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JEROLIM MIČELOVIĆ MICHIELI, A PENOLOGIST
FROM THE XVII CENTURY AND HIS
*PRATICA CRIMINALE**

*The author reports on the insufficiently known handbook *Pratica criminale pei cancelieri*, which was written in the mid XVII century in Venice by Croatian lawyer and scholar Jerolim Mičelović Michieli. There are indications that the work influenced criminal legal practice to a certain extent, and that it contributed to alleviate the severity of the inquisitorial procedure and criminal system, at least in some parts of the Venetian Dominium. *Pratica criminale pei cancelieri* is the subject of a research project being implemented at the Faculty of Law in Split, with the task to explore in more details that estimation. *Pratica criminale pei cancelieri* is basically a theoretical text, but it is written in a dialogue form, and it probably had influenced future officials in some parts of the Venetian Dominium. The author launches some hypothesis considering that texts and its impact in legal practice, with the goal to provoke further discussion.*

Key words: *Venetian Republic. Pratica criminale. Chancellor. Inquisitorial criminal procedure.*

The history of Venetian criminal law and procedure should be entirely re-written, taking into consideration not only recent publications of numerous sources and documents but also those equally numerous, which are still scattered and forgotten in various public and private archives and libraries. These words by the famous Italian legal historian Claudio Schwarzenberg,¹ having been said for more than 40 years ago, are just as valid today as they have been nearly a half century before.

* The paper is an elaborated version of the short communication discussed at the Conference *Internationale Rechtswissenschaftliche Tagung, Forschungen zur Rechtsgeschichte in Südosteuropa*, held in Vienna on 9-11 October, 2008.

¹ C. Schwarzenberg (a cura di), *Pratica del Foro veneto*, Camerino 1967, 15.

A forgotten document which would certainly contribute to a wider knowledge and a better understanding of criminal procedure in the Venetian Republic is, beyond doubt, the treatise, actually the handbook, entitled *Pratica criminale pei cancelieri* (Practical Handbook of Criminal Law for Chancellors), which was compiled around 1650 in Venice by the still today not so well known Croatian lawyer and scholar Jerolim Mičelović – Michieli. That document was just a part of a range of handbooks dedicated to various segments of legal organisation of the Venetian Republic (together with criminal, most often also civil law, notary system, and the like). They were aimed mostly at legal practitioners.²

The Faculty of Law of the University of Split is actually running a research project on Mičelović and his *Pratica*. This papers rather aims at announcing main issues waiting to be investigated, than to report on the final conclusions, hoping that it may incite fruitful discussion and bring new inputs.

The basic bio-bibliographical details about Mičelović are presented in the two works by Andrija Ciccarelli, a Dalmatian historian and writer coming by the end of the XVIII and the beginning of the XIX century.³ Antun Cvitanić also wrote about Mičelović, and tried at least twice to awaken a scientific interest in his contribution to criminal and procedural doctrine of the time.⁴ Valuable biographical details about Jerolim Mičelović were given also by Andre Jutronić and Jakov Jelinčić on the basis of analysis of the oldest registry in the municipality of Mičelović's birth.⁵

Jerolim Mičelović was born in Postira on the island of Brač in 1600, and died in Trogir 66 years later, where he, as a person of note, was

² S. Gasparini, *Tra fatto e diritto: Avvocati e causidici a Venezia nell'età moderna*, Padova 2005, 85; S. Gasparini et al., *Spazi di lettura. Rassegna bibliografica di testi e documenti per la ricerca e la didattica giuridica del Seminario di Storia del diritto medievale e moderno*, Padova 2003, 9 25.

³ A. Ciccarelli, *Opuscoli riguardanti la storia degli uomini illustri di Spalato, e di parecchi altri Dalmati*, Dubrovnik 1911, 55 57; A. Ciccarelli, *Osservazioni sull'isola della Brazza e sopra quella nobilita*, Venezia 1802, 18.

⁴ A. Cvitanić, "Tragom rada jednog našeg pravnika praktičara iz XVII stoljeća" [*In the Footsteps of an Our Criminal Lawyer from 17th Century*], *Zbornik radova Pravnog fakulteta u Splitu [Collected papers of the Law Faculty of the University of Split]*, 8/1971, 71 80; A. Cvitanić, "Jerolim Mičelović Michieli, hrvatski pravnik XVII stoljeća: "Preporuka za znanstvenu obradu i vrednovanje njegova djela *Pratica criminale pei cancelieri*" [Jerolim Mičelović Michieli, *A Croatian Lawyer from 17th Century: Recommendation for scientific research and evaluation of his work Pratica criminale pei cancelieri*], *Hrvatski ljetopis za kazneno pravo i praksu [Croatian annual of criminal law and practice]*, 4, 2/1997, 747 752.

⁵ A. Jutronić, "Naselja i podrijetlo stanovništva na otoku Braču" [*Settlements and Origin of Population on the Island of Brač*] *Zbornik za narodni život i običaje Južnih Slavena [Collected papers on people's life and customs of South Slavs]*, Zagreb 34/1950, 145; J. Jelinčić, *Na postirskim vrelima [On Origins of Postira]*, Postira 2004, 73 78.

buried in the tomb at the main altar of the cathedral. Therefore, it is not surprising that one of the three handwritings of the famous Mičelović's *Pratica* was found in the Library of the Trogir cathedral. The other two manuscripts are kept in Italy: one in the National Library of St. Marco in Venice (*Marciana*), and the other in the Communal Library in Udine. According to our examination, not a single one of those handwritings was originally written by Mičelović. The Udine handwriting is at first glance uttermost removed from the original writer. That is the somewhat shortened later version, indicated by the characteristics of language and writing, as well as by the occasional omissions which are contained in the use of inappropriate terms, produced by mistake in invalid reading of the original handwriting. The other two manuscripts are most probably only copies of the original work. Both were written by at least two different people, and each one of them have gaps in content which do not overlap with the other one, and which have been probably caused by voluntary omission or by careless re-writing of the original. A comparative argument also suggest such a proposition, as all other known and preserved Venetian practical handbooks were normally not more than copies.⁶

Mičelović studied law at the University of Padua, where he was awarded a doctoral degree in laws (*doctor utriusque iuris*). He held various positions in the public service of the Venetian Republic. He was, among other positions, an auditor⁷ and advisor to the general commanders and rectors in certain inferior towns in Italy, Dalmatia and Crete. For a period of time he performed the duty of chancellor. However, it was not a position of the main or great chancellor (*canceliere grande*), which was held by the Duce office in the very town of Venice,⁸ but rather a local chancellor function having been performed in other places, cities and provinces of the Venetian Republic.⁹

According to Ciccarelli, Mičelović was considered as a famous criminologist (*criminalista famoso*), whose *Pratica* was unstintingly used by candidates who were preparing for the chancellor service.¹⁰ To that aim, it was useful as it was informative enough, but also as it was attractive, as it was composed in the form of a dialogue between a chancellor and coadjutor (candidate for chancellor service).¹¹

⁶ A. Cvitanić (1997), 749.

⁷ On the service as auditor *cfr.* C. Milan, A. Politi, B. Vianello, *Guida alle magistrature; Elementi per la conoscenza della Repubblica Veneta*, Verona 2003, 79-80.

⁸ C. Milan, A. Politi, B. Vianello, 71-73.

⁹ A. Cvitanić (1997), 750.

¹⁰ A. Ciccarelli (1802), 18.

¹¹ Dialogue form was not otherwise unusual at that time in similar works. The same idea can be met in Arcangelo Bonifaccio, *Nuova e succinta pratica civile e criminale*, Venezia 1739.

The work is divided into ten chapters-dialogues and each analyses a central issue. However, within the same chapter different issues of criminal substantive law and procedure were often intertwined. Although substantive and procedural criminal law were in principle differentiated already in the XVI century,¹² the Mičelović's text shows that the process of emancipation of criminal procedure from criminal substantive law was quite slow.¹³ It is easy recognizable in the author's observation that criminal law belongs to the category of *ars*, rather than to the world of science.¹⁴ The subject of that *ars* are not only offences and people, prosecutors and injured parties, but also law suits initiated by a criminal action (*querella*) and other forms of procedural remedies.¹⁵

Briefly, the content of Mičelović's *Pratica* has a following structure. In the first chapter (*Criminalità*), certain types and categories of offences are defined, wherein the author relies on classification of the XVI and XVII century *ius comune*.¹⁶ Most important are the divisions of offences into: a) public and private, b) regular and extraordinary, c) summary, seriously and more seriously indictable, and d) ecclesiastical, secular and mixed. Such a categorisation of offences basically was kept even up to the XVIII century literature.¹⁷ Then the typical scheme for practical handbooks follows, that is a description of the various phases of criminal procedure.¹⁸

The second chapter (*Quali cause sono criminali, civile e miste*) discusses the concept and different characteristics of criminal, civil and mixed law suits, beginning with the double criteria of the types of offences and punishments. Particular attention is paid to the differentiation of ordinary and extraordinary punishments typical for the criminal doctrine of the time.¹⁹ The first are, according to Mičelović, punishments determined precisely by the law or statute, while the others are punishment according to the arbitrary assessment of the court, such as deprivation of office, benefits or honour, etc.

¹² It was firstly suggested by the great criminologist Tiberio Deciani in his work *Tractatus criminalis*. Cf: A. Marongiu, *Tiberio Deciani (1509 1582) lettore di diritto, consulente, criminalista*, Bologna 1934, see more in A. Cavanna, *Storia del diritto moderno in Europa*, I, Milano 1979, 146 152.

¹³ See also S. Lessi, *Benedetto Pasqualigo e la Giurisprudenza criminale teorica e pratica*, Padova 1999, 21 23.

¹⁴ (...) è da concludersi che medesima sia più tosto arte, che scienza... la criminalità nel caso nostro si può chiamar con maggior ragione arte, che scienza.

¹⁵ Il soggetto di quell'arte sono i medesimi delitti, le persone, cioè li querellanti, et offesi, e l'azioni loro, cioè le querelle, ò altro modo di procedere.

¹⁶ A. Cavanna, 147.

¹⁷ S. Lessi, 25 44.

¹⁸ *Ibid.*, 22.

¹⁹ *Ibid.*, 33.

The third chapter (*Dei modi e delle forme di procedere*) analyses the different ways of initiating criminal proceedings. Procedures are determined as *per accusationem*, *per denuntiationem* for barbers, doctors and heads of certain areas (*contrata*), and *per expositionem* – according to reports of military officers. However, the court is eligible to initiate procedure by virtue of its office (*per inquisitionem*), without any initiative vested into the previous forms.

The fourth chapter (*Varie circostanze circa le querelle*) deals with different aspects according to criminal action taken by the injured party (*querella*), different than a civil one. The fifth chapter (*Delle diligenze che deve usare la Giustizia doppo la notitia de dellitti, e che in primo luogo deve constare del corpo d'essi*) discusses procedural steps which were supposed to be undertaken after the information that the criminal act was performed. Firstly it was determined whether the crime actually took place, and particularly to determine *corpus delicti*. Without those elements, the charge could not be passed and neither could torture be applied in the proceeding. Mičelović distinguishes between the so called permanent offences (*delitti permanenti*) and passing offences (*delitti transeuntii*), which was a routine division in the criminal doctrine of the XVII and XVIII century.²⁰ The first category encompasses offences committed by some act (*fatto*) having left obvious material traces, while the others were performed by words (*detto*) or omission (*omissione*), and did not leave observable traces. To this, close causality was linked in order to determine the existence of certain types of offences. The similar topic is continued in the sixth chapter (*Avertendo che secondo la qualità de casi devono anco esser usati li modi, così per far constar i delitti, come anco per inquirer i delinquenti*).

The seventh chapter (*De testimonii, et altre considerationi circa l'informationi necessarie contro a rei*) exposes the complex system of witnesses interrogation, while the eighth chapter (*Delle deliberationi di processi*) discusses forms of different procedural decisions (*decreti*). These are not decisions on the merit, but rather the procedural remedies aimed at enabling the main process. The most important of these were calls to the accused to present his defence, an order to appear for an informative discussion, decision to prevent accused to get away, and calls to put someone on the list of wanted defendants, all in the form of public proclamations (*proclama*). *Proclama* was a public call *ad carceres*. On that basis the elusive accused person could be arrested wherever he was found. If he refused to go to court within the deadline given in the warrant for arrest, he was officially pursued in his absence (*bando*).²¹ The ninth chapter (*Della retentione e captura*) analyses the reasons, ways and legal requisites for the preventive arrest of the accused. The last, tenth

²⁰ *Ibid.* 46.

²¹ M. Ferro, *Dizionario del diritto comune e veneto*, vol. II, Venezia 1845, 531-532.

chapter (*De proclami*) deals with proceedings against the accused who has been listed within the record of wanted persons (the so called *reo proclamato*), as well as different procedural issues and remedies, including the torture as a means of securing evidence.

Ciccarelli emphasises that Mičelović's *Pratica*, although it was never published up to "our time" (that is until the fall of the Venetian Republic),²² served as a standard and example to the chancellors of the Venetian Republic, and that it helped greatly to allieviate in practice the severity of criminal sanctions as well as to ensure that their implementation was based on more correct questioning of relevant factors.²³

However, for the contemporary analysis it is necessary to take into account the whole social and historical context of Mičelović's work in order to evaluate and understand its goals and results properly. It leads us to the political settings and peculiarities of criminal legal institutions, as those circumstances shaped a fundamental profile of Venetian history in the last centuries of the Republic.²⁴

After centuries of prosperity and stability, in the XVI century many indicators of the crisis have appeared, in proportion to the economic rise and political influence of other European countries. They started to make better use of their own national resources and more favourable geographical position, particularly in regard to the relocation of the main commercial routes from the Mediterranean to the Atlantic, while Venice remained not active enough in those global processes.²⁵ In the XV century, while it was at the height of its power, the Venetian Republic skilfully wanted to maintain political balance in the capital as well as regarding subordinate towns and areas.²⁶ Even though the Venetian state transformed itself over the centuries from a communal entity, via the city-state, to the mighty, expanded, well organized state in a form of the Republic with lots of territories (*Dominium* or *Signoria*), it has basically preserved in an unchanged form its old political and administrative structures, having been created in the previous times.²⁷ However, when the crisis started to erode the economic and political power of the state and the morale of the governing

²² See also A. Cvitanić (1997), 749.

²³ *Servi molto a mitigare le pene criminali, e per far che precedano le più esatte cognizioni all'esecuzione; qual pratica fino a di nostri serviva di norma ai Cancellieri dello Stato Veneto, sebbene non pubblicata con le stampe* (1811, 55).

²⁴ G. Cozzi, *Politica e diritto nella riforma del diritto penale veneto nel settecento*, Padova 1966, 1.

²⁵ G. Zordan, *L'ordinamento giuridico veneziano*, Padova 2005, 111; G. Cozzi, M. Knapton, G. Scarabello, *Povijest Venecije [History of Venice]*, vol. II, (Translation V. Begić et al.), Zagreb 2007, 266; F. C. Lane, *Povijest Mletačke Republike [Venice. A Maritime Republic]* (Translation T. Mršić), Zagreb 2007, 428.

²⁶ G. Cozzi (1966), 11.

²⁷ G. Zordan et al., *Società, economia, istituzioni. Lineamenti per la conoscenza della Repubblica Veneta*, vol. I, *Istituzioni ed economia*, Verona 2002, 23.

nobility, the old city-state institutions demonstrated their impotence. Incapable in implementing necessary reforms, the Venetian Republic turned to a range of restrictive political measures, attempting to strengthen constitutional and political institutions. One of the main instruments of that political goal was the inquisitorial procedural system.²⁸

It was the new, “special” procedural regime (*rito*), which increasingly suppressed traditional criminal court procedure, known as ordinary, which was used by the older judiciary bodies, particularly by the Council of Forty,²⁹ as a system mixed in character with accusatorial elements,³⁰ where representatives of the accusation and of the defence contradicted verbally in the presence of the accused. Such a procedure was different from the new inquisitorial one considering wider possibilities for the defence. Although numerous formalities complicated the procedure, they obtained in the same time more guarantees for the protection of the rights of the accused, by the publicity of the procedure and finally by the inclusion of *Avogador de Comun* at any phase in the process. *Avogador* represented the public charge and suggested the verdict. On the other side such a procedure was longwinded and slow, and lead to the increase of cases (of which many were never resolved), while the accused persons were often in custody awaiting the end to the proceedings.³¹

Affirmation of the inquisitorial criminal procedure was connected to the Council of Ten and its two dependant magistrate bodies. These were the Executives Against Blasphemy (*Esecutori contro la bestimmia*) and the State Inquisitors (*Inquisitori di Stato*).³² Despite the obvious disadvantages of the ordinary procedure mentioned above, implementing the new regime of procedure never entailed just a simple technical change. The inquisitorial regime allowed the court to lead proceedings even when the accusation party was not present (*accusator*), to question the witnesses and pass sentence. *Accusa*, with a litteral meaning of law suit filed by a private party disappeared completely, so the in the XVI century there was practically no more traces left.³³ That is what Mičelović confirms himself, observing the ways of how the criminal proceedings were initiated in his time, and stating that “modo dell’acusatione non è più in uso”.

A further consequence of the inquisitorial procedure was the implementation of torture as of a regular method of investigation.³⁴ Differently

²⁸ G. Cozzi (1966), 4 12.

²⁹ C. Milan, A. Politi, B. Vianello, 57 58.

³⁰ G. Cozzi (1966), 10; S. Lessi, 100.

³¹ S. Lessi, 100.

³² G. Zordan (2005), 72; C. Milan, A. Politi, B. Vianello, 58 66; G. Cozzi (1966), 12; S. Lessi, 75.

³³ G. Cozzi (1966), 1 4.

³⁴ *Ibid.*

than the earlier ordinary procedure, it did not allow representation of the accused by a representative (lawyer) during the process, although both legislation and doctrine of the XVII century, have softened that approach.³⁵ Summary and secret accusations were the main characteristics of the inquisitorial procedure. It was much more based on practice (*practica*) rather than upon precise and comprehensible norms, so that the accused was often at the mercy of the state inquisitor. The individual was also exposed to the arbitrariness and misuse of a wide network of state stalking and spying.³⁶ By the anxiety which it instilled, by its rigidity, and the lack of serious procedural guarantees for the protection of the rights of the accused, the inquisitorial procedure became truly a powerful political instrument of the governing noble oligarchy.³⁷ Therefore it was not surprising that such an organisation of criminal justice was not only subject of the Venetian public animosity, including the majority of the nobility, who did not belong to the small class of the governing oligarchy, but it also received serious condemnation and critics by the theory, particularly by the Enlightenment thinkers and scholars.³⁸ However all attempts at reform and humanization of criminal law and procedure were unsuccessful, partly as innovative idea of the Enlightenment hardly touched the Venetian Republic,³⁹ as well as the success of such a project depended on serious reforms of the state apparatus, which was nearly an impossible task.⁴⁰

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Ciccarelli was of opinion that Mičelović's contributed greatly the practice to alleviate severity of punishments, and that before the implementation of criminal sanctions, precise and correct examination of facts has to be performed. It gives foundation to Cvitanić's conclusion that the intention of Mičelović was to alleviate inhumanity of the inquisitorial procedure. Even more, given the above, *Practica criminale* by Mičelović can be understood in that context as a critique of the politics of the Venetian aristocratic oligarchy, and as one of the first voices in favour of modernization of criminal law and procedure.

³⁵ S. Lessi, 155.

³⁶ G. Cozzi (1966), 20 21; C. Milan, A. Politi, B. Vianello, 58 59.

³⁷ A. Cvitanić (1997), 749.

³⁸ Venetian inquisitorial procedure was also criticised by the influential Italian legal writer Cesare Beccaria in his famous work *Dei delitti e delle pene* (1764). Cfr. C. Beccaria, *O zločinima i kaznama* [*On Crimes and Punishments*], (2nd ed., Introductory and translation A. Cvitanić), Split 1990; *Id.*, "Beccaria i mletački inkvizicioni postupak" [*Beccaria and Venetian Inquisitorial Procedure*], *Zbornik radova Pravnog fakulteta u Splitu* [*Collected papers of Law Faculty of Split*], Split 1978; G. Cozzi (1966), 15.

³⁹ G. Zordan (2005), 111.

⁴⁰ See more A. Cvitanić (1997), 751.

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JEROLIM MIČELOVIĆ-MICHIELI, EIN STRAFRECHTLER
AUS DEM 17. JAHRHUNDERT UND SEINE
PRATICA CRIMINALE PEI CANCELIERI

Zusammenfassung

Der Verfasser berichtet über das wissenschaftliche Projekt Jerolim Mičelović Michieli, ein kroatischer Strafrechtler aus dem 17. Jahrhundert, das an der Juristischen Fakultät der Universität Split realisiert wird. J. Mičelović (Postira, Insel Brač, 1600 – Trogir, 1666) hat in Venedig um 1650 das strafrechtliche Handbuch Pratica criminale pei cancelieri verfasst. Obwohl sein Werk nie gedruckt wurde, hat man es wahrscheinlich für die Ausbildung von Kandidaten für das Amt des canceliere verwendet. Es gibt sogar Indizien dafür, dass dieses Werk zur Milderung der Härte des venezianischen Inquisitionsverfahrens und der strafrechtlichen Repression im Allgemeinen beigetragen hat. Es ist die Aufgabe des Projektes zu erforschen, ob und in wie weit diese Indizien begründet sind.

Die Pratica criminale wurde als Dialog in zehn Kapiteln zwischen einem Lehrer (canceliere) und einem Schüler (coadiutore) verfasst. Erhalten sind drei handschriftliche Exemplare (Venedig, Udine, Trogir), für die man mit guten Gründen vor aussetzen kann, dass alle drei die Abschriften des Autografs von Mičelović sind.

Schlüsselwörter: *Republik Venedig. Pratica criminale. Canceliere. Inquisitionsstrafverfahren.*