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## BOGIŠIĆ'S CORRESPONDENCE WITH LAZA KOSTIĆ, SERBIAN POET AND LAWYER (DOCTOR UTRIVSQUE IURIS)

1. Laza Kostić (1841–1910) was not only a great Serbian poet, playwright, translator, literary and theater critic, journalist, national tribune, politician, diplomat, philosopher and aesthete, but as one of the most educated and well-known Serbian intellectuals of the time, he also made a significant contribution to the legal field. Unfortunately, for a long time, the scientific community did not shed enough light on this area of his activity, so in a recently published scientific monograph we pointed out Kostić's most important achievements in the field of legal sciences.<sup>1</sup> At only 25, in 1866 he became a doctor of both secular and ecclesiastical law (*doctor utriusque iuris*), by writing and successfully defending his dissertation, in Latin, at the Royal University of Pest.<sup>2</sup> Based on the archival documents which we have recently discovered, our legal science realized that the topic of his *dissertatio inauguralis* was in the field of Serbian medieval law, regarding the famous *Tsar Dušan's Code* from the fourteenth century, which is certainly the most important legal and historical document of the Nemanjić dynasty era.<sup>3</sup> However, Kostić did not pursue a career in law, although he tried,

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<sup>1</sup> Ž. Bujuklić, *Pravnički dometi pesnika Laze Kostića*, Beograd 2018.

<sup>2</sup> Kostić's biographer and contemporary Milan Savić states that this "promotion was a date in the history of the Pest Law School". M. Savić, *Laza Kostić*, Novi Sad 1929, 22.

<sup>3</sup> These results are from the official records of pre-doctoral examinations (*examina rigorosa*) in 1864–1865, and the *dissertatio* itself (May 1, 1866), which I discovered in the archives in Budapest. I also found the original handwritten doctoral diploma in the Archive of the Matica Srpska in Novi Sad, and provided translation for all those documents from Latin. Ž. Bujuklić, *Doktorska disertacija pesnika Laze Kostića 'De legibus*

but without success, to become a professor of Roman law (and some other subjects) at the University of Zagreb and also at the Belgrade Great School, the most significant educational institution in Serbia at that time, and fore-runner of the University of Belgrade.

The source of valuable information for this discovery, as well as many other facts from Kostić's life and work, is the two-volume collection of his private letters, published in 2005 and 2017.<sup>4</sup> The correspondence between Laza Kostić and Valtazar Bogišić, which, with their sporadic personal contacts, lasted for almost four decades, is of particular relevance for our topic. The first preserved letter was sent by Kostić at the beginning of 1867, when he was at the age of 27, and the last one was sent in March 1905, three years before Bogišić's death.<sup>5</sup> It is difficult to determine when they first met, but it is known that when they were young they were gathered around the idea of the "United Serbian Youth" (*Ujedinjena omladina srpska*), a patriotic political organization founded in 1866 in Novi Sad (which was in Hungary at the time), in which they also participated.<sup>6</sup> The goal of this national movement, modeled upon Mazzini's revolutionary organization *Giovane Italia*, was the All-Slavic liberation from the rule of the Habsburg Monarchy. Since the organization was banned, after a while, in Austria-Hungary and the Principality of Serbia, its seat became Cetinje, the capital of the Principality of Montenegro. Renowned intellectuals propagated their patriotic ideas in "The Voice of the Montenegrin" (*Glas Crnogorca*), a political and literary court magazine, and in 1871, under the initiative of the Montenegrin *knjaz* (prince) Nikola Petrović and his *vojvoda* (duke) Simo

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*serbicus Stephani Uros Dusan'*, Anali Pravnog fakulteta u Beogradu, LXVI, 1/2018, 22–44. Kostić was awarded the title of *a doctor utriusque iuris* (or *universi iuris*), also on the basis of defending a work of a smaller volume (only 6 pages), with a predetermined content and title, which was quite common at that time: *Theses ex scientiis juridicis et politicis*. In our science it was mistakenly considered as his *dissertatio inauguralis*. Cfr. S. Šarkić, *Rimsko pravo u doktorskoj disertaciji Laze Kostića*, in: "Antika i savremeni svet i recepcija antičke kulture" (ed. K. Maricki-Gadžanski), Beograd 2012, 455–460.

<sup>4</sup> Laza Kostić, *Prepiska*, vol. I–II, Novi Sad 2005, 2017. The "Correspondence" (*Prepiska*) was published with extensive comments by the Serbian academic Mladen Leskovac, distinguished literary historian, writer and translator. As one of the best connoisseurs of the life and work of Laza Kostić, he prepared an edition of XII volumes of his collected works, published by Matica Srpska from Novi Sad.

<sup>5</sup> *Prepiska*, vol. I, 281–382.

<sup>6</sup> About Bogišić's political ideas on all-Serbian unification see N. Martinović, *Valtazar Bogišić i Ujedinjena omladina srpska*, Zbornik Matice srpske, IX, Novi Sad 1954.

Popović, the "Society for Serbian Liberation and Unification" (*Družina za oslobođenje i ujedinjenje srpsko*) was formed in Cetinje.<sup>7</sup>

Unlike Bogišić, Laza Kostić did not give up on being active in politics for longer periods of time; however, in correspondence with his esteemed friend and colleague, he did not reflect upon these issues too much. Apart from everyday life problems (mainly concerning possible solutions to Kostić's existential problems due to poverty), their topics revolved around important questions in the field of European history, the importance of evolution in nature and society, confrontation of different legal ideas, dilemmas in the field of Slavic linguistic studies, and especially, the creation of new legislative terminology.<sup>8</sup> There was also an exchange of books and rare magazines, as well as proofreading of Kostić's translations of his own plays and other literary works. The correspondence shows the extraordinary erudition of both, an exceptional meticulousness, a systematic approach and interest in different scientific fields — though the most impressive are those letters that show the human greatness of Bogišić, when in some difficult moments in Kostić's life he supported him and helped him significantly.

Correspondence shows us that out of 99 preserved letters, 77 were written by Kostić and they are kept in the Archive in Cavtat, while only 22 of Bogišić's answers are in the *Manuscript Department of the Matica Srpska* in Novi Sad.<sup>9</sup>

<sup>7</sup> The ideological leader of this movement was Svetozar Miletić, the Viennese doctor of law, advocate, journalist and well-known Serbian national activist from Vojvodina, which was then part of the Austro-Hungarian Monarchy. At the beginning of 1871, Miletić sent Kostić (as one of his closest associates) to Cetinje, under the pretext of attending the baptizing ceremony of the Prince's son, with the real task of preparing the action for the start of war against Turkey. This is why this secret and illegal organization was founded, and became an important factor in the future Serbian-Montenegrin political alliance. As many as 27 famous public workers and political tribunes, from all parts of the Serbs-populated area, gathered in Cetinje. Montenegro was represented by *vojvoda* Mašo Vrbica and Prince's personal secretary *vojvoda* Simo Popović. Due to these revolutionary activities, Kostić was arrested twice (1872, 1876), on the charge of recruiting revolutionary volunteers and conspiracy. D. Mikavica, *Politička ideologija Svetozara Miletića*, Novi Sad 2006, 138–144.

<sup>8</sup> The same as with Kostić, terminology of Bogišić is based on the vernacular legacy pertaining to the entire linguistic area of Serbs (he made no distinction between them and Montenegrins) and Croats. He regarded that language as being a single one and called it "Serbian", "Serbo-Croatian" and "Croatian or Serbian".

<sup>9</sup> *Prepiska*, 281–382, 559. Twenty of Bogišić's letters from the Archive of Matica Srpska were previously published by A. Forišković, *Pisma Valtazara Bogišića Lazi Kostiću*, Zbornik Matice srpske za književnost i jezik, XVIII, 1/2970, 90–112. The Cavtat Archive preserved ten thousands of letters exchanged with over a thousand persons at more than

It is strange indeed that only one brief, mostly descriptive paper has been devoted to their correspondence so far, limited mainly to the topics of Bogišić's *Property Code* of 1888.<sup>10</sup> The author of that article, Ivan Kustudija, in accordance with the solemn occasion of the centenary of the *General Property Code for the Principality of Montenegro* (OIZ), inspiredly concludes that Bogišić and Kostić "contributed creatively, together with other foreign and domestic cultural, educational and scientific workers, to the rapid revival of Montenegro in the mid-nineteenth century", adding the exalted conclusion that "the leading place belongs to Valtazar Bogišić, with an immeasurable contribution by Laza Kostić".<sup>11</sup> Although admirers of the great Serbian poet may appreciate such praise, the available documents do not, however, confirm the validity of these claims, especially when it comes to the role of Laza Kostić in the creation and application of the Montenegrin *Property Code*, not even during his seven years stay at Prince Nikola's court (1884–1891).

A letter from 1879 shows that during his stay in Vienna, Laza Kostić was already well informed about the work on drafting the Montenegrin Code, as well as about the initial ideas for creating a similar code in faraway Japan:

*Apropos Bogišić. There is a possibility that the Mikado will invite him to create a Code for the Japanese. A notice about that was published in Golos, but not a single newspaper in Serbia talked about that, which in the spiritual sense is as significant for the Serbs at least as much as the victory in the Battle of Fundina in the military sense.*<sup>12</sup>

It seems that Kostić was aware of Napoleon's saying that the *Code Civil* was worth more than all his military victories. Furthermore, Kostić would write extensively about Bogišić's contacts with Japanese officials in *Glas Crnogorca* in 1885:

*During the 1878 Paris World Exhibition, the Japanese Minister of Finance, Masayoshi Matsukata, was there as the President of the Japanese section of the*

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200 addresses in Paris alone — and when this is compared to what remains of Kostić's correspondence, all we can do is mourn the material that has since disappeared, and is now inaccessible. For example, over 200 letters were preserved from Bogišić's correspondence with the Serbian academic Stojan Novaković, famous historian and politician. B. Nedeljković, *Prepiska Stojana Novakovića i Valtazara Bogišića*, SANU, Belgrade 1968.

<sup>10</sup> I. Kustudija, *Prepiska Valtazara Bogišića i Laze Kostića o Opštem imovinskom zakoniku za Knjaževinu Crnu Goru*, in: "Stogodišnjica Opšteg imovinskog zakonika za Knjaževinu Crnu Goru" (ed. M. Šuković), CANU, Titograd 1989, 77–83.

<sup>11</sup> I. Kustudija, *op. cit.*, 83.

<sup>12</sup> *Prepiska* (to Antonije Hadžić, Vienna, August 5, 1879), 79. Fundina is a settlement near Podgorica where the small army of Montenegro defeated the vastly superior Turkish military forces on the 14<sup>th</sup> of August, 1876. Cfr. *Prepiska*, 514.

exhibition.<sup>13</sup> Hearing that Mr. Bogišić was also in Paris drawing up the basics for the Montenegrin Code, he sent his secretary to Mr. Bogišić, asking him to come. Bogišić, of course, gladly responded. The Japanese asked our lawyer about the basics which he applied in his work. When Mr. Bogišić explained his system and method extensively, he ordered the translation of this entire explanation into Japanese, and it was done so. Judging by the just-printed first part of the Japanese Code, the Japanese commission received the opinion of Mr. Bogišić, which was opposite to the way recommended by Boissonade. Therefore, Montenegro can be pleased that the basis on which its Civil Code will be raised has sustained victory in the far East, in the distant Japanese Empire.<sup>14</sup>

During his long stay in Cetinje, Laza Kostić was also a direct witness to the inauguration of the Code, which, surprisingly, was not attended by its creator Valtazar Bogišić. Their correspondence shows that Kostić described this solemn ceremony to him, while trying to convince Bogišić to amend this Code with family law.<sup>15</sup> His creator thought that it should not be codified yet, but should instead remain regulated by customary law:

*They ask me here if you intend to draft another part of the 'civil' Code: the family law. I didn't know how to answer that question. I certainly hope that you live to see a sufficient development of family law among Slavs, especially among these Serbs, and that you eventually decide to tackle this couronnement de l'édifice /crown achievement/.*<sup>16</sup>

Two weeks later Kostić writes to Bogišić from Cetinje:

<sup>13</sup> Matsukata Masayoshi (1835–1924) was a Japanese politician who was Prime Minister of Japan from 1891 to 1892 and 1896 to 1898, during which times he concurrently also held office as the minister of finance. S. J. Ericson, *Financial Stabilization in Meiji Japan: The Impact of the Matsukata Reform*, Cornell University Press, 2019. On the significance of that encounter, as depicted in Bogišić's records and letters, and on the theoretical influence he had on the systematization of the Japanese Code, cfr. N. Martinović, *Valtazar Bogišić — istorija kodifikacije crnogorskog imovinskog prava*, Cetinje 1958, 217–218. See more about the Japanese legal system in R. Đurović, Lj. Marković, *Pravni sistem Japana*, Beograd 2011.

<sup>14</sup> L. Kostić, *O politici, o umetnosti*, III, 18. Gustave Émile Boissonade de Fontarabie (1825–1910) was a distinguished French professor who had lived in Japan for more than two decades, where he participated as a legal advisor in writing their civil and criminal codes. Y. Okubo, *Gustave Boissonade, père français du droit japonais moderne*, *Revue historique de droit français et étranger*, Quatrième série, vol. 59, No. 1 (janvier-mars 1981), 29–54.

<sup>15</sup> The initial broadly conceived idea of a *general code* which would have included private and public law, became reduced to a *civil* one, which in turn, lacking *family* and *inheritance* law, has been designated as a *property code*. M. Luković, *Bogišićev zakonik, priprema i jezičko oblikovanje*, Beograd 2009, 93.

<sup>16</sup> *Prepiska*, 307–308 (Cetinje, May 1/13, 1888).

*There is a general wish to see you here as soon as possible. And there is a real need, as well. When you see how your Code is ‘coming into force’,<sup>17</sup> I think that, when you print it as the second edition — and this is urgently needed — you will change some little things, and then it will be *Codex repetitae praelectionis*.<sup>18</sup> It is a pity that so few copies were printed. I hardly got a hold of 3 (three) copies a few days ago, and I was asked for 50 copies. I sent one to Belgrade, since none are there yet (unless you sent them) so no copy will remain for me. If you still have some copies of the book, please get one hardbound and send it to my cousin Nikola Mihailović, who is a former President of the *Tabulae Regiae* in Budapest.<sup>19</sup> His address is: Mr Nicholas de Mihailovitch, magnat de Hongrie etc. — Zombor (...) You will see that your fame will reach places you never expected it to reach — among the Hungarian magnates.<sup>20</sup>*

The very fact that Kostić compares this legislative endeavor with Justinian’s codification confirms not just how much the Serbian poet appreciated Bogišić’s Code, but also how well the *doctor utriusque iuris* knew the Roman legal tradition. The purpose of his text was to justify the delay in the adoption of the Code, by pointing out the problems that such codification ventures encountered in other areas:

*...We will not even mention the number of people and time spent working on Justinian’s Corpus Iuris, because, firstly, it was a long time ago, twelve centuries ago, and secondly, it is mostly just a collection of older laws (...) In order to see how many difficulties must be overcome in such a great work, how painstaking, diverse and therefore slow a job it is, to incorporate all legal customs*

<sup>17</sup> Kostić uses (under quotation marks) the precise legal phrase, insisted on by Bogišić through correspondence with the Prince, explaining why three points in passing the Code should be distinguished: *promulgation*, *publication* and *entrée en vigueur* — for which he proposed “the Serbian folk words: *постављење* /setting/, *проглашење* /proclaiming/ and *ступање на снагу* /coming into force/”. M. Luković, *op. cit.*, 11.

<sup>18</sup> This is a part of Justinian’s codification from 529 AD, in which the imperial constitutions have been re-assembled, so this is a revised text, created after the “re-reading” (*praelectio repetitio*) regula from *Codex Iustinianus* of 529 AD. A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1963, 392.

<sup>19</sup> Nikola Mihailović (1811–1895) was a doctor of law, advocate, landlord, member of Hungarian Parliament and higher state official: President of *Tabula Regia Iudiciaria* (Kraljevski sudski stol) — a judicial body in the administrative system of the Hungarian Monarchy (Cfr. M. Rady, *Customary Law in Hungary: Courts, Texts, and the Tripartitum*, Oxford 2015, 58, 194). As Kostić’s cousin (his aunt’s brother) Mihailović financially supported young Kostić during studies, who thanked him with a dedication on the front page of his doctoral *Theses*, obligatory printed before the defence exam at the Pest University. M. Savić, *op. cit.*, 35; I. Lukić, M. Marjanović, *Prilozi za istoriju zadužbine ‘Braća Mihajlović’*, Sombor 2003.

<sup>20</sup> *Prepiska*, 308–310 (Cetinje, July 13/25, 1888).

of a nation into one legal code, bigger or smaller, and to study and incorporate all the rules, all the orders which are necessary to ensure the constant and proper development of property, as well as family, tribal and personal exchanges throughout the nation. We will now bring to our readers an overview of all such legal affairs, made all around the world at the same time as the Montenegrin Code: in Berlin for the whole German Empire; in Budapest for the Hungarian Kingdom (except for Croatia, where the Austrian Civil Code is applied); in St. Petersburg for all Russia and, finally, in the farthest East, in Tokyo, for the Japanese Empire.<sup>21</sup>

This is followed by a comparative analysis, short but meticulous and with a lot of legal and historical data, which must amaze every lawyer, especially considering the reading audience at the court of Prince Nikola, for whom this text was mostly intended. It would be interesting to find out what sources he used, because it is hard to imagine that Kostić wrote this article “off the top of his head”, since it is full of details that even a highly educated lawyer does not need to know. The text is written precisely and clearly, as if for a textbook, which shows the creative potential of this well-educated doctor of law.

Unfortunately, during his stay in Cetinje, as a subject in the service of Prince Nikola, he did not get the opportunity to use his legal education in any way. Simo Matavulj, an immediate witness to Kostić's stay in Cetinje, reveals to us that there were those who thought that “as a good connoisseur of foreign languages, he should be given a job in the Ministry of Foreign Affairs” while others wanted him “to be given a place at the stagnant and anachronistic Montenegrin Grand Court, where he would most conveniently come as a lawyer”.<sup>22</sup> However, it is obvious that there was no such offer from Prince Nikola, because, according to the testimony of *vojvoda* Simo Popović, the Montenegrin ruler assigned Kostić a completely different role at the court: “It would be a pity for you and for Serbian literature

<sup>21</sup> L. Kostić, *O politici, o umetnosti (novinski članci 1884–1886)*, III, Novi Sad 1990, 14–18.

<sup>22</sup> S. Matavulj, *Bilješke jednog pisca*, Sabrana dela IV, Beograd 1953, 221. Simo Matavulj (1852–1908) was a Serbian writer born in Dalmatia, who participated in the rebellion of his people against the Austrian occupation. In 1881 he moved to Montenegro, where he was a school superintendent and teacher at the Gymnasium, an editor of the official newspaper *Glas Crnogorca* and teacher of Prince's children. There, at Cetinje, Matavulj met Kostić, with whom he established a firm and long lasting friendship. Matavulj left several volumes of travelogues, memoirs, novels and literary articles with varied content. He was a member of the Matica Srpska of Novi Sad, the first president of the *Association of Writers of Serbia* and a member of the *Serbian Royal Academy*. Cfr. <https://www.biografija.org/knjizevnost/simo-matavulj/>

to tie you to an office. It is better to put it like this: I will give you 3,000–4,000 fl. a year, as long as you are alive. If that is not enough, I will not regret giving you five or six thousand, and I ask nothing from you, but only to sing and write”<sup>23</sup>

So, apart from the expected praise for his poetic achievements from Prince Nikola, his Master, who wanted to be a literary counterpart to the great Montenegrin poet and Bishop Petar II Petrović Njegoš, Kostić was not allowed to engage more directly in the legislative or judicial life of the Montenegrin capital. Not only did the Prince refrain from giving him a chance to get involved in the codification project, but his great friend Bogišić did not help him either. A possible reason could be his intention to fully control the process of the Code’s creation, which was ultimately Russia’s political project, and Bogišić was a direct executor of that task. He was probably aware of Kostić’s extremely negative attitude towards Tzarist Russia, whose politics he was completely disappointed in ever since he participated as secretary of Jovan Ristić (the Serbian Ministry of Foreign Affairs) at the Congress of Berlin in 1878. Kostić was an immediate witness to hypocritical and two-faced Russian politics, which supported the decision that Austro-Hungary should occupy Bosnia and Herzegovina even though the majority of its population was Serbian. Nor could he forgive Russia the previously concluded Treaty of San Stefano with the Ottoman Empire, creating the independent Principality of Bulgaria at the expense of Serbian national territories.<sup>24</sup>

2. On the occasion of the proclamation of the Code, a great ceremony was held on Easter (April 26, 1888) in the small Montenegrin capital, Cetinje.<sup>25</sup> The celebration began with a worship service at the Cetinje Monastery, after which Prince Nikola went to the Great Court (*Biljarda*), where he signed and certified the Code with a seal in front of selected invitees, and then, the Deputy Minister of Justice, Božo Petrović,<sup>26</sup> read the text of

<sup>23</sup> S. Popović, *Laza Kostić i knez Nikola*, Prilozi Letopisu Matice srpske, vol. I, 1928, 23–32.

<sup>24</sup> D. Mikavica, *Laza Kostić, politička biografija*, Novi Sad 2011, 197ss.

<sup>25</sup> At the end of the XIX century, Cetinje had about a hundred houses and a little more than 1500 inhabitants. The building for the ruler’s residence and accommodation of state institutions (*Biljarda*) was erected only in 1838, and the first larger public building in 1888 (*Zetski dom* Theater). Cfr. “Istorijski leksikon Crne Gore” (ed. Š. Rastoder, M. Andrijašević), I–VI, Podgorica 2006, 119–120, 197–198, 1214–1215.

<sup>26</sup> Božo Petrović Njegoš (1845–1927), a close relative of Prince Nikola, Montenegrin *vojvoda*, President of the Senate (1867–1879) and long-term Prime Minister (1879–1905), also concurrently holding other state offices. He was educated in Paris, where he graduated from the Lyceum of Louis the Great in 1867. Military commander of the famous



the *Decree*. When the ruler came out to the main square, cannon salvos and church bells saluted the act of promulgation and announced a solemn word by the Master of Montenegro in the presence of the prince's family, all state officials, ambassadors, high dignitaries and a large crowd of people in folk costumes. The text was compiled by *vojvoda* Gavro Vuković<sup>27</sup> and Jovan Pavlović<sup>28</sup>, according to Bogišić's instructions, given earlier (April 5/17, 1888) in a letter from Paris to Prince Nikola — who still had the last word in writing the final version.<sup>29</sup> Kostić, as an eyewitness, described the whole ceremony in detail in the *Glas Crnogorca* from May 1, 1888, with the integral text of the Prince's speech and his official *Decree*, which became the introductory part of the Code itself. He also published telegrams of special gratitude to the Russian Tsar Alexander III (and his assassinated father, Alexander II) for help in drafting the Code, as well as to its creator Bogišić, and then their replies with congratulations. In the same telegram, Prince Nikola informed Bogišić that he had awarded him “the highest recognition that Montenegro has”, a Great Cross of Prince Danilo's Order, of the first degree. The special diploma and order were sent to him in Paris, since he was absent from the ceremony — as he wrote in his Diary — “due to personal modesty” and because he thought “that the ceremony could also take

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battles in which the Turkish army was severely defeated (1876). He performed numerous diplomatic missions and was a member of the Montenegrin delegation to the Berlin Congress (1878). Cfr. “Istorijski leksikon Crne Gore”, cit., 1011–1012.

<sup>27</sup> Gavro Vuković (1852–1928), was a jurist, Senator of the Principality of Montenegro, a military commander and holder of the high honorary title of *vojvoda*. He graduated from the University of Belgrade's Law School in 1873 and was the first Montenegrin to reach that degree of education. After returning to Montenegro, he took high positions in the government. He became the Secretary of Senate in 1874 and after that a member of the High Court. Vuković was appointed Minister of Foreign Affairs in the Principality of Montenegro in 1899 and held that position until 1905. Cfr. “Istorijski leksikon Crne Gore”, cit., 1197.

<sup>28</sup> Jovan (Jovo) Pavlović (1843–1892) completed his undergraduate studies in Pest, the jurisprudence at Belgrade's Great School, and continued his education in social and economic sciences in Geneva and Munich. Due to his revolutionary political activities as journalist and writer, he had to leave the Habsburg monarchy, and then the Principality of Serbia. At the invitation of Prince Nikola, he came to Montenegro where he was appointed the editor of *Glas Crnogorca* (1878–1885), the director of the Gymnasium and then the Minister of Education and Religion (1885–1892). He passed about thirty decrees and laws by which he reformed and modernized the school system in Montenegro. Cfr. “Istorijski leksikon Crne Gore”, cit., 965.

<sup>29</sup> ZBB HAZU, XXII/15. Z. Rašović, (*Ne*)poznato o štampanju, proglašenju i primeni OIZ-a, in: “Opšti imovinski zakonik za Knjaževinu Crnu Goru — 130 godina (1888–2018)” (ed. Z. Rašović), CANU, vol. 13, Podgorica 2018, 44.

place without him”.<sup>30</sup> Kostić informs Bogišić that it was sent immediately after his urgency and asked him: “Have you already been in front of the / Russian/ Tsar with the decoration that you so rightly deserve?”<sup>31</sup>

From a letter about the *Decree* on the Montenegrin Code, Kostić informs Bogišić that he did not even participate in drafting it: *I must point out that I was not in the editorial board (...) but all the editorial merit and responsibility are borne by Gavro Vuković and Jovo Pavlović*, and adds: ... *As you will see, I dared to make some small changes to the Decree. I hope that you will approve them without any particular motivation, that I do not wish to incite now, boring you in the festive leisure of your mental rest. This can be supplemented later, and it would be the best, when, God willing, we meet again, here or, what would make me even happier, where you are, or perhaps somewhere in the middle of the road.*<sup>32</sup>

This condescension and prudence is understandable, because Kostić surely realized that the *Decree* had been written under the control of the Prince himself, but that the legal argumentation was prepared by Bogišić — which is evident in the explanation of the purpose of passing the *Code* in the *Decree* — like its Preamble:

*We have decided in advance that in this law-making business, in addition to all the necessary data regarding science and the legislative actions of other educated states, the main attention is paid to the people’s notions of law and justice, to the customs, traditions and living needs of the Montenegrin people. This work was done with that goal.*<sup>33</sup>

From the mouth of the Montenegrin Prince, through the contents of the *Decree*, speaks Bogišić actually, a well-educated lawyer and legal theoretician, a follower of Savigny’s School.<sup>34</sup> He incorporated the postulates

<sup>30</sup> Bogišić’s unpublished Diary, ZBB HAZU, XIII/1. Z. Rašović, *(Ne)poznato o štampanju, proglašenju i primeni OIZ-a*, cit., 40, 49. However, the real reason is that, for him, the codification mission in Montenegro was over, and he was already preoccupied with completely different things at that time. Somewhat earlier, in the French archives, Bogišić found documentation on the so-called “Zrinjski-Frankopan Conspiracy” in Croatia in the XVII century, and it was published by the Yugoslav Academy of Sciences and Arts in Zagreb in 1888. That same year, in the middle of May, he went to St. Petersburg where he stayed for a whole year due to the slow resolving of his status and material issues. M. Luković, *op. cit.*, 14–15, spec. n. 18.

<sup>31</sup> *Prepiska*, 310 (Cetinje, July 13/25, 1888).

<sup>32</sup> *Prepiska*, 307–308 (Cetinje, May 1/13, 1888).

<sup>33</sup> *Opšti imovinski zakonik za Crnu Goru*, Cetinje 1888, pp. I–VI, spec. III.

<sup>34</sup> L. Breneselović, *Fortführung und Facetten der Savigny-Schule bei ihrem Anhänger Valtazar Bogišić (1834–1908). Ein Beitrag zum rechtsrealistischen (Selbst-)Verständnis der Historischen Rechtsschule*, in: “Savigny global 1814–2014 — ‘Vom Beruf unsrer Zeit’: zum

of this teaching into the Code itself, giving the greatest contribution to its creation — which is why it was quite justifiably named after him: *Bogišić's Code*, and not after the ruler of Montenegro.

The entire text of the *Decree* was published in *Glas Crnogorca*, the court bulletin edited by Laza Kostić on May 1, 1888, and since this publication had the significance of an official state gazette, it is assumed that the Code was officially *proclaimed* on that date. It would be logical that the full text of the Code was published in the same bulletin, but because of its volume (1031 articles), it was technically impossible to carry it out, so over a thousand copies had been printed out previously in Paris, at the expense of the Prince's treasury and with the financial assistance from the Russian government.<sup>35</sup>

In his correspondence with Bogišić, Laza Kostić also talks about preparing the personnel for the implementation of the Code itself. He states that there was also a special preparatory course for the “grand judges” with the aim of explaining the Code, and that *vojvoda* Gavro Vuković, the Montenegrin Foreign Minister, was involved as their “teacher”. Kostić then adds: “It seems to me that the highest benefit here is the engagement of Labud Vrbica in the Grand Court, since he completed a full legal course in Vienna, at Theresianum”,<sup>36</sup> so these two officials will be “the only reliable commentators”, and “also the only fully qualified lawyers in Cetinje”.<sup>37</sup>

A faithful witness of the Montenegrin judiciary of that time was Simo Matavulj, who spent six years in Cetinje (1881–1887) and recorded his memories in the biographical work “Notes of a Writer”:

“Certain *serdar*<sup>38</sup> Vukotić, who was a typical Montenegrin householder of the old sort, was at his seventies a member of the Grand Court. Of course,

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*transnationalen Recht des 21. Jahrhunderts* (ed. S. Meder, C. E. Mecke), 2016, 174–204.

<sup>35</sup> In a short time, Montenegrin Code underwent numerous translations, in France: *Code général des Biens, pour la principauté de Monténégro de 1888*, Paris 1892; in Germany: *Allgemeines Gesetzbuch über Vermögen für das Fürstenthum Montenegro*, Berlin 1893; in Spain: *Código general de los Bienes de Montenegro*, Madrid 1893; in Italy: *Codice civile per Montenegro*, Spalato 1900; in Russia: *Obščij imuščestvennij zakonik dlja Knjažestva Černogorskogo*, St. Petersburg 1901). The second revised edition and last improved version of the *General Property Code* was published ten years later, in 1898. Formally, the Montenegrin Code was valid until the end of World War II, when the communist authorities nullified all previously enacted legislation, including the *Serbian Civil Code* of 1844. M. Orlić, *Zaostavština Valtazara Bogišića u svetskoj i srpskoj pravnoj kulturi*, in: “Opšti imovinski zakonik za Knjaževinu Crnu Goru — 130 godina (1888–2018)”, cit., 137–166.

<sup>36</sup> *Prepiska*, 307 (Cetinje, May 1/13, 1888).

<sup>37</sup> *Prepiska*, 309 (Cetinje, July 13/25, 1888).

<sup>38</sup> *Serdar* was a military rank in the Ottoman Empire, but in the Principality of Montenegro (and Serbia as well) it was an honorary non-noble title, below that of *vojvoda*. Cfr. “Istorijski leksikon Crne Gore” cit., 1109–1110, 1183–1184

he was illiterate, and he judged according to the customary law or common sense, like his other comrades. (...) I think there were seven members of the Grand Court at that time, and most of them had the same education as this *serdar*. Afterwards, four Montenegrin lawyers came from Russia, and the official newspaper reported that the Property Code, drafted by Bogišić, was finished. The *chibukashi*<sup>39</sup> (uneducated members of the Grand Court) said: ‘Well, it is not just that so many scholars came at once, since there are not that many of them in the whole country. And, let them, indeed, attend the Montenegrin school in the spring, and then let them judge according to the Code!’ One of these four, Plamenac, was from here, and a job was already waiting for him in the Foreign Ministry, the second, who according to his comrades, was the most educated of the four, began to negotiate for a better salary, and when they offered him very small compensation, he went to Bulgaria; the other two waited, and became the scribes of *chibukashi*.<sup>40</sup>

Obviously, there was no place for Laza Kostić in the judicial branch, but as the editor of *Glas Crnogorca* he described many details of the mentioned Easter ceremony, and later, on Bogišić’s advice, published his own affirmative article on the Montenegrin *Property Code* (July 3, 1888), reminding Bogišić in one of his letters that “everything he finds anywhere about the Code” will be printed in this publication.<sup>41</sup>

An interesting testimony to the publication of the *Decree* is provided in an unpublished letter, recently discovered by Zoran Rašović, in which Bogišić from Paris gives detailed instructions to Kostić on how to print this important document: on the front page of the Easter edition of the *Glas Crnogorca*; the lines should run “along the whole width of the paper, not in the columns”; he specifies the title, the size of the letters and requires that the text is kept strictly confidential until the moment of its publication, and before the printing of the final version, to double check its content.<sup>42</sup>

In the same letter, Bogišić expresses his pleasure that Laza Kostić will attend the solemn ceremony of the proclamation of the Code:

<sup>39</sup> From the Turkish word *chibuk* (*çibuk*-stick) — a long pipe for smoking, so it is used here in the pejorative meaning for “lazy people and idlers who do nothing but hold on to their pipes all day long” and that is why they remained uneducated.

<sup>40</sup> S. Matavulj, *op. cit.*, 105–106, 203–204.

<sup>41</sup> *Prepiska*, 309 (Cetinje, July 13/25, 1888).

<sup>42</sup> ZBB HAZU, XXII/15 (Paris, April 12/24, 1888). A few weeks earlier, Bogišić also wrote to the Prince about the publication of the *Decree* in *Glas Crnogorca* and asked him to order Kostić to leave enough space in the Easter issue for the text of the *Decree* and inform him of all precise instructions on the manner of printing that he would send to Kostić. With this, Bogišić indirectly reveals who is in fact the “real” editor of this court bulletin. Bogišić also points out that all this information must be considered as an official

*I am very glad that by will of fate you, who toiled with me at the beginning in search of terms, are also taking part in the proclamation of the completed Code. You know that the daily correspondents several times falsely telegraphed from Kotor that the Code in Cetinje had been promulgated. It would be nice, and I think that you would be glad, if this time the true proclamation was announced only by the Decree, which will be published on Easter in 'Glas Crnogorca'.<sup>43</sup>*

Bogišić points out that it would be “very good for the Code itself” if in the next issue of *Glas Crnogorca*, Kostić drew up a more extensive description of the ceremony that would be held for the Code's promulgation on April 26, 1888, and finally advises him:

*It would be even better, and it would oblige me personally, if you could write something about the meaning of the Code, the difficulties in drafting it, its direction, and its intrinsic value. Of course, that could be said in general terms. But if you do decide to write an article about it, you could ask the Prince to give you, as aid in your writing, one of my French brochures, which I sent to him 5–6 days ago, and maybe some manuscript remarks which I am sending him today. The latter have been put to paper in a hurry and are by no means printable and can only serve as material for the article in question.<sup>44</sup>*

Kostić accepted Bogišić's advice and wrote an article addressing the issue of the impact of codifications on substantive law, referring to the work of Heinrich Emil August Danz, famous professor at the Friedrich-Schiller

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secret and that Kostić “should not tell anyone about it in advance”. ZBB HAZU, XX-II/15 (Paris, March 28/April 9, 1888). Z. Rašović, (*Ne*)poznato o štampanju, proglašenju i primeni OIZ-a, cit., 26–27, 41.

<sup>43</sup> Z. Rašović, (*Ne*)poznato o štampanju, proglašenju i primeni OIZ-a, cit., 41.

<sup>44</sup> *Ibidem*. I would like to thank my colleague Dr Zoran Rašović, who allowed me to use a few documents even before their publication in his latest books on Valtazar Bogišić. In the Cavtat archival material, which Rašović has been studying for a decade, he discovered, among many other things, Bogišić's letters that Mladen Leskovac missed when he had published Kostić's entire correspondence. Academic Rašović has already published a comprehensive collection of Bogišić's manuscripts and letters in five large volumes: *Bogišićeve pravne izreke — skladnost između rimskog i crnogorskog narodnog vrela*, CANU, vol. 126, Podgorica 2016; *Crnogorska služba Valtazara Bogišića — (ne)završeni zakonski projekti*, CANU, vol. 133, Podgorica 2017; *Opšti imovinski Zakonik za Knjaževinu Crnu Goru: Završna čitanja na Cetinju, Rijeci Crnojevića i u Parizu (I), Štampanje, proglašenje i primjena u 1888. godini (II)*, CANU, vol. 146, Podgorica 2018; (*Ne*)poznato o ministarskoj službi Valtazara Bogišića i radu na drugom izdanju Opšteg imovinskog zakonika za Knjaževinu Crnu Goru, CANU, vol. 156, Podgorica 2019.

University of Jena.<sup>45</sup> Kostić's article was published in *Glas Crnogorca* (No. 27 of July 3, 1888), having been announced in that newspaper several months before; Bogišić thought that the article would appear immediately after the promulgation of the *Code*. However, Kostić, in agreement with Prince Nikola, published the text two days after the entry into force of the *Code*.<sup>46</sup>

Starting from a critical analysis of the draft of the Civil Code of the Kingdom of Saxony, professor Danz distinguished "narrow codification" from the so-called "incorporation". Kostić explains the first type of codification as a legal "product" that is considered to be a whole new creation "completely separated from everything that would otherwise be inherently connected, a sacrosanct thing that should not be touched at all", while "incorporation" represents a type of codification that "remains relevant and consistent with all kinds of other sources of law and does not retreat from their lawful and natural confrontation; when the Code emerged from the past and reached out with its branches into the future of the people".

Kostić points out that the previous legal codes belonged to the first group as a rule, and that Bogišić opted for the "more tortuous path of incorporation", which is methodologically more difficult and which requires a spirit as strong as the robust shoulders of Atlas. The legislator here has to harmonize the text of the code with the whole "mass of legal material found among the people", which is shaped by historical, economic, religious and other circumstances. Kostić notes that harmony is much more difficult to achieve here than with "narrow codification", because the legislator must keep in mind all the rules of social behavior (customary, moral, religious, etc.), as if they were "an integral part of the Code... (because) the lack of it could create dualism and rift in legal life." In Bogišić's codifying venture, Kostić sees the realization of all these postulates and the achievement of consonance and harmony between the rules of the Code "with all the necessities of life and with the organic nature of law". Kostić points out that, in the legal world, this is the first serious attempt in making such a "more natural and scientific kind of codification" and therefore believes that "this work will greatly contribute, God willing, to Montenegro shining in the

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<sup>45</sup> H. E. A. Danz, *Die Wirkung der Codificationsformen auf das materielle Recht, Erläutert durch Beispiele aus dem Entwurfe eines bürgerlichen Gesetzbuch für das Königreich Sachsen*, Leipzig 1861.

<sup>46</sup> Z. Rašović, *Štampanje, proglašenje i primjena u 1888. godini*, CANU, vol. 146/40, II, Podgorica 2018, 93.

annals of Serbian education, as much as it shines in the chronicles of Serbian heroism".<sup>47</sup>

In the article Kostić quotes in a number of places Bogišić's famous study on the *Property Code*, published in French: *A propos du code civil du Monténégro. Quelques mots sur les principes et la méthode adoptés, pur sa confection* (Revue de droit international et de législation comparée, Pariz 1886). As we have seen, Bogišić himself prompted Kostić to analyze it, with the advice to ask his "Master", the Prince of Motenegro, to "give him the French brochure", which he had recently sent to the Prince, to aid him in his writing.<sup>48</sup> Surprisingly, other correspondence also shows that Kostić, although being an editor in chief of the court bulletin, found it difficult to obtain the aforementioned Bogišić's text, so he was forced to ask him for help: "Please, if it is your will, send one copy of your brochure to me as well. Gavro /Vuković/ gave it to me, but he asks for it back all the time, and I cannot analyze it in peace".<sup>49</sup>

This relationship becomes clearer through the contents of the yet unpublished Bogišić's letter to *vojvoda* Gavro Vuković (Paris, April 13/25, 1888), which shows that Bogišić sent the text of the *Decree* and his French brochure only to Vuković and not to Kostić, explicitly emphasizing that it can be given to the chief editor only for *temporary* use: "If Mr. Kostić should have time to write an article about the Code, you can give it to him around Easter to use it".<sup>50</sup> After all, in the letter dated April 12/24, Bogišić explicitly states to Kostić: "The *Decree* to be included in the *Glas Crnogorca* will be given to you by the Master himself, or through Vuković, who is himself dedicated to all this work". Obviously, their collegial and friendly relationship was not sufficient reason for Kostić to receive the text personally from Bogišić; instead, the text reached him indirectly, only after being double-checked by the *knjaz* (Prince) and his trusting *vojvoda*.

These seemingly insignificant facts, unfortunately, faithfully reflect the almost humiliating position that Kostić held in that environment. Forced by the circumstances of life into the Montenegrin mountains, he was compelled to make compromises that were so great that he himself once bitterly concluded that "every man has moments when he is not *himself*".<sup>51</sup> That is why he took advantage of the Prince's absence from Montenegro during

<sup>47</sup> *Ibid.* In the text: "Prvi jula 1888" /The first of July 1888/.

Cfr. [http://www.dlib.me/sken\\_prikaz\\_1\\_f.php?id\\_jedinice=1840&skrd=1#](http://www.dlib.me/sken_prikaz_1_f.php?id_jedinice=1840&skrd=1#).

<sup>48</sup> See above (letter of April 12/24, 1888).

<sup>49</sup> *Prepiska*, 307 (Cetinje, May 1/13, 1888).

<sup>50</sup> This letter was also kindly put at my disposal by colleague Rašović.

<sup>51</sup> M. Nenin (ed.), *Epistolarna biografija Svetislava Stefanovića*, Novi Sad 1995, 24, 276.

his visit to the Russian Tsar Alexander III in St. Petersburg, and left Cetinje almost secretly, without any desire to return to that place again.

Descending on foot from Cetinje to Kotor, Kostić stayed shortly in Dubrovnik, from where he informed Bogišić that he had resigned from Prince Nikola's service:

*I have been here in your Dubrovnik for 8 days, as a guest of Sarcey /French diplomat/. The day after tomorrow I will leave for Vienna. I do not plan to return to Cetinje, having sent my resignation to the Master who is in Russia and also to the Successor /Danilo/ in Cetinje. I will share with you the details of this rather interesting matter when, if God wills it, we meet. The Russian mission fully approved the manner of my departure from Montenegro. I will contact you again from Vienna only when I find out what will happen to me.<sup>52</sup>*

However, Gavro Vuković, one of the most powerful persons at the court of Prince Nikola, looked at Kostić's stay in Cetinje and his departure, with completely different eyes:

*...Dr Laza Kostić left Cetinje. That person was so respected here, so accepted, so appreciated and met with the utmost care, he was even paid abundantly relative to the state of our finances, so I can simply say that he simulated a small misunderstanding with the Minister of Education just in order to leave Montenegro as a great martyr (...) He went as if he was going on vacation, and then he sent circulars of his resignations from Kotor. He actually escaped from Montenegro. We fully consider this escape, which is not based on any fundamental reason, as astonishing ingratitude towards his patron, Prince Nikola, and towards the sacrifices he made for him. We also think that he chose that funny way to leave, just to boast in front of his like-minded people.*

The Montenegrin *vojvoda* was really trying, unsuccessfully, to persuade him to come back to Cetinje, as Kostić confirms in a letter to one of his friends:

*... I sent my resignation to the Master in Petersburg and to the Successor in Cetinje. Gavro Vuković wrote to me, on behalf of the 'Successor', to return, that I would get every satisfaction I was looking for, that everything I complained about would be removed, etc. etc. I replied that I would stick to the decision to resign.<sup>53</sup>*

After leaving Cetinje, Kostić never spoke about Prince Nikola in a negative light, neither publicly or in his writings, as if he tried not to harm the interests of Serbian unity by using that measured tone. Maybe he was afraid of the ruler of Montenegro because he, just in case, destroyed his own personal

<sup>52</sup> *Prepiska*, 321 (Dubrovnik, May 7, 1891).

<sup>53</sup> S. Popović (ed.), *Odnosi Srbije i Crne Gore u XIX veku (1804–1903)*, SANU 1987, 647.



correspondence with the persecuted Prince's opponents. However, he told the real truth only to his closest friends, among which, unfortunately, he included an Austrian diplomat, who meticulously conveyed Kostić's lament in a confidential report to the Ministry of Foreign Affairs in Vienna. Kostić's opinion of Prince Nikola is devastating: he accuses him of hypocrisy, selfishness, heartless play on the people's interests, claims that the Russian Tsar disgusts him, and Kostić says that he himself fell into disfavor because he criticized the Prince's wrongdoings too sincerely, believing that his policy is too "dynastic", which is the reason why he does not want the rival Serbian dynasty to have good relations with Russia; especially since he gave his daughter to be wed to the future king of Serbia, Montenegro has been in a position of falsehood towards brotherly Serbia, etc. Kostić summed up his disappointment in an intimate letter, where he reduced his bitter experience to just a few sentences: "I learned so much in Cetinje, in that school of life ... that all my previous education is nothing compared to that. What is Constantinople? *Enfoncé!* /Overwhelmed! /. Cetinje is a much better school for diplomacy — the *current* Cetinje, of course". However, it is clear that Kostić did not manage to overcome "the very peak of the political mastery of the Levantine type" (Vinaver).<sup>54</sup> The Serbian poet was just one more *izvanjac* (foreigner) who was rejected by this environment as an extraneous, undesirable body. In these political games, the wise Bogišić managed far better than him.

After the debacle he experienced at Cetinje, Kostić writes to Bogišić with indignation:

*I will do my best to find a home outside of Serbia and, of course, outside of Montenegro. It took me 50 years to finally understand that personal advancement in those "states" of ours requires completely different "virtues" than those I possess.*<sup>55</sup>

It became clear that an autocrat who ruled Montenegro for more than half a century (1860–1916) could not find a common ground with the Serbian poet of great erudition and self-consciousness. To him, Kostić was merely a subject in his court, a refugee who for political reasons had to flee the Austro-Hungarian monarchy, then the Principality of Serbia, and find shelter in this remote spot.

3. In the correspondence with Bogišić, Kostić also mentions implementation of the *Code* in practice, of which we have little information.<sup>56</sup> At the beginning of March 1891, he openly warned Bogišić that the *Code* was

<sup>54</sup> S. Vinaver, *Zanosi i prkosi Laze Kostića*, Beograd 2012, 559–569.

<sup>55</sup> *Prepiska*, 330–331 (Vienna, June 6, 1891).

<sup>56</sup> P. Stojanović, *Primjena Opšteg imovinskog zakonika za Knjaževinu Crnu Goru* (1888), *Glasnik CANU*, vol. V, Titograd 1987, 7–67; Z. Rašović, *op. cit.* (vol. 146/40, book I, 2018), 113–157.

only applied in some instances and that it was not enforced equally for all: “When we meet, God willing, I am going to tell you about the internal application of your *Code* (if there is any).”<sup>57</sup> However, that meeting did not take place and Kostić, in a letter written after leaving Cetinje, gave an impressive example of his previous claims. It was the “famous litigation” (*cause célèbre*) dating back to 1882, between the mighty *vojvoda* Mašo Vrbica, the first Montenegrin Minister of Internal Affairs, and a Greek, owner of a private company in Bar:

*Dear Sir and Friend,*

*The Cetinje’s ‘cause célèbre’, in short, is this: Mašo Vrbica has appeared before the Grand Court with one Greek (Rizos) in a dispute over a joint soap factory in Bar. The Grand Court judged the matter in favor of the Greek. The following day a telegram came to the Court, from Wiesbaden, with approximately the following content: ‘I rescind yesterday’s shameful judgment of the Grand Court and order it to be judged anew. Nikola’. This is testimony of Prof. Dušan Jovanović, who was leaving Cetinje just then. You see, therefore, that a Code de procédure is completely redundant for a proper trial under the Property Code. And which lawmaker might anticipate this, that the same matter, adjudicated in Cetinje in a last instance, could be overthrown from Wiesbaden? This case may greatly enrich your legal theory.*<sup>58</sup>

It is not difficult to notice Kostić’s ironic tone when he concludes that procedural legislation is superfluous because the Prince can overturn the decision of the Grand Court, noting that such practice would “enrich” legal theory. In an earlier letter, also regarding this *cause célèbre*, he directly asked Bogišić: “Do you agree with this application of your Property Code? *Quelle procédure! Hein? /What a trial! Huh?/*”<sup>59</sup>

However, in order to understand the political background of this trial, one should keep in mind an event that had preceded it a decade earlier, which led to a change at the very top of the Montenegrin government. The official court bulletin *Glas Crnogorca* (No. 52, December 19, 1882) published a notice about it on the front page, especially framed and highlighted:

“His Highness the Prince decided on Thursday, the sixteenth of this month, to dismiss the former Minister of Internal Affairs, Mr. *vojvoda* Mašo

<sup>57</sup> *Prepiska*, 310–311; Z. Rašović, *op. cit.*, 118, 154. The opinion expressed by Kostić has been prevalent in our science for a long time. However, after doing research of unpublished archival documents, Rašović discovered about 60 decisions of Montenegrin courts that were made in the first year of application of the *Code*, with explicit references to its particular articles. *Op. cit.*, 124–154.

<sup>58</sup> *Prepiska*, 344 (Sentomaš-Szenttamás, Mart 2/14, 1892).

<sup>59</sup> *Prepiska*, 342 (Novi Sad, February 9/21, 1892).

Vrbica, from civil service, and to appoint Mr. *vojvoda* Božo Petrović in his place”, with the explanation that Mašo Vrbica “could not correspond anymore to the highest trust that was placed in him, which was strictly limited to the defined competency, thus, it is normal that he could no longer keep the position which is inextricably linked to the trust of the Ruler”.<sup>60</sup>

Shortly before that decision, Prince Nikola accused Mašo Vrbica of financial misconduct in a public trial (1882), presided by the Prince himself, and forced him to resign.<sup>61</sup> So, Vrbica experienced on his own skin this dependence of the judiciary on the will of the Master of Montenegro. In the previously quoted letters, Kostić explained how the Prince “judged” once more in a court dispute from 1892, now against a Greek merchant who had business with Vrbica. Although he did not lose this case, *vojvoda* Vrbica was soon afterwards forced to leave Montenegro for political reason and die in exile.<sup>62</sup>

It is strange that Bogišić was not informed about this trial, not even by the newly appointed Minister (who replaced the dismissed Vrbica), during their meetings in Paris. Bogišić asked Kostić about that (Paris, March 4, 1892):

*I don't know anything about the 'cause célèbre' in Cetinje. A month ago, Mr. Božo Petrović was here /in Paris/, and I met with him on several occasions, but he didn't say a single word about it. I'm very curious, and you would oblige me very much if you told me: what's the matter?*<sup>63</sup>

All the information he received was certainly not pleasant for Bogišić, but a year earlier (Paris, March 11, 1891) he had explicitly asked Kostić to collect information on how the Code was implemented in practice:

<sup>60</sup> Cfr. [http://www.dlib.me/sken\\_prikaz\\_1\\_f.php?id\\_jedinice=1576&skrd=1](http://www.dlib.me/sken_prikaz_1_f.php?id_jedinice=1576&skrd=1) (online digital edition).

<sup>61</sup> *The course of the trial was described in detail by Simo Matavulj, as an immediate witness. S. Matavulj, op. cit., 171–175. Vrbica was formally charged with abuse of authority in the work of the “Economic Society”, trade association which he was honorary president. Before his political dismissal, he was the Prince's person of special trust and performed delicate missions of a political and personal nature for him. As Minister of Internal Affairs, he was also the main supervisor of all surveillance and eavesdropping in Montenegro and abroad. Historiography still speculates why their conflict occurred, but it is assumed that Prince Nikola did it under pressure from Russia. Namely, Vrbica became very close to an Austro-Hungarian diplomat in Cetinje (Count Gustav von Temel), who had a significant influence on him and because of that the Prince was advised by the Russian tsar to dismiss Vrbica due to collaboration with the enemy's secret service. Cfr.*

[http://montenegrina.net/pages/pages1/istorija/cg\\_u\\_xix\\_vijeku/sudjenje\\_vojvodi\\_masu\\_vrbici.htm](http://montenegrina.net/pages/pages1/istorija/cg_u_xix_vijeku/sudjenje_vojvodi_masu_vrbici.htm)

<sup>62</sup> See entry *Vrbica Mašo*, in: “Istorijski leksikon Crne Gore”, cit., 1185–1186.

<sup>63</sup> *Prepiska*, 343.

...If God wills it, when we meet, I would be pleased to hear a report on the implementation of the Code. It certainly interests me greatly. After all, implementation is eigentlich /actually/ the subjective work of the local authorities and judges. For me, the most important thing is how this work was applied in science (theory) and in legislative (codification) practice, which is so that I did not hope for half of it.<sup>64</sup>

Only four days later (Paris, March 15, 1891), he writes to Kostić again, specifying what he is particularly interested in:

...As I have already written to you, the issue of application in its subjective sense is completely different from the principal issues that the author concerned himself with, as well as the way that he solved them; the latter issues are the point of interest for pure science (theory) as well as legal (codification) practice of educated people. Dickel<sup>65</sup> and Brissaud<sup>66</sup> also had this point of view regarding the Montenegrin Code, so I think that it would honor Montenegro if you would say something about that brochure in 'Glas Crnogorca'. I am enclosing some notes into this small letter to make it easier for you to prepare that *entrefilet*. Of course, take this into account only if the current 'politics' there finds these issues worthy of conversation — because it seems that for some time any word about the Code has been avoided — in case that it provokes even

<sup>64</sup> *Prepiska*, 311–312. Bogišić believed that the adoption of the Code would establish a legal system in which the courts would have the last word, and not the ruler himself. In a letter to his colleague Kosto Vojnović, a lawyer, university professor and Rector of the University of Zagreb, Bogišić explicitly states (St. Petersburg, October 6/18, 1888): *In each 'kapetanija' (there were more than 60 captains after the War) the military and administrative power was judicial as well. It is the first instance. Then they have district courts where one judge arbitrated with a secretary, and there are 5–6 such judges. Finally, there is the Great Court, it is 'La Court Supreme de justice' — but again the highest instance is the Prince, who is still retreating more and more from the judicial practice, so that he will soon come to exercise only his right of amnesty.* ZBB HAZU, XIa. Z. Rašović, (Ne)poznato o štampanju, proglašenju i primeni OIZ-a, 51. It is obvious that Bogišić's assessment did not come true.

<sup>65</sup> Karl Dicker (1853–1920) was a professor of German Civil Law and Civil Procedure at the Friedrich Wilhelms University of Berlin (1899). Kostić published a review of his study *Über das neue bürgerliche Gesetzbuch für Montenegro und die Bedeutung seiner Grundsätze für die Kodifikation im Allgemeinen mit Bemerkungen über den neuen Entwurf deutschen bürgerlichen Gesetzbuches*, Marburg 1889 (= *Études sur le Nouveau Code Civil du Monténégro et sur l'importance des principes suivis par l'auteur de ce code en matière de codification*, Paris 1891). Cfr. *Glas Crnogorca*, No 12 (March 16, 1891), No 13 (March 23, 1891).

<sup>66</sup> Jean-Baptist Brissaud (1854–1904) was a law professor at the University of Bern (Switzerland) in 1880, then a professor of history in Montpellier in 1883. He also wrote an extensive treatise on Bogišić's Code.

*the slightest problem, please throw away these notes into the dustbin and do not say a word! As far as I am concerned, a lot has been said about the Code already, so, since it has been three years from its publication, it can stop now. But, on the other hand, I think that it should not be ignored if it should happen to have some influence in science or in legal practice; the author's name can be completely left out and there should only be a note about the Code and about the fact.*

*However, this is something that I will leave up for you to decide, whether to make and include that entrefilet or not, but here is what I would like to ask of you **seriously**.*

*I have a significant number of sentences<sup>67</sup> regarding a reconciliation of the families /over blood revenge/ and other disputes in my collection of judicial manuscripts and their transcriptions, but almost all of them are very new; among all of them only one dates back to the last century. I would like to have some sentences from the last century, or at least from the beginning of the XIX century. Would you be able to get any for me? Ask Gavro /Vuković/ first if there is such material in the state archive<sup>68</sup> and ask him to get it transcribed. If not, then perhaps some announcement in 'Glas Crnogorca' could be published to find somebody who would sell it? If anything can be found, you can count on me to provide money for the originals and for the transcriber, if something is found in the archive. And now, I cordially salute you.*

*Yours, V. Bogišić<sup>69</sup>*

The importance of this request for Bogišić is shown not only by the bold-written text in his letter, but also by their frequent correspondence over a

<sup>67</sup> "Sentences" are the judgments of eminent heads of the local communities (*vojvoda, serdar, kapetan*) which were made in the presence of the assembled people. Everyone spoke freely and argued *pro et contra*, and on that basis a judgment was given, in accordance with customary law. Everything was done orally, and the verdict was written into the protocol by the clerk, who was usually the only one literate person there. These judgments were rarely appealed to a higher judicial body (Grand Court). According to the testimony of *vojvoda* Sima Popović, "sentences" were kept at homes, wrapped in towels and kept in family chests. When a lawsuit was raised on the same thing, on another occasion, these documents were brought to court. After the end of the litigation, the clerk would read the new "sentence" in front of all and delivered copies to the parties. S. Popović, *Memoari*, Podgorica 2015, 44–46.

<sup>68</sup> It was not until 1894 that Prince Nikola gave an order to Valtazar Bogišić (then Minister of Justice) to write a legal project that would regulate the status and principles of running the administration, then depositing, preserving, protecting and ordering all archival documents. See entry *Arhiv Crne Gore*, in: "Istorijski leksikon Crne Gore" cit., 34–41.

<sup>69</sup> *Prepiska*, 313–315. All underlines and bold letters were written by Bogišić.

short period, in which they informed each other on the manner and course of collecting the desired documents:

Kostić (Cetinje, April, 1891): ...*I will try to find whatever ‘sentences’ I can in the archive of the Grand Court. But, Đuro Cerović (vojvoda and president of the Grand Court) told me that such things can be found with people, there where the food is bountiful, so it would be better to transcribe them only, because the originals are hard to get, not even for big money.*<sup>70</sup>

Bogišić (Paris, April 14, 1891): *Thank you for discussing the translation of Dickel’s treatise at such length (...) As to the sentences, it would be good to have an announcement in the newspapers — but since hardly anyone would accept to sell such a document, announce that we only ask for the purpose of copying it, and that whoever brings such sentences from the last century (or older), or from the beginning of the XIX century at the latest, will get a donation (for example, 1 florin for the previous centuries, and 2 zwanzigs for the beginning of our century) for every such borrowed document and have it returned immediately. If anyone sends you anything, please write to me so that we can talk about ways to transcribe it.*<sup>71</sup>

Kostić (Cetinje, April 21, 1891): *I have decided to leave Montenegro — not without reason, as you will surely believe me (...) The announcement on the ‘sentences’ will be included in the next issue, and after my departure I will find a replacement who will follow your order as I would. Here at the archives they claim there is nothing more than what you’ve already seen. Sorry for bothering you.*<sup>72</sup>

Kostić (Vienna, May 16, 1891): ...*I wrote again to my replacement in Cetinje, to take care of obtaining the sentences and to deliver each of them to you immediately. As the smallest, but highly significant reason for my resignation, I would like to mention that, by a higher order (probably the **highest** one), I had to pay full advertising tax to the /Royal/ printing house for the announcement regarding the ‘sentences’ in *The Voice of the Montenegrin*.*<sup>73</sup>

Obviously, this endeavor was of particular importance to Bogišić, which he himself points out in his records. Namely, towards the end of his scientific work and life, Bogišić began to write a “Diary” (not yet published), as a reminder of the main problems and questions regarding the theoretical and methodological concepts behind studying the family, marriage and kinship relations of the peoples in the South Slavs region. Bogišić began to write the first part of his “Diary” in Paris in April 1892, and from the very

<sup>70</sup> *Prepiska*, 315-316.

<sup>71</sup> *Prepiska*, 317-319.

<sup>72</sup> *Prepiska*, 319-321.

<sup>73</sup> *Prepiska*, 322-323.

beginning he states that he “decided to start working on the family immediately”, exactly the job from which “some preparatory activities and some sort of idleness” distracted him until now, but it basically represented “living food” for him.<sup>74</sup> Bogišić further states that he is particularly interested in different types of family communities because “it is tied to inheritance, as well as the system of kinship and kinship relations based on customs”.<sup>75</sup> By *General Property Code* Bogišić partially legalized the patriarchal customs of the Montenegrin clan-tribal community, and it was exactly such codification of local unwritten law that was a novelty in the field of South Slavic legislation, which is why the *Code* drew general attention in European and world science, all the way to Japan.<sup>76</sup> This work, no doubt, reflected Bogišić's methods within a complex, interdisciplinary approach to research: sociological, linguistic, ethnological, and legal-historical. At that time, he was not satisfied with what he had explored in his earlier works, where he covered these problems only in the *general framework* of family customary law in the Balkan Slavs community, which went through specific historical, political and cultural stages of evolution in the past.<sup>77</sup> All this was directly related to the drafting of his *Code* and its implementation in practice,

<sup>74</sup> Bogišić Archive in Cavtat, box XXV /4f, XXV/ and “Notes”, Vol. II, 16,7. Cfr. V. Stojančević, *Valtazar Bogišić o metodi proučavanja porodice, braka i srodničkih odnosa u našem narodu*, Glasnik Etnografskog instituta SANU, vol. XLVII, Beograd 1988, 30–42, spec. 32, n. 14.

<sup>75</sup> *Ibid.*

<sup>76</sup> K. Takii, *Valtazar Bogišić und Hirobumi Ito Zwei Schüler von Steins*, in: “Spomenica Valtazara Bogišića” (ed. L. Breneselović), vol. I, Beograd 2011, 221–230. On March 16–17, 2015, an international conference of Japanese and Serbian scientists entitled “Comparative Law, Codifications, Customary Law, and Mixed Legal Systems” was held at the University of Belgrade Faculty of Law. An important part of this session was devoted to the potential impact of Valtazar Bogišić on the Japanese Civil Code and the parallels between the Montenegrin *General Property Code* and Japanese codification. Cfr. E. Matsumoto, *Advice of Valtazar Bogišić on the Codification of Japanese Civil Law*, *Aoyama Law Review*, vol. 57, no. 4, 2016, 441–465; Idem, *Correspondence between Boissonade and Bogišić*, *Aoyama Law Forum*, vol. 4, No. 2, 2016, 11–35. See also chapter: *Bogišić's records of the impact of General Property Code for the Principality of Montenegro on the systematics of the Japanese Civil Code of 1890*, in: Z. Rašović, *op. cit.* (vol. 146/40, book I, 2018), 158–172.

<sup>77</sup> V. Bogišić, *Naputak za opisivanje pravnih običaja koji u narodu žive*, Zagreb 1867; V. Bogišić, *Zbornik sadašnjih pravnih običaja u južnih Slavena*, JAZU, Zagreb 1874. That same year (1874), Bogišić visited Belgrade to acquaint himself with the thirty years of implementation of the *Civil Code of the Principality of Serbia* of 1844. His proposal to draw up a single civil code for Serbia and Montenegro on identical principles was not accepted in Belgrade. For more, see T. Nikčević, *Postanak i pokušaj prerade građanskog zakonika Kneževine Srbije*, Belgrade 1971.

since the problem of the relationship between traditional *unwritten law* and *state legislation* was raised. Bogišić was fully aware that “they do not coexist in the best of harmony”.<sup>78</sup>

It is no wonder, therefore, that he asked Kostić, like many other friends and colleagues, for help in collecting new materials for further research.<sup>79</sup> Kostić was very eligible for this task because he had lived in the Montenegrin environment for a long time and was well acquainted with the customs and traditions of that people. However, he certainly did not need any special legal capacity for such a mission.

Hence, it is a great pity that, during his stay in Cetinje, Kostić’s broad education, and most of all his legal knowledge, did not come to light at all, though he was a friend of Bogišić and a follower of his theoretical ideas. On the other hand, it should not be forgotten that even before his arrival at Prince Nikola’s court, Kostić had been out of the legal profession for a long time, so he could not always follow Bogišić’s fast-track mind and his new methodological steps in the concrete application of Savigny’s principles. Namely, Bogišić was a follower of the Historical School of Law, because in his work *On the Importance of Legal Customs*<sup>80</sup>, he sees himself as a pupil of Puhta and Savigny, but still holds a critical distance, enriching his theoretical concept with the new ideas of evolutionary positivism of Spencer, and even with the principles inherent in the Natural Law School. No wonder Kostić had in Bogišić the best person to share these new ideas with, especially while studying *Ancient Law*, the capital work of Sir Henry Maine, with whom Bogišić had just corresponded.<sup>81</sup>

<sup>78</sup> V. Stojančević, *op. cit.*, 31.

<sup>79</sup> Bogišić designed an extensive questionnaire (2,000 questions) to cover customary practices in both public and private laws. He conducted a survey on customary law, relying on several local informants in Montenegro who were well versed in the matter and, as a rule, holders of high military and civil offices. A distinctive group of Bogišić’s associates were members of the commission responsible for discussing two drafts of the Code, all of them judges of the highest court in Montenegro at the time. N. Martinović, *Valtazar Bogišić — istorija kodifikacije crnogorskog imovinskog prava*, Cetinje 1958, 87–106; N. Martinović, *Valtazar Bogišić, Uputnik za opisivanje pravnih običaja Crnogoraca*, Cetinje, 1964; T. Nikčević (ed.), *Metod i sistem kodifikacije imovinskog prava u Crnoj Gori*, SANU, CDIX, Belgrade 1967, 1–35; M. Luković, *Valtazar Bogišić and the General Property Code for the Principality of Montenegro: Domestic and Foreign Associates*, Balcanica XXXIX, SANU, Beograd 2008, 175–188. Kostić was not involved in any of these commissions.

<sup>80</sup> V. Bogišić, *O značaju pravnih običaja. Pravni članci i rasprave*, Biblioteka za pravne i društvene nauke 23, vol. I, Beograd 1927.

<sup>81</sup> D. Čepulo, *West to East — East to West: Baltazar Bogišić and the English School of Historical and Comparative Jurisprudence (H. S. Maine, F. Pollock, P. Vinogradoff)*, in: “Rechtswissenschaft in Osteuropa. Studien zum 19. und frühen 20. Jahrhundert” (ed. T.



4. The preserved letters to Bogišić show that the Serbian poet asked him for advice not only on particular legal issues, but also on those concerning Kostić's interests in the natural sciences, which served him to establish certain regularities in the sphere of human spirituality, especially aesthetics, which will later become a basis for creation of his aesthetical essay *Osnova lepote u svetu s osobitim obzirom na srpske narodne pesme* (The Foundation of Beauty in the World with Particular Emphasis on Serbian National Poetry, 1880), as well as his philosophical treatise *Osnovno načelo. Kritički uvod u opštu filosofiju* (The Basic Principle. A Critical Introduction to General Philosophy, 1884):

*Is there any trace in the legal life of the people of the existence of that natural law, which Darwin found and observed in physical fertilization, the law of crossover /"ukrštaj"/, as Darwin calls it: intercrossing? And if so, what effects do the occurrences of intercrossing have on legal life?(...) The reason for taking up your time with this is that I intend to write about the law of crossover in aesthetics, especially with regard to our folk songs ...Please, if you find time to respond, do refrain from referring me to rare books, because Viennese libraries are, as you know, very poor. For instance, I could not find all works of Darwin in the original version at the Court library.<sup>82</sup>*

Unfortunately, Bogišić's answer was not preserved, but the following letter from Kostić clearly shows what his answer had been:

*First of all, I would like to thank you kindly for your notice, which is priceless for the direction my research is taking, because it confirms to me that the law, which I see in all occurrences of organic life, especially in spiritual functions, is also valid in legal life. But, even though your instruction is enough for me, I would still like to ask you to share your thoughts with me on another special case. Speaking of the first period of development of Roman law, is it possible to establish where the influence of Etruscan or Sabine customs begins and what is the nature of this influence? Does the acquisition of Etruscan elements coincide with any historical event, e. g. with the abduction of Sabine women?<sup>83</sup>*

As a good connoisseur of Roman history, in dialogue with Bogišić he wants to find concrete historical proof of the *intercrossing* and *selection* processes, which influenced the formation of customary law in ancient Rome (*ius non scriptum, ius civile antiquum*). Hence, he analyzes the mutual contacts of the Etruscan-Italian tribes settled on the banks of the Tiber.

Kostić certainly knows that this legendary event is related to the emergence of the oldest Roman state, that is, the subjugation of the Sabinian

Simon), Frankfurt am Main 2010, 71–116.

<sup>82</sup> *Prepiska*, 282 (Vienna, August 10, 1878).

<sup>83</sup> *Prepiska*, 283 (Vienna, September 3, 1878).

people by the authority of Rome,<sup>84</sup> and that the Etruscan influence on the ancient Latins, the founders of the city “on the seven hills”, was undoubtedly very strong in the field of culture, religion, and even on the oldest customary law.<sup>85</sup> Hence the belief that the primordial Roman community consisted of three tribes: *Ramnes*, *Tities*, and *Luceres*, in which the Latins, Sabians, and Etruscans were assembled. It is no wonder that it was precisely this historical context which served Kostić in raising a proper argument for proving the fruitful *intercrossing* of these diverse but culturally related social communities, which, in the final *selection* process, formed a vital and sustainable civilization, which would survive for centuries.

From the following letter to Bogišić, it is clear that during his studies at the University of Pest, Kostić was well acquainted with the works of the greatest representatives of Savigny’s Law School and that he wanted to include their teaching about the evolution of law in his theoretical observations:

*I would like to thank you very much for your detailed notice. It was a long time ago that I read Niebuhr, Mommsen and Puchta, I have to thumb through them once more. I would be very interested to find out in what points do you not agree with these Romanists? There are some useful remarks for me in ‘Ancient Law’.*<sup>86</sup>

Although there is a lack of Bogišić’s answers, which would shed more light on the views of this legal expert, nevertheless, Kostić’s letter alone is a valuable testimony to his scientific preoccupations at that time. He is obviously referring to *The Ancient Law*, the famous book by Sir Henry Maine, a professor of legal history at Cambridge and Oxford, which had already had twenty editions during his lifetime.<sup>87</sup> In it, the author presents ide-

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<sup>84</sup> However, the Roman tradition gives this story a completely different, romantic character. According to legend, Romulus invited the neighboring tribes to visit, of which the Sabinians were the most numerous, and when the young men abducted the girls during the celebration in order to make them their wives, it caused outrage from the families of the abducted girls, and a war led by the Sabinian king Titus Tadius. However, in the decisive battle, the Sabinian women stripped between the warring armies of their husbands and fathers and contributed to the conclusion of the peace agreement. The two tribes then united, and Romulus and Titus became co-rulers of Rome. R. Brown, *Livy’s Sabine Women and the Ideal of Concordia*, Transactions of the American Philological Association, vol. 125/1995, 291–319.

<sup>85</sup> D. Briquel, *La civilisation étrusque*, Paris 1999; S. Haynes, *Etruscan Civilization: A Cultural History*, Los Angeles 2000.

<sup>86</sup> *Prepiska*, 284–285 (Vienna, November 26, 1878).

<sup>87</sup> H. Sumner Maine, *Ancient Law, its connection with the early history of society, and its relation to modern ideas*, Cambridge 1861.

as that are close to Kostić's understanding of the gradual development of law, through permeation with the cultural influences of different peoples. Maine proves that legal concepts (in property, inheritance, contract and tort) are the product of historical development, just as biological organisms are formed through the process of evolution. Hence, Maine necessarily relies on Darwin's theory, presented in *The Origin of Species*, which greatly inspired Kostić himself.<sup>88</sup> This is also evident from the letter to Vatroslav Jagić, the prominent Croatian linguist, sent from Vienna on the same day as the one to Bogišić and with almost the same question:

*Is there in language as well any trace of that natural law of crossover and choice, which Darwin calls 'intercrossing' and 'selection'? In this regard, I can note that Schleicher's brochure on Darwinism in language does not completely satisfy me.*<sup>89</sup>

Obviously, Laza Kostić ardently accepted the teaching of the German Historical School, according to which law is not an eternal, forever given category (as the Natural Law doctrine teaches), but that it evolves through three stages — starting from the primordial *customary law*, over its scientific processing by jurisprudence (*Professorenrecht*), and ends with spontaneous *codification*. According to this teaching, each nation has its own particular "folk spirit" (*Volksgeist*) that shapes specific customs, language, culture, folklore, and even law. It is no wonder, therefore, that Kostić connected with Bogišić very early, befriended him and relied highly on his achievements in the study of folk customs and legal terminology.<sup>90</sup>

When evaluating Kostić's broad contribution to the field of spiritual creativity, one should also take into account the fact that he did not study

<sup>88</sup> Ch. Darwin, *On the Origin of Species, by means of natural selection, or the preservation of favoured races in the struggle for life*, London 1859.

<sup>89</sup> *Prepiska*, 440 (Vienna, September 3, 1878). August Schleicher (1821–1868) was a highly respected German Slavist, professor of comparative linguistics at the University of Jena and an honorary member of *Yugoslav Academy of Sciences and Arts* in Zagreb. After his untimely death, V. Jagić published an extensive obituary in the bulletin of this institution. Cfr. Rad JAZU, vol. VI, Zagreb 1868, 1–24.

<sup>90</sup> In his final elaborate on the creation of the Montenegrin Code (written in 1901), Bogišić mentioned his distinguished associates and friends with whom, during years of work, he consulted about some basic theoretical issues (Darest, Dickel, Neibauer). With regard to technical terms, he expressed special gratitude to several Southern Slavs language experts (Jagić, Miklošič, Budmani, Novaković et al.) — including also Laza Kostić. V. Bogišić, *L'histoire d'une codification*, *Revue de Droit international et législation comparée*, Bruxelles 1901, 5–15. Cfr. N. Martinović, *Valtazar Bogišić — istorija kodifikacije crnogorskog imovinskog prava*, Cetinje 1958, 262–263; Z. Rašović, *op. cit.* (vol. 146/40, book I, 2018), 108–111.

philosophy, aesthetics, or any of the natural sciences, but as a doctor of law, he was in these fields, one might say, a complete autodidact. Intellectual curiosity drove Kostić to different sides, and he, while pursuing various scientific disciplines, absorbed what he was interested in, seeking to create from a partial knowledge a complete system of cognition of the world around us. Shaping the idea of “crossover” (*ukrštaj*), Kostić was trying to find empirical confirmation of his views not only in philosophy and aesthetics, but also in the processes of forming the identity of peoples, the emergence of state-law entity, and many other historical phenomena.

The correspondence with Bogišić refers to this, demonstrating that Kostić seeks confirmation that the natural law of *intercrossing* and *selection* (according to Darwin’s terminology) is also applied in legal life.<sup>91</sup> This fits into Kostić’s notion of the gradual development of law, through its interweaving with cultural influences of different nations, and of legal concepts that are a product of historical development, just as biological organisms are formed through the process of evolution.

It is clear that Kostić, on the basis of historical background or relevant linguistic knowledge, analytically reached precisely for the facts that would confirm his basic thesis. It’s a pity that only this scarce correspondence (from 1878) tells us what Kostić’s scientific preoccupation in that period was. We would have learned far more if Bogišić’s answers to Kostić were preserved. Unfortunately, we have only lapidary information, like small parts from which it is difficult to reconstruct the whole puzzle of their broader scientific argument. The most they can provide us with is valuable information about the completely different methodological approach Kostić took when asserting exact scientific facts, in contrast to the free poetic imagination, to which he was certainly far more inclined during his life.

5. It was in his late years when Laza Kostić started to translate the textbook of Roman Pandect Law, of the famous German jurist, professor and politician Heinrich Dernburg (1829–1907).<sup>92</sup> This three-volume masterpiece (*Pandekten*, Berlin, 1884–87)<sup>93</sup> formed the basis of modern European legal culture. The first volume of Kostić’s translation of *Pandekten* was published in Zagreb in 1900, the second remained in draft and it is not

<sup>91</sup> *Prepiska*, 282 (Vienna, August 1, 1878).

<sup>92</sup> L. Klaus. s. v. *Dernburg, Heinrich*, in: “Juristen: ein biographisches Lexikon” (ed. M. Stolleis), München 2001, 175ss.

<sup>93</sup> Vol. I: *General Part and Real Property Law*, vol. II: *Law of Obligation*, vol. III: *Family Law and Inheritance Law*.

known if he completed this work.<sup>94</sup> The translation available to us shows the level of inventiveness that Kostić used to create a new legal terminology, based on the vernacular language, taking the ideas from Savigny's Historical School of Law that were dominant at the time, and especially the teaching of renowned Valtazar Bogišić.

When Kostić lost the sinecure of Prince Nikola, and having spent his inheritance a long time ago, and now also without a home, he tried to secure his existence on another side — at the University of Zagreb. Just at that time (1892) he unexpectedly received a formal offer to translate this textbook from Iso (Isidor) Kršnjavi, the Minister of Religion and Education in the so-called “Royal Croatian-Slavonian-Dalmatian Government” (*Kraljevska hrvatsko-slavonsko-dalmatinska zemaljska vlada*) seated in Zagreb.<sup>95</sup> Kostić informs Bogišić about this:

*I was in Zagreb, where the government entrusted me with translating the Pandekten of Dernburg into the 'Croatian or Serbian language'. It will take me two years of work and the reward will be 40 fr. by the sheet (a total of 3700–4000 fr.). At the same time it would be — in the words of Dr. Iso Kršnjavi, Minister of Religion and Education — a recommendation to 'create a position for me' in Zagreb, which means one chair at the Faculty of Law.*<sup>96</sup>

But the real initiative to engage him at this high academic institution (which Kostić at the time did not know) came from Khuen Héderváry, a Hungarian politician appointed as the Croatian Ban,<sup>97</sup> who held this position for two decades (1883–1909).

<sup>94</sup> See about it in the poet's memoir records: L. Kostić, *Kako je došlo do prevođenja Dernburgovih 'Pandekata'*, in: “Iz moga života” (ed. M. Leskovic), Beograd 1988, 214–219.

<sup>95</sup> In his *Preface*, Kostić explicitly thanks him for that, considering the Croatian politician as his friend and colleague. Kršnjavi was also a superior erudite: a Viennese doctor of law, philosopher, academic painter, art historian, university professor, author of poems, travelogues and two novels, translator and interpreter of Dante's *Divine Comedy*, patron and builder of cultural institutions in Croatia, school reformer — but also a skilled, uncompromising politician. Therefore, in more than four years of his ministry (1892–1896), he will succeed in leaving Croatia with an incredibly rich cultural heritage, especially in the field of education. He greatly respected Kostić and his exceptional education, and truly believed that he entrusted the translation work to the right person. Cfr. Collection of papers of scientific conference: “Iso Kršnjavi — veliki utemeljitelj” (ed. I. Mance/Z. Matijević), Zagreb 2015, *passim*.

<sup>96</sup> *Prepiska*, 347–348 (Sombor, 1/13 July, 1892).

<sup>97</sup> *Ban* is a very old noble title, from Byzantine times, used in several states in Central and Southeastern Europe. In Croatia it persisted after 1527 when the country became part of the Habsburg Monarchy, and continued all the way until 1918. During that long period the competencies and power of the *Ban* periodically expanded and narrowed, depending on the state status of Croatia. In the 18<sup>th</sup> century, bans were at the head of Ban's

It is indeed astonishing that Héderváry offered the Chair of Roman Law and task to translate a textbook for that course, to an Orthodox Serb, with a distinct patriotic and national orientation — and yet without consulting the professors there. Moreover, his long lasting reign was marked by a strong “Magyarization” (Hungarization) process of the Slavic population. Though it sounds paradoxical, Kostić was chosen by Héderváry *precisely* because of his ethnic background. This fit into Ban’s long lasting skillful policy: *divide et impera*.<sup>98</sup>

In the records of Radivoj Simonović, personal doctor and close friend of Laza Kostić, the real reasons behind his involvement in this job were very well explained:

“Ban Khuen Héderváry’s policy was to show the Serbs that no one was persecuting them in Austria-Hungary and that Serbs were not neglected within the Monarchy. Ban thought of appointing Laza as a professor at the Faculty of Law in Zagreb, but when that plan failed, Laza was given a task by the Croatian government to translate the Pandects from Dernburg. Over the course of a few years, Laza struggled with the translation and creation of neologisms for the legal terms (*termina technica*). He was paid around 4000 forints for the translation, but the book was not used as a manual in teaching, and it disappeared!”<sup>99</sup>

What actually happened was explained by Kostić in a letter to Bogišić:

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Government, effectively the first prime ministers of Croatia. In accordance with the *Croatian–Hungarian Settlement* (1868) Ban/Viceroy was appointed by the Hungarian king on the proposal of his prime minister, but with consent of the majority in the Parliament. Entry s. v. *Ban*, Hrvatska enciklopedija, mrežno izdanje, Leksikografski zavod Miroslav Krleža, Zagreb 2020. Cfr. <https://www.enciklopedija.hr/Natuknica.aspx?ID=5627>

<sup>98</sup> Károly Khuen-Héderváry formally supported the Serbian institutions and elite and its influence in Croatian politics and economy. In 1884 he passed a set of “Serbian” laws, extended in 1887, by which the position of the Serbian minority in Croatia-Slavonia was arranged: the Orthodox Church gains the right to national-church autonomy, Deputy Ban and Speaker of the Parliament were Serbs, and they had the highest ranks in the judiciary. Due to this legislation, Héderváry was sometimes nicknamed by his political opponents the “Serbian Ban”. The main goal of favouring the Serbs was to encourage inter-ethnic (Croat/Serb) conflicts which would lead to preventing Croatian resistance to the unitary state policy. However, in practice, Héderváry skillfully distorted the implementation of these regulations, turning them into mere “empty promises”, as the indignant and dissatisfied Serbian opposition called them. In doing so, Ban also encouraged inter-party frictions within the Serbian national corps. V. Krestić, *Istorija Srba u Hrvatskoj i Slavoniji 1848–1914*, Beograd 1992<sup>2</sup>, 301ss.

<sup>99</sup> R. Simonović, *Uspomena na dr Lazu Kostića*, Novi Sad 1986, 94–95.

*Two months have passed since my translation of the Dernburg's Pandects — the first volume — was printed and the entire edition was submitted to the Office of Religion and Education. I wrote to the Head of this institution (Blessed Dr Armin Pavić, a member of the Yugoslav Academy, etc.) asking him to give the order to send my copies to me. I have never received an answer. Now I hear that all those books will rot in the basement of the Department, non videbunt lucem /not seeing the light of the day/.*

*Why? It will not be printed further, they say, because it is 'too expensive', making the already printed ones unworthy of greeting the world as well. This is obviously just a facade, an excuse. I'm afraid the real reason is that the translator is a Serb (...) So, if you would like to get this book — I was so looking forward to sending you the first copy quickly, because I had written in the Introduction 'A few words about this translation' where I mention you — you should encourage your most trusted people in Zagreb to try and handle this with the Head of Office.*

*If you could manage to get the whole edition released into the world — but I don't believe that is possible, not even you would be able to achieve this, it would be a great tour de force. This way, try to get a hold of at least two copies and keep one for me.*

*Sombor, June 12, 1900*

*Forever Your wholehearted admirer and friend,  
Lazo Kostić<sup>100</sup>*

From Paris Bogišić responded shortly (June 22, 1900):

*... I'm glad you finished the work on translating Dernburg — and I'm so sorry they put a ban on the issue, so it will not be easy to lay my hands on the copy intended for me! You are mistaken if you think I have any special friends there. The old ones have already died, and I do not know the young generation. As I do not know how to be a hypocrite, and I always call things by their proper name, this is not a way to make friends, or to keep the old ones who have gone the other way. But then, I will write to a friend (or, more precisely, an acquaintance), just to fulfill your wish, though I know in advance that I will not succeed.<sup>101</sup>*

Even after the first volume of Pandects was printed, critical texts on Kostić's translation in the politically colored press did not cease; moreover, two extensive reviews by professors Dr Franjo Spevec and Dr Luka Marjanović from the University of Zagreb were published on around a hundred pages

<sup>100</sup> *Prepiska*, 357–358.

<sup>101</sup> *Prepiska*, 358–359.

(in eight sequences) in a reputable scientific magazin *Mjesečnik*, the Journal of Law Society in Zagreb.<sup>102</sup> About all of this, Kostić informed Bogišić urgently (Sombor, November 26, 1901):

*I hear that the rest of my translation of the Dernburg's Pandekten is completely and finally buried, non videbunt lucem /not seeing the light of the day/. The current Head of 'religion and education', Pavić — who hates either me or his predecessor /Kršnjavi/ — ordered my manuscript to be re-evaluated, and he entrusted the work to two judges: to Spevec to evaluate it from the legal side, and to Marjanović to check the language. Spevec has judged that I did not understand the matter, the original text, and Marjanović swears that I do not know Croatian. I received this information in confidence.*<sup>103</sup>

Not even half a year later, Kostić was still not acquainted with the content of these texts, but in a letter to Bogišić (Sombor, June 9, 1902) he only states briefly:

*The Mjesečnik's lightning didn't strike me; I only heard the thunder from far away. I hear that two professors have me in the crosshairs: Spevec and Luka Marjanović. When I have some time to spare, I'll order Mjesečnik. Well, what can you do — we live and learn.*<sup>104</sup>

With this resigned conclusion Kostić seemed to say goodbye to the idea of taking up his legal profession again in his late years, and in the next letter declares with indignation: *This whole world is a comedy — unless it is a tragedy!* (Sombor, July 3, 1902).<sup>105</sup>

<sup>102</sup> F. Spevec, *Mjesečnik*, XXVIII, Zagreb 1902, 142–150, 222–232, 304–316, 387–397; L. Marjanović, *Mjesečnik*, XXVIII, Zagreb 1902, 465–476, 545–555, 619–629, 701–713. In an effort to prevent the professors' campaign against Kostić and to fulfill Ban Hedervary's order, minister Kršnjavi tried to "bribe" them — of which he writes in his Diary: *The translation of the Dernburg Pandects has begun and is likely to inaugurate a new era in our country's legal literature. I got a Serbian writer Lazo Kostić to do it. The resistance was great. Kostrenčić, scared for the monopoly of the Matica Hrvatska /Croatian national institution/, discouraged me from doing so. Law professors also stood up against this; a whole 'movement' was arranged. I took the main agitators to the editorial board, which for good compensation had to review Kostić's translation, and the 'movement' died down.* I. Kršnjavi, *Zapisci*, I–II, Zagreb 1986, 47 (the record of December 1, 1892). However, his attempt failed and negative reviews would still be published. The Croatian Minister had even received threats from professors, stating they would resign their posts if Kostić came to their Faculty and his translation became compulsory in teaching — although no other textbook for the Pandect Law existed at the Zagreb University at that time. M. Apostolova-Maršavelski, *Rimsko i pandektno pravo na Pravnom fakultetu u Zagrebu*, u: "Hrestomatija rimskog prava" (ed. V. Radovčić, et al.), Zagreb 1998, 369ss.

<sup>103</sup> *Prepiska*, 368.

<sup>104</sup> *Prepiska*, 371.

<sup>105</sup> *Prepiska*, 372.



In the correspondence that follows, Bogišić and Kostić did not mention the translation of the *Pandects* anymore. Even Kršnjavi, as a former minister of education, did not comment publicly on the treatment of this Serbian intellectual, whom he had previously supported so much. In his exhaustive memoir records, he completely skips this unfortunate political episode, because for him personally it was, certainly, a defeat he did not want to remember, nor to leave a trace of it in his Diary.<sup>106</sup>

6. The influence of the creator of the Montenegrin *Property Code* on the legal vocabulary of Laza Kostić has been undeniable, but at the same time, the creativity of the Serbian poet in this field far exceeded Bogišić's linguistic standards and even differed from the language he ordinarily used in his literature and correspondence. The terminology of his translation was based on the existing vernacular, but also on archaic words, terms from medieval legal documents, and newly created coinages as well as linguistic constructions that were more appropriate for poetic than legal expression. This original, somewhat artificial terminology, did not even get a chance to be tested and proved in practice, since the use of this textbook at the University of Zagreb was banned immediately after its publication. Reasons for that were obviously not only of scientific character, but also had a political background. Unfortunately, even Bogišić's great reputation could not help Laza Kostić succeed in his intention to join the academic community in Zagreb, nor even to obtain a copy of the first volume of the Dernburg's *Pandekten* translation.

By analyzing the terminology used, we can conclude that Kostić's undertaking in translation was a reflection of the era he lived in, his sincere desire to contribute to the rapprochement of the South Slavic peoples. Hence, Kostić had a noble wish to help in bringing these two peoples closer, which placed him into the pleiad of great minds of that time, such as the famous Serbian language reformer Vuk Karadžić, then Vatroslav Jagić (Croat), Franz Miklošič (Slovenian), and especially Bogišić, who believed that Serbs and Croats were speaking a single language, a language which should serve as cohesive tissue for their life together and not for conflicts and divisions.<sup>107</sup>

In a few lines of his *Preface* to the *Pandects* translation, Kostić summed up his intellectual and creative credo, which he was led by, thus taking up a hefty job at the behest of Ban Héderváry. Before him he obviously had Bogišić's Code, a model whose content was based on customary law and

<sup>106</sup> I. Kršnjavi, *op. cit.*

<sup>107</sup> Ž. Bujuklić, *Bogišićev uticaj na pravnu leksiku Laze Kostića tokom prevođenja Dernburgovih Pandekta*, in: "Opšti imovinski zakonik za Knjaževinu Crnu Goru (1888–2018)" (ed. Z. Rašović), CANU, vol. 13, Podgorica 2018, 63–100, spec. 85ss.

native vernacular. As an excellent polyglot,<sup>108</sup> doctor of legal sciences (*doctor utriusque iuris*) and a proficient connoisseur of his language, Kostić considered himself quite capable of embarking on such an endeavor:

*It was necessary... to change our current legal terminology, and if it is being changed yet, it must not be half done, but must be fundamentally changed, it must be equated with the present, more advanced and more literary language, it must be put on a purely national basis, because only this basis is reliable, since it will not change significantly, as long as the people and their language exist. It was no small anguish. And God knows how I would have overcome this, indeed, if I would have overcome it at all, had I not found three great helpers. One was the vernacular; the other was the ancient speech of the people from our documents; the third was Dr V. Bogišić and his Property Code.<sup>109</sup>*

*(...) Bogišić was my guiding light. But it so happened that both Bogišić and the lively folk speech left me in trouble. Bogišić could not follow me on such a long road, because his Property Code leaves a large part of the material covered by the Pandects intact. Then I turned to the past, to our legal documents. Some words in my translation — which for many people will seem brand new, instead of old and forgotten for lack of use — are now revived. In those documents I found such beautiful, such pure folk words, that some of them I liked more than those from actual speech.<sup>110</sup>*

However, this project, which led to the linguistic homogenization of the Slavs, also faced sharp internal contradictions, which were the result of historical, political, cultural, religious, economic and other differences between them. Unfortunately, those frictions were not only between ethnically diverse Slavic peoples, but even within one of them, which was especially true for Serbian intellectuals. Laza Kostić himself, as a supporter of the idea that it is necessary to form a common language of Serbs and Croats, will find himself in a whirlpool of these diverse, very conflicting interests. They were in themselves already serious and limiting factors, standing in the way of realization of this great idea of linguistic unification of those peoples. To be able to handle all this demanded real skill, and Laza Kostić

<sup>108</sup> He knew Latin and Ancient Greek well, from which he first translated Homer in Serbia, and spoke six more languages from which he translated the texts of Heine, Goethe, Byron and was the first who translated Shakespeare's plays in the Balkans. V. Milanović, *Laza Kostić, prevodilac i kritičar Šekspira*, Banja Luka 1999, *passim*.

<sup>109</sup> L. Kostić, *Nekoliko riječi o ovome prijevodu*, pp. VIII–XVI (in the Preface to his translation).

<sup>110</sup> L. Kostić, *Nešto o današnjem stanju našeg književnog jezika i osobito o našoj pravničkoj terminologiji*, in: "O književnosti i jeziku" (ed. H. Krnjević), Novi Sad 1990, 228;

did not possess the necessary adroitness and ability to realistically perceive the social and political background of the project he was embarking on.<sup>111</sup>

In addition, there were circumstances of subjective nature that kept Kostić from reaching his maximum and devoting himself fully to scientific work. When he left Montenegro and accepted the offer for translation (1892), he was without any financial means, without home, and he was living on loans or the help of his friends, and from the occasional fee from certain cultural institutions for which he would do some work. The constant relocations from one place to another reduced his reference library to only the most necessary of books, which was not enough for the serious translation work he had started at the time. This problem became even more serious because the translation of the *Pandects* was done mainly while he was staying as a guest in Krušedol, an orthodox monastery in Vojvodina (former part of Hungary).<sup>112</sup> Kostić chose to find refuge in the monastery's silence, between its thick walls, which provided him with spiritual peace and protected him from worldly challenges.<sup>113</sup>

In monastic silence and renunciation Laza Kostić spent almost five years, and there are not many testimonies to this, except in the brief records of several contemporaries. For example, one of them notes: "At that time Laza was translating *Pandects* for the University of Zagreb, and he spent very little time on newspapers and fine literature",<sup>114</sup> and another one:

*...My friend Laza flipped through the mail and retreated quickly into his chamber, where from morning till dark he translates Roman Pandects, and a little bit of his old favorite, Shakespeare. Great Fasts are observed in the strictest manner. There are no exceptions, not even for Laza. He respects every Fast with the monks, even the strictest one during the Passion Week, having only bread and water, after which he also receives the Holy Communion... Krušedol is getting merits for Serbian literature by treating its most ingenious representative so nicely and taking such good care of him.*<sup>115</sup>

<sup>111</sup> See more details Ž. Bujuklić, *Nation-building and the Emergence of Serbian Legal Studies in the Nineteenth Century*, in: "Konflikt und Koexistenz. Die Rechorndnungen Sudosteuropas im 19. und 20. Jahrhundert" (ed. T. Simon), Band II, Frankfurt am Main 2017, 513–582.

<sup>112</sup> Throughout all these years, hospitality was provided to him by a Krušedol archimandrite Gavriilo, his close friend from his early days, with the blessing of Patriarch Georgije Branković (1830–1907), the spiritual leader of Habsburg Serbs. S. Vinaver, *Zanosi i prkosi Laze Kostića*, Beograd 2012, 619–622.

<sup>113</sup> M. Živanović, *Lazin kros, život uz nos (1841–1910)*, Novi Sad 2010, 107.

<sup>114</sup> J. Protić, *Sećanja na dr-a L. Kostića*, u: "Laza Kostić" (ed. M. Leskovic), Belgrade 1960, 65–72.

<sup>115</sup> M. Živanović, *op. cit.*, 114.

It is also evident from a letter to Bogišić (September 8, 1892) that his main job in this monastery was to translate this voluminous book, to which he could then devote himself fully:

... Here I am again at the Krušedol Monastery. I am more calm here, so today I begin the translation of 'Pandekten', since I have sent to Zagreb, as an échantillon /sample/, the chapter 'der Besitz' /tenure/. I use a lot of your terminology, which is approved in Zagreb.<sup>116</sup>

7. However, Kostić could not find the necessary literature in the monastery library, so he filled up that void by frequent trips to Novi Sad, where he stayed in the reading room of Matica Srpska all day. His letters show that at the time he was ordering books from various sides, translating Shakespeare's *King Lear*, and corresponded with many famous people whose help he needed to realize various ideas, which he continued to devise tirelessly.<sup>117</sup>

On the other hand, those who criticized his work had all the privileges and comforts of an academic life at the University of Zagreb, economically well provided for and with easy access to private and university libraries, and were even financially rewarded for reviews of Kostić's translation of the Pandects. No less well-off were those who were his true friends and admirers, such as Bogišić and Vatroslav Jagić, who spent most of their lives in major European capitals (one in Paris and the other in Vienna) — but they at least wholeheartedly aided and abetted him in the most difficult moments. While Bogišić worked on collecting the national linguistic treasures of Montenegro, he received monetary appanages from Prince Nikola and Tsarist Russia, and during that time he owned a great personal library in Paris (of about 15.000 books, magazines and brochures), most of which he bequeathed to his native town Cavtat.<sup>118</sup> In fact, he later supervised the implementation of the Code from this European metropolis; although he was formally the Montenegrin Minister of Justice, in accordance

<sup>116</sup> *Prepiska*, 348–349.

<sup>117</sup> For his comedy *Gordana*, which failed at the anonymous Matica Srpska Award Contest, the disappointed Kostić provides translations into French, German, English and Russian, wishing to make his way to the scenes of Paris, Munich, Prague, London and Saint Petersburg (*Prepiska*, 327); also from Krušedol he writes to Nikola Tesla in New York "to take care of the English translation of *Gordana* so that it could appear on the American stage". Writing to Bogišić from the monastery, he even tries to reach the famous composer Franz von Suppè, a native of Dalmatia, who became very popular for his operetta in Vienna, wanting to offer him this work as a musical libretto. *Prepiska*, 346–347, 349; *Prepiska*, vol. II, 414–422.

<sup>118</sup> Cfr. <http://hvm.mdc.hr/zbirka-baltazara-bogisica-hazu,762:CVT-1/hr/info/>.

with the contract made with the Prince, he had no obligation to stay in Cetinje for long.<sup>119</sup>

Having this in mind, we can understand to what extent was Laza Kostić deprived of all that is necessary for anyone to engage in scientific work at all. Considering the difficult task he took upon all by himself, it is clear why Kostić pointed out at the beginning of his *Foreword*: “When I started this job, I knew it would be very difficult. But that it would be so annoying, I realized only when I found myself halfway through”. During his stay in Krušedol, his only income came from periodic payments for parts of his completed work, which he received from Zagreb, along with the compensation from Matica Srpska for the translation of Shakespeare's *King Lear*, and from the Belgrade National Theater for *Romeo and Juliet* and *Richard III*.<sup>120</sup>

These limitations of a subjective nature were certainly of no concern to professors from Zagreb who wanted to judge the value of Kostić's work scientifically, coolly and objectively. However, anyone who delicately searches for translation errors, omitted lines, overlooked and terminological inconsistencies, and even spelling errors (all that listed in their sharp reviews of the translation),<sup>121</sup> should keep in mind that Dernburg's three-volume textbook had about 1500 pages, and that Laza Kostić did his job in just a few years, completely by himself, without any assistant that university professors are usually entitled to. It is not known whether he completed the translation, because further printing was stopped, but the first volume already had over 800 pages, which means that there were surely twice as many in the manuscript, since numerous and often extensive footnotes were of dense spacing. So, thousands of sheets of paper had to be handwritten, reviewed, corrected, subsequently edited — and all this while grappling with his other life troubles and unsuitable conditions for such work.

However, even if we set aside the mentioned subjective limitations, it is necessary to determine beforehand the criteria by which we will judge the critical evaluations of the Zagreb professors. Hence, the parameters that can serve us to objectively evaluate the success of Kostić's translation must be established — but this is rather a task for future linguists, philologists and experts in Slavic languages and German as well — in cooperation with jurists, of course. In a recently published study dedicated to the legal achievements of Laza Kostić, we laid down the methodological foundations for

<sup>119</sup> J. Danilović, *Sto godina Opšteg imovinskog zakonika za Crnu Goru*, Anali Pravnog fakulteta u Beogradu, 6/1988, 625–635.

<sup>120</sup> Ž. Mladenović, *Laza Kostić, život i književna dela*, Beograd 2015, 88; R. Simonović, *op. cit.*, 95.

<sup>121</sup> See above (n. 102).

future studies, preliminary results of a partial analysis of his newly established legal terminology, comparing them with the contributions of other zealous Serbian workers in this field.<sup>122</sup>

From a letter sent by Bogišić from Paris (July 11, 1900), while he attended the World Exhibition, it can be seen that he received only a part of Kostić's translation, which was published as early as 1893, in the form of a small extract of about a hundred pages:

*Tandem aliquando /at long last/ I was sent your Pandects from Zagreb, but only the first part, which is only 96 pages. I paid 2 crowns and 25 paras for postage. The translation is superb — and how could it be different, since you translated it yourself! I am pleased to see that you have taken over some terms from the Property Code. I couldn't get another copy. I wrote again, but it will be difficult, because I am not a chameleon. However, if they send it to me, I will ship it to you. But as this is highly unlikely to happen, you will see it at my place when you come here for the Exhibition. I wish you to stay healthy and cheerful.*

*Your old friend,*

*V. Bogišić<sup>123</sup>*

In a letter dated July 17, 1900, Kostić joyfully informs Bogišić that a newspaper in Zagreb (*Narodne novine*, July 14) had announced that his translation had finally been published:

*Victoria! You have done it as would Banović Strahinja /famous Serbian epic hero/... I have already ordered one book to be sent to you immediately, and then you will receive another deluxe copy for your library. There is no doubt that I have your intervention to thank for all of this. By that you can see what power your name wields in the official circles in Zagreb, among all Southern*

<sup>122</sup> Ž. Bujuklić, *Pravnički dometi pesnika Laze Kostića*, cit., 124ss; Idem, *Il contributo al campo giuridico del poeta Serbo Laza Kostić*, in: "Liber amicorum Janez Kranjc" (ed. M. Kambič, K. Škrubaj), Ljubljana 2019, 57–70. With the exception of the translation from Latin by S. Šarkić, accompanied by his very good comments, on Kostić's *Theses* defended at the University of Pest (*Theses ex scientis iuridicis et politicis*, Novi Sad 2011, 14–63), so far no scientific work has been devoted to the contribution of the Serbian poet in the legal field. Even the scientific literature often contains erroneous information that he was an attorney or a judge, which no historical source confirms. Even in the works of the best linguistic experts, but legal laymen, the mistake was made that Kostić was translating Justinian's *Pandectae*, not a 19th-century German textbook of the same name. Cfr. Collection of papers on the centenary of his death: "Laza Kostić (1841–1910–2010)" (ed. Lj. Simović), SANU, Beograd 2011, *passim*.

<sup>123</sup> *Prepiska*, 359–360, 575.

*Slavs and the entire Slavic population, as well as in the non-Slavic legal world. Let my gratitude be a small contribution to this great moral satisfaction.*<sup>124</sup>

As far as we know from the available documents, Laza Kostić had never (at least officially) received his copies of the book. He also never responded to the severe critiques which were shortly afterwards printed in a law journal in Zagreb — as if they did not concern him. A few years later, he died at a Viennese sanatorium (1910), and Bogišić's positive evaluation is the only praise of his translation that he received in his lifetime — the only one, but certainly the most valuable to him.

Another commendation, which is less known, came from Mihailo Polit Desančić, Kostić's friend and political companion, unfortunately over the poet's grave at the Sombor cemetery:

*He was not a doctor of law in vain. It is worth reading his excellent Serbian translation of the Pandects. Each row shows an expert lawyer. What beautiful, precise Serbian language! Such excellent terminology with all the nuances of law!*<sup>125</sup>

These praises, though uttered by a close friend of Kostić and in extremely specific circumstances, have some weight, as they were uttered by a highly educated Serb, polyglot and erudite who graduated in law in Vienna and in political sciences in Paris.<sup>126</sup>

In one of Kostić's last letters to Bogišić (Sombor, December 27, 1904), there are no more high-minded topics, but ordinary life things:

*This morning I have seen a note in one newspaper that, 8 days ago, you celebrated your 70th birthday. Thank God, and forgive me for not knowing. I knew that you were a bit older than me, but I thought it was only by 2–3 years. Actually, it is 6 years, precisely 6 years and 6 weeks. Cela ne nous rajeunit pas! /It does not rejuvenate us! /. We are already getting into years that do not deserve congratulations, as much as condolences. However, thank Goodness, you wear them lightly; you are still so "green" in body, that you really deserve to be congratulated! Hence, receive my cordial greetings, with the sincere desire that God keeps you safe for many and many years to come!*<sup>127</sup>

Bogišić's response came very quickly, and this is his last (preserved) letter to Kostić (Paris, January 1, 1905):

<sup>124</sup> *Prepiska*, 361(Radegund, July 17, 1900).

<sup>125</sup> The obituary was published on the entire front page of the journal "Branik", organ of the Serbian Liberal Party in Hungary (December 11, 1910).

<sup>126</sup> He was also a journalist, writer, politician, a deputy in the Croatian-Hungarian Parliament and a member of the *Serbian Royal Academy*. D. Mikavica, *Mihailo Polit Desančić, vođa srpskih liberala u Austrougarskoj*, Novi Sad 2007, 43–45.

<sup>127</sup> *Prepiska*, 380.

*I received your congratulations 4–5 days ago as a ‘memento mori’ /as a reminder of the inevitability of death/, because seven decades are ‘grande humane aevi spatium’ /a very great part of the life of man/, after which a period of preparation for eternal peace and rest begins. But since resting is dear and comfortable to a tired man, I thank you very much for your friendly congratulations.*

*I also thank you for congratulating me the New Year, and in return, I also send you my best wishes: to spend the Christmas and New Year holidays, which are fast approaching, in health and joy. I would also like to congratulate you on your seventieth birthday, but, as it is still far away, I do not hope I shall live to see it! After all, it will be whatever God wills!*

*And now be warmly greeted  
by your old friend,*

V. Bogišić<sup>128</sup>

Unfortunately, shortly after that, his sincere friends Valtazar Bogišić (1908) and Simo Matavulj (1909) passed away, along with his faithful wife Julijana Palanački (1909), so he was left completely alone. Kostić had no offspring, but he bequeathed a rich cultural heritage to the Serbian people, worthy of further thorough study.<sup>129</sup>

*Conclusion.* Kostić’s high creative goals, which he set to himself over the course of his life, show how strongly he believed in his own abilities, which is why he was not satisfied with the average. He did not reach many of them because they were set too high, far ahead of his time, and hence he was not understood in the environment in which he was creating. He was also hindered by political circumstances in which he did not get along well, but also by his bohemian character and his messy private life. Nothing was strange to Kostić: from bohemian wantonness, linguistic playfulness and wits, over exalted lyrical feelings and national elation, to engaging in fundamental discussions in philosophy, aesthetics and legal terminology. He is, in much of his work, a reflection of the era he lived in, but he was undoubtedly beyond

<sup>128</sup> *Prepiska*, 380–381.

<sup>129</sup> Kostić was elected a permanent member of the *Serbian Royal Academy* just before he died, after much resistance within this institution caused by his earlier political involvement. Unfortunately, his illness and death not long after prevented him from holding a solemn access speech. Ž. Mladenović, *Izbor Laze Kostića za člana Srpskog učenog društva i Akademije nauka*, Zbornik radova, XVII, SANU, vol. 2, Beograd 1952, 415–462. Bogišić became a member of this most respected scientific and cultural institution of the Serbian people a whole two decades earlier (1888), and was also a member of the *Yugoslav Academy of Sciences and Arts* in Zagreb since its founding in 1867. Cfr. <http://enciklopedija.lzmk.hr/clanak.aspx?id=44807>



— or better yet, ahead of it. The life and work of this 19th-century extraordinary erudite undoubtedly attracts by its unusual Renaissance charm, and especially with its Faustian pursuit of unattainable perfection. Through the principle of “crossover”, he wanted to reach the ultimate ontological goal, *beauty*.<sup>130</sup> In Kostić's work, it is not only a phenomenon of the objective world and an aesthetic problem, but the primary motivation, goal and *raison d'être* of human existence. He searched for beauty in his poetry, literature, and even in the arid legal terminology. He wanted to ascend to the heights of heaven, to perfection, but the Icarus fall landed him, reduced to a reality in which he felt restrained and powerless to pursue his noble goals in life. Bogišić's friendship was certainly a great help and support to him on that long and uncertain path. Unfortunately, Kostić's spiritual stillborn was not only left in the basement of the Department of Religion and Education “without seeing the light of day”, but it was also far from the eyes of the scientific public for more than a century. This can also be said of the entire legal opus of this Serbian poet, who certainly did not reach the level of one such as Bogišić even remotely, but, on the other side, his contribution in this area was far more significant than it has been known until recently.

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<sup>130</sup> The idea of sublime, transcendent beauty is best embodied in the verses of *Santa Maria della Salute*, a poem he had been devising for decades, inspired by his affection for the young lady Lenka Dunderski (“Serbian Beatrice”) and ended just before his death. In the opinion of many historians of literature, this is the most beautiful love poem in Serbian poetry. Unfortunately, throughout his life and long afterwards, his poetic and literary *opus* has been sharply criticized and underestimated by the most eminent Serbian traditionally oriented writers and theoreticians. Only in recent times has his work been fully rehabilitated in our scientific community. H. Ž. Jakšić, *Vek pesme Santa Maria della Salute*, Novi Sad 2009, 37–135.

