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MARRIAGE AND DIVORCE LAW IN THE VARDAR VALLEY OF THE THIRTEENTH CENTURY.*

Yanko Hristov

The ambitious task of scholarly research on the peculiarities of everyday life has challenged scholars for many decades. Attempts the history of popular culture and life in the Vardar valley and its surrounding area to be studied, have promised much, but are constrained by the lack of historical sources.

Territories of present-day Macedonia were the site of most of the military and ecclesiastical clashes just before and after the capture of Constantinople by the knights of the Fourth Crusade. At the very end of the 12th and the dawn of the 13th century, part of the lands in the valley of Vardar was under the authority of the regional lord - Dobromir Chrysos. The backbone of his possessions was Strumica and the inaccessible Prosek. The attempts to maneuver between the Byzantine Emperor Alexius III Angelos (1195-1203) and the Bulgarian Tsar Kaloyan (1197-1207) brought only relative stability. In 1201 Dobromir Chrysos, together with his father-in-law, the former Byzantine protostrator Manuel Kamytzes enjoyed temporary success. After adopting Byzantine sovereignty and arrangements of Emperor Alexius III, the alliance with Kamytzes was coming to ending. A dynamic decade and a half followed, in which the lands of the upper and middle watersheds of Vardar changed their masters several times before a successful campaign of the ruler of Epirus - Theodore Doukas (Angelos Komnenos). He significantly expanded his possessions and included the territories of today's Republic of Macedonia within the frameworks of the Despotate of Epirus.¹

Because of this rule, the rigid grip of the lack of source material is briefly relaxed. Data for the region is stored in a collection with a significant number of copies and extracts of documents of Ohrid Archbishopric from the time of Archbishop Demetrios Chomatenos (1216 - ca. 1236). It is known by the name of *Ponemata diaphora* (Повнмата диѳора) - Diverse works. Nowadays, the presence of accessible new publications and

* Във връзка с изпълнение на дейностите по проект „Извори за историята на правото - познати и непознати“, при Правно-исторически факултет на Югозападен Университет „Неофит Рилски“ - Благоевград, приложеният тук текст бе представен като доклад на тема „Everyday life in Macedonia during the first decades of the XIIIth century (according to works of archbishop Demetrius Chomatenos)“ на състоялия се в Скопие (Македония) на 18-19. 10. 2013 г. международен научен симпозиум „Days of Justinian I“. В последствие бе анонимно рецензиран под работното заглавие „Shall a man cleave into his wife; and they shall be one flesh (Gen. 2: 24), or maybe not.“. В настоящия брой на *Studia Iuridico-Historica* се предлага с добавка в три от бележките под линия на достъпни за българския читател публикации.

¹ Срв.: **Nikol, D.**, *Despotate of Epiros*. Oxford: Blackwell, 1957; **Баришић, Фр., Б. Ферјанчић**, *Вести Димитрија Хоматиана о власти Драгувита*. - ЗРВИ 20 (1981), 41-58; **Радић, Р.**, *Области господари у Византији, крајем XII и у првим деценијама XIII*. - ЗРВИ 24-25 (1986), 153-289; **Николов, Г.**, *Самостоятелни и полусамостоятелни владения във възобновеното Българско царство (края на XII - средата на XIII век)*. София: Гутенберг, 2011, 37-44, 70-123.

commentaries on *Ponemata diaphora*, by Günter Prinzing, seriously facilitates future research initiatives.²

The importance of the collection of letters, legal decisions, opinions and judgments as the main source of information for the development of the region during the period is beyond dispute. Certainly, the texts in *Ponemata diaphora* are not the only narratives based on legal matters issued by Orthodox hierarchs and archdiocesan synods. Even before the 13th century, such a practice was well-established in the Orthodox world. The Constantinopolitan synod worked as an operative court and had a legislative function. It mainly addressed itself to the two areas of legislation and judgment with regard to marriage and the organization and administration of the Church.³ This is a fact that does not diminish the public role of the Demetrios Chomatenos at all. In spite of the accusations of his Nicaean rivals, he had undoubted skills. The juridical opinions and decisions are clear evidence of this. Yet, searching for a significant novelty or a more specific conformity to principles of canon law is unnecessary and incorrect. He leaves his mark on the legal proceeding system in the Archbishopric. However, it is due to the fact, that the abundant Byzantine legal tradition facilitates rather than restricts the people that have knowledge of it, while looking for a solution.⁴ The preserved records of Chomatenos's decisions reveal not only the legal sources that he used for substantiating his decisions, but also a great deal of variety of aspects from the life on a daily basis. A large part of these texts concerned adulterous relations, which are incompatible with proper Christian behavior, as well as explanations of kinship degrees.⁵ Moreover, the texts' strong dependence on family law and inheritance principles does not exclude the possibility of a different interpretation of the described peculiarities. This is present among the characteristics within these narratives, which scientists have studied for decades.⁶

² *Demetrii Chomateni Ponemata diaphora*. Rec. G. Prinzing, Berolini - Novi Eboraci: Walter de Gruyter, MMIII (*Corpus Fontium Historiae Byzantinae*, vol. XXXVIII). Една немалка част от текстовете са дотъпни и на български. Срв.: **Илиев, И.**, *Охридският архиепископ Димитър Хоматиан и българите*. София: Анубис, 2010.

³ **Troianos, S.**, *Byzantine Canon Law from the Twelfth to the Fifteenth Centuries*. - In: **Hartmann, W., K. Pennington, (Eds.)**, *History of Byzantine and Eastern Canon Law to 1500*. Washington, D.C.: Catholic University of America Press, 2012, 170-171 (*History of Medieval Canon Law*, vol. IV).

⁴ **Konidaris, I.**, *The Ubiquity of Canon Law*. - In: **Laiou, A., D. Simon, (Eds.)**, *Law and Society in Byzantium, Ninth - Twelfth Centuries*. Washington, D.C., Dumbarton Oaks Research Library and Collection: Harvard University Press, 1994, 131-150.

⁵ **Снегаров, Ив.**, *Брачното право на Охридската архиепископия в XIII век. (при архиепископ Димитър Хоматиан)*. - *Духовна култура* 28/29 (1926), 102-117; 30/31 (1926), 166-181; **Prinzing, G.**, *Sozialgeschichte der Frau im Spiegel der Chomatenos-Akten*. - *JÖB* 32/2 (1982), 453-462; **Angelomatis-Tsougarakis, H. N.**, *Women in the Society of the Despotate of Epiros*. - *JÖB* 32/2 (1982), 473-480; **Laiou, A.**, *Contribution à l'étude de l'institution familiale en Épire au XIII^{ème} siècle*. - *Fontes Minores* 6 (1984), 275-323; **Angold, M.**, *Church and Society under Comneni 1081 - 1261*. Cambridge: University Press, 1995, 385-467. Срв. също: **Илиев, И.**, *Апог отпаѓа винцит. Любовта и бракот по нашите земи през XIII век*. - В: *QUOT DEUS VULT! Сборник в чест на проф. дин Красимира Гагова*. София, 2013, 163-173. - <http://www.mediaeva.lia.eu/index.php/qmediaevaliaq/in-honorem> (Web access May 12, 2014).

⁶ Срв. с посочване на по-ранни публикации: **Prinzing, G.**, *A Quasi Patriarch in the State of Epiros: The Autocephalous Archbishop of "Boulgaria" (Obrid) Demetrios Chomatenos*. - *ЗРВИ* 41 (2004), 165-182; **Илиев, И.**, *Охридският архиепископ Димитър Хоматиан и българите*. София: Анубис, 2010; **Целебичић, Д.**, *Друштво у Епирској држави преје половине XIII века*. (PhD diss., University of Belgrade, 2012) - <https://fedora.bg.ac.rs/fedora/get/o:6032/bdef:Content/get> (Web access March 16, 2014); **Илиев, И.**, *Сведения за*

In this paper, in view of the difficulties in researching daily life, the mentioned narratives bring additional profits. They allow not only a glance over the details behind and around the legal case, but they also reveal a great deal of their importance for its origination, as well as existence of a certain type of relations in the region at the beginning of the 13th century. Undoubtedly, Archbishop Demetrius Chomatenos conforms to the fundamental legal provisions for divorce. Actually, when we talk about divorces and abrogation of marriages by legal reasons, his opinions and decisions are studied in depth from various aspects. However, a few odd features of relation between the spouses need to be further investigated. Notices of them in *Ponemata diaphora* pose the question of whether sometimes the ecclesiastical court, which the Archbishop presided over, had to choose the lesser of the two evils. In some of the observed texts, the legal reasons are just an acceptable cursory explanation and the motives for separations of spouses are deeper and complex. In this respect, all ecclesiastical courts in every part of the Byzantine commonwealth were facilitated by the fundamental and characteristic principle of *oikonomia* (*οικονομία*). As it has been specified, according to it, something, which at a particular time is forbidden, may be forgiven and allowable under other circumstances and at a different time.⁷

The principle was applicable to various types of aspects, but it was particularly helpful in solving marriage matters. Some of them caused severe pressure over the legal proceedings' system. For the observed area, there are several very specific evidences, concerning treats and suicide attempts. They can be seen in texts N 17; N 19; N 23; N 141; N 143. They are different from each other. The general unifying feature is that women prefer to commit suicide than live in a situation, that they are forced to endure. The desire to take their own lives away is completely contrary to the church dogma. Apart for being a mortal sin, from an ecclesiological and legal perspective, it is treated as a criminal act as well, with inevitable consequences.⁸ The very reasons appear to be a part of another major problem. Regardless of regional or personal variations, as a rule and as a legal theory as well as a popular practice, girls had no opportunity or chance to choose their own husbands. The male members of the family - fathers or brothers - arranged betrothals and marriages. Usually relationships were established between the people of similar background and social status. Chastity of girls was not only expected but it was also required.⁹

български народни игри и обичаи във византийски документи от началото на XIII век. - Исторически преглед, № 5-6, 2011, 202-216; **Prinzing, G.**, *Convergence and Divergence between the Patriarchal Register of Constantinople and the Ponemata Diaphora of Archbishop Demetrios Chomatenos of Achrida/Ohrid*. - **Бојана Крсмановић, Љубомир Максимовић, Радивој Радић, (уред.)**, *Византијски свет на Балкану*, I, Београд: САНУ, 2012, 1-16.

⁷ **Konidaris, I.**, *The Ubiquity of Canon Law*, 134-135.

⁸ **Karpozilos, A.**, *Suicide in Byzantium*. - *Hellenika* 57/1 (2007), 79-104. - <http://www.ems.gr/analytikos-katalogos-ekdoseon/ellinika/ellinika-57-1.html>. (Web access October 5, 2013).

⁹ **Laiou, A.**, *The Role of Women in Byzantine Society*. - *JÖB* 31/1 (1981), 233-260; **Rautman, M.**, *Daily Life in the Byzantine Empire*. Westport, Conn. - London: Greenwood Press, 2006, 39-44; **Laiou, A.**, *Sex, Consent and Coercion in Byzantium*. - In: **Laiou, A. (Ed.)**, *Consent and Coercion to Sex and Marriages in Ancient and Medieval Societies*. Washington D.C., Dumbarton Oaks Research Library and Collection: Harvard University Press, 1993, 109-221.

While the chastity of girls is a matter of high importance, it is difficult to prove that the moral principles of youth entering into marriage are a subject of discussion. The dangers of such a practice clearly stand out in document N 17. The document was issued in response to a request by the Pelagonian Bishop regarding the petition for divorce of Maria, daughter of the deacon and chartophylax of the Church in Prilapos (present-day Prilep, Macedonia), Ioannes Chrysilos, married to Nikolaos Halmyriotes. Maria insists on getting a divorce, since by beating, she is forced to satisfy “unnatural sexual desires” of her husband. Due to the threat of suicide, Archbishop offers the suffragan Bishop to apply the principle of *oikonomia* and to dissolve their marriage.¹⁰ Considering the nature of the case as well as the nature of the reasoning, the uncertainty of the representatives of the local clergy is understandable. Most probably such a case required high skills and better legal education, providing the ability not only to deal with the letter of the law, but also profound interpretation of legal regulations. Unfortunately, we cannot be sure, whether Archbishop applied his decision according to decree of year 342, issued by emperors Constantius II and Constans, which prohibited a sexual relation between man and wife that did go beyond vaginal sex. As has already been pointed out “the intent, clearly enough, was to outlaw anal and oral sex between married persons”.¹¹ That might have been among the main reasons for the involvement of the archbishop’s unchallengeable authority. What is significant is not how Demetrios Chomatenos handles it, but how similar relationships remain unregistered. Regrettably, given the available information, the answer to this question is that their exact number can never be specified. About a century ago, the Bulgarian scientist Ivan Snegarov connected the clues of document N 17 with other texts from Chomatenos’s collection, testifying for such a sexual practice, introduced within the frameworks of the Archdiocese by foreigners (in the case reviewed by him - Arabs).¹²

Document N 19 notes how Basilios, who has served in the armored cavalry of the ruler of Epirus, has been betrothed to the much younger than him Kale, daughter of Ioannes Lakapenos/Lampenos, when she was only 5. Upon approaching the authorized by law minimum age for marriage, the fiancée showed violent resistance. After the threat of committing suicide, the arranged marriage became undesirable. The legal basis for an appropriate solution is grounded on the concluded betrothal prior to the required age. In this respect, despite the amount of the text, one could say that it boils down to an easy case in spite of the fact that the individuals involved are a part of the local gentry and former members of elite troops.¹³

The situation described in documents N 141 and N 143 of the collection seems far more complex. In the first of them it is mentioned how the wife of Theodoros Chloropodes - Irene, daughter of a person from Voden (present-day Edessa, Northern

¹⁰ *Ponemata diaphora*, № 17, 80*, 69₁-71₆₅.

¹¹ **Brundage, J.**, *Law, Sex and Christian Society in Medieval Europe*. Chicago - London: Chicago University Press, 1987, p. 108.

¹² **Снегаров, Ив.**, *История на Охридската архиепископия. От основаването ѝ до завладяване на Балканския полуостров от турците*. т. 1, София: Гутенберг, 1924, с. 259.

¹³ *Ponemata diaphora*, № 19; 81*-83*; 75₁-77₉₇; **Целебцић, Д.**, *Друштво.*, 223-224. Срв.: *Намоканон Константинопольского патриарха Фотия с толкованиями Вальсамона*, прев. и комм. В. Нарбеков. Ч. 2, Казань: Типо-литография Императорского Университета, 1899, 480-501.

Greece) - Michael, who, despite her legal marriage, regularly runs away from the hearth and wanders around other houses. Even the constant interference of her parents, ranging from persuasion, threats and scandals, leading to physical assault, does not lead to the termination of such behavior. According to the records, Irene in no way wishes to resume cohabitation with her husband and she is even willing to commit suicide, to prevent her return to him. During the trial, the testimony of Theodoros Chloropodes's sister explains that the escapes of Irene are her way to meet her lover Georgios Cholaures. The confessions of the unfaithful wife also confirm the indictment and hence, the court has nothing to do but give a divorce judgment.¹⁴ Frequent escapes and the threat of suicide caused by intolerance towards the husband have been registered in document № 143. Interestingly, according to the text, the wife Anna has lived with her husband Nikos for some time, and the hatred towards him occurs later on.¹⁵

While Anna, who, according to the descriptions only threatens to hang or drown herself, document N 23 talks about a slightly different situation with another runaway bride, who is again named Irene. In contrast to the abovementioned Irene, this one lacks any data regarding where she is from and who her parents are. Given the information in the mentioned fragment of *Ponemata diaphora*, she is legally married to Ioannes - resident of the provincial estate nearby Prilapos. The husband has just referred his problems with his wife to the judicial authorities. She has lived in someone else's home in the nearby town for months and there are witnesses who confirm that. Among those inconsistent with Christian morality actions of hers is that during her absence from home, she has practically cohabited with another man.¹⁶ Of course, the adultery and infidelity were not omitted as it can be noticed, but there is also a perceivable description of Irene's effort to establish other monogamous relations even though being illegal. Obviously, while striving to do this, she was actuated not by sexual lust, but from discontent and disappointment with her spouse Ioannes. Moreover, searching for another man's caress is not the prime cause. Without any endeavors to excuse the wife's flight, some details in document N 23 show that her husband became quite unbearable for her and she definitely refused to live with him under the same roof. When Ioannes uses the assistance of the authorities to force her, the desperate Irene throws herself into the waters of the river flowing near the village Vodane.¹⁷ It must be pointed out that the betrayed husband Ioannes, who approached the court, was described as *proskathemenos* (προσκαθημένος).¹⁸ It is not of high importance which scientific view about such a specified type of villager will be accepted - dependent peasant; tenant; very poor newcomer settled in the provincial domain; landless day-labour or farmhand. Every possible option puts him in an extremely low social position. If we take into consideration this fact, it will be easy to real-

¹⁴ *Ponemata diaphora*, № 141, 258*, 417₁-418₅₃, Целебцић, Д., *Друштво.*, 216-217, 263.

¹⁵ *Ponemata diaphora*, № 143, 259*-260*, 419₃-420₁₂. Превод на български в: Илиев, Ил., *Охридският архиепископ.*, 308-309.

¹⁶ *Ponemata diaphora*, № 23, 89*-90*, 92₂₋₆; Илиев, Ил., *Охридският архиепископ.*, с. 250; Същият, *Атот отпиа vincit. Любовета и бракът по нашите земи през XIII век.*, с. 173.

¹⁷ *Ponemata diaphora*, № 23, 92₁₅₋₁₆; Илиев, Ил., *Охридският архиепископ.*, с. 250.

¹⁸ *Ponemata diaphora*, № 23; 92₂₋₃; Bartusis, M. C., *Proskathemenos*. - In: Kazhdan, Al. (Ed. in Chief), *The Oxford Dictionary of Byzantium*. Vol. III, Oxford - New York: Oxford University Press, 1991, p. 1738.

ize why the wife Irene was not attracted to share such a life, especially when an opportunity for better existence in Prilapos appeared.

Applying the principle of *oikonomia* becomes more distinct as the flexibility of the ecclesiastical court of Ochrid archbishopric has not only the will to lay the Christian doctrine in a position of a minor scale, regarding the indestructibility of marriage, but it also uses the best of the rich Byzantine legal practice, when it comes to details of a private law character. That is how, for example, a way has been found to respect the property claims of the abandoned fiancé Basilios of document N 19, with reference to the assessment and return of the prenuptial gifts. There is a difference with Anna and Nikos of text N 143, who have lived together being legally married. Both of them got divorced by mutual consent, without property claims. At the same time, there have not been noted any penances or fines adjudged.¹⁹ The situation with the created love triangle between Irene, daughter of Michael, her husband Theodoros Chloropodes as well as her beloved Georgios Cholaures is even more interesting. The court has all legitimate reasons to impose fines on the adulteress, which was not done due to consideration of her poverty. There is a similar case with the divorce of Ioannes and his wife. Interestingly, according to the present-day copy of the protocol that has reached us, the panel of judges explicitly refers to Book 28 of the *Basilica*, Tit. 7, part 1, in which the provisions of 117th *Novel* (c. 8, 9) of Emperor Justinian I (527-565) have been rendered.²⁰ The fled and implicated in cheating wife is punished with exile for six months. This, however, is discordant with the rule of *Novel* 134th of Justinian I applied by Chomatenos himself. When cheating has been proven, the woman had to reside in a monastery for two years and afterwards, the husband had to decide whether to shelter her or the divorce could enter into force.²¹ The lack of fines and remedies for the obvious poverty of the collapsing family appears to be an undoubted parallel with document N 141. The short period of exile and the unclear condition of being in a strange place (outside the mansion where Ioannes lives and works - all being the same) cannot be simply ignored. It creates a sense of a specious way to entitle recently divorced wife to seek a way to legalize her adulterous relation in Prilapos.²²

Decades ago, Hellene N. Angelomatis-Tsougarakis specified that in Byzantine commonwealth “it is not uncommon for women to appear in person in the Synodical Court, seeking a divorce; clearly they often tried in every possible way to find a cause for it or use an opportunity to dissolve their marriages.”²³ Such a statement is based on the notifications in reachable to the present day narratives of the era and it has its undoubted grounds. However, a threat to commit suicide is not an almighty miraculous spell, which has only to reach the ears of the jurors. When it comes to the reviewed texts in *Ponemata diaphora*, in particular, at least two of those aforementioned cases show that the ultimate measure is a fully conscious choice to put an end to the physical, psychological or sexual

¹⁹ *Ponemata diaphora*, № 19, 76⁵⁴⁻⁸⁵; № 143, 420²⁶⁻³⁶; Laiou, A., *Contribution.*, p. 312, 323; Илиев, Ил., *Охридският архиепископ.*, 308-309.

²⁰ *Ponemata diaphora*, № 23, 93³⁸⁻⁴³.

²¹ *Ponemata diaphora*, № 137, 410¹⁻²⁶; № 139, 413¹⁻⁴¹⁵⁶⁵; Илиев, Ил., *Охридският архиепископ.*, 304-305; 305-306.

²² *Ponemata diaphora*, № 23, 93⁴³⁻⁴⁶.

²³ Angelomatis-Tsougarakis, H. N., *Women in the Society.*, p. 475; Angold, M., *Church and Society.*, p. 419.

harassment conducted by a spouse and/or relatives. It is evident that Irene, the wife of Ioannes, has a desire to commit suicide, which is not a hollow threat. The attempt is unsuccessful only because of the desperate intervention of third parties - local archon Gregorios Gabras and his men.²⁴

However, accepting women as victims of unfortunate, intrusive relations as well as forced marriages in Vardar's valley is utterly wrong. A great number of documents from the collection itself prove it. One of them is particularly indicative. There is relatively detailed data about a Vlachian woman Dzhola who together with potter Chrysos from Kastoria (already married to another woman) achieved prosperity during their cohabitation in Ochrid. The lovers were separated under the pressure of the ecclesiastic authority. Then Dzhola claimed part of the acquired property and the court respected her claims. She became a sole owner of a cow, a two-year calf, two pigs, textiles, two donkeys and a beehive. A special focus should be placed on the fact that Dzhola is the active party in the illegal relationship and she welcomes Chrysos in her home. Moreover, this emancipated woman is ethnically different from the majority of the population in the city. However, neither the accusations of misconduct, nor the possible xenophobia could prevent her from managing partly market-oriented activities, and together with her lover, they could achieve prosperity and secured themselves a stable existence.²⁵

The presented examples and interpretations of Chomatenos's collection have been limited mainly to some interesting divorce's reasons and their surrounding aspects. It is obvious that they overcome the paralyzing domination of the political order and are evidence of a far more fascinating and versatile picture of lower society layers. Within the variety of their relationships *Ponemata diaphora* does not hide even the most intimate details of family matters.

БРАКОРАЗВОДНОТО ПРАВО В ПОВАРДАРИЕТО ПРЕЗ XIII ВЕК

Резюме

Аспектите и проблемите, отнасящи се до всекидневния живот през Средновековието отдавна са част от изследователските разработки за епохата. В споменатата насока обаче, сякаш все още има какво да се постигне. Особено що се отнася до семейни и семейно-правни отношения във редица региони от българското етническо и политическо пространство. В тази връзка сбирката с документи на Охридската архиепископия, известна под названието *Ponemata diaphora*, представлява първостепенен източник на информация за форми на извънбрачно съжителство, междуполови контакти, разтрогване на незаконни или нестабилни бракове и разкриване на валидните правни основания за това в православния свят на Балканите през XIII век.

²⁴ *Ponemata diaphora*, № 23, 92₁₆₋₂₃; Илиев, Ил., *Охридският архиепископ*, с. 250; Целебџић, Д., *Друштво*, 80-81, 149, 219.

²⁵ *Ponemata diaphora*, № 136, 409₂₋₉, 409₁₆₋₂₅; Laiou, A., *Contribution*, 286-287; Илиев, Ил., *Едно известие на употребата на думата черга в народния говор на Охридско през XIII в.* - Български език, № 1, 2004, 75-86; Същият, *Охридският архиепископ*, 198-199, 204-205, 303-304; Същият, *Амор отпиа vincit. Любовта и бракът по нашите земи през XIII век*, с. 173.