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Extrajudicial Dispute Resolution In Venetian-Held-Corfu In The 18th Century

Spyridoula Mouratidi
(Philologist-M.Ed. Historian, PhD candidate University of Ioannina, Greece)

ABSTRACT :*The extrajudicial dispute resolutions demonstrate the significance of the adopted practice, the thorough study of which is expected to lead us to the disclosure of further information on the social and economic profile of the litigants, the subject of litigation, the means of resolving disputes with the intervention of simple mediators or officially appointed arbitrators. In particular, the latter are particularly interested, inter alias, in the way they are selected, the law-making process on their part, the commitments to implement their decisions. It is believed that the in-depth and systematic study of the notarial acts related to this subject can lead to a study which, on the one hand, will highlight determinant aspects of the economic life of the inhabitants of Corfu in the 18th century, on the other hand, it will reveal, through the examination of a very wide variety of cases of settlement of economic disputes, a whole range of social behaviors that shape the particular characteristics of a population group that moves within a framework defined by the Serenissima Republic of San Marco.*

KEYWORDS : *Compromise, extrajudicial dispute resolutions, notarial acts, ownership, the institution of arbitration.*

I. INTRODUCTION

Recourse to justice [1] through the existing institutions in the 18th century for the resolution of disputes between citizens of the *Serenissima Republic of San Marco*, where this, due of the nature of the dispute, was not mandatory, seems to be of great importance to those concerned who try to avoid it, seeking different ways to satisfy the sense of justice. Their attitude is justified by the fact that the recourse to justice implied a not so costly financial burden, while at the same time the time for adjudication was usually quite long and often disproportionate to the severity of the disputes to be resolved. It goes without saying that an extra burden, in terms of time and expenditure, should be considered in the case that an appeal against the first instance judgment had to be lodged in Venice.

The institution of arbitration [2] had also been established in the Ionian Islands since the 15th century with Statuta Veneta, according to which there should be a compromise**,** the arbitrators' decisions should be irrevocable and published by a notary. The irrevocability of arbitration was also provided for by Byzantine law. According to Statuta, the arbitration award had to be ratified within eight days by ordinary judges. In addition to civil arbitration, there was also ecclesiastical arbitration under the jurisdiction of the ecclesiastical court.

Interestingly, we find that the Greek constitutional history contains provisions regarding arbitration [3]. For example, Article 86 of Rigas Feraios' Draft Constitution (1797) stipulated that *no one can bother those citizens, who, having differences, have elected arbitration judges to make a ruling.* However, since the Constitution of 1844, any explicit reference to the arbitration of disputes is avoided, based on the belief that recourse to arbitration is covered by the Constitution on the grounds that no one is deprived of the judge designated by the law, without his will.

Several variations have been identified in matters that required resolution. Initially, it is possible to approach and categorize them by subject area. The cases we have found can be divided into those relating to movable assets, immovable assets, and also monetary amounts. Regarding the functioning of the institution of judges, it can be said that they are divided into two categories; the judges, who are defined by a very specific process, that of the compromise[1]. These judges may be either noble signors, with recognized social authority, or experts who, because of their experience, express and apply their judgment. It is worth mentioning that sometimes a combination of both of the above can also be found. The second category of judges involves judges who, without following the compromise process, act as mediators, but at the same time serve also as guarantors,

[1] Italian:Compromesso: compromise, compromise solution.

even as secondary liable parties. Thus, although most judges come from a high social class and hold titles of nobility, such as *signor* and *misser*, but some other times judges come from the class of master craftsmen or are generally experts, depending on the extrajudicial dispute to be solved.

II. ARBITRATORS

As far as the election of official judges is concerned, it was quite common for the judges to be chosen separately by each of the two parties. A typical example is that of November 4, 1796, when, on one hand, priest Panagiotis Livathinos and, on the other, Yannis Liviathinos, both of Yannades village, appeared before the notary and, in order to settle their differences, concluded a compromise agreement, and agreed to elect judges, arbiters and arbitrators according to the Venetian custom. This election took place about a month later, on December 12, 1796, when, *before* the notary, the above priest elected *misser* Giorgaki Vassilakis, and Yiannis *misser* Stathis Lefteriotis, so that they can hear their differences within one month of the day of conclusion of this notarial act. What is more, the procedure to be followed is describe, providing more information than usual: *Gathered at a certain or non-defined place, with or without prejudice to the legal order*. It is, furthermore, noteworthy that the judge, if they do not agree, have the option to elect a third judge, who would not be known to the two parties, in order to ensure objectivity in the process of satisfaction of the sense of justice. The judges, having listened to the differences between the two parties regarding the distribution of movable and immovable property and having examined them in detail, appear that they have divided this large estate with precision and objectivity. For example, if a house was given to the priest, which was smaller than the one given to Yannis, the latter was bound and had to give to the priest a horse (*with black hair*) in order for the share to be fair. Also worth mentioning is the fact that they do not share all the goods, but they suggest to use some of them together, such as a well, located on a land given to the priest. As in most cases, the arbitrators also distribute land, olive trees and vines.

A particularly interesting case that demonstrates the significance of the institution of arbitrators, as well as the complexity of their charge, is that of the year 1760[2]. In particular, in the residence, where *maistro* Dimos Agiovlassitis, dwelled and passed away, in the area of *Spilia*, the *parties present*, Stelios Agiovlassitis, Rizos Giannis[3] and Demetris Batalis, the nephews and heirs of Dimos, according to his will[4], were to share in three equal shares the assets, mobile and immovable goods, debit bonds and so on. "Because they want the distribution of the property to be correct and legitimate, they appoint as arbitrators the *present* noble signor Jan Antonio Varouha, *Doctor*, and *signor* Antonio Marazzo", to whom they give authority to divide the estimated by experts assets into three equal shares. It should be noted that if there is any difference between the heirs, the arbitrators will have the right to resolve it in a fair and lawful manner. This procedure lasted all day and when it was getting late the notary said that the assessment would be postponed for another day. As the Civil Code nowadays defines for the drafting of wills, in this registration and distribution of assets too, *unitas actus* is not required. The notarial act can be interrupted and resumed in another place and time. Of course, this divisional recording and distribution is made with the presence of the same participating persons (notary, arbitrators, witnesses) each time. The signatures of the two arbitrators follow, with each of them signing in Italian: *Giudice, Arbitre e Divisor* (Judge, Arbitre and Divisor): *Gio(vanni) Antonio Varucca* and *Antonio Marazzo*. Gio (vanni) Antonio Varucca and Antonio Marazzo. The next day, at the same place, the heirs delivered to the arbitrators public and private documents of their uncle; debit bonds etc. The recording continued on the following day and concerns the notarial acts (*instromenta*) by which the deceased had acquired some property and income as a result of debts. The judges, in a diligent and precise manner, received the estimated values the goods by experts, by item type, namely the seamstress decided for the clothing items, the painter for the hagiographies, the *practitioners* for the olive trees and the vines. Afterwards, the judges, and with the obvious will to be absolutely fair, divide the assets.

III. MEDIATION

A notable example of informal mediation is that of February 7, 1759[5], where the notary being at the minor court place, beneath the bailate (bailo's office, the governor of Corfu), wrote down that *signor* Jan Batista Daverona had rented his bakery to *maistro* Nicoli Firlinkos, for two years, with a rent of twelve sequins[6]/year. However, Firlinkos had not been able to pay the rent consistently and ended up owing five months' rent.

[2] General State Archives-Archives of Corfu (GSAC), *Συμβολαιογράφοι*, Volume K 227, book 8, p. 23r.
[3] We point out that the surname Agiovlasitis has been erased and, in bold letters, it has been written: Giannis. However, in subsequent relevant reports, the surname Giannis is recorded.
[4] In the books of the notary Spyridon Kalochrysos (March 4, 1760).
[5] GSAC, *Συμβολαιογράφοι,* Vol. K 227, b. 3, p. 6v.
[6] The sequin weighed 3.5 grams of almost pure gold throughout its circulation [4].

Davenona had to take legal action (he applied a lawsuit to the bailate), and Firlinkos was put in prison. However, *maistro* Anastassis Girardis, who was also a baker, appeared before the notary, and declared that he wants to free Firlinkos from prison and urges Daverona to pay a partial sum of the amount due, namely 1½ sequins upon conclusion of the notarial act, while the remaining 3½ sequins Girardis declares that will be paid off by installments at the beginning of every month by himself, guaranteeing his own assets, even his own freedom[7]. Daverona, *because of his goodness*, agrees, but also because he was looking forward to receiving the rent due, while the executive power of that notarial act was recalled as usual. We note that Girardis takes on a particularly complex role since not only he intervenes in the dispute but also he assumes the burden of guarantee and debt. Of course, we do not know whether he acts in this way, either by simple collegiate solidarity or because of a pre-existing professional relationship [6] with Firlinkos, which is not mentioned by the notary, perhaps because the latter does not consider it necessary. The way Firlinkos will repay Giraldis is not mentioned as well.

On the other hand, these latter elements exist in another notarial act[8] in which the professional relationship [7] between the debtor and the mediator is stated. This is a legal dispute about a debt of 10 sequins, for the repayment of which the Granary (*Fontigo*) [8] had brought an action against the *absent* baker Spyros Turkos, who for that reason was imprisoned. *Maistro* Petros Katechis appeared before the notary and declared his will to do what is necessary, so that Turkos could be released, in order to continue working in his bakery, where, Katechis, the owner himself, had chosen him as a partner. Thus, Katechis entered into a written agreement with the noble Andreas Polylas, who acts on behalf of his *absent* brother, noble Georgi, the Granary's official, and pays Andreas 2 *golden* sequins against the 10, promising, as a guarantor, that the balance of the debt will be paid to the Granary in installments, starting with the first installment one month after the conclusion of this agreement until final repayment. It was stated clearly that, if Katechis did not appear to be punctual with an installment, he would be deprived of this favorable arrangement and the Granary would retain the right bring proceedings against him, asking for repayment of the full amount of the debt by binding him in terms of his assets and his freedom. However, there is a clear term that if Turkos did not remain in the company and in the work at the above bakery until the repayment of the debt of 8 sequins, Katechis would be released from this guarantee and the Granary's official would appeal against Turkos, *as the principal and sole debtor*, to receive the repayment. In this case, we assume that the mediator, regardless of whether he is motivated by this agreement for reasons of mutual solidarity, seeks to explicitly guarantee his interests and to suspend his obligation to pay the amount due if his partner terminates their professional relationship.

IV. OWNERSHIP, POSSESSION AND USUFRUCT

One of the important issues that one can draw from the dispute settlements is the question of ownership, domination and usufruct. Ownership is defined as the right in rem that gives the beneficiary direct, absolute and universal authority over one thing. On the one hand, it provides all the powers over that thing, that is, the use, the charging and disposal of the thing, and, on the other hand, it prohibits any third party intervention on it without his permission. Objects of ownership are only things or things considered by the law to be things (*res*). Of course, the concept of co-ownership (many owners) is often found, as well as the concept of full ownership that refers to the owner, who has freehold on his property. This allows him to invade and exploit his property directly and universally.

The term possession [9] describes the occupancy with or without legal ownership (a term often confused with ownership, since legal and physical power is often the same). In such cases, ownership is effectuated in a manner that is the link between the right of ownership and reality. Thus, any act of the owner over one thing is an evidence of both property and possession. Of course, it is worth to clarify that usufruct and possession restrict ownership.

Lastly, regarding usufruct, a concept that is found in several instances, it must be noted that the usufructuary (beneficiary) can use and harvest the foreign properties owned by the bare owner, with a clear commitment not to consume them, expend them, or change their substance. Of course, as it is natural, the usufructuary is not responsible for the normal deterioration of the property, but, during the usufruct, the charges on property are borne by him.

We identify issues of ownership in several cases of dispute resolution where the transfer of assets is chosen for the settlement of a debt. Of particular interest is the wide range of variations regarding the conditions, the type of assets transferred, as well as the individual terms of those transfers. A typical example is the notarial act of February 1759[9], where it's stated that Anastasis Kontos was unable to pay to *signor* Laon

[7] A very common tactic to ensure the repayment of the loan is the freezing not only of all the goods of the borrower, but of his own freedom in case of non-payment of the amount [5].
[8] June 13, 1759, GSAC, *Συμβολαιογράφοι,* Vol. K 227, b. 4, p. 19v.
[9] On February 22, GSAC, *Συμβολαιογράφοι*, Vol. K 227, b. 3, p. 13v.

Dodeskos the 5 *golden* sequins, which was the second installment of the debt of 45½ sequins and Dodeskos was going to take legal action. For this reason, Kontos, recognizing his error and the fairness of of Dodeskos' demands, pleaded him and Dodeskos, *out of the goodness of his heart*, agreed to be repaid in the following way: Kontos would sell to him 11 barrels of wine and he would assume the obligation to transport, at his own expense, to Dodeskos' store, which was situated in the city of Corfu, as many grapes from his vines as required, in order to make the above quantity of wine. Failure to settle a debt, under an earlier lending contract, would lead to the conclusion of another category of contract; that of purchase.

On several occasions, debt repayment takes place over a long period of time since the initial agreement, while the principle of favor for the debtor seems to be very often applied. In other words, the least painful solutions are chosen, which mainly concern transfers of movable property instead of immovable goods. In the same year[10], in the house of *signor* Georgios Verviziotis, a notarial act was concluded because Vervitsiotis had to receive 70 reals from Kostantis Kormaris, based on a document of 1749[11]. For the above amount (*Kavidali*) and the unpaid interest, Verviziotis took legal action against Kormaris in order to foreclose a house of his. Kormaris, however, recognizing *his injustice and the righteousness* of Vervitsiotis, begged him not to be repaid with this house, but to wait till next August to receive from Kormaris the 18½ reals, as well as the 3½ reals, the interests for the months February-August. Regarding the capital of 70 reals, Kormaris also promised to hand over to Verviziotis 7 *sturdy and good* pigs, as he had received from Verviziotis himself, on the basis of the previous written agreement. It is also stated that with regard to the costs incurred by Verviziotis in pursuing him, Kormaris promised to give him two pigs by August, and that if Kormaris failed to meet the new agreement, Vervitsiotis would continue the prosecution, in order to acquire full ownership of the house.

Another notarial act of particular interest is that of the year 1742 where, on one hand, the priest Stamos and *signor* Antonios, brothers Moraitis, and, on the other hand, their mother Maria Moraitis [10], appeared before the notary. The brothers declared that they recognized that the arbitration decision was fair and equitable, which was the same as with the decision of the provisor-general of the Sea, which confirms the above decision, so they no longer wanted to oppose their mother. It is clear that, as far as the remainder is concerned, they gave up ownership and left her their father's house and a plot. In addition, they left the few movable goods existing in the city of Corfu, as well as all the movable goods that the two brothers had not shared. However, because the value of all the above, movable and immovable goods, is not enough to repay the debt to their mother, a debt that is registered and confirmed by the judges and arbitrators [11], their mother, *out of her goodness and excessive motherly love*, declared pleased and satisfied for what they gave to her and she gave up her claim for the rest of the debt. Thus, she waived all claims and did not demand anything else from her sons and their heirs and successors, and the sons promise and assume the obligation to guarantee her property rights, as well as her rights on the movable goods that Stamos was going to give her, *as she was a legitimate housewife*. Thus, before the notary, the two brothers handed to their mother the key of the house and thanked her.

Furthermore, it is important to note the ownership issues in agreements on assignment of a claim, where the creditor [1] (transferor) transfers to another person, the transferee, his claim against the debtor. In a notarial act of 1759[12], *maistro* Theodoris Moumouris declared himself *a clear and true* debtor to the *honorable signor* Antonios Setinis for the sum of 50 sequins and for their interest at 10% per annum. However, Moumouris did not pay such interest[13], so the *honorable signor* Daniel Cobitsis, Setinis' brother-in-law, became a transferee and he was intenting to take legal action against Moumouris, in order to receive the initial amount and the unpaid interest. Moumouris realized that the ruling would serve only Setinis' full satisfaction, through intervention of mutual friends, Setinis accepted the payment of the debt through transfer of Moumouris' property in Doukades village. Thus, for the instigations and considerations of the Christians towards Setinis, he was pleased, and for his peace of mind, he took resort to the above search. Moumouris therefore sold *and alienated* to Setinis his homestead with the trees in it and others[14], and valuators[15] were appointed who, as usual, would go to the spot, would carry out the assessments and declare them to the notary. Then, followed the notarial act regarding the sale of the premises with its trees, as well as other olive trees, from Moumouris to Kobitsis.

We know that often the usufruct's practice, over time, is adopted in cases where parents transfer ownership of property, mostly immovable property,, to their children, but retain for them the usufruct, for life, in

[10] On March 14, 1759, GSAC, *Συμβολαιογράφοι,* Vol. K 227, b. 3, p. 14v.
[11] Document of January 26, 1749, to the notary Dimitrios Marketis.
[12] GSAC, *Συμβολαιογράφοι*, Vol. K 227, b. 4, p. 25v.
[13] In the notarial act it is noted that the previous interest has been paid, as evidenced by the detailed description given, according to which it appears that the loan agreement, with an initial duration of six months, was concluded on February 3, 1743, and that the interest, until 1746, was paid every six months, while for the period 1747-1755 interest was paid annually (2½ and 5 sequins respectively).
[14] The location of the premises, as well as the type and number of trees have been clearly stated.
[15] Three estimations have been done.The first defined a total value: 677 ducats, the second: 615 ducats and the third: 739 ducats.

the context of safeguarding their own basic survival needs, while the heirs have the bare ownership. Most often these property transfers are done without problems, at least not mentioned in writing. But there are exceptions, especially when conditions and circumstances are varied. Such is the notarial act of conciliation of 1784[16], which refers to the litigation between brothers Piero, Charalambis, Giannis, Frangiskos, Thodoris and Stamatis Manessis, sons of the deceased Spyros, against Anastassoula Papadopoulou, wife of the deceased Alexandros Manessis, who was the uncle of the above brothers, about the usufruct Alexander had granted, *as a privilege*, to his wife. For this act of usufruct, the above brothers had appealed, in order to cancel it. But with the *contribution of Christians and friends*, the two parties agreed and accepted the following compromise [13]: Firstly, if Anastassoula wishes to continue to live as Manessis' widow, she agreed with his sons to continue to live in the house, being the largest of the three houses that the deceased owned. She admitted that the other two houses were of the Manessis brothers, but with the obligation to build a partition separating the two houses from Anastassoula's, where they are bound to make a kitchen with an oven. However, it is noted that, if she wished to marry, any favorable arrangement will cease, the above usufruct will cease to exist and the Manessis brothers would acquire full ownership of the house. This particular usufruct has led to controversy between both sides, most likely because the usufructuary is the widow of the deceased uncle of the heirs-brothers. Otherwise, the Manessis brothers, having the bare ownership, as usual, would bear the cost of building the dividing wall and the small kitchen. Of course, if Anastassoula loses widowhood if she marries a second time, she will cease to enjoy the privilege of usufruct. In addition, we have to mention that other conditions in this compromise act include that the Manessis brothers would pay Anastassoula's maintenance and that if she married in the next two years, they would pay her 50 sequins as a payment of previous maintenance, but also for the *credit* of her downy, amounting to the sum of 14 sequins, which they will pay her either she gets married or not. In any case, the above brothers will give the widow 6 *xéstes* olive oil from every harvest. Furthermore, it is stated that the amount of money from the dowry, as well as the quantity of olive oil was a decision taken by the deceased uncle. We note that Anastassoula is, of course, independent, has the legal capacity as a widow to appear before a notary and conclude this conciliation act, but, as it appears from the case, her husband owned several assets that, after his death, not only were managed by his nephews, but also were possessed and exploited by them, as the nephews are in the second class in inheritance. We would also say, as in other instances, in this case, whether directly or indirectly, the matter is about the validity of the morals prevailing in every time period, of customary law, of common sense and the prevailing morality, according to which the right to enjoy privileges depends on the nature of the social engagement in question.

In addition, another example in which usufruct and nomination are presented is the following notarial act. In 1794[17], *nobile signor* Gasparo *de 'Zorzi* handed over to the notary a document signed by Gasparo and his brother Antonio. This document was a private agreement concerning the allocation of a room of the paternal house from Antonio to Gasparo. A document followed, which states that, upon the interference of common friends to resolve the dispute between Gasparo, Antonio and Francesco Floro, due to the distribution made by Floro of their paternal house, the parties agreed as follows. Firstly, Antonio, in this distribution (made by the older brother) had chosen the first share, which included a room next to the other five rooms which is located opposite the bell tower of the church of Agia Paraskevi (*Santa Veneranda*)[18]. Antonio then gave this room, for life, to Gasparo, and the latter usds it and owned it as well as his own share. Subsequently, on the basis of the above distribution, everyone was responsible for the cost of repairing the rooms of his own share, while the cost of repairing the roof would be borne by all three. Furthermore, according to the new arrangement, Gasparo would bear the cost of the room allocated to him, as well as Antonio's share of the cost of repairing the roof for the duration of the concession. Similarly, Gasparo undertook, for the same period, to exempt Antonio from the payment of half of the annual tax with which the property is charged, a payment which, on the basis of that distribution, is borne by the recipient of the first share, Antonio. Gasparo will pay that half for life, as above mentioned. Finally, all the parties involved assume the obligation to observe the above-mentioned commitments of all their assets, what they already possess, but also what they are going to acquire.

An example[19] of a lending contract [14] is characteristic of our subject. Spiridon Milidonis was unable to repay it, he filed an appeal for an extension of the payment. For the exact return of the interest of fifteen sequins annually, from the day of conclusion of this agreement to full repayment, the house, belonging to Milidonis, the creditor is able to lease and be paid in respect of interest. It is worth mentioning that as Milidonis can not leave this house for the time being, he begged *Maddalenna* to give him a room, assuming the obligation to pay for the five years the rent of the 15 sequins, calculated with effect from the day of conclusion of the

[16] GSAC, *Συμβολαιογράφοι,* Vol. A 91, b. 99 (9), p. 14r. On August 6, 1784, at the house of signor Fotios Lisgaras, in the area of the church of Saint Vassilios and Saint Stefanos.
[17] GSAC, *Συμβολαιογράφοι,* Vol. A 514, b. 11, p. 7r.
[18] The first owners and founders of the church of Saint Veneranda and Saint John the Theologian in Sternes were the monk Christoforos and Christofora [13].
[19] On June 23, 1759, GSAC, *Συμβολαιογράφοι*, Vol. K 227, b. 4, p. 28v.

transaction, guarantying all his *remaining* assets, *present and future*. In the event that Milidonis failed to pay the rent within the prescribed period, he woul lose, *ipso jure*, the beneficial arrangement of the lease in question and Schendo would be able to lease the house to that person he wished without warning or judicial action and Milidonis will be directly obliged to rent it out without objection.

V. CONCLUSION

In conclusion, this brief reference to the extrajudicial dispute resolutions demonstrates the significance of the adopted practice, the thorough study of which is expected to lead us to the disclosure of further information on the social and economic [15] profile of the litigants, the subject of litigation, the means of resolving disputes with the intervention of simple mediators or officially appointed arbitrators. In particular, the latter are particularly interested, inter alias, in the way they are selected, the law-making process on their part, the commitments to implement their decisions. It is believed that the in-depth and systematic study of the notarial acts related to this subject can lead to a study which, on the one hand, will highlight determinant aspects of the economic life of the inhabitants of Corfu in the 18th century, on the other hand, it will reveal, through the examination of a very wide variety of cases of settlement of economic disputes, a whole range of social behaviors that shape the particular characteristics of a population group that moves within a framework defined by the *Serenissima Republic of San Marco*.

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