Зборник радова Византолошког института XLV, 2008
Recueil des travaux de l'Institut d'études byzantines XLV, 2008

DOI:10.2298/ZRVI0845223S
UDC:34(497.11)"04/14"

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NATURAL PERSONS (INDIVIDUALS) AND LEGAL PERSONS (ENTITIES) IN SERBIAN MEDIEVAL LAW

In this paper the author is exposing the concept of natural persons (individuals) and legal persons (entities) in Serbian mediaeval law. The terms *glava* (head, *caput*, κεφαλή), or sometimes *kapa* (cap, hood) are used in Serbian legal sources to designate natural persons (individuals). In Serbian mediaeval law, it was mostly churches and monasteries that had the trait of legal persons (entities). Beside them, towns, villages, counties and districts, had some characteristics of legal persons.

I

In modern jurisprudence the term *individual* denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation or association.

Serbian legal sources used the terms *glava* (head, *caput*, κεφαλή), or sometimes *kapa* (cap, hood) to designate natural persons (individuals). The term *glava* could be found in two treaties concluded by Tsar Dušan (September 20, 1349) and his son and successor Tsar Uroš with Dubrovnik (April 25, 1357). In both of the treaties we find the same formula *da gredu svoimi glavami*,[1] that means that Ragusan merchants could freely circulate within Serbia as individuals. In the article 31 of the Law Code of Stefan Dušan, on parish priests, it is used the expression *and the priest's cap is free* (*i da jest popovska kapa svobodna*).[2] It means that parish priests, as natural persons (individuals), were exempted of feudal services that commoners normally had.

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[1] *S. Novaković,* Zakonski spomenici srpskih država srednjega veka (further on Zakonski spomenici), Beograd 1912, 169 and 179;

[2] *S. Novaković,* Zakonik Stefana Dušana cara srpskog 1349 i 1354 (further on Zakonik), Beograd 1898 (reprint 2004), 29 and 164; English translation by *M. Burr*, The Code of Stephan Dušan, Tsar and Autocrat of the Serbs and Greeks (further on *Burr*), The Slavonic (and East European) Review, vol. 28 (1949), 204.

Only individuals who were free had full legal capacity. Slaves (*otroci*) were owned by their masters and therefore had neither private nor public rights. However, in mediavel Serbia there were several exemptions from that general rule.[3]

According to the Serbian legal sources it is not clear enough at what age full legal capacity was assumed. The Charter presented by King Milutin to the monastery of Saint Stephen in Banjska (1313–1318) says *that a widow, who has a little boy, should hold the whole village until her son is grown-up* (*a sirota koja ima mala sina da si drži vse selo dogde joj sin podraste*).[4] It is clear that persons under age could not enter into formal transactions, but what was the age when natural persons (individuals) asumed full legal capacity? So-called "Justinian's Law" in Article 1 provides that full legal age was asumed at the age of 25.[5] Serbian translation of *The Syntagma of Matheas Blastares* exposes very complicate Byzantine system of three ages existing in the life of natural persons: 1) young persons (*mladi,* ἄνηβοι) under puberty (14 male, 12 female) had no legal capacity and they were under tutorship (*pristavnik, tutela*, ἐπίτροπος); 2) individuals who have reached puberty were, nevertheless, too young to administer their affairs and they were under *cura* (*pečalovnik*, κουράτωρ**,** guardianship over minors) until the age of 25, either male or female; 3) a person who reached *perfecta aetas* at the age of 25, has full capacity to act on its own behalf.[6] But, according to Byzantine law four more years were required for establishment **(***ustamenienije*, ἀποκατάστασις) of all legal rights of an ex-minor, so that the conscent of a *curator* was no more needed at the age of 30.[7] Further, according to remainig legal sources it is impossible to say whether those Byzantine rules were applied in mediaeval Serbia and whether full legal capacity was assumed at the age of puberty (14 male, 12 female).[8]

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[3] Considering all the facts given by Serbian legal sources it is evident that *otroci* could not have simply be called slaves, and that the term had few different meanings (see *R. Mihaljčić,* Otroci, Istorijski glasnik 1 (1986) 51–57 = Prošlost i narodno sećanje, Beograd 1995, 233–240; See also the articles Otrok and Rob, Robinja, by *Dj. Bubalo* in The Lexicon of Serbian Middle Ages, Beograd 1999, 483–485 and 622–625). Basically, *otroci* were on the bottom of the social ladder; they were a class of people with a social status between serfs and slaves. But, the close relationship between an *otrok* and his master might create a relation of confidence, so that some of very important missions could be conferred to an *otrok.* It is well known that in Ancient Rome some very important duties were conferred to the slaves and especially to the free-made (*libertinus*). *L. Margetić,* Bilješke o meropsima, sokalnicima i otrocima, Zbornik radova Pravnog fakulteta u Novom Sadu XXV, 1–3 (1991) 113, considers that *otroci* are social class similar to the noblemen servants in mediaeval Croatia or *ministeriales* of German law. On legal capacity of *otroci* see *T. Taranovski,* Istorija srpskog prava u nemanjićkoj državi, III deo, Istorija građanskog prava, Beograd 1935, 3–6 (= Klasici jugoslovenskog prava, knjiga 12, Beograd 1996, 525–528).

[4] Zakonski spomenici, 627, LXXIII.

[5] *A Solovjev*, Zakonodavstvo Stefana Dušana cara Srba i Grka, Beograd 1928, 236 = Klasici jugoslovenskog prava, knjiga 16*,* Beograd 1998, 540.

[6] *S. Novaković,* Matije Vlastara Sintagmat (further on Sintagmat), Beograd 1907, 308. Greek text edited by *G.A. Ralles — M. Potles,* Ματθαίου τοῦ Βλαστάρεως Σύνταγμα κατὰ Στοιχεῖον, Athenai 1859, 293–294.

[7] *S. Novaković,* Sintagmat, 144–145.

[8] According to the opinion of *T. Taranovski*, op. cit. 7, it is not possible to suppose that such a complicate system could have been applied in mediaeval Serbia, because of the simplicity of Serbian

II

In Serbian mediaeval law it was mostly churches and monasteries that had the trait of legal person (entity — an organization entitled to acquire and enjoy rights and duties, particularly considering their property). Beside them, towns, villages, counties and districts also had some characteristics of legal persons.

Serbian monarchs were giving land and estates to churches and monasteries and that way they became the subjects of property rights. To designate the ecclesiastical entities Serbian legal documents use different terms. For exemple, in the Chrysobull from 1308 King Milutin says that he gave everything to the church of the Holy Virgin of Hilandar (*i sija vsa jaže pridaa kraljevstvo mi* ***crkvi*** *Svetije Bogorodice Hilandarskije*).[9] The same term — *church* (crkva) we found in the Chrysobull of Tsar Stefan Dušan from 1346: *Let that all have* ***the church of Saint Stephen*** (*da ima crkva Svetago Stefana*).[10]

In some legal documents the term *hram* = temple, shrine (the Holy Shrine of Saint Nicolas in Vranjina, the Shrine of Holy Virgin in Hilandar, the Shrine of the Saint Protomartyr Stephen in Banjska) is used instead of the word *church* (crkva).[11] But, most frequently we found the term *monastery* (manastir). Already the Great Župan Stefan Nemanjić, in his Charter to Hilandar (1199–1206) says that he gave the villages *to the monastery* (*dah sela manastiru*).[12] The monastery of Saint Stephen in Banjska, the monastery of Saint George near Skopje, the monastery of Saint Nicolas Mrački, the monastery of Holy Virgin in Htetovo, the monastery Treskavac, and many others,[13] are mentioned in the same fashion (as legal persons). However, one could note that the name *monastery* is often replaced with the term *church*. In Serbian legal documents Hilandar, for example, is equally called a church and a monastery.

To designate the legal persons Serbian monarchs sometimes used figurative expressions, saying that they have given the estates to the eponymous saint of the monastery, so *the saint* has a feature of a legal entity. We shall quote a few examples: King Stefan Vladislav writes between 1234 and 1237 that he gave the village of Branike to the Most Pure Virgin (*Ja Stefan Vladislav, sa pomoštiju božijeju kralj… pridah to selo Branike Prečistoj Bogorodici*).[14] King Stefan Dečanski says

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society. It is much more likely that the legal age was assumed at the age of puberty. As the argument for his opinion the author adds that all rules on legal age were omited in the abridged version of Syntagma. See also *S. Šarkić*, O sticanju poslovne sposobnosti u srednjovekovnom srpskom pravu (On Acquirement of Legal Capacity in Serbian Mediaeval Law), ZRVI 43 (2006), 71–76. The same paper, with some amendments, has been published in Italian as well: Sull'acquisizione della capacità di agire nel diritto medievale serbo, Diritto e Storia, Rivista internazionale di Scienze Giuridiche e Tradizione Romana, N. 6 (2007), 1–6.

9 Zakonski spomenici, 478, XV.

10 Ibid. 631, V.

11 Ibid. 579, V; 448, VI; 622, I.

12 Ibid. 325, I.

13 Ibid. 631, I; 608, I; 644, X; 657, II; 664, I.

14 Ibid. 386.

that he gave a small gift to the Most Pure Mother of God from Hilandar (*Temže i az va Hrista Boga verni Stefan IV po milosti Božijej kralj vseh srpskih i pomorskih zemalj i čestnik Grkom… prinesoh mali si dar… prečistoj Materi Božijej Hilandarskoj*).[15] Tsar Dušan writes that he gave the estates to the Saint Nicolas (*…i sije priloži carstvo mi svetomu Nikole*).[16]

In some legal documents the entity of church or monastery was expressed as the *home of a certain saint.* For example *the home of the Holy Virgin from Hilandar* (*dom svetije Bogorodice Hilandarskije*),[17] *the home of Saint Stephen in Banjska* (*dom Svetago Stefana u Banjskoj*),[18] *the home of Our Almighty (Pantokrator) Lord* (*dom Gospodnevi Bogu pandokratoru*),[19] *the home of the Savior* (*Dom Spasov*) in Žiča,[20] *the home of the Holy Virgin in Ston* (*dom Svetije Bogorodice u Stone*),[21] etc. It is evident that the figure of the saint expresses the concept of churches and monasteries as the institutions, i.e. legal persons (entities).

According to the opinion of some authors towns had the feature of legal persons as well.[22] The arguments of those historians are based on two articles of the Law Code of Stefan Dušan and two charters. First, article 124 being as follows: *Greek towns which the Lord Tsar hath taken, whatsoever charters and decrees have been granted to them, whatsoever they have and hold up to the time of this Council, let them hold, and it is confirmed to them and let no man take aught from them* (*Gradove grčci, kojeh jest prijel gospodin car, što im jest učinil hrisovulje i prostagme, što si imaju gde i drže do sijega-zi sabora to-zi da si drže i da im jest tvrdo, i da im se ne uzme ništo*).[23] This means that towns conquered from Byzantium (*Greek towns*) possessed real or immovable property. Likewise in article 137 we find general confirmation of all chrysobulls granted to the towns.[24] One can conclude that the towns were treated as legal persons (entities) enjoying the absolute ownership on their lands. To support such a statement we shall quote two charters of Serbian monarchs: in the first charter King Stefan Radoslav (1230, July 15) confirms to the maritime town of Kotor all its property rights on lands and vineyards (*confirmò tutti li orti et le vigne loro*);[25] in the second charter Tsar Dušan 1351 confirms property rights of the same Kotor town on the county (župa) of Grbalj.[26]

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15 Ibid. 413, I. King Dušan confirms the gift of his father Stefan Dečanski (1334–1346).

16 Ibid. 435, IV.

17 Ibid. 480, V.

18 Ibid. 630.

19 Ibid. 646, II.

20 Ibid. 471, VIII.

21 Ibid. 600, I.

22 For more details see *Taranovski,* op. cit. 25–26.

23 *S. Novaković*, Zakonik, 95 and 221; *Burr,* 521.

24 Article 137: *My charters which I have granted to the towns of my Empire, that which is written in them may not be changed, even by the Lord Tsar himself, nor by any other man. The charters are firm* (*Hrisovolji carstva mi što su učinjeni gradovom carstva mi, što im piše, da im nest voljan potvoriti ni gospodin car ni in kto. Da su hrisovolji tvrdi*). *Burr,* 524; *S. Novaković*, Zakonik, 104 and 227.

25 Zakonski spomenici, 24.

26 Ibid. 31–32.

The above mentioned documents refer only to Byzantine (Greek) and maritime towns as legal persons. What was the situation regarding towns in the interior of Serbia? The Law Code of Stefan Dušan (article 126) mentions *urban land around a town* (*gradska zemlja što je okolo grada*),[27] but we do not have any proof that the land was absolute ownership of the town. Anyway, it is very hard to say whether the towns in Serbia were considered as legal persons, because we dispose only scarce information in the sources.

We have much more data regarding villages as legal persons (entities) and subjects of property rights. Article 74 of the Law Code of Stefan Dušan provides that villages have the right to pastures.[28] But, it is not clear whether the villages had ownership of the pastures or had only a servitude. Article 79 provides: *But if villages dispute between themselves touching land or boundaries, let them sue by the law of the Sainted King*[29] *from the time of his death…* (*A za međe i za zemlju što se potvoraju sela među sobom, da ište sudom ot svetago kralja, kadi se je prestavil…*).[30] So, the villages could be either plaintiff or defendant in a lawsuit, which proves that they were considered legal persons in the civil law cases. Had they no property rights to their land, villages could not have had any judicial claim.

According to the article 75 of the Law Code of Stefan Dušan we can conclude that counties or districts (župa) had some rights to pastures, as well.[31] But, this is not sufficient to assert that counties and districts in mediaeval Serbia had features of legal persons (entities).

III

Legal persons (entities) administered their affairs and effected their rights through their legal agents. Serbian legal sources give us information only on churches and monasteries as legal persons. Legal agents of monasteries were their superiors (hegoumenos, ἡγούμενος) who could enter into formal transactions in the name of a monastery or a church. However, monastery superior could perform important legal acts only with the consent of elder monastery brothers. This was clearly written in the Tsar Dušan's Charter to the monastery of Saint Archangels Michael and Gabriel (1348): *And the monastery superior can do or give nothing*

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27 *S. Novaković,* Zakonik, 97 and 223*; Burr,* 522.

28 Article 74: *Let village pasture with village, where one village, there also the other. Only legal enclosures and meadows may not be grazed* (*Selo sa selom da pase; kude jedno selo, tude i drugo:razve zabel zakonitih i livad zakonitih nikto da ne pase*). *Burr,* 212*; S. Novaković,* Zakonik, 59 and 191.

29 *The Sainted King,* in the Code, always means Milutin, Dušan's grandfather.

30 *Burr,* 213; S. Novaković, Zakonik, 63 and 193.

31 Article 75: *No district my graze its stock within another district. And if in the district there be a separate village which belongs to any lord, or to my majesty, or is a Church village, or belongs to a gentleman, that village shall graze with the rest of the county district and no man shall forbid it to so graze* (*Župa župe da ne popasa dobitkom ništa. Ako li se najde jedno selo u to-zi župe u koga ljubo vlastelina, ili jest carstva mi, ili jest crkovno selo, ili vlasteličića, onomu-zi selu nikto da ne zabrani pasti, da pase kude i župa*). *Burr,* 212*; S. Novaković,* Zakonik, 60 and 191.

without agreement with oikonomos and bašta [father] *and ekklesiarches and docheiarios* (*I da ne voljan iguman ništa otdati ni učiniti bez zgovora ikonoma i bašte i eklisiarha i dohijara*).[32] The sale of monastery land could be performed with the agreement of the whole monastery community.[33]

Article 35 of the Law Code of Stefan Dušan explicitly states that the superior is the legal agent of the monastery: *And my majesty has granted to the hegoumenes their churches, that they be rulers of their goods, both mares and horses and sheep and everything else and that they may do with them whotsoever is deemed suitable and appropriate and lawful, and as is written in the chrysobuls of the holy founders* (*I predade carstvo mi igumenom crkvi; da obladaju vsom kućom, kobilami i konjmi, i ovcami, i inem vsem, i o vsem da su voljni što jest prilično po pute i po pravde i kako piše hrisovulj svetih ktitor*).[34] A superior had to be appointed with the consent of the monastery community and the superiors must be honest persons: *Hegoumenes may not be appointed without the consent of the Church; as hegoumenes in monasteries good men shall be appointed, who will enrich the Church, the House of God* (*Igumni da se ne postavljaju bez dela ot crkve; igumni po manastireh da se stave dobri človeci, koji će crkov stožiti, Dom Božji*).[35] Finally, the Law Code orders that superiors perform legal acts with the consent of the community: *Hegoumenes shall live in the monasteries according to the law and the elders shall confer* (*Igumni da živu u kinovijah po zakonu, zgovaraje se sa starci*).[36]

Dušan's Law Code did not however issue the rule that a monastery's land could be sold only with the common agreement of the whole monastery community. This gap in the law could be explained by the fact that the sale of monastery lands in practice was very rare. In a case when a monastery wanted to sell its land, it should have obtained a special confirmation of a monarch, that was to be written in the separate charter.

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[32] Zakonski spomenici, 697, CLXIV. Edition *S. Mišić — T. Subotin-Golubović*, Svetoarhanđelovska hrisovulja, Beograd 2003, 111.

[33] Ibid. 485, II.

[34] *Burr,* 205; *S. Novaković,* Zakonik, 33 and 169.

[35] *Burr,* 201*; S. Novaković*, Zakonik, 19 and 156.

[36] *Burr,* 201; *S. Novaković*, Zakonik, 19 and 157.

Срђан Шаркић

ФИЗИЧКА И ПРАВНА ЛИЦА У СРЕДЊОВЕКОВНОМ СРПСКОМ ПРАВУ

У средњовекововном српском праву физичка лица означавају се терминима *глава* и *капа.* Ти изрази срећу се у два уговора са Дубровником (*глава*) и у члану 31 Душановог законика (*капа*). Није, међутим, сасвим јасно у ком узрасту су физичка лица стицала пуну пословну способност.

Српски правни споменици најчешће спомињу цркве и манастире као правна лица. Понекад се користе и фигуративни изрази, тако што се каже да имовином манастира располаже епонимни светац или „дом свете Богородице“, „дом Господневи Богу пандократору“, „дом Спасов“, „дом Светаго Стефана“ и слично. Нека својства правних лица имали су и градови, села и жупе.

Правна лица остваривала су своја права преко својих правних заступника. Српски правни споменици дају нам само податке о правним заступницима цркава и манастира. Правне послове у име манастира склапали су њихови игумани уз сагласност манастирске заједнице. Немамо података ко је иступао у име градова, села и жупа.