17</sup> The collection devoted a large part of its eighteen books to private law — mainly to the institute of the marriage,<sup>18</sup> which was a strong instrument of social control — and the rest to criminal law, with the prevision of a long list of punishments;<sup>19</sup> its aim, as it is possible to read in the proem,<sup>20</sup> was the restoration of the old and good *dikaïodosia*, simplifying the previous system.<sup>21</sup>

<sup>14</sup> Irreplaceable is the account of Theophanes the Confessor's *Chronographia*: Theophanis Chronographia, ed. C. de Boor, Leipzig 1883–1885, I 408–413 and Theophanis Chronographia, ed. J. Classen, Bonn 1839, I 621–630; see however G. Ostrogorsky, Die Chronologie des Theophanes im 7. und 8. Jahrhundert, Byzantinische-Neugriechische Jahrbücher 7 (1930) 1–56; see moreover The Chronicle of Theophanes Confessor: Byzantine and New Eastern History AD 284–813, edd. C. Mango — R. Scott, Oxford 1977 and I. Rochow, Byzanz im 8. Jahrhundert in der Sicht des Theophanes. Quellenkritisch-historischer Kommentar zu den Jahren 715–813, Berlin 1991.

<sup>15</sup> See Ecloga: das Gesetzbuch Leons III. und Konstantinos V., ed. L. Burgmann, Frankfurt am Main 1983. Useful also C. A. Spulber, L'Eclogue des Isauriens, Cernautzi 1929, N. P. Blagoev, Ekloga, Sofija 1932 and E. E. Lipšic, Ekloga: vizantijskij zakonodatelnyj svod 8. veka, Mosca 1965; see finally A Manual of Roman Law. The Ecloga, published by the Emperors Leo III and Constantine V of Isauria, ed. E. H. Freshfield, Cambridge 1927 (together with Roman Law in the Later Roman Empire. The Isaurian Period, Eighth Century, the Ecloga, Cambridge 1932).

<sup>16</sup> Francesco Brandileone used to indicate three points to characterize the legal system of Southern Italy under the Byzantine domination: the presence of Justinianic law and the absence of Roman law coming from the *Theodosian Code* as among the barbarian people, the vitality of the juridical schools and the force of the principle of the territoriality of the norms: see L'Italia bizantina e la sua importanza nella storia del diritto italiano, *passim*.

<sup>17</sup> See D. Ginis, Das Promulgationsjahr der Isaurischen Ecloga, Byzantinische Zeitschrift 24 (1923) 345–58 and V. Grumel, La date de la promulgation de l'“Eclogue” de Léon III, Échos d'Orient 34 (1935) 327–31, but also La date de la promulgation de l'Eklogue des Isauriens: l'année et le jour, Revue des études byzantines 21 (1963) 272–274; see at least mainly Ecloga, ed. L. Burgmann, 10–12.

<sup>18</sup> See D. Simon, Zur Ehegesetzgebung der Isaurier, Fontes Minores I, Frankfurt am Main 1976, 16–43.

<sup>19</sup> See B. Sinogowitz, Studien zum Strafrecht der Ekloge, Athens, 1956 and Sp. Troianos, Bemerkungen zur Strafrecht der Ecloga, Ἀφιέρωμα στὸν Ν. Σβορώνο, edd. V. Kremmydas — Ch. Maltezou — N. M. Pahagiotakis, Rethymno 1986, I 97–112, but also again Sp. Troianos, Die Strafen im byzantinischen Recht. Eine Übersicht, Jahrbuch der österreichischen Byzantinistik 42 (1992) 55–74.

<sup>20</sup> See Ecloga, ed. L. Burgmann, 162, 32–51. About the ideology in the introductory sections of the legal texts see H. Hunger, Prooimion. Elemente der byzantinischen Kaiseridee in den Arengen der Urkunden, Wien 1964.

<sup>21</sup> See G. Ostrogorsky, Über die vermeintliche Reformtätigkeit des Isaurier, Byzantinische Zeitschrift 30 (1929–1930) 394–400 (= Festgabe A. Haisenberg zum 60. Geburtstage gewidmet, ed. F. Dölger, Berlin-Leipzig 1929–1930), but also D. Savramis, Die Kirchenpolitik Kaiser Leons III., Südostforschungen 20 (1961), 1–22. About the “humanitarian” target of the Isaurian reform — καὶ ἐπιδιόρθωσις εἰς τὸ φιλανθρωπότερον, we read on the title — see T. E. Gregory, The Ekloga of Leo III and the Concept of Philantrophia, Βυζαντινά 7 (1975) 269–287.

In the same period, the Byzantine empire was crossed by the iconoclastic fury.<sup>22</sup> Leo III, the champion of the resistance to the Arabic offensive,<sup>23</sup> who had showed his intentions already in 726 ordering the destruction of Christ's image at the Chalké, when managed to obtain in the *silention* on the 17<sup>th</sup> January 730 the edict to banish the icons,<sup>24</sup> lost any hesitation in venting the vehemence of the reform; Constantine V, as soon received the heritage of the religious renovation, involved himself without a rest, arriving to preside at the Council of Hiereia (754),<sup>25</sup> where the principles professed by the dynasty were definitely canonized.

Normally, the affairs of the Costantinopolitan church represented in the Italian peninsula a reason of serious troubles, because of the presence of the papacy, which used every favourable occasion to reach a strengthening of its independence.<sup>26</sup> Besides the schism "of the Three Chapters" under Justinian I, we must evoke the Eraclius' *Ekthesis* (638)<sup>27</sup> and above all the Constance II's *Typos* (648):<sup>28</sup> Olympius, the exarch sent to crush the revolt, rebelled, while the pope Martinus I, who was to die in exile in Cherson on the Black Sea due to his

<sup>22</sup> See Der byzantinische Bilderstreit, ed. H.-J. Geischer, Gütersloh 1968 and Iconoclasm. Papers given at the Ninth Spring Symposium of Byzantine Studies. University of Birmingham, March 1975, edd. A. Bryer — J. Herrin, Birmingham 1977, in addition to Culto delle immagini e crisi iconoclasta. Atti del Convegno di studi, Palermo 1986. See moreover S. Gero, Byzantine Iconoclasm during the Reign of Leo III, Louvain 1973 and Byzantine Iconoclasm during the Reign of Constantine V, Louvain 1977; fundamental finally Byzantium in the Iconoclast Era (ca. 680–850): the Sources, edd. L. Brubaker — J. Haldon, Aldershot 2001.

<sup>23</sup> After a year from his elevation to the throne (25th march 717), he managed to remove the Arabic siege to the capital, pushing away the danger of the pillage (15th august 718); in the year 740 the armies of the son was to have another big victory at Akroinos, near Amorios.

<sup>24</sup> See W. Bernard, Emperor Cult and the Origins of the Iconoclastic Controversy, Byzantion 43 (1973) 13–29 and mainly P. Brown, A Dark Age Crisis: Aspects of the Iconoclastic Controversy, English Historical Review 88 (1973) 1–34, in addition to G. B. Ladner, Origin and Significance of the Byzantine Iconoclastic, Mediaeval Studies 2 (1940) 127–149; in the second letter Leo III says to Gregory II to be βασιλεὺς καὶ ἱερεὺς (Regesta Pontificorum Romanorum ab condita ecclesia ad annum post Christum natum MCXC VIII, ed. P. Jaffé, Berlin 1851, n. 2182; see at least L. Bréhier, Ἱερεὺς καὶ βασιλεὺς, Mémorial Louis Petit, Bucharest 1948, I 41–45).

<sup>25</sup> See Die ikonoklastische Synode von Hiereia 754, edd. T. Krannich — A. von Stockhausen, Tübingen 2002, but also M. V. Anastos, The Argument for Iconoclasm as presented by the Iconoclastic Council of 754, Late Classical and Medieval Studies in Honour of A. M. Friend, Princeton 1954, 177–188 and The Ethical Theory of Images Formulated by the Iconoclastic in 754 and 815, Dumbarton Oaks Papers 8 (1954) 151–160.

<sup>26</sup> See O. Bertolini, Riflessi politici delle controversie religiose con Bisanzio nelle vicende del secolo VII in Italia. Caratteri del secolo VII in Occidente, Spoleto 1958, 733–784 (= Scritti scelti di storia medievale, Livorno 1968, I 263–308).

<sup>27</sup> Dölger, Regesten, n. 225. See E. Dovere, L'Enotico di Zenone Isaurico. Preteso intervento normativo tra politica religiosa e pacificazione sociale, Studia et Documenta Historiae et Iuris 54 (1988) 170–90. In the meantime the usurper Basiliskos issued, during the year 475, the *Enkyklion*, quite immediatly revoked, against the *Tomus ad Flavianum* and all the decisions of the Council of Chalkedonia; see again E. Dovere, L'Ἐγκύκλιον Βασιλίσκου: un caso di normativa imperiale in Oriente su temi di dogmatica teologica, Studia et Documenta Historiae et Iuris 51 (1985) 153–88.

<sup>28</sup> Dölger, Regesten, n. 225. See F. Winkelmann, Die Quellen zur Erforschung des monoenergetisch-monotelistischen Streits, Klio 69 (1987) 515–569.

adversion to the *basileus*,<sup>29</sup> called a council to assume a firm position about the matter of the monoenergismus-monothelismus.<sup>30</sup>

Also the iconoclastic policy — that one, which belonged to the first fase of the fight, until the second Council of Nicaea promoted by the empress Irene (787)<sup>31</sup> — did not remain without effects, but its results were more lasting and dramatic, because the attempt to impose the distruction of the images and hence to concentrate the general worship on the imperial figure became part of the process of replacement on the Italian soil between the Frankish and the Longobard power.<sup>32</sup>

We are writing about events, which are quite feverish.<sup>33</sup> To weary the Gregory II's (715–731)<sup>34</sup> resistance, Leo III ordered that the receipts of the tax collection on the Italian *themata*,<sup>35</sup> chiefly the Sicilian one,<sup>36</sup> which belonged to the *patrimonium*

<sup>29</sup> See *A. M. Piazzoni*, Arresto, condanna, esilio e morte di Martino I, Martino I papa (649–653) e il suo tempo. Atti del XXVIII Convegno Storico Internazionale, Spoleto 1992, 187–210.

<sup>30</sup> Read it in *Mansi*, X 863–1188; see *E. Caspar*, Die Lateransynode von 649, Zeitschrift für Kirchengeschichte 51 (1932) 75–137. The relationships between the Byzantine empire and the Roman papacy was every time conflicting: if Constantine IV (668–685), grateful for the loyalty of Vitalian I (657–672), had condemned the monoenergismus-monothelismus, Justinian II (685–695), after ten years, wanted to impose by force the principles of the council Quinisextus of 691–692 to Sergius I (687–701).

<sup>31</sup> See Il concilio niceno II (787) e il culto delle immagini, Messina 1994.

<sup>32</sup> See *O. Bertolini*, Longobardi e Bizantini nell'Italia meridionale. La politica dei principi longobardi fra Occidente e Oriente dai prodromi della “Renovatio” dell'impero in Occidente con Carlomagno alla sua crisi con Carlo “il Grosso”, Atti del III Congresso Internazionale di studi sull'Alto Medioevo, Spoleto 1959, 103–124 (= Scritti scelti di storia medievale, Livorno 1968, I 171–192) and *A. Guillou*, Longobardi, Bizantini e Normanni nell'Italia meridionale: continuità o frattura?, Il passaggio dal dominio bizantino allo Stato normanno nell'Italia meridionale. Atti del II convegno internazionale di studio sulla civiltà rupestre medievale nel Mezzogiorno d'Italia, ed. *C. D. Fonseca*, Taranto 1977, 23–61; interesting finally *F. Masai*, La politique des Isauriens et la naissance de l'Europe, Byzantion 33 (1963) 191–221.

<sup>33</sup> See *M. V. Anastos*, Leon III's Edict against the Images in the Years 726–27 and the Italo-Byzantine Relations between 726 and 730, Byzantinische Forschungen 3 (1968) 5–41, but also *P. Schreiner*, Problemi dell'iconoclasmo nell'Italia meridionale e nella Sicilia, Le relazioni religiose e chiesastico-giurisdizionali. Atti del III Congresso Internazionale sulle relazioni tra le due sponde adriatiche, Roma 1979, I 113–128 (= note in Archivio storico per la Sicilia Orientale 79, 1983, 505–506), with a particular hypothesis.

<sup>34</sup> We have two letters sent by Gregory II to Leo III — published in *Mansi* XII 959 sq. and after in *E. Gaspar*, Papst Gregor II. und der Bilderstreit, Zeitschrift für Kirchengeschichte 52 (1933) 72–89; see for example *L. Guérard*, Les lettres de Grégoire à Léon l'Isaurien, Mélanges d'Archéologie et d'Histoire 10 (1890) 44–60 — and they could be authentic: see *J. Gouillard*, Les Lettres de Grégoire II à Léon III devant la critique du XIVe siècle, ZRVI 8 (1963) / Mélanges Georges Ostrogorsky I 103–110 and Aux origines de l'iconoclasme: la témoignage de Grégoire II?, Travaux et Mémoires 3 (1968) 243–307, where a negative position, with *H. Grotz*, Boabachtungen zu den zwei Briefen Papst Gregors II. an Kaiser Leo III., Archivium Historiae Pontificiae 18 (1980) 9–40, where a positive one. See in general *P. Speck*, Kaiser Leon III., die Geschichtswerke des Nikephoros und des Theophanes und der Liber Pontificalis: eine quellenkritische Untersuchung, Bonn 2002.

<sup>35</sup> See *A. Pertusi*, Contributi alla storia dei temi bizantini dell'Italia meridionale, Atti del III Congresso Internazionale di studi sull'Alto Medioevo, Spoleto 1959, 495–517. About Calabria, the most important centre for the production of books, see *E. Eickhoff*, Tema e ducato di Calabria (Per la storia dell'organizzazione dell'Italia Meridionale), Archivio Storico per la Calabria e la Lucania 21 (1952) 105–118; see also La Calabria bizantina. Vita religiosa e strutture amministrative. Atti del I e II Incontro di Studi Bizantini, Reggio Calabria 1974 and La Calabria bizantina. Aspetti sociali ed economici, Atti del III Incontro di Studi Bizantini, Reggio Calabria 1978.

*beati Petri*, were to be paid directly to the revenue of the Byzantine state, organizing in the meantime a heavy military conscription; moreover, the dioceses of Calabria and Sicily, but also the city of Neaples<sup>37</sup> and Sardinia,<sup>38</sup> besides Illyricus and even the island of Creta, passed under the jurisdiction of the Constantinopolitan patriarchate.<sup>39</sup> In parallel, the emperor sent to the Adriatic Sea an unlucky naval expedition, a *megas stolos* commanded by the *drugarios* Manes, which had a story still rather mysterious.<sup>40</sup> The rebellion started to inflame Italy, while Gregory III (731–741)<sup>41</sup> called another Lateran council, where the iconoclasm was officially condemned (739). During the following years were to fall forever the Exarchate of Ravenna with the Pentapolis through the siege of Astolf I (751) and Stephen II was to decide to sign the alliance with Pepin the Short at Pouthiou (754).

It is difficult to think that during the whole period the Byzantines did not receive in the lands administered by them the *Ekloge*, independently of its link, in an ideological sense, with the iconoclastic reform, trying to introduce it at least concerning the aspect of criminal law. In addition, the fact that the text collected in a such copious manner many elements from customs may have been a powerful incentive for its diffusion, into a net of a legal society formed by *notairoi*, *tabularioi* and *kritai*, who, despite they have not forgotten the Justinian law, however were partly leaving that world;<sup>42</sup> finally, in compliance with the more or less realistic

<sup>36</sup> See *L. Cracco Ruggini*, *La Sicilia tra Roma e Bisanzio*, Storia della Sicilia, ed. *R. Romeo*, Napoli 1980, III 3–96; see also *S. Borsari*, *L'amministrazione del tema di Sicilia*, *Rivista Storica Italiana* 66 (1954) 133–158.

<sup>37</sup> In Neaples the archbishop, Sergius, at first remained irresolute, but then chose to support the papacy: *Chronicon Episcoporum S. Naepolitanae Ecclesiae*, *Monumenta ad Neapolitani Ducatus historiam pertinentia*, ed. *B. Capasso*, Napoli 1881, I 194.

<sup>38</sup> See *A. Era*, *Di una novella di Leone Isaurico e di una sua probabile applicazione in Sardegna*, *Studi bizantini e neoellenici* 7 (1953) / *Atti dell'VIII Congresso Internazionale di studi bizantini* II 323–330.

<sup>39</sup> *Dölger*, *Regesten*, n. 301 and *Duchesne*, *Liber Pontificalis*, I 403, 20–25. See *M. V. Anastos*, *The Transfer of Illyricum, Calabria and Sicily to the Jurisdiction of the Patriarchate of Constantinople in 723–733*, *Studi bizantini e neoellenici* 9 (1957) / *Silloge bizantina in onore di S. G. Mercati* 14–31 and about the dating *V. Grumel*, *L'annexion de l'Illyricum oriental, de la Sicilie et de la Calabre au Patriarcat de Constantinople*, *Recherches de sciences religieuses* 40 (1951–1952) 191–200 — not acceptable because refers to the time of Stefan II (752–757) and maybe the years 731–733 — and the communication *Cause et date de l'annexion de l'Illyricum oriental, de la Sicilie et de la Calabre au patriarcat oriental*, *Studi bizantini e neoellenici* 7 (1953) / *Atti dell'VIII Congresso Internazionale di studi bizantini* I 376; see also *P. Lajolo*, *L'editto di Bisanzio del 725. Trattamento della Sicilia durante la persecuzione iconoclasta*, *Archivio Storico per la Sicilia Orientale* 19 (1922–23) 154–166. See finally *V. Prigent*, *Les empereurs isauriens et la confiscation des patrimoines pontificaux du Sud*, *Mélanges de l'École française de Rome. Moyen Âge* 116 (2004) 557–594.

<sup>40</sup> *Chronographia* di Teofane Confessore, ed. *C. de Boor*, Leipzig 1883, I 408–413. See *O. Bertolini*, *Quale fu il vero obiettivo assegnato in Italia da Leone III "Isaurico" all'armata di Manes, stratego dei Cibyrreoti?*, *Byzantinische Forschungen* 2 (1967) 15–49 and also *J. B. Bury*, *The naval policy of the Roman Empire in relation to the Western Provinces from the 7th to the 9th Century*, *Centenario della nascita di Michele Amari*, Palermo 1910, II 21–34.

<sup>41</sup> *Gregorius III*, *Duchesne*, *Liber Pontificalis*, I 415–425.

<sup>42</sup> The matter was studied in particular concerning the debate about the origin of the *Nomos Gheorghikos*: see *P. Pieler*, *Byzantinische Rechtsliteratur, Die hochsprachliche profane Literatur der Byzantiner*, ed. *H. Hunger*, München 1978, II 440–442.

opinion, which affirms that the *Nomos Gheorghikos* was born exactly in Southern Italy, this fact could prove to be very significant, concerning this problem.<sup>43</sup>

On the contrary, the issue about the concrete penetration of the *Ekloge*, because of the scarceness of confirmations from documentary sources,<sup>44</sup> must be different and therefore the judgement more prudent. The Byzantine codes, which came from Southern Italy and contained collections formed also with the Isaurian legal monument or its derivations, are few, quite late and anyway not always able to demonstrate that the penetration of the imperial legislation proceeded together with the production of legal doctrine works;<sup>45</sup> evidently, they were produced when the Macedonian dynasty embarked upon the reconquest of the peninsula and in general during the following process of byzantinization of the those provinces.<sup>46</sup>

<sup>43</sup> See *H. Köpstein*, Thessaloniki — Wiege des Nomos Georgikos?, Διεθνές Συμπόσιο Βυζαντινῆ Μακεδονία 324–1430 μ.Χ. (Thessaloniki, 29–31 october 1992), Thessaloniki 1995, 157–162, but also *J. Karayannopoulos*, Entstehung und Bedeutung des Nomos Georgikos, Byzantinische Zeitschrift 51 (1958) 357–373; see moreover *W. Ashburner*, The Farmer's Law, Journal of Hellenic Studies 30 (1910) 85–108 e 32 (1912) 67–95. On the Italian origin of the collection see *F. Dölger*, Ist der Nomos Georgikos ein Gesetz des Kaisers Justinian II.?, Festschrift für L. Wenger, München 1945, II 18–48 (= *Paraspora. 30 Aufsätze zur Geschichte, Kultur und Sprache des byzantinischen Reiches*, Ettal 1961, 241–262); see also *H. F. Schmid*, La legge agraria Nomos Georgikòs bizantina e le origini delle decime ecclesiastiche nell'Italia meridionale, Studi Bizantini 7 (1953) 392–393; agree the editors of its best edition too: *I. Medvedev — E. Piotrovskaja — E. E. Lipšic*, Vizantijskij zemedel'ceskij zakon, Leningrad 1984; against *L. Margetić*, Zamljoradnički zakon, Zbornik Pravnog fakulteta Sveučilišta u Rijeci 3 (1982) 85–122, in addition to La legge agraria. Accenni ad alcuni problemi della storia del diritto, Rivista di studi bizantini e slavi 5 (1985, but 1989) 103–135. About the hypothesis of the connection with the customary law of the Slavian people see *G. Vernadsky*, Sur l'origine de la Loi agraire, Byzantion 2 (1925) 169–180. For other pieces of information see *P. Lemerle*, Agrarian history of Byzantium: from the origins to the twelfth century: the sources and the problems, Galway 1979 (in addition to *Esquisse pour un histoire agrarie a Byzance*, Revue historique 219, 1953, 65–84 / 220, 1955, 43–54); see finally *A. Guillou*, Des collectivités rurales à la colectivité urbaine en Italie méridionale byzantine. VIe–XIe siècles, Bulletin de Correspondance Hellénique 100 (1976) 315–325, but also Transformations des structures socio-économiques dans le monde byzantin du VIIe au VIIIe siècle, ZRVI 19 (1980) 71–78.

<sup>44</sup> In addition to *G. Ferrari dalle Spade*, I documenti greci medievali di diritto privato dell'Italia meridionale e le loro attinenze con quelli bizantini d'oriente e coi papiri greco-egizi, Byzantinisches Archiv als Ergänzung der byzantinischen Zeitschrift 4 (1910) 77–140 (= *Scritti giuridici*, Milano 1953, I 133–301), without forgetting *F. Brandileone*, La “traditio per cartam” (παράδοσις δι' ἐγγράφου) nel diritto bizantino, Studi di diritto romano, di diritto moderno e di storia del diritto pubblicati in onore di Vittorio Scialoja nel venticinquesimo anniversario del suo insegnamento, ed. *F. Brandileone*, Milano 1905, I 1–26 (= *Scritti di storia del diritto privato italiano*, ed. *G. Ermini*, Bologna 1931, I 13–36), see *V. von Falkenhäusen — M. Amelotti*, Notariato e documento nell'Italia meridionale greca (X–XV secolo), Per una storia del notariato meridionale, ed. *M. Amelotti*, Roma 1982, 7–69 and Il documento notarile greco in Italia meridionale, Notariado publico y documento privado de los orígenes al siglo XIV, Valencia 1989, II 1041–1052; we remember finally *A. Guillou*, Le fonti diplomatiche greche nel periodo bizantino e normanno in Italia, Atti del IV congresso storico calabrese (Cosenza 1966), Napoli 1969, 85–103 (= *Studies on Byzantine Italy*, London 1970, IV).

<sup>45</sup> See *J. Irigoien*, Notes sur la tradition juridique byzantine dans l'Italie Méridionale, Ἀφιέρωμα στὸν Ν. Σβορώνο, edd. *V. Kremmydas — Ch. Maltezou — N. M. Pahagiotakis*, Rethymno 1986, I 162–165, but especially *G. Cavallo*, La circolazione di testi giuridici in lingua greca nel Mezzogiorno medievale, Scuole, diritto e società nel Mezzogiorno medievale d'Italia, ed. *M. Bellomo*, Catania 1987, II 87–136.

<sup>46</sup> See *V. von Falkenhäusen*, Untersuchungen über die byzantinischen Herrschaft in Süditalien vom 9. bis ins 11. Jahrhundert, Wiesbaden 1967, but also *A Provincial Aristocracy: The*



Among all the manuscripts,<sup>47</sup> we have to consider Cod. Marc. 172 (july 1175), Cod. Vat. 845 (second half of the XII century) and Cod. Par. gr. 1384 (1166): considering our interest and trying to find the survival of an Isaurian legislative tradition, which never stopped to exist, we have to remember that the first contains the *Epitome Marciana*,<sup>48</sup> which has an apograph also in Cod. Pal. 55, the second, besides the little treatises about the *theoretros* and the *hypobolos*,<sup>49</sup> the *Prochiron legum*<sup>50</sup> and finally the third one both the *Appendix*

Byzantine Provinces in Southern Italy (9th–11th Century), The Byzantine Aristocracy (from IX to XIII), ed. M. Angold, Oxford 1984, 211–235, with N. Svoronos, Société et organisation intérieure dans l'Empire byzantin au XIe siècle: les principaux problèmes, The Proceedings of the XIIIth International Congress of Byzantine Studies, edd. J. M. Hussey — D. Obolensky — S. Runciman, London — New York — Toronto 1967, 373–389; see moreover J. Ferluga, L'Italia bizantina dalla caduta dell'esarcato di Ravenna alla metà del secolo IX, Bisanzio, Roma e l'Italia nell'Alto Medioevo, Spoleto 1988, I 169–193. We remember finally two classical works: G. Schlumberger, L'épopée byzantine à la fin du Xe siècle, Paris 1900–1905, in three volumes and J. Gay, L'Italie méridionale et l'Empire byzantin: depuis l'avènement de Basile I jusqu'à la prise de Bari par les Normands (867–1071), Paris 1904, 574–575.

<sup>47</sup> Concerning the period before the Norman time we remember, on the one hand Cod. Athos Lavra A<sup>7</sup> 55, foll. 132–141 (palimpsest with parts of a version with annotations of the *Eisagoge cum Prochiron composita*) and Cod. Ambros. F 106 sup. (palimpsest with the famous *Florilegium Ambrosianum*, an anthology from the *Basilika* and the Leo the Wise's Novels; see C. Mercati, Il palinsesto Ambrosiano dei Basilici, Rendiconti del Reale Istituto Lombardo di scienze e lettere, ser. II, 30, 1897, 821–841, also in *Opere minori*, Città del Vaticano 1937, I 528–548), on the other hand Cod. Marc. 579 (*Epitome ad Prochiron mutata* and some special Isaurian laws) and Cod. Vindob. Jur. Gr. 18 (palimpsest with material from the *Ecloga*, the *Appendix Eclogae* and the *Ecloga privata aucta*). Finally, Cod. Bodl. Selden sup. 11 contains *excerpta* from the *Ecloga privata aucta*. During the following epoche, besides the diffusion of the *Synopsis Basilicorum Maior* (Vat. Ott. gr. 15, Marc. gr. 177, Vat. Palat. gr. 249, Laur. 4.10 / Escorial R I 15, similar to Par. gr 1367, with the *Nomos Georghikos* and the *Nomos Rhodion Nautikos* too), we remember at least Cod. Vat. gr. 168 (XII century), which has a version of the *Ecloga privata aucta* and the so called *Prochiron Vaticanum*.

<sup>48</sup> See K. E. Zachariae von Lingenthal, *Collectio librorum juris graeco-romani ineditorum*, Leipzig 1852, § 5 and J.-A.-B. Mortreuil, *Histoire du droit byzantin ou du droit romain dans l'Empire d'Orient depuis la mort de Justinien jusqu'à la prise de Constantinople en 1453*, Paris 1846, III 271–277; other pieces of information in E. Mioni, *Bibliothecae Divi Marci Venetiarum codices Graeci manuscripti*. *Thesaurus antiquus*, Romae 1985, II 261–265 and A. M. Zanetti, *Graeca D. Marci bibliotheca codicum manu scriptorum per titulos digesta*, Venetiis 1740.

<sup>49</sup> About the little treatises *περὶ θεωρέτρον* and *περὶ ὑποβόλου* see A. De Gaspari, *Teoretro ed ipobolo*. Considerazioni sopra due frammenti contenuti nel Cod. Vaticano 845 (fol. 140–141), *Studi e documenti di storia del diritto* 7 (1886) 249–270, but mainly F. Brandileone, *Frammenti di legislazione normanna e di giurisprudenza bizantina nell'Italia meridionale*, *Rendiconti della Reale Accademia dei Lincei*. Classe di scienze morali storiche e filologiche 1886, 281–284 and *Nuovi studi sul diritto bizantino nell'Italia meridionale*, *Studi e documenti di storia del diritto* 8 (1887) 65–90 (both also in *Scritti di storia del diritto privato italiano editi dai discepoli*, ed. G. Ermini, Bologna 1931, I 59–87 and 87–116).

<sup>50</sup> See the *Prochiron legum* published according to Cod. Vat. Gr. 845, edd. F. Brandileone — F. Puntoni, Roma 1895, with F. Brandileone, *Notizia del Prochiron Legum contenuto nel Codice Vaticano Greco 845*, *Rendiconti della Reale Accademia dei Lincei*. Classe di scienze morali storiche e filologiche, 1885, 507–513 and *Studio sul Prochiron legum*, *Bullettino dell'Istituto Storico Italiano* 16 (1895) 1–36; see also E. H. Freshfield, *A provincial manual of later roman law*, Cambridge 1931. The original title of the collection was *Πρόχειρος νόμων διηρημένων ἐν τίτ. μ'*: it contained the *Ecloga* and the *Appendix Eclogae*, the *Procheiros Nomos* and the *Eisagoge*, the *Epitome legum*, the *Nomos Georgikos* and the *Nomos Rhodion Nautikos*.

*Eclogae*<sup>51</sup> and a version of the *Ecloga privata aucta*,<sup>52</sup> with the *Ecloga ad Prochiron mutata*.<sup>53</sup>

The *Epitome Marciana* and the *Prochironum legum* were formed precisely by norms coming from the *Ekloge*, but also from the *Procheiros Nomos* or *Prochiron*\*<sup>54</sup> and the *Eisagoge*<sup>55</sup> and more from the so called *Epitome legum*<sup>56</sup> together with some constitutions of later emperors. Concerning the *Ecloga privata aucta* — the *Appendix Eclogae* indeed had a characteristic nature quite coming from ecclesiastical law<sup>57</sup> — we know that the text owned to the “*Ecloga-Derivate*”, as they are conveniently defined;<sup>58</sup> this could mean in particular two things, unfortunately in contrast each other: from a side, that the *Ekloge* was to have a moderate diffusion in an environment, where customs lived with the Roman law belonging to the Justinianic compilation (a good example are again the wedding unions<sup>59</sup>) the

<sup>51</sup> Appendix Eclogae, edd. L. Burgmann — *Sp. Troianos*, Fontes Minores III, Frankfurt am Main 1979, 24–125.

<sup>52</sup> Z. v. L. JGR IV 1–48 and *Zepos* JGR VI 7–47, considering Cod. Par. Gr. 1384; see also D. Simon — *Sp. Troianos*, EPA Sinaitica, in Fontes Minores II, Frankfurt am Main 1977, 45–86. See E. E. Lipšic, *Vizantijskoe pravo v period meždu Eklogoj i Prochironom*, *Vizantijskij Vremennik* 36 (1974) 42–72 and N. P. Matsis, *Διορθώσεις εις την Ηύξημένην, Ἐπετηρίς Ἐταιρείας Βυζαντινῶν Σπουδῶν* 33 (1964) 154–159, in addition to F. Gorla, *Sulla data e sull'origine dell'Ecloga Privata Aucta*, *Studi Parmensi* 20 (1977) 305–323 and mainly *Tradizione romana e innovazioni bizantine nel diritto privato dell'Ecloga privata aucta*, Frankfurt am Main 1980.

<sup>53</sup> Z. v. L. JGR IV, 49–170 and *Zepos* JGR VI 217–318, but see also J. de Malafosse, *L'Ecloga ad Prochiron mutata*, in *Archives d'histoire du droit oriental* 5 (1950–1951) 197–220.

<sup>54</sup> Z. v. L. *Procheiros Nomos*, Heibelderg 1837, 1–258 and *Zepos* JGR II 107–228.

<sup>55</sup> Z. v. L. *Collectio librorum juris Graeco-Romani ineditorum*, Leipzig 1852, 53–218 and *Zepos* JGR II 231–368.

<sup>56</sup> Z. v. L. JGR III 265–431 and *Zepos* JGR IV 265–585. It was a private collection from the time of Romanus Lacapenus (920), where were gathered materials from the several revisions of the Justinianic compilation and from the *Procheiros Nomos*. It was asserted that also the *Epitome ad Prochiron mutata* (Cod. Bodl. 3399 e Cod. Marc. Gr. 579) came from Southern Italy: see Zachariae von Lingenthal's recension to Heimbach's first volume of the *Anekdotia* (Leipzig 1938), *Jahrbücher der Literatur* 86 (1839) 184–236, 200 sq.

<sup>57</sup> See *Collectio tripartita*. Justinian on Religious and Ecclesiastical Affaire. An anonymous collection of Greek summaries of fragments from *Corpus Iuris Civilis*, edd. N. van der Wal — B. H. Stolte, Groningen 1994.

<sup>58</sup> See P. Pieler, *Byzantinische Rechtsliteratur*, in *Die hochsprachliche profane Literatur der Byzantiner*, ed. H. Hunger, München 1978, II 458–459.

<sup>59</sup> See again F. Gorla, *Tradizione romana e innovazioni bizantine nel diritto privato dell'Ecloga privata aucta*. *Diritto matrimoniale*, Frankfurt am Main 1980, in addition to D. Simon, *Zur Ehegesetzgebung der Isaurier*, in Fontes Minores I, Frankfurt am Main 1976, 16–43, but also always D. Simon, *Das Ehegüterrecht der Pira*. Ein systematisch Versucht, in Fontes Minores VII, Frankfurt am Main 1986, 193–238, about the late Byzantine jurisprudence; we quote moreover A. Marongiu, *La forma religiosa del matrimonio nel diritto bizantino, normanno e svevo*, *Archivio Storico per la Calabria e la Lucania* 30 (1961) 1–30 (= *Scritti in onore di A. C. Jemolo II*, Milano 1963 and *Byzantine, Norman, Swabian and later institutions in Southern Italy*, London 1972) and A. Guillou, *Il matrimonio nell'Italia bizantina nei secoli X e XI*, Spoleto 1977, 869–886, with F. Schupfer, *La comunione dei beni fra coniugi nell'Ecloga isaurica*, *Rivista italiana per le scienze giuridiche* 36 (1903) 319–335, but also F. Brandileone, *Sulla storia e la natura della “donatio propter nuptias”*, *Bologna 1892* and *Studi preliminari sullo svolgimento storico dei rapporti patrimoniali fra coniugi in Italia*, *Archivio Giuridico “Filippo Serafini”* 8 (1901) (both in *Scritti di storia del diritto privato italiano editi dai discepoli*, ed. G. Ermini, Bologna 1931, I 117–214 and 229–319).

other, that the echo of the “Macedonian Renaissance” on the Italian territories involved the compilation of legal collections, which preserved not only Basilus I’s handbooks, but also Leo III’s and Constantine V’s legislation.

But we will continue along this way, perhaps advancing a hypothesis, which could conciliate these two possibilities. The presence of the elaborations of the *Ekloge*, included the *Ecloga ad Prochiron mutata*, which in this sense is almost emblematic for its strongly provincial and hybrid character,<sup>60</sup> shows that a deep knowledge of the Isaurian legal text was preserved: when the moment arrived — at the time of the legislative ferment promoted by the Norman monarchy, but also before, concerning the legal books production — to compose the codes which we have just remembered, the *Ekloge* was placed side by side both with the *Prochiron* and the *Eisagoge*; this is not the place to analyze the relationships between the *Ekloge* and the *Prochiron* — the *Eisagoge* indeed answered to the request to outline the spheres of action between emperor and patriarch and was hence very near to canonical law<sup>61</sup> — and we will avoid it,<sup>62</sup> but it is impossible to forget that the refuse of the Isaurian legislation by the emperors of the Macedonian dynasty had only a propagandistic value, because a great number of articles contained into the *Ekloge* were recovered into the *Prochiron* without appreciable modifications.<sup>63</sup>

Nevertheless, if we do not want to make simply a history of the formation of the manuscripts and of the transmission of their exemplaries, thinking about some passages not only as the evolution the evolution of the law actually charged, the reasoning conducted until this point could be persuasive: otherwise, we have to admit that the compilers of the three codes transcribed and unified the different legal textes in them contained only to follow an aim of pure preservation, which is for us an improbable possibility.

If we arrive to conclude that the *Ekloge* had an own existence also aside from the recovery effected by who assembled the codes using the handbooks of the Macedonian period, we will able maybe to make some reflections about the importance of such a reception through a comparison with other legal cultures, which experienced the Isaurian legislation too, taking possession of it: we are re-

<sup>60</sup> See *J. De Malafose*, L’ecloga ad Prochiron mutata, Archives d’Histoire du droit Oriental 5 (1950–1951) 197–220, but also *Z. v. L. JGR* IV 49–170 and *Zepos JGR* VI 217–318.

<sup>61</sup> See *J. Signes Codoñer* — *F. J. A. Santos*, La introduccion al derecho (Eisagoge) del patriarca Focio, Madrid 2007, in addition to *J. Scharf*, Photios und die Epanagoge, Byzantinische Zeitschrift 49 (1956) 385–400 and *A. Esser*, Die Lehre der Epanagoge — eine oströmische Reichstheorie, Freiburger Zeitschrift für Philosophie und Theologie 10 (1963) 61–85.

<sup>62</sup> See *P. Pieler*, „Ἀνακάθαρσις τῶν παλαιῶν νόμων“ und makedonische Renaissance, Subseciva Groningana 3 (1989) 61–77; see also *N. J. Pantazopoulos*, Caratteri ed aspetti fondamentali della politica legislative della dinastia macedone, Studi in onore di Edoardo Volterra, Milano 1971, V 151–169.

<sup>63</sup> Both the handbooks did not respect the principles of the Macedonian “purification” of the previous law; see *A. Schmink*, Studien zu mittelbyzantinischen Rechtsbüchern, Frankfurt am Main 1986, *passim*, but also *T. van Bochove*, To Date and not to Date. On the date and status of Byzantine law books, Groningen 1996, *passim*, with *E. E. Lipšic*, Vizantijskoe pravo v period između Eklogoj i Prochironom (Častnaja Rasprostrannaja Ekloga), Vizantijski Vremennik 36 (1974) 42–72.

ferring to the adventure lived by the *Ekloge* in the Slavian world and principally in the Balkans.<sup>64</sup>

It is known that the *Ekloge* had an extensive diffusion through the *Zakon Sudnyj Ljudem*,<sup>65</sup> a collection in ecclesiastical Slavian language, which produced a new elaboration of the legal text, in particular of the seventeenth book, a mixture of criminal norms and moral precepts in conformity with the use of the penitentials:<sup>66</sup> it — literally “the law for the judgement of the people”, meaning in this way the mass of the subjects alien to the structures of the church — constituted the principal legal monument in the history of the ancient Slavian law and a corner stone for the process of influence which the Byzantine sources exerted over those systems.<sup>67</sup> The provenance of the compilation is still enshrouded into the mystery:<sup>68</sup> scholars are divided between an ecclesiastical origin, during the Christianization of the kingdom

<sup>64</sup> See mainly *Ja. N. Ščapov*, *Receptii sbornikov vizantijskogo prava v srednevekovykh balkanskikh gosudarstvach*, *Vizantijskij Vremennik* 37 (1976) 123–129. About the relationships with the Byzantine empire see *I. Dujčev*, *Relations entre les Slaves méridionaux et Byzance aux Xe–XIIe siècle*, *Cahiers de civilisation médiévale* 9 (1966) 533–556 and *A. Dostal*, *Les relations entre Byzance et les Slaves (en particulier les Bulgares) au XIe et XIIe siècles du point de vue culturel*, *Proceedings of the XIIIth International Congress of Byzantine Studies*, London — Oxford — New York — Toronto 1967, 167–175, but also *J. Ferluga*, *Byzantium on the Balkans*, Amsterdam 1976 and *Gli Slavi del Sud ed altri gruppi etnici di fronte a Bisanzio*, *Gli Slavi occidentali e meridionali nell’Alto Medioevo*, Spoleto 1983, 303–344; we remember finally *F. Dölger*, *Die mittelalterliche Kultur auf dem Balkan als byzantinisches Erbe*, *Revue internationale des études balkaniques* 2 (1935) 108–124 (= *Byzanz und die europäische Staatenwelt*. Ausgewählte Vorträge und Aufsätze, Ettal 1953, 261–280).

<sup>65</sup> See *M. N. Tichomirov — L. V. Milov*, *Zakon sudnyj ljudem*. Kratkoj redakcii, Moskva 1961 and *Zakon sudnyj ljudem*. Prostrannoj i svednoj redakcii, Moskva 1961; see also *V. Ganev*, *Zakon soudnyi ljud’m: pravno-istoričeski i pravno-analitični proučvanija*, Sofija 1959, about the Bulgarian origin of the legal text.

<sup>66</sup> This kind of production had a great diffusion in the Slavian world: to Saint Methodius is assigned a work, called *Zapovede svetych otcej*, which was a penitential, probably similar to that coming from Marseburg, testified in the *Eucologio Sinaïtico* and in the *Kormčaja* of Ustiug.

<sup>67</sup> The subject is very extensive. See *A. V. Soloviev*, *L’influence du droit byzantin dans les pays orthodoxes*, X Congresso Internazionale di scienze storiche. Relazione VI, Firenze 1955, 599–650 (also in *Byzance et la formation de l’Etat russe: recueil d’études*, London 1979); we quote moreover the classical works of *R. Hube*, *O znaczeniu prawa rzymskiego i rzymsko-byzantyńskiego u narodów słowiańskich*. W dadaktu excerpta serbskie z praw rzymsko-byzantyńskich, Warszawa 1868 (= *Droit romain et greco-byzantin chez les peuples slaves*. Avec un appendice contenant un extrait serbe des lois romano-byzantines, Paris–Toulouse 1880) and then *T. Saturnik*, *Príspevky k šírení byzantského práva u Slovanů*, Praha 1922; see finally *T. Ionascu — V. Georgescu*, *Unité et diversité des formes de la réception du droit romain en Occident et du droit byzantin en Orient*, *Revue des Etudes sud-est européennes* 2 (1964) 153–186 and *La reception du droit romain de Justinien en Occident et celle du droit romano-byzantin en Orient*, *Studi Accursiani*, Milano 1968, III 1209–1237; more recently *H. Wagner*, *Influssi della giustizia bizantina sul diritto medievale dei popoli slavi*, *Atti dell’Accademia Romanistica Costantiniana XI Napoli* 1996, 679–687.

<sup>68</sup> See *S. V. Troickij*, *Sv. Mefodij kak slavjanskij zakonodatel’*, *Bogoslovskie trudy*, Moskva 1961, II 83–141, but recently also *K. Ilievska*, *Zakon Sudnyj Ljudem*, Skopje 2004, about an origin of the legal text in Macedonia; accepted the possibility of western influences *H. F. Schmid*, *La legislazione bizantina e la pratica giudiziaria occidentale nel più antico codice slavo*, *Atti del Congresso Internazionale di diritto romano e di storia del diritto* (Verona 27–28–29 novembre 1948), ed. *G. Moschetti*, Milano 1953, I 395–403.

of Great Moravia<sup>69</sup> and thanks to the work of Saint Methodius,<sup>70</sup> or a secular one, in connection with the birth of the Bulgarian state and the process of its evangelization.<sup>71</sup>

Anyway the *Ekloge* did not appear uniquely into the *Zakon Sudnyj Ljudem*.<sup>72</sup>

An indirect channel of transmission of articles from the collection is represented indeed by the canonical tradition and in particular the various versions of the *Kormčaja Kniga*,<sup>73</sup> the Slavian edition of the Byzantine nomocanon: although in some different manners, each of the diverse families — the Moravian,<sup>74</sup> the Bulgarian,<sup>75</sup> the

<sup>69</sup> See *J. Vašica*, Kirillo-Mefodievske iuridičeskje pamjatniki, Voprosy slavianskogo jazykoznanija 7 (1963) 12–33 and *C. Papastathis*, Τὸ νομοθετικὸν ἔργον τῆς κυριλλο-μεθοδιανῆς ἱεροποστολῆς ἐν Μεγάλῃ Μοραβίᾳ, Thessaloniki 1978; see also again *J. Vašica*, Origine cyrillo-methodienne du plus ancien code slave dit “Zakon sudnyj Ljudem”, Byzantinoslavica 12 (1951) 154–174 and *V. Prochazka*, Le Zakon’ sudnij liudem et la Grande Moravie, Byzantinoslavica 29 (1968), 112–150. See finally *K. Rebroy*, La Grande Moravie. Gli inizi del cristianesimo e dell’ordine giuridico, Cristianità ed Europa: miscellanea di studi in onore di Luigi Prodocimi, ed. *C. Alzati*, Roma 1994, 1.2, 357–368, with *R. Dittrich*, Christianity in Great-Moravia, Groningen 1962 and *V. Vavrinek — B. Zasterova*, Byzantium’s Role in the Formation of Great Moravian Culture, Byzantinoslavica 43 (1982) 161–188.

<sup>70</sup> See for example *A.-E. Tachiaos*, Cyril and Methodius. The Acculturation of the Slavs, Thessaloniki 1989.

<sup>71</sup> See *M. Andreev*, Le droit romain et l’Eclogue slave (quelques considerations sur les ecarts de l’Eclogue slave du droit romain), Bartolo da Sassoferrato. Studi e documenti per il centenario, Milano 1961, I 109–129 and Sur l’origine du “Zakon Sudnyj Ljudem” (loi pour juger les gens), Revue des études sud-est européennes 1 (1963) 331–344; see also *H. Oroschakoff*, Ein Denkmal des bulgarischen Rechtes (Zakon Sudnyj Ljudem), Stuttgart 1915 (= Zeitschrift für vergleichende Rechtswissenschaft 33, 1916, 141–282).

<sup>72</sup> The collection arrived as far as Russia. See *A. M. Kleimola*, Law and Social Change in Medieval Russia: The Zakon sudnyi lyudem as a Case Study, Oxford Slavonic Papers 9 (1976) 17–27.

<sup>73</sup> See *P. I. Žužek*, Kormčaja kniga. Studies on the Chief Code of Russian Canon Law, Roma 1964: the reconstruction of the process of diffusion into the Russian lands of the *Kormčaja Kniga* is fundamental to obtain a quite precise description about the route of the Byzantine nomocanon in the Slavian world, because all the redactions arrived precisely in Russia; see *Ja. N. Ščapov*, Vizantiiskoei iužnoslavianskoe pravoe nasledie na Rusi v XI–XIII vv., Moskva 1978.

<sup>74</sup> La *Ustjugskaja Kormčaja* (from Ustjug, the old city in the north, where it spread) is very important because contains the Slavian translation done by Saint Methodius of the John Scholasticus’ *Synagoge L titulorum* with the name of *zakonupravilo* (see *F. Grivec*, Cyrillo-Methodiana — O Metodovom Nomokanonu, Slovo. Journal of Old Church Slavonic Institute 6–7–8, 1957, 35–45); even if the absence of rules coming from the *Ekloge*, which was to use always for the marriage only in the Photius’ nomocanon, it appears together with the *Zakon Sudnyj Ljudem*. See for the edition of the text *V. N. Benešević*, Sinagoga v 50 titulov i drugie iuridičeskie sborniki Joanna Scholastika. K drevnejšoj istorii istočnikov prava greko-vostočnoj cerkvi, Sankt Peterburg 1914 (Leipzig 1972) (but also Ioannis Scholastici synagoge L titulorum ceteraque ejusdem opera iuridica I, München 1937); see moreover *H. F. Schmid*, Die Nomokanonübersetzung des Methodius. Die Sprache der kirchenslavischen Übersetzung der Synagoge des Johannes Scholasticus, Leipzig 1922 and Neuere Beiträge zur Frage nach der ältesten kirchenslavischen Nomokanonübersetzung, Zeitschrift für slawische Philologie 1 (1925) 198–210, in addition to *P. I. Žužek*, The Determining Structure of the Slavonic Syntagma of Fifth Titles, Orientalia Christiana Periodica 33 (1967) 139–160, concerning *S. V. Troickij*, Apostol slavianstva sv. Mefodij kak kanonist, in Žurnal Moskovskoj Patriarchii 3 (1958) 38–51.

<sup>75</sup> The *Efremovskaja Kormčaja* (from Efrem, a name found in some notes in the primary manuscript) was composed under Jaroslav the Wise; it is a private translation of the *Nomocanon of the XIV Titles*, without the originary commentary, but with several *scholia* in Slavian language; the text came from the Bulgarian empire and probably preceded the Photius’ nomocanon of the year 883. See

Serbian<sup>76</sup> and finally the Russian one<sup>77</sup> — kept articles from the *Ekloge*, concerning both the marriage and criminal law; in the Russian principalities<sup>78</sup> the Isaurian legislation will appear, translated in many ways, in the *Merilo Pravednoe*,<sup>79</sup> a code of canonical law, and even in the *Knigi Zakonnye*,<sup>80</sup> which contained a Slavian version of the *Nomos Gheorghikos*.

Moreover, we know that an important point of access to the reception of a valid part of the rules of the *Ekloge* was represented by the *Zakonik*,<sup>81</sup> the Serbian medieval code which the *car* Stefan Dušan issued in two times in Skopje (1349) and in Serres (1354), with the addition of few dozens of sentences. Divided in three sections — the genuine *Zakonik*, a core of articles quite original, the so called *Lex Iustiniani*,<sup>82</sup> drawn again from the *Nomos Gheorghikos*, and especially a revision of the Matthew Blastares' *Syntagma Alphabeticum*,<sup>83</sup> composed by other ma-

however *V. N. Benešević*, *Kanoničeskij sbornik XIV titulov so vtoroj četverti VI veka do 883 g.*, Sankt Peterburg 1905.

<sup>76</sup> The *Rjazanskaja Kormčaja* came from an exemplary sent to the metropolitan Kirill in 1262 by Svjatoslav, a Bulgarian despot with a Russian parentage, being part of the famous compilation of Saint Sava compilation and written during the time of the Serbian autocephaly; the collection included sinodal and conciliar canons, the works of the Fathers of the Church with the commentary of Alexius Aristenus and John Zonaras, the *Procheiros Nomos*, the John Scholasticus' *Collectio LXXXVII capitulorum*, some imperial constitutions and several patriarchal decisions. See *M. Petrović*, *O Zakonopravilu ili Nomokanonu Svetoga Save*, Beograd 1990, besides *D. Bogdanović*, *Krmčija svetog Save, Sava Nemanijć — Sveti Sava. Istorija i predanje. Međunarodni naučni skup. Decembar 1976*, Beograd 1979, 91–99; see also *S. V. Troickij*, *Kako treba izdati Svetosavsku Krmčiju. Nomokanona sa tumačenjima — How should be edited the Kormchaja of St. Sava. Nomokanon with Commentary*, Beograd 1950.

<sup>77</sup> The *Novgorodskaja Kormčaja or Sofijskaja* — we have many versions, formed by heterogeneous material coming mainly from the *Efremovskaja*, but also the *Rjazanskaja* and the *Usjužkaja* — was decided by the metropolitan Kirill in the Synod of Vladimir in 1274 and traditionally is considered to have a national character. We will not consider the special versions of the heretic Vassian Patrikeev and the so called “reconciled” one.

<sup>78</sup> See *D. H. Kaiser*, *The Growth of the Law in Medieval Russia*, Princeton 1980.

<sup>79</sup> See *M. N. Tichomirov*, *Merilo pravednoe po rukopisi XIV veka*, Moskva 1961.

<sup>80</sup> See *I. Medvedev — E. Piotrovskaja — E. Lipšic*, *Vizantijskij zemedel'českij zakon*, Leningrad 1984, 233–256, but before *A. S. Pavlov*, “*Knigi Zakonnye*”, *soderžaščie v sebe v drevnerusskom perevode vizantijskie zakony zemledeľčeskie, ugolovnye, bračnye i sudebnye*, Sankt Peterburg 1885.

<sup>81</sup> See for a good bibliograpy *G. Radojčić-Kostić*, *Bibliografija o zakonodavstvu cara Stefana Dušana*, Beograd 2006; see also *Zbornik u čast šeste stogodišnjice Zakonika cara Dušana*, ed. *N. Radojčić*, Beograd 1951 and recently *Zakonik cara Stefana Dušana. Zbornik radova sa naučnog skupa održanog 3. oktobra 2000, povodom 650 godina od proglašenja*, ed. *S. Ćirković*, Beograd 2005; we want to remember also *A. V. Soloviev*, *Zakonodavstvo Stefana Dušana, cara Srba i Grka*, Skopje 1928 and *Zakonik cara Stefana Dušana: 1349 i 1354 godine*, Beograd 1929; finally, the curious reader will consult two our works, in Italian language: *Lo «zakonik» di Stefan Dušan e i suoi legami con la legislazione bizantina*, *Index 37 (2009) 219–228* and *Il Syntagma Alphabeticum di Matteo Blastares nella codificazione dello car Stefan Dušan: alcune riflessioni di ordine cronologico*, *Atti dell'Accademia Pontaniana 58 (2009) 53–66*.

<sup>82</sup> See *M. Vesnić*, „Justinijanovi zakoni“ i staro srpsko pravo, *Branič 3 (1889) 137–148*; see at least *E. E. Lipšic*, *K istorii “Zemledeľčeskogo Zakona” v Vizantii i v srednevekovych balkanskich gosudarstvach*, *Vizantijskij Vremennik 29 (1969) 53–68*, but also *I. P. Medvedev*, *Predvaritel'nye zametki o rukopisnoj tradicii zemledeľčeskogo zakona, Vizantijskij Vremennik 41 (1980) 194–209*.

<sup>83</sup> It is possible to read the text in *Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων VI*, edd. *G. A. Rhalles — M. Potlès*, *Ἀθήναι 1859* and in *Patrologia Graeca*, ed. *J. P. Migne*, Paris 1865, 144 col.

terial taken from the Isaurian text — had a very strong impact on the legal system of the new Balkanic state.<sup>84</sup>

Stefan Dušan probably knew the text of the *Syntagma Alphanumericum* during a travel with his wife done through the monasteries of Mount Athos between the years 1347 and 1348 to escape from a pestilence, when he consolidated the relationships with the institution of Hilandar: the handbook, connected with the judiciary reform promoted first by Andronicus II (1296) and then by Andronicus III (1329),<sup>85</sup> had become significant mainly in the region of Thessaloniki, the centre for the irradiation of the Byzantine culture among the Slavian people.<sup>86</sup> The king, together with other initiatives taken to adopt the system of the Byzantine bureaucracy,<sup>87</sup> started to think about a legislative intervention, which would be decisive, choosing a text simple and easy to apply.

959–1400 and 145 col. 9–912; see also S. Novaković, Matije Vlastara Sintagmat, azbučni zbornik vizantijskih crkvenih i državnih zakona i pravila, Beograd 1907 and N. Ilynski, Sintagma Matfeja Vlastara, Moskva 1892. Useful finally P. B. Paschos, Ὁ Ματθαῖος Βλάσταρης καὶ τὸ ὑμνογραφικὸν ἔργον του, Thessaloniki 1978, in addition to Sp. Troianos, Περὶ τὰς νομικὰς πηγὰς τοῦ Ματθαίου Βλάσταρη, Ἐπετηρὶς Ἑταιρείας Βυζαντινῶν Σπουδῶν 44 (1979–1980) 305–329.

<sup>84</sup> We quote a famous work: S. V. Troickij, Crkveno-politička ideologija Svetosavske Krmčije i Vlastareve Sintagme, Glas Srpske akademije nauka CCXII / Odeljenje društvenih nauka — nova serija 2, Beograd 1953, 155–206. We remember also A. V. Soloviev, Aperçu historique du développement du droit dans les Balkans (jusqu'au XVe siècle), Revue internationale des études balkaniques 1–2 (1936) 437–447, with Le droit byzantin dans la codification d'Etienne Douchan, Revue Historique du droit français et étranger 7 (1928) 387–412. About the matter of the penetration of Byzantine law into the Balkan states see at least Sp. Troianos — S. Šarkić, Ο κώδικας του Στεφάνου Δουσάν και το βυζαντινό δίκαιο, Βυζάντιο και Σερβία κατά τον ΙΔ' αιώνα, ed. E. Papadapulu, Ἀθήναι 1996, 248–257, but also Ja. N. Šćapov, Recepcii sbornikov vizantijskogo prava v srednevekovych balkanskich gosudarstvach, Vizantijskij Vremennik 37 (1976) 123–129.

<sup>85</sup> To stem the decline into the judiciary administration, Andronicus II composed a college of twelve judges, laical and ecclesiastical, as supreme bench of appeal, even if its activity was soon interrupted because of some facts of corruption (Nov. XXXVIII, *Zepos* JGR I 558–568); Andronicus III then formed a new college, made by only four judges, two lay and two religious, with the assignment of a general supervision, but another time was necessary to create local upper magistrates, placed into the various provinces, even if in the hands of the Serbs, like Serres (Nov. XLI, XLII and XLIII, *Zepos* JGR I 580–583). The introduction of personalities coming from the church was strong and the *ius gladii* was given to the metropolitans as καθολικοί κριταί: they used the Matthew Blastares' handbook, which had tried to unify secular and canonical law. Besides L. Petit, La réforme judiciaire d'Andronique Paléologue, Échos d'Orient 9 (1906) 134–138, see P. Lemerle, Le juge général des Grecs et la réforme judiciaire d'Andronic III, Mémorial Louis Petit, Bucarest 1948, 292–316 and Recherches sur les institutions judiciaires à l'époque des Paléologues, I. Le tribunal impérial, Mélanges Henri Grégoire, Paris 1949, I 369–384 and II. Le tribunal du patriarcat ou tribunal synodal, Mélanges Paul Peeters, Paris 1949/1950, 320–333; see finally also E. Schilbach, Die Hypotypos der καθολικοί κριταί τῶν Ῥωμαίων vom Juni 1398, Byzantinische Zeitschrift 61 (1968) 44–70.

<sup>86</sup> We can not forget that Constantine-Cyrrill and Methodius were son of Leo, who was a Greek dignitary in that city. See at least O. Tafrafi, Thessalonique au XIVE siècle, Paris 1913.

<sup>87</sup> He loved to introduce in the Serbian court imperial dignities and other Byzantine titles, besides to sign often his decrees in Greek (see Grčke povelje srpskih vladara, edd. Solovjev A. V. — Mošin V. A, Beograd 1936); see for example M. Dinić, Srpska vladarska titula za vreme carstva, ZRVI 5 (1958) 9–19 and Sevastokratori i kesari u Srpskom carstvu, Zbornik Filozofskog Fakulteta u Beogradu 11 (1970) 255–269, but also Lj. Maksimović, Greci i Romanija u srpskoj vladarskoj tituli, ZRVI 12 (1970) 61–78. The same wife, Jelena, assumed the epithets of *augusta* and *despina*. About the administrative organization, new territorial circumscriptions, called *kefalija*, were established

Now we can try a comparison, in conformity with a diacronic view, between the Italian experience and the Slavian one in general and the Serbian one in particular, making some considerations and maybe proposing an original vision about the difficult matter.

In the affair of the composition of the *Zakon Sudnyj Ljudem* and in general during the process of diffusion of the *Ekloge* through the several Slavian compilations the Byzantine law had two targets, strongly bound each other: to cement the conversion to the Christianity of populations which were been pagan for a long time<sup>88</sup> and in the meanwhile to offer to the sovereign, who had baptized his people, an extraordinary instrument to legitimate the power, with the imposition of a single written law.

In Southern Italy on the other hand the reception of the *Ekloge*, covering a natural route, was simply part of the great stream of the Justinianic legislation; despite the growing importance of customs and the possibility of constant contacts with the barbarian legal systems,<sup>89</sup> the law continued to be considered as the expression of an imperial will, preserving in this way the link which tied the Italian territories to Constantinople.

The matter of the language is fundamental and full of a symbolic value. The Slavian world knew the *Ekloge* through a series of translations, which changed irreparably the character of the originary source, adapting it to realities often very different;<sup>90</sup> on the contrary in Southern Italy, independently of the parlance of the local population,<sup>91</sup> the writing remained always Greek until the end, at least concerning the transmission of the manuscripts, so in this sense the law was everytime the imperial one and not something else.<sup>92</sup> It was like a kind of continuity, quite impossible to break.

The study of the adoption of the *Ekloge* in Southern Italy, during the control of the Byzantines or more simply their influence, depending on the period, must consider several factors, not last the problem about the relationships between the

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instead of the old *župe*, while the control of the hard lands on the border was given to reliable commanders, the *krajiške vojvode*.

<sup>88</sup> See, for example, La conversione al cristianesimo nell'Europa dell'Alto Medioevo, Spoleto 1967, but mainly R. Fletcher, *The Conversion of Europe: from paganism to Christianity*. 371–1386 d.C., London 1997.

<sup>89</sup> See F. Calasso, *Il problema istituzionale dell'ordinamento barbarico in Italia, Il passaggio dall'antichità al medioevo*, Spoleto 1962, 57–90, but also G. Vismara, *Il diritto in Italia nell'alto medioevo, La cultura in Italia fra tardo antico e alto medioevo. Atti del convegno*, Roma 1981, I 165–179.

<sup>90</sup> See L. Burgmann, *Mittelalterliche Übersetzungen byzantinischer Rechtstexte, Antike Rechtsgeschichte. Einheit und Vielfalt*, ed. G. Thür, Wien 2005, 43–66.

<sup>91</sup> See V. von Falkenhausen, *Zur Sprache der mittelalterlichen griechischen Urkunden aus Süditalien und Sizilien, La cultura in Italia fra Tardo Antico e Alto Medioevo. Atti del convegno tenuto presso il C.N.R.*, Roma 1981, 611–618.

<sup>92</sup> See, for example, F. Gorla, *Legislatore e legislazione nell'impero romano d'oriente da Eraclio al 1204, Modelli di legislatore e scienza della legislazione. II. Modelli storici e comparativi*, Napoli 1988, 43–66.



centre of the empire and its ramifications.<sup>93</sup> The significance which in the Byzantine ideology had Rome and Italy, with the respective impacts, affected the way of the law reception coming from Constantinople.<sup>94</sup>

Completely different the experience, which was lived by the Slavian cultures, the Balkanic one like the Bulgarian and then Serbian, before that of the state of Great Moravia, finally into the Russian principates, where the Byzantine political ideology survived for a long time;<sup>95</sup> each of all these realities took the Byzantine law as an element not involved in its constitutive culture and originating from far: it was something belonging to an upper sphere, a kind of heritage to make foreign people not only enter to participate of the Orthodox world,<sup>96</sup> but especially to confirm in the eyes of the contemporaneous some positions of command, which were obtained using the force and the violence through a mechanism of power devolution descending directly from the imperial majesty.<sup>97</sup>

<sup>93</sup> See *G. Dagron*, *Rome et l'Italie vues de Byzance (IVe–VIIe siècles)*, Bisanzio, Roma e l'Italia nell'Alto Medioevo, Spoleto 1988, I 45–64, where also *A. Carile*, *Roma e Romania dagli Isaurici ai Comneni*, II 531–582, with *G. P. Bognetti*, *I rapporti etico-politici fra Oriente e Occidente dal secolo V al secolo VIII*, *Relazioni del X Congresso internazionale di Scienze Storiche*, Firenze 1955, III 3–65 (= *L'età longobarda*, Milano 1968, IV 115–135); see finally *F. Dölger*, *Rom in der Gedankwelt der Byzantiner*, *Zeitschrift für Kirchengeschichte* 56 (1937) 1–42 (= *Byzanz und die europäische Staatenwelt. Ausgewählte Vorträge und Aufsätze*, Ettal 1953, 70–115).

<sup>94</sup> See for example *L.-R. Ménager*, *Notes sur les codifications byzantines et l'Occident*, *Varia. Études de droit romain*, Paris 1958, III 239–303. Despite positions like that of Zachariae von Lingenthal, who considered Byzantine law in Southern Italy even at the origin of the Bononia “juridical revival” (see *Il diritto romano nella Bassa Italia e la scuola giuridica di Bologna*, *Rendiconti del Regio Istituto Lombardo di scienze e lettere*, 18, 1885, 894–899 = *C. Ferrini*, *Opere*, Milano 1929, I 485–489 = *Kleine Schriften zur Römischen und Byzantinischen Rechtsgeschichte*, Leipzig 1880–1894 and Leipzig 1973, II 241–246), the bond with the capital of the empire remained always very strong. Interesting *A. Guillou*, *L'École dans l'Italie byzantine*, *La scuola nell'Occidente latino dell'Alto Medioevo*, Spoleto 1972, 291–311.

<sup>95</sup> See *F. Dvornik*, *Byzantine Political ideas in Kievan Russia*, *Dumbarton Oaks Papers* 9/10 (1956) 73–121.

<sup>96</sup> See *D. Obolensky*, *Byzantine Commonwealth. Eastern Europe. 500–1453*, New York – Washington, 1971.

<sup>97</sup> See *G. Ostrogorsky*, *The Byzantine Emperor and the Hierarchical World Order*, *The Slavonic and East Europe Review* 35 (1956/1957) 1–14; for the Byzantine conception of the power we refer to *G. Dagron*, *Empereur et prêtre: étude sur le “césaropapisme” byzantin*, Paris 1996; see moreover *S. Runciman*, *The Byzantine Theocracy*, Cambridge 1977. About the matter of the Byzantine autocracy see *H.-G. Beck*, *Res Publica Romana. Vom Staatsdenken der Byzantiner*, München 1970, *H. Ahrweiler*, *L'idéologie politique de l'Empire byzantin*, Paris 1975, *D. M. Nicol*, *Byzantine Political Thought*, *The Cambridge history of medieval political thought*, ed. *J. H. Burns*, London 1988, 51–79, *A. Pertusi*, *Il pensiero politico bizantino*, ed. *A. Carile*, Bologna 1990, *P. Piccinini*, *L'ideologia politica bizantina*, *Rivista di Bizantinistica* 1 (1991) 163–80, *M. Th. Fögen*, *Das politische Denken der Byzantiner*, *Pipers Handbuch der politischen Ideen*, edd. *I. Fetscher* – *H. Munkler*, München 1993, 41–85, *J. Irmscher*, *Il pensiero politico a Bisanzio*, *Lo spazio letterario nella Grecia antica*, edd. *G. Gambiano* – *L. Canfora* – *D. Lanza*, Roma 1995, II 529–61; see moreover *P. J. Alexander*, *Religious and political history and thought in the Byzantine Empire: collected studies*, London 1978 and *F. Dvornik*, *Early Christian and Byzantine political philosophy: origins and background*, Washington 1966; see finally *A. Michel*, *Die Kaisermacht in der Ostkirche (843–1204)*, *Ostkirchliche Studien* 2 (1953) 1–35 and 89–109 / 4 (1955) 227–31 (= *Darmstadt 1959*), besides *F. Dölger*, *Kaiser, Kaisertum. II. Byzantinische Kaisertum*, *Lexikon für Theologie und Kirche* V,

Clearly, the persistence of Byzantine law and in a more circumscribed manner the diffusion of the *Ekloge* in the Italian peninsula included into the territory of the eastern Roman empire are elements, which we have to analyse considering also the ideological placement of the region, if close or far away from their pulsating hearth,<sup>98</sup> Constantinople, the *polis basilissa*.<sup>99</sup>

The consideration of the problem in the Slavian world runs along other paths, because these lands, each one in a peculiar way, had an independent history, where the penetration of the *Ekloge* was been an external factor, even if powerful and full of significance. In particular, considering Stefan Dušan's Serbia the choose to use the Isaurian legal text, shortened and translated, disclosed rather than a route of natural influence the decision to import a system with a deep character of political symbology: it was the new written law given to rule the just created empire "of the Greeks and the Serbs".<sup>100</sup>

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Freiburg in Breggau 1996, 3. Aufl., 1245–1246 and mainly Die "Familie der König" im Mittelalter, Historische Jahrbuch 60 (1940) 397–420 (= Byzanz und die europäische Staatenwelt. Ausgewählte Vorträge und Aufsätze, Ettal 1953, 34–70).

<sup>98</sup> See *A. Guillou*, *Italie méridionale byzantine ou byzantins en Italie méridionale?*, *Byzantion* 44 (1974) 152–190 (droit: 175–176), but also *M. McCormick*, *The Imperial Edge: Italo-Byzantine Identity. Movement and Integration. A.D. 650–950*, *Studies on the Internal Diaspora of the Byzantine Empire*, edd. *H. Ahrweiler — A. E. Laiou*, Washington 1998, 17–52; useful finally *H. Ahrweiler*, *Byzance. Le pays et les territoires*, London 1973.

<sup>99</sup> See *H. Hunger*, *Ὁ ὀφθαλμὸς τῆς οἰκουμένης. Das Auge der Welt, Neuen Forschungen und Restaurierungen in byzantinischen Kaiserpalast von Istanbul. Akten der Internationalen Fachtagung vom 6.–8. November 1991 in Istanbul*, Wien 1999, 21–28. Concerning the imperial structure the concepts of "centre" and "periphery" composed an inseparable binomial: in this sense the connection between the two terms represents a precious "key of reading" to understand the whole Byzantine history; see *Zwischen Polis, Provinz und Peripherie. Beiträge zur byzantinischen Geschichte und Kultur*, ed. *L. M. Hoffmann*, Wiesbaden 2005, but especially *E. Pitz*, *Die griechisch-römische Ökumene und die drei Kulturen des Mittelalters: Geschichte des mediterranen Weltteils zwischen Atlantik und Indischem Ozean. 270–812*, Berlin 2001; see also *M. Gallina*, *Centre et Périphérie: identité et différences (XIe–XIIIe siècles)* and *G. Cavallo*, *Ἐν βαρβάρους χωρίοις. Riflessioni su cultura del centro e cultura delle periferie a Bisanzio*, both in *Byzantina-Metabyzantina. La périphérie dans le temps et l'espace. Actes de la 6e Séance plénière du XXe Congrès international des Études byzantines*, Paris 2003, 57–76 and 77–106; we remember finally *Bisanzio fuori di Bisanzio*, ed. *G. Cavallo*, Palermo 1991.

<sup>100</sup> On the Eastern of 1346, in the front of the most important orthodox authorities of the Balkans and in particular the patriarch of Serbia Joanikije and of Bulgaria Simeon, he assumed the title of "emperor and autocrat of Serbs and Greeks" (*Stefan v Christa Boga verni car Srbliem i Grkom / Στέφανος ἐν Χριστῷ τῷ θεῷ πιστός βασιλεύς καὶ ἀυτοκράτωρ Σερβίας καὶ Ῥωμανίας*).

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## О РЕЦЕПЦИЈИ ИСАВРИЈАНСКЕ ЕКЛОГЕ У ВИЗАНТИЈСКОЈ ИТАЛИЈИ: ПОКУШАЈ ПОРЕЂЕЊА СА СЛОВЕНСКИМ СВЕТОМ И ПОСЕБНО СА СРПСКИМ ЦАРСТВОМ СТЕФАНА ДУШАНА

Историја рецепције византијског права у областима Апенинског полуострва, потчињеним власти Источног римског царства, почиње, вероватно, „прагматичком санкцијом“ (*pragmatica sanctio*), издатом 554. године, по завршетку исцрпљујућих сукоба са Готима: наиме, тада је Јустинијанова кодификација (*Corpus Iuris Civilis*) ступила на снагу и у Италији, која је коначно била ослобођена од варварске доминације, и тако се поново успоставила веза са оним што је тада било центар света — Константинопољем. У складу са оваквим идеолошким развојем треба тумачити и период владавине исавријске династије, када је царство било снажно уздрмано иконокластичким споровима. *Еклога*, законски текст проглашен у марту 741, раширила се у току процеса који је следио политичким догађајима, везаним за борбу против папства, када су Лав III и Константин V наметнули нову политику скупљања пореза, потчињавајући италске теме непосредној царској надлежности; тешко је замислити да у таквим околностима није накнадно постојао макар само покушај увођења законодавства, које би убрзо било установљено. Рукописи који се сматрају традицијом, која потиче од *Еклоге*, су првенствено *Cod. Marc.* 172 (јул 1175), *Cod. Vat.* 845 (друге половине 12. века), и *Cod. Par. gr.* 1384 (1166): први садржи *Epitome Marciana*, други *Prochironlegum*, а трећи *Appendix Eclo-*

*gae* и једну верзију *Eclogaprivataaucta*, поред *Eclogaad Prochironmutata*. Пошто треба придавати значај чувању и преузимању исавријских законских споменика у македонској епохи, било би занимљиво извршити поређење са ширењем Еклоге у словенском свету, а нарочито после неколико векова у Србији Стефана Душана. Супротно од оног што се десило у Италији, где се наметање Еклоге уклопило у један, готово природни процес, у оним областима где су законске одредбе преведене на словенски језик и сачуване у члановима закона, коришћеним у зборницима црквеног права, као што је *Закон судниј људем*, разлози су били друге природе; велики српски владар је одлучио да прибегне посебно византијском законодавству, због оног што је оно представљало са идеолошке тачке гледишта: реч је о писаном закону који проистиче из власти римског цара и који треба да се односи на све поданике, прошле, садашње и будуће.