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Cases of dispute resolution over dowries and hereditary assets in Corfu (18th-19th c.)

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Abstract

The study concerns the extrajudicial resolution of disputes over dowries and hereditary assets, which are registered in the notarial books of Corfu, one of the Ionian Islands, in the 18th and 19th centuries. The opposing parties can resort to arbitration, invoke the intervention of common "unknown" friends or resorve their differences by themselves. The quantitative and qualitative characteristics of the dowries and inherited assets highlight the social and economic status of the parties involved.

Keywords: arbitrage, extrajudicial dispute resolution, notarial acts, dowries and hereditary assets, Ionian Islands, Corfu

1. Introduction

In the parts of the Greek territory that were not occupied by the Ottomans, arbitrage, i.e., the recourse to elected judges-arbitrators, was the procedure applied for the settlement of private disputes in quite a few cases. The reason for the adoption of this practice was the desire to meet specific needs which had not been adequately covered by the existing legal system for various reasons (delay in the examination of cases and issuing of a court decision, court costs, etc.).

The parties would reach an agreement (*consensus*) to resort to arbitrators[1] as a last resort to safeguard their interests. The arbitrators, for the period under consideration, were persons of common consent and were chosen by both parties; the procedure followed a standard process, according to which a separate instrument, the *compromesso*[2], was initially drawn up, stating the selection of the arbitrators[3] and the subject matter of the dispute. It was made clear from the outset that there was no possibility of further recourse to other legal bodies, provided that the arbitrators' decision was strictly enforceable. It should be noted at this point that recourse to arbitration was also possible in cases, where a judgment had already been handed down by a court of first instance, and for which there was of course the possibility of an appeal against the first instance judgment to the competent courts of appeal in Venice.

2. The procedure, the cases

The judges were either noble (*honourable aristocrats, signori*), with a socially recognized prestige, or experts, who, due to their professional expertise and experience in their respective fields, were able to express and apply their judgment. There were usually two arbitrators, with the possibility of a third one, the adjudicator, in the event of a disagreement between the two arbitrators. They were present at the hearing, examined the facts of the case and decided on its resolution[4]. Of course, in addition to the election of arbitrators, there are many cases, where the parties themselves decided to enter into a compromise, without specifying whether this is the result of the intervention of an 'informal arbitrator' or even the notary himself. As regards the issues to be resolved, these were of various kinds and covered almost all branches of civil law (contract, property, inheritance, family and commercial law).

[1] On the recourse to arbitration in the Ottoman-ruled area, see. Rodolakis, 2019: 94.
[2] Italian: *Compromesso*: compromise, compromise solution.
[3] In a later period, see. and the Hague Convention: On the Pacific Settlement of International Disputes, 1907, in Chapter II: on the Arbitral Tribunal, in Article 46, it is stated that the parties declare their intention to apply to the Arbitral Tribunal, file the text of the contract and the names of the arbitrators-judges, while Chapter III refers to the arbitral procedure.
[4] See also, Limniou, 2000: 112.

One of the issues that often resulted in disputes between the parties was the management of dowries. The well-known institution of dowry(*repromissa*), was among the most significant ones, since it essentially concerned the way in which families would manage their property. It also revealed the strategy that the family would follow. The dowry, therefore, aimed on the one hand to cover the basic needs of a new couple, and on the other hand it served as a guarantee of the legitimacy of the bride at both moral and social levels. Simply put, it was a necessary condition for the marriage to take place[5].

As it can be expected, the parties would turn to the arbitrators for advice in several cases on matters relating to goods given as dowry. In fact, delays in the payment of dowries were very common or even non-payment of the dowry in some cases. At this point, it is worth mentioning that the dowry was rarely handed over to the groom in its entirety. Usually, a part of it was given at the moment the couple made a promise of marriage, a second part followed when the woman went to the matrimonial home and the rest, if there was any, was given after a reasonable period of time[6]. As far as the island of Corfu was concerned, the dowry consisted mostly of movable goods, such as jewellery, linen, clothing, household goods and furniture (e.g., chests, dressers), while rarely small sums of money were included, especially in cases where women of the peasant class were promised[7].

Claiming the dowry on behalf of the groom was often a time-consuming process, which could even last for several years, since the promised but unpaid dowry assets were due even after the death of the settlor father. For example, the following notarial deed is of particular interest and refers mainly to dower assets that were not paid to the groom by his father-in-law while the latter was alive, as opposed to the dower assets already paid by the latter to the wives of his other three daughters. The following compromise deed records the satisfaction of the claims of the aggrieved brother-in-law in respect of part of the property inherited from the father-in-law, as well as the remaining dowries from the parent's estate and other assets. On 27 February 1782[8], the notarial deed refers to the existence of disputes between, on the one hand, the *signor* Anastasios Paramythiotis and, on the other hand, Alexandros Voulgaris, Christodoulos Samoilis and Panagiotis Kalogeropoulos, all of them being brothers-in-law. The aforementioned parties entered into the following compromise because they wished to put an end to their dispute concerning non-payment of the full amount of the promised and payable dowry to Paramythiotis.

Originally, according to the paternal will of Theodosia, she held all the usufruct of the goods until she married and they passed into the possession of her husband, *signor* Anastasios Paramythiotis. These incomes now are deducted. However, it is found that from these incomes, namely from agricultural products, 5 measures of corn and 4 measures of wheat were held by Christodoulos Samoilis who, before the notary, promised to hand them over to Paramythiotis within four days, offsetting and deducting from these 3½ pitchers of olive oil against 60 lire/pitcher. In addition, a divestiture has already taken place on account of the paternal debts for 8 barrels of wine, and from the maternal property for 7½ barrels of wine; from that total a quarter is deducted for Paramythiotis. However, as this share also had been taken by Samoilis, he undertook in turn to deliver it to Paramythiotis at the price of 15 *lire* per barrel.

Furthermore, it is stipulated that Paramythiotis was to receive as a dowry 100 thalers and as many movable goods as the other sons-in-law of Andriolos Pandis had received as dowry, of which, however, only a part was received, as shown in the attached document, while the remainder was still to be received, as it is. mentioned in another document. Both parties (the opponents) agreed that the total amount is set at the sum of 4,190 *lire*, from which 1,464 *lire* were offset and deducted for various amounts Paramythiotis had already received from sums of money paid and from the sale of movable property, on the basis of a similar document. For the remaining amount (2,726 *lire* or 454 ducats and 2 *lire*, against 6 *lire*/ducat) both parties agreed to mutually appoint experts who would carry out a valuation of immovable property from the father's assets, in order to cover the remaining outstanding amount of 2,726 *lire*, including an explicit statement that, in the event of non-funding, a valuation of a part also of movable assets would be carried out until full payment of the outstanding dowry. In addition, the movable assets, animals, various debts and other documents and anything else found in the paternal estate were distributed on the basis of the relevant documents, while the remaining (after the dowries had been paid) assets would be distributed in four equal shares (for the spouses of the four daughters of Andriolos); in case of any surplus in the immovable assets, these would be distributed in the same way. Finally, the movable and immovable endowments from the mother's assets would also be divided into four shares, with the exception of goods, which Paramythiotis accepted as payment equivalent to the gold of fifty ducats, which he received by way of dowry.

The above conciliatory notarial deed is another very good example of the validity of the institution of dowry in the Ionian Islands area during the period under consideration. Not only were the demands and claims for the return of all the promised and payable but unpaid dower assets still valid after the death of the dowering father as claims on the inherited assets, but they did also 'legitimize' the irregular or even illegal financial transactions of the wronged son-in-law in part of these assets, such as the collection of sums of money lent by the father-in-law to

[5] Ploumidis, 2008: 49.
[6] Maltezou, 2010: 809.
[7] Ploumidis, 2008: 52-53.
[8] General State Archives-Archives of Corfu (GSAC), *Notaries*, Volume K 169, book 9 (69), p. 1v.

various persons and the sale of parts of the movable assets. In addition, it should be noted once again that the parties themselves, the opponents, were trying to resolve their disputes as far as possible, while at the same time safeguarding their own interests by not resorting to judicial proceedings (justice authorities). In such cases, of course, it remains unknown whether the parties reached an agreement with encouragement and assistance from 'unknown friends', as is probably the case here, or even pursuant to a decision of an arbitrator-judge, who is not mentioned, or simply with the contribution and guidance of the notary, who sometimes assumed mediation responsibilities[9]. He also had the right not only to authenticate the documents of the parties, but also to collect, interpret and give legal effect to them[10].

Another case, in which the effort of proper management, but also of claiming assets, is the following. On 6/18 June 1819[11], Georgios Chytiris and Ioannis Anthis on the one hand and Konstantinos Cypriotis on the other, gathered before the notary in order to choose judges-arbitrators for the resolution of their disputes. Chytiris and Anthis elect Beno Kasfiki, of whom, although Cypriotis stated that they were related, they stated that they accepted him as an arbitrator because they knew he was honest, whereas Cypriotis elected Nikolaos Arvanitakis. Arvanitakis's arbitral decision, among others, is interesting in some of its points. In particular, Arvanitakis invokes the impossibility of carrying out an investigation into the financial transactions relating to one spouse, in respect of whom there was no relevant decision, while for the corresponding accounts of the other spouse, the arbitrator invoked the irrevocability of the relevant decision already issued: *because no one may contest what has already been decided*. Elsewhere in his decision, Arvanitakis rejects the claim of the two women to the property of Cypriotis because it was given to him as a dowry, even if the father of the women had received it as a share. Concerning the two women's claim to assets from their mother's inheritance, the arbitrator recalls one of the basic long-standing principles of inheritance law, namely that if a parent died without leaving a will, intestate succession applied and the inherited assets were to be distributed equally to his children. Moreover, elsewhere in his arbitral decision, Arvanitakis enforced an oath to ascertain the truth regarding expenses paid, shares, leases, etc. It should be noted that the oath, as is well known, has been a means of proof throughout the centuries, even in ancient times. Once again, we note the in-depth knowledge of the basic principles and rules of law on the part of the arbitrators in the resolution of private disputes, with an obvious desire to make clear, at every opportunity, their impartial attitude, which was indicative of their presumed ethics.

In addition to the acts relating to the dowries management and claiming, the arbitrators were often called upon to settle cases purely relating to the hereditary property. Testaments, being essentially last will expressing documents, are among the best known unilateral (negotia unilateralia) legal acts[12]. It is worth emphasizing at this point that for the Venetian State, the procedure for drawing up wills was a key issue[13]. This is best explained by the fact that, of all legal instruments, this is the most important one, since at the time it is to be executed, the author[14] is no longer alive and so he/she cannot confirm his/her will. For this very reason, the role of the notary is of the utmost importance, since he is the person who will ensure that all legal procedures[15] are followed, such as the registration of the true date that the will was drawn up, the observance of the relevant legal form, the clear and explicit wording of its terms and the registration of the names of the witnesses present as well[16].

Through wills, therefore, contractual relationships, social stereotypes, as well as the general economic activities of various social groups are highlighted. Of course, issues often arose concerning the safeguarding of the interests of the parties, especially where minors were concerned. Indeed, in an attempt to prevent misconduct in inheritance cases, in Venice in 1578, the Grand Council introduced the obligation for judges to submit a sworn document to the ordinary judge to validate their decisions, failing which the principle of irrevocability would be nullified[17]. It is necessary to mention here that in cases of loan agreements, the death of the creditor did not constitute grounds for annulment of the obligations which the creditor had created. The contracts quoted below describe precisely the will of the heirs to resolve, in the best possible way, any disputes that had arisen[18].

It is interesting to note the cases in which the parties had resorted to the courts in an attempt to settle their differences, but in the end both them and their heirs seem to have chosen to withdraw from and settle their legal disputes. The most common subject of such disputes had to do with repayments of debts of the deceased heirs. A

[9] In Western Europe in the Middle Ages, some notaries also exercised judicial-arbitrary functions. In contrast, in Byzantium, this was rare. Saradi, 1991: 214.
[10] Stasinopoulos, 1999: 7.
[11] GSAC, *Notaries*, Vol. Φ. 98, b. 14, p. 1r.
[12] Petropoulos, 1963: 512.
[13] Karlafti-Mouratidi, 2008-2012: 170.
[14] Almost throughout time the testator had to be known to the notary and witnesses were obliged to declare that they knew him. Cf. See also the relevant articles 1725-1737 of the modern Civil Code.
[15] When the will was drawn up, no other persons may be present, except the notary, the testator, and the necessary witnesses. Even in the modern Civil Code, by virtue of Article 1733 par. 2, the will must be signed only by the aforementioned persons.
[16] Karlafti-Mouratidi, 2008-2012: 172.
[17] Panciera, 2014: 395.
[18] Petropoulos, 1963: 1095.

good example of this category is the following legal transaction. On 1 August 1796 [19], at the house of the inheritance of the deceased *signor* Alexandros Petretin, the notary, being also asked to go there, registers the presence of Christodoulos Provatas, father and attorney of his children who are heirs of Alifieris Ioannis Provatas, but also as attorney for Margarita, wife and usufructuary of the deceased Ioannis. There had been a previous appeal to the justice system, concerning the repayment of the debt, by the deceased Provatas against Petretin and after Petretin's death, against Cremesina, wife and usufructuary of Petretin.

The dispute concerned a debt of 55 thalers and 22 pitchers of olive oil, for which Alexandros had filed a lawsuit against Christodoulos as shown in the relevant court document. Christodoulos and Cremesina declared that they wished to enter into a compromise, subject to the following conditions. Firstly, Christodoulos, as attorney-in-fact of the above, was to withdraw from any litigation and any document relating to the above debt. To the aforementioned amount of money owed should be added the monetary value of the 22 pitchers of olive oil, against 70 *lire*/pitcher, and to the new sum (119 thalers and 4 *lire*) only 10 thalers should be added, which were the legal expenses paid by Cremesina. At Provatas's request, Cremesina agrees the 129 thalers and 4 *lire* to be paid off by selling a part of his assets. It is worthy of mention that the two parties decide, in order to safeguard both the right of the creditor and the debtor, to appoint appraisers to determine the value of Provatas's assets to be sold to pay off the debt. In fact, as usual, they set a deadline, namely until next October of that year. If the above deadline expired without the valuation of the assets in question being carried out, Cremesina would reserve the right to continue the prosecution, i.e., to proceed with the enforcement and sale of Provatas's assets in order to ensure debt repayment. A very important role was played by the appraisers[20], who most of the times were either master craftsmen/artisans craftsmen or exercised another *practical* profession. It should be pointed out that the appraisers often were not mere professionals, but rather officials of the respective guilds[21], while, there are also few cases recorded, where women, the *stimadorises* (estimators)[22], mainly seamstresses or dressmakers[23], were appointed as appraisers to determine the value of movable dowry goods.

With regard to the legal transaction in question, we note first of all that it was drawn up in the house of Petretin's widow, since, in the context of highlighting the characteristics of the position of women in the Corfiot society at the time, it was customary for the notary to go to the house of one of the contracting parties, especially when that would be a woman. The heirs of the original parties, after having resorted to legal action, then chose the conciliatory route for the repayment of the original debt, applying here too the principle of good faith and trust. In application of another basic principle of the law of obligations, the principle of leniency towards the debtor, the final amount owed is reduced in comparison with the original amount owed, including subsequent costs. The appointment of expert appraisers to determine the value of the debtor's assets to be sold falls under the same framework, so that the debtor is not treated unfairly. Of course, the latter is subject to a resolutory condition whereby, should the deadline for carrying out the valuation in question not be met, Cremesina would be free to demand enforcement.

Similarly, a dispute concerning the hereditary property is also described in the following deed of 19 March 1737[24]. The contractual parties are, on the one hand, *signora* Theodora, widow of the deceased *signor* Simos Paipetis, and heir of her deceased aunt Graziosa, and, on the other hand, Theodore Gardikiotis, son of the deceased Ioannis. The two parties had taken legal action in their dispute, in particular before the Administrative Court, but also, most probably, by appealing the original judgment to the competent court in Venice. But then, consensually, both parties decided to put an end to their differences and agreed on the following. Theodora transferred to Gardikiotis the ownership of all the cultivated land and olive trees located in his area of Pelekas. In addition, she kept the bare ownership and conferred on him the right of possession and usufruct of the house, in which Gardikiotis resides, over the lifetime of himself and his wife Marietta, after whose death, as usual in similar cases, Theodora was to become the full owner of that house. Gardikiotis was pleased and undertook to deliver to her all the documents relating to the disputed inherited assets, for which an enforcement order was probably issued, in order for Theodora to settle the relevant pending cases (due to the dispute in question), while Theodora waived the claim that Gardikiotis should pay to her the legal costs of the case, and in general the two parties mutually waived their claims. This act is also interesting, as it had "muted" details over the course of the original dispute. The notary does not consider it necessary, in this deed of compromise, to record additional, though key, elements of the case, such as the validity, or otherwise, of the claims of both parties over the disputed house. The option of usufructuary establishment was a good solution in many cases of property claims, both in terms of the area and time under consideration. Moreover, it is interesting to note that, while the opposing parties had turned to both the administrative court and then, most probably, to the competent court of appeal in Venice to resolve their dispute, in

[19] GSAC, *Notaries*, Vol. K. 182, b. 4, (194) p. 15r.

[20] The office of appraiser appointed by the Venetian administration was one of many paid offices, such as that of the accountant, treasurer and secretary. Papadia-Lala, 2008: 317.

[21] Karlafti-Mouratidi, 2013: 21.

[22] Hellenized type of the Venetian: *stimadòr*. Boerio, 1867: 704.

[23] Maltezou, 2010: 217.

[24] GSAC, *Notaries*, Vol. K. 239, b. 2, p. 46v.

the end it seems that they themselves (without mentioning any mediators) found a compromising solution that fully satisfied both parties.

3. Conclusion

In conclusion, this brief reference to the procedure for the extrajudicial settlement of disputes concerning dowries and inherited property indicates the importance of this practice. This is because the transactions studied reveal information concerning the social and economic profile of the opposing parties, the subject matter of the dispute, the ways in which disputes were resolved through the intervention of simple mediators, officially appointed arbitrators or even the parties themselves. In fact, as regards arbitrators, the way in which they were selected, the procedure for the administration of justice by the arbitrators and the obligations to implement their decisions are of particular interest, among other things.

Based on the above, it is believed that the in-depth and systematic study of notarial deeds related to this field of knowledge highlights decisive aspects of the economic life of the inhabitants of Corfu in the 18th century. Through the examination of a particularly wide variety of cases of settlement of disputes of an economic nature, a whole network of social behaviours is revealed that shape the distinctive characteristics of a population group, which operates within the legal framework defined by the state authority of the Republic of Venice, but also by the state authorities that followed in the 19th century, which adopted legal behaviours and attitudes of the past, but also modified or abolished others, adapting (the state authorities) to the evolving social and economic conditions, mentalities and attitudes of their time.

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