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ВИЗАНТИЙСКОЕ ОБЩЕСТВО И ГОСУДАРСТВО

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RIGHTS OVER "THE PROPERTY OF ANOTHER" (*Iura in re aliena*) IN BYZANTINE AND MEDIAEVAL SERBIAN LAW [1]

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Abstract. In some cases, when a person owned property, his rights over such property might be limited. The most important rights over another's property, mentioned by Byzantine law and accepted in mediaeval Serbian legal sources are servitudes, pledge and emphyteusis. The rules on servitudes (δουλεία – работа) penetrated in Serbian law at the beginning of 13th century, when Saint Sabba (Свети Сава) incorporated in his "Nomokanon" the whole Byzantine "Procheiron". Its chapter XXXVIII, under the title "On novelties" (Περὶ καινοτομιῶν), contains different provisions, concerning the servitudes, mixed with administrative rules on building the new houses. That was the reason why Serbian translators of "Procheiron" entitled this chapter as "On building of new houses, reconstruction of the old and other things". While the chapter XXXVIII of "Procheiron" contains 64 provisions, Matheas Blastares took in his "Syntagma" only 18, and created a short Chapter K-3 under the same title "On novelties" ("О новотвореныхъ" in Serbian translation). It contains, beside different decrees and prohibitions by administrative authorities, some urban servitudes, that could be changed by special agreements (συμφώνον – сьгласик). Byzantine legal miscellanies always put together the rules on pledge in the same chapter with the provisions on loan, although modern legal science treats pledge as a part of the law of property and loan as a real contract and the part of the law of obligation. The chapter X of "Ecloga" has a title "On literal and unliteral loans and for them given pledges"; the chapter XVI of "Procheiron" is known under the title "On loan and pledge" and the chapter XXVIII of "Epanagoge" entitled "On loans and pledges". For this reason, Matheas Blastares included the chapter Δ-2 under the title "On lenders, and loan, and pledges" in his "Syntagma". Among Serbian legal sources, pledge was mentioned only in a few documents: these are so called "Justinian's Law" (art. 26 and 27); King Milutin's chrysobull, granted to the Hilandar's pyrgos in Chrousija; King Dušan's chrysobull, giving the church of Most Holy Virgin in Lipljan to the Hilandar's pyrgos in Chrousija; and Dušan's "Law Code" (art. 90). The chapter XV of the "Procheiron" has the title "On emphyteusis" and contains six provisions, speaking on emphyteusis of Church estates. Matheas Blastares introduced a short Chapter E-8, entitled "On emphyteusis" ("О насажденіи" in Serbian translation), in his "Syntagma". Its chapter represents an interpretation of Justinian's Novella CXX, chapters 2 and 8. In Serbian legal sources we can not find any information on emphyteusis.

Key words: servitudes, pledge, emphyteusis, "Procheiron", "Ecloga", "Syntagma" of Matheas Blastares, Dušan's Law Code, charters.

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ПРАВА НА «ЧУЖУЮ СОБСТВЕННОСТЬ» (*Iura in re aliena*) В ВИЗАНТИЙСКОМ И СРЕДНЕВЕКОВОМ СЕРБСКОМ ПРАВЕ [1]

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Аннотация. В некоторых случаях, когда некое лицо обладало частной собственностью, его права над собственностью должны были быть ограничены. Наиболее важными правами над чужой собственностью, упоминаемыми в византийском праве и принятыми в средневековых сербских законодательных источниках, являлись сервитуты, залог (заклад) и эмфитевсис. Нормы сервитутов (δουλεία – работа) проникли в сербское право в начале XIII в., когда Св. Савва (Свети Сава) включил в свой «Номоканон» целый византийский «Прохирон». Его глава XXXVIII, под титулом «О новшествах», содержит различные положения, посвященные сервитутам, которые касаются административных правил строительства новых зданий. Такова причина, почему эту главу сербские переводчики «Прохирона» озаглавили «О строительстве новых домов, реконструкции старых и иных вещах». В то время как глава XXXVIII «Прохирона» содержит 64 статьи, Матфей Властарь включил в свою «Синтагму» только 18 и создал краткую Главу К-3 под тем же самым заглавием «О новшествах» («О новотвореныхь» в сербском переводе). Она содержит, помимо различных декретов и запретов административных авторитетов, описание некоторых городских сервитутов, которые могли бы применяться по специальным соглашениям (συμφώνον – сьгласие). Хотя современная правовая наука трактует залог как часть права собственности и заем как реальный контракт и часть обязательственного права, византийские правовые сборники всегда помещают правила о залоге (закладе) в той же самой главе вместе со статьями о займе. Глава X «Эклоги» имеет название «О займах письменных и неписьменных и дающих ради них заклад»; глава XVI «Прохирона» известна под титулом «О займе и закладе», и глава XXVIII «Эпанагоги» озаглавлена «О займах и закладах». По этой причине Матфей Властарь включил в свою «Синтагму» Главу Δ-2 под названием «О заимодавцах [кредиторах], и займе, и закладах». Среди сербских правовых источников залог упоминается только в нескольких документах: это так называемый «Юстинианов закон» (ст. 26 и 27); хрисовул краля Милутина, пожалованный Хиландарскому пиргу в Хрусии; хрисовул краля Стефана Душана, данный церкви Пресвятой Богородицы в Липлянах о Хиландарском пирге в Хрусии; и Душанов «Законник» (ст. 90). Глава XV «Прохирона» названа «Об эмфитевсисе» и содержит шесть статей, рассказывающих об эмфитевсисе в церковных имениях. Матфей Властарь ввел в свою «Синтагму» краткую Главу Е-8 под названием «Об эмфитевсисе» («О насаждении» в сербском переводе). Она представляет интерпретацию юстиниановой новеллы CXX (главы 2 и 3). В сербских правовых источниках мы не можем найти сведений об эмфитевсисе.

Ключевые слова: сервитуты, залог, эмфитевсис, «Прохирон», «Эклога», «Синтагма» Матфея Властаря, Душанов «Законник», акты.

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Introduction

The task of this paper is to examine rights over “the property of another” (iura in re aliena) in Serbian mediaeval law. These rights were represented in Byzantine law by legal sources translated from Greek language into Old Serbo-Slavonic language of Serbian legal miscellanies.

In some cases, when a person owned property, his rights over such property might be limited. The most important rights over another’s property of Byzantine law, accepted in mediaeval Serbian legal sources, are “servitudes”, “pledge” and “emphyteusis”.

Servitudes

“Servitudes” (servitutes – δουλεία – работе) was said to exist where X possessed rights “in rem” over the property of Y. According to the interpretations of Roman iurists servitudes might be praedial or personal. Praedial servitudes could

be rustic (“iura praediorum rusticorum”) or urban (“iura praediorum urbanorum”). Praedial servitudes were rights over immovables. These rights were exerted by the owner of a “praedium dominans” (dominant tenement) over a “praedium serviens” (servient tenement). Such “servitutes” were of two types: rural or rustic and urban. Praedial servitudes were held by virtue of the ownership of a house or land; personal servitudes did nor depend on such ownership. The most important personal servitudes were: “ususfructus”, “usus”, “operae servorum vel animalium”, “habitation” (D. VII.1–9; XXXIII.2–3; VIII.1–6 [29]; IJ. II.3–5 [30]; CJ. III.33–34 [31]; Gai. Inst. II [3]; Paul. Sent. I.17 [35]; Ulp. Reg. Lib. sing. XV.1; XIX.1 [37]).

Roman terms “servitudes” were translated in Byzantine legal sources as “δουλεία”, although this word means slavery and hard (slavish) work, as well, for example: Δουλεία ἐστὶν ἐθνικοῦ νόμου διατύπωσις [34, p. 171]. This definition is the translation of Roman “iuristconsultus” (lawyer) Florentinus, who wrote: “Servitus est constitutio iuris gentium” (D. I, 5,4). In their translation from Greek the redactors of Serbian legal miscellanies used the word “rabota” (**работа**), which has also different meanings. In any case, “rabota” (“**работа**”, id est “service”) is the general Slavonic word for customary “labour service”, corresponding to the Greek word “ἀγγαρεία” [1, p. 609] [2].

The rules on servitudes penetrated in Serbian law at the beginning of 13th century, when Saint Sabba incorporated in his “Nomokanon” the whole “Procheiron” (word by word “Πρόχειρος Νόμος”, lit. “Handbook” or “The Law Ready at Hand”). The chapter XXXVIII of “Procheiron”, under the title “On novelties” (“Περὶ καινοτομιῶν”), contains different provisions, concerning the servitudes, mixed with administrative rules on building the new houses [36, pp. 206–216]. That was the reason why Serbian translators entitled this chapter of “Procheiron” as “On building of new houses, reconstruction of the old and other things” (“**О ꙁданыи новыхь домовь, и ѡ поставьлѥенїи ветьхыхь, и ѡнихь вѣщехь**”) [17, pp. 380–397; 4, pp. 315b–321b]. There is an analogy in “Syntagma” of Matheas Blastares, the monk from Thessaloniki, who puts together 24 titles in his alphabetical miscellany, where each title has a sign of the letter in the order of Greek alphabet; this nomocanonical “Syntagma” (further – Synt.) is known in Serbia in two translations (further – Synt.Se), a full version and an abridged one. While the chapter XXXVIII of “Procheiron” contains 64 provisions, Serbian compiler took in his “Syntagma” only 18 provisions, and created a short chapter (Synt. K-3) under the same title “On novelties” (“Περὶ καινοτομιῶν” [38, pp. 312–314] – “**О новотвореныхь**” in Serbian translation [5, pp. 330–332]). It contains, beside different decrees and prohibitions by administrative authorities, some urban servitudes (**работе**), that could be instituted and changed by special agreements (συμφώνον – **сьгласиѥ**). Those are the following rules:

A house in a town (i. e. Constantinople) can not cover the view on the sea (Proch. XXXVIII.5 [36, p. 206]; Hexabibl. II.4.46 [28]; Synt. K-3.4 [38, p. 312]; Synt.Se.K.3 [5, c. 330–331]). This is very well-known urban servitude, called by Roman iurists “ne luminibus, ne prospectui officiator” or shorter “servitus prospectus” (“right to light”: δουλεία ἀπόψεως – **работа оть видѣнїа**). However, the stated prohibition does not refer to gardens, if the distance between the buildings is larger than hundred feet: ἐὰν δὲ ρ´ ποδῶν ἐν μέσω τῶν δύο οἴκων εἴη διάστημα (Synt. K-3.4) [38, p. 312] – **аще ли же стомь ногамь мѣждоу двѣма храмома ѥсть растоꙗнїе** (Synt.Se. K-3) [5, p. 331].

It is forbiden to let the smoke out of stoves, except if someone does not dispose with special right to do that: εἰ μὴ ἄρα δίκαιον εἶχεν ἐκεῖσε τὸν καπνὸν εἰσπέμπειν (Synt. K-3.12 [38, p. 313] – **раꙁвѣ оубо аще правиноу имѣль ѥсть тамо дымь испоущати** (Synt.Se. K-3) [5, p. 332]. It corresponds to “Procheiron” (Proch. XXXVIII.18) [36, p. 208] and goes back to “Digesta” (Ulpianus libro septimo decimo ad edictum): ...Aristo Cerellio Vitali respondit non putare se ex taberna casiaria fumum in superiora aedificia iure immitti posse, nisi ei rei servitutem talem admittit (D. VIII, 5, 8, 5).

Nobody can throw trash under a neighbour’s wall, exept if somebody does not dispose with a corresponding servitude: Οὐδεὶς δύναται κόπρον πλησίον τοῦ ἀλλοτρίου τοίχου ῥίπτειν, εἰ μὴ τοιαύτην ἔχει δουλείαν (Synt. K-3.14) [38, p. 332] – **никтоже можеть гнои блиꙁь тоуждеѥ стѣны помѣтати, раꙁвѣ аще таковоу имать работоу** (Synt.Se. K-3) [5, p. 314], according to “Procheiron” (Proch. XXXVIII, 22)

[36, p. 209]. It is a case of "servitus sterquilini" or "latrinae sive sterculini" (right to have a dung heap against a neighbour's wall) of Roman law (D. VIII, 5, 17, 2).

On the occasion of building a new house, it was forbidden to brick up a window to a neighbour, exept if the agreement did not institute a corresponding servitude: εἰ μὴ ἄρα δουλείαν ἔχοι κατὰ συμφωνίαν (Synt. K-3.2) [38, p. 330] – **развѣ аще работоу имать по сьгласию** [5, p. 312]. It corresponds to "Procheiron" (Proch. XXXVIII, 4) [36, p. 206]. This question was minutely regulated by a law from the reign of Emperor Zeno, without any mentioning of promulgation year (so, between 474 and 491), according to Iustiniani Codex (the chapter under the title "De aedificiis privates") (CJ. VIII.10.12).

Among rural or rustic servitudes Matheas Blastares mentioned only two rules. He classified them into the chapter of his "Syntagma" (Synt. N-8) under the title "On pasture" ("Περὶ νομῆς" – "**О паствѣ**"):

1) The first rule touches on someone, who has right to water, e. g. "aquaeductus" (leading water in pipes, or in stone channels), as well as right of pasture of sheep on another man's land (servitus pecoris pascendi). It can be raised a hut on that land: Ὁ ἔχων δουλείαν τοῦ πατίζειν καὶ βόσκειν ἐν τῷ ἀγρῷ σου θρέμματα, δύναται τοῦ ἐν αὐτῷ ποιεῖν καλύβην (Synt. N-8) [38, p. 401] – **Имѣѥи работоу иже напаꙗти и пасти на селѣ твоѥмь овце, можеть стежати работоу иже вь нѥмь творити коущоу** (Synt.Se. N-8) [5, p. 422];

2) If someone, with a knowledge of owner, leads water over another man's land, after three years he acquires this servitude, and the owner of the land can not disturb him: Ὁ δι᾽ ἀλλοτρίου ἀγροῦ ἕλκων ὕδωρ, εἰδότος τοῦ δεσπότου τοῦ ἀγροῦ, κτᾶται κατὰ τοῦ ἀγροῦ δουλείαν, ἐν τῷ νενομισμένῳ τριετίας χρόνῳ, μὴ κωλύσαντος αὐτὸν τοῦ δεσπότου τοῦ ἀγροῦ (Synt. N-8) [38, p. 401] – **Иже по тоуждемоу селоу веды водоу, ведоущоу господиноу села, стежаваѥть на селѣ работоу вь оузаконѥнномь трилѣтїа врѣмени, не вьзбранившоу ѥмоу господиноу села** (Synt.Se. N-8) [5, p. 422]. This rule goes supposedly back to "Basilika" (τὰ Βασιλικὰ, lit. "Libri LX Basilicorum", to put it more precisely the tituli B.T.LVIII.7.2) [24, p. 2645.12–16].

Serbian legal sources mention only a few rural servitudes: "aquaeductus" (right to water), "silva caedua" (right to cut the trees), "pecoris ad aquam apulsus" (right to watering one's cattle on another's land), "iter" (right of way), "actus" (right to drive a carriage or animal) and "pecoris pascendi" (right of pasture). Among personal servitudes we can find only "ususfructus" (a right to use and enjoy the fruits of another's property) and "usus" (use – a usufruct, but without a right to take the fruits) [19, p. 98; 20, p. 638].

King Milutin's charter to the monastery of Saint George mentions "right to water" (aquaeductus – **водовашина** – **воловажда** – **водоваге** – **водовагѥ**). Text say that everyone who leads a water from the church's place called "head", has to pay two dinars to the church. If someone leads a water without a permission of hegoumenos, he has to pay twelve perpers (monetary units) to the King's treasury and double to the church. And, if someone leads a water with a consent of hegoumenos, he has to pay three perpers (**И кто вади водомь коꙗ се изводи ѡт црьковна мѣста главе, да подасть црькви ѡт рала кьб'ль водовашиноу, и ѡт врьта .В. динара. Ꙗко ли безь игоумнова благословлѥниꙗ поведе кто ѡт црьковне главе водоу да плати .ВІ. перьперь оу цариноу, а црькви двоиноу да дасть. Ꙗко ли сь оупросомь водоу поведе а водовашиноу оудржи, да плати .Г. перьпере**) [11, p. 237] [3].

Cutting of threes was mentioned in the same charter, next sentence: "Who cuts the trees on the mountains belonging to the church, has to give every fourth three to the church. If someone cuts without a permission of hegoumenos, he has to pay twelve perpers to the King, and the church will take him every cut down tree" (**И кто лѣсь сѣче или дрьва оу црковномь брьдѣ, да даѥ црькви четврьто дрьво. Ꙗко ли безоу игоумнова благословлѥниꙗ сѣче що любо да плати .ВІ. перьперь, а црькви лѣсь вьсь да моу оузме**) [11, p. 237].

Right to watering one's cattle on another's land (pecoris ad aquam apulsus) we can find in the Tsar Dušan's chrysobull to the monastery of Saint Archangels Michael and Gabriel. The text says, that Emperor did not deprive hamlet of Golubovci of servitude to watering the cattle (**А напоища Голоубов'цем не ѿнесмо оу Боудислалихь коукьь**...) [16, p. 103]. The same chrysobull gives to the village of Lubižnjane right to drive a carriage or animal (actus) and right to put cattle to graze on another man's land (ius

pascendi): ...и долѣ опеть до мегѥ Коришке и до Светога Петра, да си имаю Любиж’нꙗне сь Скоробици како соу и прѣгѥ пасли [16, p. 91].

Right of way or right to pass (servitus itineris ac viae) was mentioned in a sale contract (emptio venditio), in which a certain Dobroslava with her children sells her house in the city of Prizren to a certain Mano, brother of Dragitza. In the text of contract we read that the road, leading to the house, will be free for everyone (Пȣть двора тога свободьнь с коловозомь) [2, p. 250].

Right to put cattle to graze on pastures belonging to the counties (župa), was regulated by the article 74 of Dušan's Law Code: "Let village pasture with village, where one village, there also the other. Only legal enclosure and meadows may not be graze" (Село селѡм да пасе; коудѣ едно село тоудѣи и дроуго; развѣ забѣль законитыхь и ливадь законитыхь никто да не пасе) [26, p. 212 [4]; 9, p. 59; 8, p. 118; 6, p. 89]. Similar says the article 75: "No district may 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" (Жоупа жоупѣ да не попаса добит’комь ница; ако ли се наиде едно село ȣ този жȣпѣ, оу кога любо властѣлина, или ѥсть царства ми, или ѥсть црьковно село, или властѣличикꙗ; ѡномȣзи селȣ никто да не забрани пасти; да пасе коудѣ и жоупа) [26, p. 212; 9, p. 60; 8, pp. 118, 120; 6, p. 90]. It seems that the "legal enclosures and meadows" (забѣлю законитыхь и ливадь законитыхь) were Crown lands and excluded, but the rest of the pasture land in the county was common land for grazing of all the villages in the county, regardless of ownership.

Among personal servitudes is famous well the "usus" or "ususfructus" (right to use another's property). We find it mostly in the charters presented in favour for churches and monasteries. So, the monarch or any other individual gives a land, instituted a lifelong use for certain natural person, to the monasteries or churches, expressing that with the terms "that he uses lifelong" (да си облада до нѥгова живота), "let him store it until his death, and after his death let it belong to the church" (свое все да дрьжи до смрьти, а по смрьти ѥго да ѥсть црьковно), "till the end of his life" (ꙗко до живота свога), and similar (Cf. [19, p. 96–98; 20, p. 635–638]). We will quote two interesting examples:

1) King Milutin gave as a present to a certain squire's wife with a name Radoslava, wife of certain Milša, monastery of Saint George and a village of Ulitišta, and the gift was confirmed by the Kings Stefan Dečanski and Dušan. However, King Dušan, for the unknown reasons, decided between 1336 and 1337, to give Radoslava's estate to the monastery of Hilandar. He left to the squire's wife only a right to use and enjoy the fruits of her property, but her descendants were deprived of the right of succession (И да се храни Радослава, Мил’шина жена, до нѥ сьмр’ти, а по нѥ с’мр’ти да не ѡблада мѣстѡмь тѣмь ни сынь, ни дьщти, ни кто ѡт рода...) [7, p. 65];

2) In the sale contract by which a certain Radoslava Mirković sells her house in Trepča [5] to the monastery of Saint Paul (19 January 1438), a right of use was established: Radoslava will keep a small room in the house, where she and her sister will find a shelter until the end of their lives (Я за мога живота... да имамь ѡт кȣкѥ ед’нь кѥларь где кю прибѣгнȣт с’ сестромь) (cited from: [2, p. 260, Append. 6]). In this case a right of lifelong use of a small room was instituted by a sale contract [22].

Pledge

"Pledge" (pignus – ἐνέχυρον – залога) is a transfer of possession under which the creditor obtained possession of the property pledged, but ownership remained with the debtor. The expression was sometimes used as a general one for any form of real security, including "pignus" and "hypotheca" (Cf. D. XIII.7. "De pigneraticia actione vel contra").

Although modern legal science treats pledge as a part of the law of property and loan as a real contract and the part of the law of obligations, byzantine legal miscellanies always put together the rules on pledge in the same chapter with the provisions on loan. The chapter X of "Ecloga" (word for word "᾿Εκλογὴ τῶν νόμων", lit. "Selection of the Laws") has a title "Περὶ δανείου ἐγγράφου καὶ ἀγράφου καὶ τῶν διδομένων ἐπ' αὐτοῖς ἐνεχύρων" ("On literal and unliteral loans and for them given pledges") [33, p. 204]; the chapter XVI of "Procheiron" is known under the title "Περὶ δανείου καὶ ἐνεχύρου" ("On loan

and pledge”), and the chapter XXVIII of “Epanagoge” entitled “Περὶ χρέους καὶ ἐνεχύρων” (“On loans and pledges”) [36, p. 155, 320]. For this reason, Matheas Blastares included the chapter under the title “On lenders, and loan, and pledges” in his “Syntagma” (Synt. Δ-2): in the Greek text “Περὶ δανειστῶν, καὶ δανείου, καὶ ἐνεχύρων” [38, p. 204] and in the Serbian translation (Synt.Se. D-2) “**О ꙁаѥмницѣхь и ꙁаимѣ и ꙁалоꙁѣхь**” [5, p. 214]. The rules, concerning the pledge, are the following:

1) The fruits from property pledged will be add up to the debt and if the whole amount of debt was that way discharged, pledge will be given back to the pledgor. If the value of the fruits is bigger than a debt, surplus has to be returned (Οἱ ἐκ τοῦ ἐνεχύρου ληφθέντες καρποὶ ψηφίζονται εἰς τὸ χρέος · καὶ ἐὰν ἱκανοὶ γένωνται πρὸς τὸ ὅλον χρέος, λύεται ἡ ἀγωγὴ, καὶ ἀποδίδοται τὸ ἐνέχυρον · εἰ δὲ καὶ πλείονές εἰσι τοῦ χρέους οἱ καρποὶ, ἀποδίδονται οἱ περιττεύοντες [38, p. 205] – **Иже оть ꙁалога приѥти бывше плодове приѵитають се вь длгь, и аще довол’ны боудоуть кь в’семоу дльгоу, раꙁдрѣшаѥть се вина и вьꙁдаваѥть се ꙁалогь; аще ли же и множаиши соуть дльга плодове, вьꙁдавають се иꙁлишьствоуюштїи** [5, p. 215]). It goes back to “Procheiron” (Proch. XVI, 3) [36, p. 155];

2) If the lender, not by his own negligence (culpa), similar to a case of gross fault or neglect, “culpa lata” of Roman law, has lost property pledged, he will be not responsible. But the lender has to explain, what happened to him (’Εὰν ὁ δανειστὴς μὴ παρ’ ἰδίαν αἰτίαν ἀπωλέση τὸ ἐνέχυρον, οὐκ ἐγκαλεῖται · χρὴ δὲ αὐτὸν ἀποδεῖξαι ὅτι ἀπώλεσε [38, p. 205] – **Аще ꙁаимовавыи не оть своѥѥ вины погоубить ꙁалогоу, несоудимь ѥсть; подобаѥть же ѥмоу оуказати ꙗко погоуби** [5, p. 215]). It is correspondent to “Procheiron” (Proch. XVI, 5) [36, p. 155–156];

3) If the lender explains how he has lost property pledged, he acquires a right to request a payment of a debt (τὰ γὰρ τυχηρὰ οὐ κινδυνεύεται τῷ δανειστῇ, ἀλλὰ δήνασται κατὰ τύχην ἀπωλέσας τὸ πρᾶγμα, ἀπαιτεῖν τὸ αὐτῷ κεχρεωστημένον [38, p. 205] – **приключаюштаа бо не бѣдствоуют ꙁаимовав’шомоу, нь можеть по прилоучаю погоубивь вешть истеꙁати дльжноѥ** [5, p. 215]). If the parties to the contract had an agreement, that the loss of pledge absolves debtor from responsibility, this decision becomes effective (εἰ δὲ μεταξὺ τῶν συναλλασσόντων ἤρεσεν, ἵνα ἡ ἀπώλεια τῶν ἐνεχύρων ἐλευθερώσῃ τὸν χρεώστην, τοῦτο ἰσχύει [38, p. 205] – **аще ли по срѣдѣ ꙁамѣноующихь се оугодно бысть да погыбѣль ꙁалогь свободить дльжника, се крѣп’ко ѥсть** [5, p. 215]).

So called “Justinian’s Law”, which represents original work by Serbian lawyers [6], contains two articles concerning the pledge. The article 26, under the title “On pledges” (“**Ѿ Ꙁалогахь**”) says: “If someone gives a pledge, and tells [to the pledge. – *S. Š.*]: Take this pledge until the fixed day [and the pledgee says to him. – *S. Š.*]. If you do not redeem a pledge [till the determined term. – *S. Š.*], do not ask it any more’. The judge will not approve that, and [the pledgee. – S. Š.] has to wait until the third time limit. If [the pledgor. – *S. Š.*] does not redeem [a pledge. – *S. Š.*] till the third term, after that he can not ask it [property pledged. – *S. Š.*]” (**Аще кто ꙁаложить кою любо вѣщь. и речеть приѥми ꙁалогь. ѡ то до коѥго дне, аще си не ѡткоупишь ꙁалогь. да га векѥ не иштеши. да га соудїа не чюѥть ꙁа тои нь да га чека то третїега рока. да аще м8 до третїега рока не ѡткоупить. да га потѡм не ище**) [15, p. 59]. The article 27, entitled simply “Law” (“**Ꙁакон**”) is similar with the rules of “Syntagma”, treating the cases of pledge lost: “If any [pledgee. – *S. Š.*] loses a pledge, he has to pay it, and to request a debt. If [the thing pledged. – *S. Š.*] was distroyed by fire or seized by brigands, the indolence and negligence of pledgee has to be examined. If he has saved his own property, and lost another’s, he is culpable” (**Аще кто ꙁалогь ꙁагоубить, да га плати, а дльгь да си оуꙁмет. Аще ли га ѡгнь вь неꙁаапоу пожежеть. или раꙁбоиници вьсхитеть. подобаѥт иꙁнаити лѣность и неражденїє приѥмшом8. аще ли ѥст своꙗ сьхраниль, а ѡнаа погоубиль повиннь ѥст**) [15, p. 59]. It is interesting to note, that neither “Farmer’s Law”, the main source of so-called “Justinian’s Law”, nor “Procheiron” and “Basilika”, contain such provisions. However, both articles are completely in the genius of Byzantine law.

Serbian charters, promulgated before the Law Code of Stefan Dušan, mention pledge (**залога**) only two times. In the King Milutin’s chrysobull, granted to the Hilandar’s pyrgos in Chrousija (1313–1316), Serbian monarch says, that nobody is allowed to take anything given to

the monastery tower (πύργος), and he forbids, that the property, belonging to the Hilandar, could be sold or obtained as a pledge (...**ни оу коупно име, ни оу ꙁалогоу никоимь ѡбраꙁомь**) [11, p. 443]. The same formula was repeated in King Dušan's chrysobull, giving the church of Most Holy Virgin in Lipljan [7], to the Hilandar's pyrgos in Chrousija [12, p. 43]. It is evident, that a pledge, beside purchase, was considered as one of the ways of alienation of property.

In Dušan's Law Code only the short article 90 treats the pledge: "Pledges, wherever they be, shall be redeemed" (**Ꙁалоге коудѣ се ѡбрѣтаю да се ѡткоупѹю**) [26, p. 215; 9, p. 70; 8, p. 124; 6, p. 92]. The legislator institutes the right of pledgor to redeem the property, pledged everywhere, he finds it. Above mentioned provision was promulgated to the benefit of debtors (very often Serbs), who delivered precious goods to their creditors (with great frequency Ragusans) and often lost them for ever [8]. That was the reason why Tsar Dušan, in his famous treaty with Dubrovnik (20 September 1349, i.e. only four months after the promulgation of the Code) forbids to the Ragusans to receive pledges from Serbs: "From now and furthermore nobody can take or receive pledges, neither from my imperial or royal nobleman, nor from anyone else who has the power according to my imperial or royal authorization. If someone took it, he has to return the pledge, and if he has given [property pledged. – *S. Š.*] to the third person, a transaction will be without legal strength" (**И ѡд сели напрѣда да не прѣиме ни ѹꙁмѣ ник'то залоге ни ѡд властелина царьства ми ни кралєва, ни когалюбо дрьжанига царьства ми и кралєва, к'то ли се ѡбрѣте ѹземь да залогѹ тѹзи поврати ѡпеть, а за що є приєль да мѹ се тази кѹплга ѹпад'нѣ**) [13, p. 40]. However, at the end of the treaty, after the date and before the signature, was added that already existing pledges will be on legal force, and that they will enjoy the judicial protection (**И ѡще такози ш ними ѹглави царьство ми, що сѹ залоге заложенѣ кога любо мала и голѣма иземлѣ царьства ми и кралєвѣ да се ищѹ сѹдомь а прав'домь**) [13, p. 40]. The same provisions were repeated in the Tsar Uroš's treaty with Dubrovnik (1357, April 25) [21, p. 83].

The pledges were completely abolished in treaty, concluded by city of Dubrovnik (Ragusa) with Kotor (Cataro) 20 September 1181: "Ut pignora non sint inter Ragusium et Catarum" [10, p. 22].

The special attention is to be payed to the charter of Despot Đurađ Branković, issued in the city of Smederevo on May 10, 1450. This charter was written in Latin and granted in favour of John Hunyadi (c. 1406–1456) [9], Governer of the Kingdom of Hungary ("Johannes de Hwnyad, regni Hungarie gubernator"). Serbian Despot, as well as his wife Irene (Jerina) and his sons Grgur, Stefan and Lazar, agreed that he (John Hunyadi) and his sons Mathias and Ladislaus (Ladislavus) hold the Despot's property in Hungary, towns of Mukachevo (Mwnkach [10]), Baia Mare (Rivulidominarum [11]), Satu Mare (Zathmar [12]), Nemethy [13], Debrecen (Debreczen [14]), and the villages of Bezermen [15], Dada [16] and belonging manors ("possession"), as a pledge ("in pignoraticie") to ensure security for the debt of 155.000 ducats. This debt will be discharged from the annual revenues of Despot's property, estimated on 6.700 ducats. The property had to be delivered up to the debtor after payment of principal [14, pp. 151–174]. Although this document mentions a "contract of pledge", it cannot be considered as a source of Serbian mediaeval law. All rules, concerning the pledge were accomplished in accordance with the customary law of the Kingdom of Hungary (regni consuetudinem pignori) [14, p. 155].

Emphyteusis

Emphyteusis ("ἐμφύτευσις", from verb "ἐμφυτεύω", word by word "I implant", "I inculcate", "I instill") is a real right over the property of another, consisting in a grant of land by the State or local authority on a long lease or in perpetuity for a ground rent (Cf. D. VI.3).

The chapter XV of the "Procheiron" has a title "Περὶ ἐμφυτεύσεως" [36, pp. 154–155], and contains six provisions, speaking on "emphyteusis" of Church estates. Serbian translator of "Procheiron", i. d. "Zakon gradski", used a word "nasaždenije" ("**насажденик**", word by word "planting", "implanting") [17] for the title of this chapter in Serbian translation (lit. "**О насажденыи**") [17, p. 302; 4, p. 287a.]. Matheas Blastares introduced a short chapter, entitled "Περὶ ἐμφυτεύσεως" in his "Syntagma" (Synt.E-8) [38, pp. 250–251]. In Serbian translation its correspondence is the

Chapter "**О насажденїи**" (Synt.Se.E-8) [5, pp. 263–264]. This chapter represents an interpretation of Justinian's Novella CXX, chapters 2 and 8 "ΠΕΡΙ ΕΚΠΟΙΗΣΕΩΣ ΚΑΙ ΕΜΦΥΤΕΥΣΕΩΣ ΕΚΚΛΗΣΙΑΣΤΙΚΩΝ ΠΡΑΓΜΑΤΩΝ" ("De alienatione et emphyteosi et locatione et hypothecis et aliis diversis contractibus in universis locis rerum sacrarum") [32].

In Serbian legal sources we can not find any information on "emphyteusis".

Conclusion

On the basis of the available legal document we can conclude that the following rights over the property of another were present in Serbian medieval law: servitudes, pledge and emphyteusis. Emphyteusis was mentioned only in the Serbian sources, translated from Greek language, i. e. receptions of Byzantine prototypes, for example: "Procheiron", to wit "Zakon gradski" and the "Syntagma" of Matheas Blastares; while servitudes and pledge were known in Serbian legal documents as well. However, we are not sure whether all those provisions were applied: the problem lies in the lack of additional, relevant legal sources (verdicts), which could serve as evidence of their application.

NOTES

[1] The scientific editing of the article is realized by Yury Vin.

[2] Among the different meanings of the term "**работе**", i. e. "works" in plural, Miloš Blagojević did not mention "servitudes" [1, p. 609].

[3] Right of leading water over another's land was mentioned in one Byzantine document of 1373: Anna Palaiologina, with the consent of her consort, sells her estate called Marianna in Kalamaii, which was part of her dowry, to the monastery of Docheiariou. Document says that all rights that seller used, will be transferred to the buyer, including servitude of "aquaeductus", probably from some river [23, no. 42, pp. 235–239]. Cf. [25, p. 253, n. 56].

[4] As to the translation and the explanatory comments to the Dushan's Code, made by M. Burr, see also the second part of his publication [27].

[5] The Trepča Mines (Serbian Cyrillic "Рудник Трепча", Albanian "Miniera e Trepçës") is a large industrial complex in Kosovo, located 9 km northeast of Kosovska Mitrovitza. It is one of Europe's largest lead-zinc and silver ore mine. The enterprise known as Trepča was a conglomerate of 40 mines and factories. The oldest mine called Stari Trg (Стари Трг, word for word "The Old Market-town") is one of the rare mines, which was operational from the Roman period. Saxon miners, who came in Serbia in 13th century, built settlements and churches around the mines.

[6] So called "Justinian's Law" was a short compilation of 33 articles regulating agrarian relations. The majority of these articles were taken from the famous "Farmer's Law" (Νόμος Γεωργικός), issued at the end of 7th – the beginning of 8th centuries. This law had been completely translated into the Old Serbian language. Further articles were culled from the "Ecloga", the "Procheiron" and the "Basilika". This collection ("Justinian's Law") does not exist in a Greek version.

[7] Lipljan (Serbian Cyrillic "Липљан", Albanian "Lipjani") is a town and municipality located in the Priština district of Kosovo. According to the census of 2011, the town of Lipljan has 6.870 inhabitants, while the municipality has 57.605 inhabitants.

[8] It seems that it was very difficult to a pledgor to redeem his pledge from a pledgee. Maybe, the best evidence is the letter of Tsar Dušan to the Ragusans, dating 30 March 1352: Emperor himself intervenes with Ragusans, that they get back to Prince ("knez") Vratko the precious girdle, pledged for 118 perpers by Marin Bunić [18, p. 20].

[9] Hungarian "Hunyadi János", Romanian "Ioan" or "Iancu de Hunedoara", Serbian "Sibinjanin Janko" (Сибињанин Јанко), famous Hungarian military commander and statesman (esp. 1441–1456).

[10] Modern "Mukachevo" (Ukrainian and Russian "Мукачево", Hungarian "Munkács"), a city located in the valley of the Latorica river in Zakarpattia Oblast (Province) in Western Ukraine. The population is 86.339.

[11] Today "Baia Mare", municipality along the Săsar River in northwestern Romania (Hungarian "Nagybánya", German "Frauenbach", Ukrainian "Бая-Маре"). The population is 140.738

[12] In present-day "Satu Mare", a city with a population of 102.400 in northwest Romania (Hungarian "Szathmárnémeti", German "Sathmar").

[13] Hungarian "Németi", Serbian "Nemci" (Немци), i. e. "Germans", small city close to Satu Mare.

[14] Hungarian "Debrecen", Romanian "Debrețin", German "Debrezin", Czech and Slovak "Debrecin", Serbian "Дебрецин", Hungary's second largest town. The population is 213.700.

[15] Modern "Hajdúböszörmény", a town in northeastern Hungary with a population of approximately 30.000 people.

[16] Modern "Tiszadada", a village in Szabolcs-Szatmár-Bereg county in the Northern Great Plain region of Eastern Hungary. The population is 2.247.

[17] The word "**насажденик**" is obsolete in modern Serbian language, where is used the word "zasađivanje" (засађивање).

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