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TRGOVAČKA UDRUŽENJA I POSLOVI U SREDNJOVEKOVNOM DUBROVNIKU

Rezime

Trgovačka udruženja normirana Dubrovačkim statutom, zvala su se entega, koleganca i roganca. Prva je bila udruženje rada, kapitala i sredstva za obavljanje posla, druga je stajala na razmeđi između trgovačkog posla i preduzeća, dok je treća bila, u stvari, oblik posredništva. Pojedine njihove oblike poznaju i pravni sistemi drugih jadranskih komuna, ali su najrazvijenije norme o njima zabeležene u Dubrovniku. Tu su izvorni oblici udruživanja, preuzeti iz vizantijske prakse i prava, naišli na plodno tle za dalje širenje. Najsloženiji oblik ovih udruženja, entega, nije bila sklapanja posle XVI veka, dok je koleganca postepeno prešla u komaditno društvo, odnosno kreditni posao.

Ključne reči: entega, koleganca, roganca, Dubrovnik, Statut

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TRADING GUILDS AND BUSINESS DEALINGS IN THE MEDIAEVAL DUBROVNIK

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Summary

Trading guilds, regulated under the norms of the Dubrovnik Statute, were known under the names entega, collegantia and rogantia. The first one was an association of labour, capital and funds for carrying out business activities, the second one stood on the cross-road between the trading dealings and enterprising ventures, while the third one was, in actual fact, a form of intermediation. Some of their forms are recognised also in the legal systems of the other Adriatic communes, but the best developed regulating norms prevailed in Dubrovnik. It was there that the original forms of association, adopted from the Byzantine practice and law, found a fertile ground for further expansion. The most complex form of these associations, the entega, was not to be found after the 16th century, while collegantia gradually ascended into a limited partnership society, i.e. into the crediting business.

Key words: entega, collegantia, rogantia, Dubrovnik, Statut

JEL: D02, D71, F1, N94

Udruživanje kapitala radi trgovačkih ili drugih privrednih poduhvata omogućavalo je komunama na jadranskoj obali da iz svog položaja izvuku najveće moguće koristi. Načini na koji se kapital udruživao, odnosi koji su se uspostavljali između trgovaca, poprimali su različite oblike. Ova udruženja bila su s početka regulisana običajnim pravom, i uglavljivana na notarskim ispravama. Trajala su koliko i sam trgovački poduhvat - razvrgavala su se po okončanju posla, povrata uložених sredstava i pripadajuće dobiti. Iako nisu, u srednjovekovlju još bila obezbedila perpetuelnost koja bi dovela do onoga što danas prepoznajemo kao akcionarska društva, donela su druge značajne novine na osnovu kojih je privreda ovih komuna, poglavito dubrovačka, prosperirala. Pre svega, to je mogućnost disperzije rizika koja je povećala sigurnost angažovanja kapitala, zatim i mogućnost malih kapitala da se angažuju u ekonomskoj utakmici. Konačno, jednom normirana, ova trgovačka udruženja pružila su podjednaku zaštitu svim činionicima privrednog napretka: pored samog kapitala, onima koji su ulagali svoj rad i (nautičko) umeće, te onima koji su obezbeđivali brodove kao osnovna sredstva za pomorsku trgovinu.

Srednjovekovno dubrovačko pravo, poznavalo je tri vrste udruženja za pomorsku trgovinu: entegu, kolegancu i roganču [Čremošnik, 1924, str. 10-11]. Od njih je jedino entega po svojoj pravnoj prirodi, isključivi institut pomorskog prava, dok pak kolegancu i roganču, pripadaju trgovačkom prometu uopšte.

Entega

U Dubrovniku, veoma razvijenom trgovačkom centru, entega je slovila kao najznačajnije udruženje za pomorsku trgovinu [A. Cvitanić, 1979, str. 222]. Poznata je bila i ranije, kao stari oblik pomorsko-privrednog

ugovora, na osnovu kog se formirala poslovna zajednica između zainteresovanih lica u pomorskom prevozu. Preuzeta je iz grčkih izvora [Pomorska enciklopedija, II, 1955, str. 691], a otuda je dobila i ime - po grčkoj reči ulog, uložak. U Dubrovnik je najverovatnije ovaj institut pomorskog prava došao, zajedno s terminom, iz vizantijskog prava. Neki naučnici ostavljaju mogućnost, da to nije bilo baš tako, pa smatraju, da su Dubrovčani mogli, da ovaj svoj 'specijalni' institut, nazovu i jednim 'općenitim' imenom [M. Kostrenčić, 1915, str. 287].

Možemo je, s obzirom na razvijeni oblik u srednjovekovnom Dubrovniku, posmatrati kao specifični institut dubrovačkog pomorskog prava. Tim pre, što je nema u pisanim izvorima drugih dalmatinskih gradova, a ne poznaju je ni u Veneciji, niti u gradovima severne Italije. Ovo ne mora da znači da ne postoji mogućnost da je društvo 'na uloge' (*cum entegis*), bilo poznato i u ostalim 'nedubrovačkim' pravnim područjima, iako se ovaj termin nigde ne spominje, sem u Dubrovniku. Vrlo je verovatno, da se entega, u tim drugim primorskim područjima, kako je to inače bilo uobičajeno, normirala običajnim pravom [ibid.]. Od mediteranskih spomenika, slične ugovore poznaju *Constitutum usus* (Piza, XII vek) i Statut Barija (XIII vek) [Pomorska enciklopedija, ibid.]. I u samom Dubrovniku, izgleda da već u XIV veku, polako počinju da padaju u zaborav, pa tako Gondola, dubrovački pravnik iz XVI veka, spominje da se entege više ne primenjuju [J. Cvejić, 1957, str. 370].

Ovom udruženju Statut posvećuje značajan broj odredbi, upravo zbog toga što su entege bile veoma raširene i važne za razvoj pomorske trgovine. U tekstu Statuta spominju se još i kao *enticha* (XXIII glava I knjige Stauta Dubrovnika - O (u) delu koji pomorci daju crkvi Sv. Marije, Stat. Rag, Lib I, cap. XXIII - De parte datur (a) navigantibus ecclesie s. Marie) ili *entica* (Stat. XIII glava III

Association of capital for purpose of conducting trading and other commercial ventures allowed the communes situated on the Adriatic Littoral to draw from its location the highest possible benefits. The manner in which capital was pooled, i.e. relationships formed between merchants acquired different forms. These associations were, at the beginning, regulated by the customary or common law, and established through notary public documents. They lasted for as long as the mercantile venture was in operation - and were terminated upon the completion of the operation at hand, reimbursement of money invested and collection of appurtenant gains made. Although in the mediaeval times perpetuity was not secured which would bring about this that we know today as the shareholding companies, some other significant novelties were introduced on the basis of which the commercial ventures of these communes, especially Dubrovnik ones, have prospered. Primarily, it was the option for risk dispersion which boosted the surety of capital engaged, but also the opportunity for the small-scale capital to be engaged in the commercial race. Finally, once regulated by norms, these trading associations offered an equitable protection to all the stakeholders involved in the economic progress: in addition to capital itself, to those who were investing their labour and (maritime) skills, and to those who provided ships as essential facilities for maritime trade.

Mediaeval Dubrovnik law recognized three types of maritime trade guilds: entega, collegantia, and rogantia [Cremosnik. 1924, p. 10-11]. Amongst them it was only entega that according to its legal nature was an exclusive institute of maritime law, while collegantia and rogantia rather belonged to the commercial trading in general.

Entega

In Dubrovnik, that highly developed trading centre, entega was deemed to be the most important maritime trading guild [A. Cvitanic, 1979, p.222]. It was known in the earlier times as an ancient form of maritime-

commercial contract on the basis of which a business community would be formed between interested parties in the maritime transport. It was adopted from the Greek sources [Maritime Encyclopedia, II, 1955, p. 691], hence its name - after the Greek word for deposit or stake. Dubrovnik saw this institute of maritime law most probably arriving, together with its term, from the Byzantine law. Some scholars are leaving the option open that this was not really the case, being of the view that Dubrovnik dwellers could call this their own 'special' institute under one 'general' name [M.

Kostrencic, 1915, p. 287].

We may deem it to be, in view of its well-developed form in the mediaeval Dubrovnik, a specific institute of Dubrovnik maritime law. Even more so as it is not to be found in any written sources of other Dalmatian cities, and it remained unknown even in Venice and other cities of northern Italy. This does not necessarily mean that there is no possibility for the society "pledging stake" (*cum entegis*) to have been known also in other 'non-Dubrovnik' legal areas, although this term is nowhere else to be mentioned except in Dubrovnik. It is highly probable that entega, in those other littoral areas, as was a usual occurrence, had been regulated under the norms of the customary law [ibid]. Among the Mediterranean mentions, similar contracts are known by the *Constitutum usus* (Pisa, 12th century) and Statute of the city of Bari (13th century) [Maritime Encyclopedia, ibid]. In Dubrovnik itself, it seems that already in the 14th century they are slowly starting to fall into oblivion, thus Gondola, Dubrovnik jurist of the 16th century, mentions that entega are no longer

knjige Statuta Dubrovnika - *O tuženom koji se spremio za putovanje*, Rag, Lib. III, cap. XIII - *De vocato ad placitum qui est supra viagium*). Entege predstavljaju najbolje razrađeni pomorsko-pravni ugovor srednjovekovnog Dubrovnika, na kome je počivalo trostrano pomorsko trgovačko društvo sa istim nazivom i koje je trgovalo pod tačno određenim uslovima. Entega, a videćemo kasnije i koleganca, predstavljale su pravne okvire za poslove kod kojih se novac ulagao kako u prekomorsku, tako i u kopnenu trgovinu.

Entegu kao pravno lice, činili su brodovlasnici, koji su davali na raspolaganje brod, sa svom neophodnom opremom, kao osnovnim sredstvom, mornari, koji su ulagali svoju radnu snagu, u službi na brodu, i trgovci koji su kao vlasnici kapitala, najčešće ulagali novac, kao obrtni kapital, ali ponekad, i to samo kao početni ulog, i robu [Brajković, 1933, str. 200-201]. Ovako formirano udruženje, po svojoj pravnoj prirodi predstavljalo je određenu vrstu društvenog odnosa, asocijaciju u kojoj je svaki njegov član bio u obavezi da doprinosi, srazmerno odnosima određenim u Statutu, i na tome zasnovanom dobitku. Očigledno da se radilo o zajednici interesa, koju su na jednoj strani činili brod, odnosno njegovi patroni i sve što je bilo na njemu, uz mornare sa zapovednikom, dok se na trećoj strani nalazio kapital kojim se trgovalo. Ovi interesi bili su formalizovani kroz entege, kojih je najčešće bilo više, a ne jedna, čineći tako posebnu zajedničku masu - *unam comunem fortunam*. Entega je, dakle, mešovito udruženje kapitala, sredstva za rad i samog rada, nastala pre svega zbog disperzije rizika u pomorskoj trgovini. Entega takođe označava, kao termin, i pojedinačni ulog u jednom ovakvom udruženju.

Kapital, i to kao novac za ulaganje u kupovinu robe za dalju preprodaju tokom bavljenja broda van matične luke, ulagali su trgovci. Jednom unet novac u entegu, bivao je formalizovan kao pojedinačni uložni unosom u brodsku knjigu. U načelu, u entege se davao samo gotov novac, mnogo ređe roba, pa se

tada prevozila na rizik onog koji je šalje, i nije imala ništa zajedničko s ostalim entegama, u koje nije ni spadala, sve dok nije bila prodana. Tek onda, uloženi novac ulazio je u entegu, sa svim pravima i dužnostima po vlasnika [ibid.]. Po prispeću broda sa trgovinskog poduhvata, trgovci su dobijali nazad unetu glavnicu, sa relativno pripadajućom dobiti, zarađenom obrtom njihovog kapitala.

Brodovlasnik je u entegu unosio brod, koji je vredeo određeni deo entega - pojedinačnih uloga, već prema tome koliko je bilo drugih entega. Kapetan, navigator i mornari, kao entege, u ovo udruženje su unosili sopstveni rad. Zakonodavac je Statutom definisao dozvoljene odnose između činilaca entege. Pre isplovljavanja broda, izračunavalo se, koliki udeo čini svaki elemenat u ukupnoj entegi, pa ga je tako 'premerenog', brodski pisar i upisivao u brodsku knjigu - *quaternus*. Da bi se sprečila svaka vrsta zloupotrebe upisa, mornari su zajedno sa zapovednikom, još pre nego što bi brod isplovio iz luke, morali javno da objave pred patronima i ostalim karatistima, koliko tačno ima entega na brodu, pod pretnjom plaćanja kazne opštini u vrednosti 25 perpera. I za broskog pisara, predviđala se kazna od pet perpera, ukoliko bi propustio da ovo nečinjenje prijavi knezu i Malom vijeću (iz VII knjige Statuta Dubrovnika: II glava - *O brodovima koji moraju imati pisara*, XLVI glava - *O svedočanstvu koje kormilar i mornari treba da daju vlasnicima* i XLV glava - *O entegama koje brodski pisar mora da upiše*; Stat. Rag, Lib. VII: cap. II - *De navibus que debent habere scribanum*, cap. XLVI -

in operation [J. Cvejic, 1957, p.370].

Statute devotes to this guild a significant number of clauses, actually because entega were very broadly branched out and important for the development of maritime trade. In the text of the Statute there is also their mention under the name of *enticha* (XXIII Chapter, Volume I of the Dubrovnik Statute - *On the part that mariners are offering to the Church of St. Maria*, Stat. Rag. Lib I, cap. XXIII - *De parte datur (a) navigantibus ecclesie s. Marie*) or *entica* (Stat. XIII Chapter, Volume III of the Dubrovnik Statute - *On the accused who was preparing for voyage*, Rag. Lib. III, cap. XIII - *De vocato ad placitum qui est supra viagium*). Entega were the best elaborated maritime-legal contract of the mediaeval Dubrovnik which was the cornerstone for a tripartite maritime trading guild under the same name, which traded under precisely specified conditions. Entega, and as we shall see later on, collegantia as well, represented legal framework for deals where money was being invested both in the overseas and the mainland trading ventures.

Entega, as a legal entity, consisted of the ship owners who were placing at the disposal their vessel together with all the necessary equipment, as the underlying asset, sailors who were investing their labour while serving on board the ship, and merchants who were in their role of capital owners most often investing money, as the working capital, but have also at time investing goods, yet only as an initial stake [Brajkovic, 1933, p. 200-201]. The association formed in such a manner, in its legal nature was a certain type of social relationship, an association in which every

one of its members was bound to provide his contribution, in proportion to the ratio prescribed in the Statute, and on these grounds acquired profit. Obviously, this was a community of interest, consisting on the one side of the ship, i.e. its patrons with everything on board the vessel, with the mariners headed by the ship commander, while on the third side was the capital used for trading. These interests were formally regulated through entega, which most often were several in number, not only one, thus making up for a particular single or common mass - *unam comunem fortunam*. Hence entega was a mixed association of capital, labour asset facilities and labour itself, established primarily for purpose of risk dispersion in the maritime trade. Entega also designated, as a term, individual deposit or stake in such an association.

Capital, in the form of money for investment into purchase of goods for further re-sale during the ship navigation outside of the home port, was invested by merchants. Once deposited with entega, money became formalized as an individual stake by recording it into the ship's log book. In principle, only ready cash was deposited in entega, much less frequently goods and commodities, and thereupon it was transported at the risk of the sender and had nothing in common with the other entegas, where it did not belong, for as long as it was not sold. Only upon sale, the money invested was entering entega, entailing all the rights and duties for its owner [ibid]. Upon return of the ship to the home port from the trading venture, merchants would be given back their deposited

principal, with the relevant appurtenant profit, gained through their capital turnover.

Ship owner was investing his ship in entega which was worth a certain stake of the entega - individual stakes, depending on how many other entegas were present. The ship's commander, navigator and sailors, in the role of entegas, invested in this association their own labour. Legislator had defined in the Statute the allowed relationships between the entega stakeholders. Prior to ship's sailing out of home

De manifestacione facienda a nauclerio et marinariis patronis, cap. XLV - *De entegis que debent scribi per scribanum navis*).

Isključivo pravo da upravlja entegom, imala je većina vlasnika tako nastale mase, odnosno vlasnika entega-uloga, na istovetan način, kao i što je većina suvlasnika broda imala mogućnost da određuje u kojim vodama i čime će se trgovati. Institucionalizaciju odlučivanja većinom entega unutar formiranog udruženja, posredno dokazuje i odredba Statuta koja utvrđuje sankciju za njeno kršenje. Ukoliko bi se ovo, pravilo većine, prekršilo, pa bi se i povrh toga mornari i zapovednik broda svojevoljno upustili u trgovinu mimo dogovorenog područja i tom prilikom pretrpeli štetu, onda su oni, a ne nikako brodovlasnici i trgovci, bili u obavezi da nadoknade sav gubitak. Tako je bivalo, na primer, u situacijama kada su i pored toga što su entege bile date za plovidbeni poduhvat unutar Jadrana - *intra Culfum*, mornari svojevoljno, sa zapovednikom, isplovili u drugi akvatorijum (LXVIII glava VII knjige Statuta Dubrovnika - *O onima koji primaju enetege za plovidbu po Jadranu*, Stat. Rag, Lib. VII, cap. LXVIII - *De hiis recipiunt entegas infra Culfum* i već citirana glava XLVI iste knjige Statuta, Stat. Rag, Lib. VII, cap. XLVI).

Sve ono, što su članovi dali u društvo, ostajalo je i dalje njihova isključiva svojina, svaki osnivač entega, i dalje je ostajao vlasnik onog što je u nju i uneo, pa je tako brodovlasnik imao svojinu na plovilu, a trgovac vlasništvo na novčanom kapitalu (iz VII knjige Statuta Dubrovnika: XLIV glava - *O brodovima koji plove s entegama* i Glava XLVII - *O brodu koji pretrpi*

brodolom; Stat. Rag, Lib. VII: cap. XLIV - *De navibus que vadunt cum entegis* i cap. XLVII - *De navi que patitur naufragium*). Iz ove činjenice proističe i način raspodele dobiti, odnosno gubitka od trgovačkog poduhvata za koji je entega sklopljena.

Statut u određenoj meri preuzima na sebe i zaštitu brodovlja i radne snage vezane za njih od premoći novčanog kapitala, svakako mobilnijeg i efikasnijeg, pa time potencijalno pretećeg po čitavo ekonomsko ustrojstvo Republike. To se vidi po tome što je Statutom miksimizirana dobit koja se mogla steći novčanim ulogom u entegu. Celokupna dobit koju bi brod ostvario ne samo trgujući entegama, nego i od vozarine naplaćene od ostale robe koja je mogla da se nađe na lađi, u odlasku i povratku, najamnine, takođe u oba smera, kao i svaki drugi mogući dobitak, delio se po prethodno, tačno utvrđenim pravilima i u zavisnosti od toga da li se plovidbeno putovanje obavljalo unutar ili izvan voda Jadranskog mora. Ako se radilo o plovidbi na Jadranu, 2/3 dobitka sledovalo je vlasniku broda i mornarima, dok se 1/3 istog davala vlasniku novca, kako Statut izričito kaže:

'... a od sve dobiti koju Gospod dâ od tog novca, a i od brodarine u odlaski i u povratku, te od drugih prihoda koje taj brod ostvari, dva dela neka dobiju brod i mornari, a treći deo pripada tom novcu.' - XLII glava VII knjige Statuta Dubrovnika - *O novcu koji ide brodom* (*'... et de toto prode quod inde Dominus dederit de dicta moneta, et eciam de naulo eundo et reddeundo et de aliis utilitatibus quas habere possit ipse navis vel lignum, duas partes lucri habeat navis et marinarii, et terciam partem ipsa moneta habere debet'* - Stat. Rag, Lib. VII, cap. XLII - *De pecunia que vadit cum navi*).

Za slučaj da je, pak, plovilo putovalo van teritorija Jadranskog mora, dobit se raspoređivala tako, što se od svega stečenog, polovina davala

Sv. Vlaho drži maketu Dubrovnika
St Vlaho holding the model of
Dubrovnik

port, calculation was made as to the size of the stake on the basis of each element in the total entega, and so "measured" it was entered by the ship's clerical mate into the ship's log book - *quaternus*. In order to prevent any misuse of the entry, sailors had the duty, together with their commanding officer, the captain, even before the ship sailed out of port, to announce publicly before the patrons and other caratists, just precisely how much entegas are there on board, under the threat of paying a money fine, in case of omission, to the municipality in the value of 25 perpers. Penalty was also prescribed for the ship's clerical mate in the amount of five perpers if he would fail to report this omission to the duke and the Small Council (from Volume VII of the Statute of Dubrovnik: II Chapter - *On ships that must have ship's clerical mate*, XLVI Chapter - *On testimonies that the navigator and the sailors should give to the ship owners*, and XLV Chapter - *On entegas that the ship's clerical mate (scrivener, keeper of records) must record*; Stat. Rag. Lib. VII: cap. II - *De navibus que debent habere scribanum*, cap. XLVI - *De manifestacione facienda a nauclerio et marinariis patronis*, cap. XLV - *De entegis que debent scribi per scribanum navis*).

The exclusive right to manage entega rested with the majority of owners of so collected mass, i.e. owners of the entega/stakes, in an identical manner, as the majority of co-owners of the ship had the option to decide in which waters and with what goods trading will be conducted. Institutionalization of decision-making with the majority of entega within the formed association is indirectly substantiated by the provision of the Statute prescribing a sanction for its breach. In case this majority right would be breached, and the mariners and the ship's commander would willfully engage in trade beyond the agreed area and on such occasion suffer losses, then they would be held liable, and never the ship owners and merchants, for compensation of all the losses. This was happening, for example, in the situations when although entegas were given for the navigation venture within the Adriatic Sea - *intra Culfum*, mariners would of their own will, together with the captain, sail out into another aquatorium (LXVIII Chapter, Volume VII of the Statute of Dubrovnik - *On those who are receiving entegas for navigation in the Adriatic Sea*, Stat. Rag. Lib.

VII, cap. LXVIII - *De hiis recipiunt entegas infra Culfum* and the already quoted XLVI Chapter of the same volume of the Statute, Stat. Rag. Lib. VII, cap. XLVI).

Everything that the members have given to the society still remained their own exclusive property, thus every founding member of the entega remained the owner of what he had invested in it, so that the ship owner had his proprietary rights over the vessel, while the merchant retained ownership of the monetary capital invested (from Volume VII of the Statute of Dubrovnik, XLIV Chapter - *On ships navigating with entegas*; and XLVII Chapter - *On the ship suffering shipwreck*; Stat. Rag. Lib. VII: cap. XLIV - *De navibus que vadunt cum entegis*, and cap. XLVII - *De navi que patitur naufragium*). This fact gives an insight into the manner of distribution of profit, i.e. loss from the trading venture, for which the entega was intended and contracted.

The Statute, to a certain extent, takes it upon itself also to protect navigation vessels and labour power thereto related from the monetary capital supremacy, certainly more mobile and efficient and thus potentially threatening for the entire economic set up of the Republic. This is evidenced by the fact that Statute prescribes maximized profit that can be acquired through the monetary deposit in the entega. The entire profit to be acquired by the ship trading not only in entegas but also from the freight transport charges collected on other goods that could be found as cargo on board the ship, on departure and return voyages, rentals also in two-way navigation, but also every other possible gain were to be divided according to the previously precisely determined rules, depending on whether the navigation voyage was taking place within or outside of the Adriatic Sea waters. If it was a navigation route along the Adriatic, 2/3 of the profit was to be allocated to the ship owner and the ship crew (sailors), while 1/3 of the profit was given to the owner of the money, as explicitly stipulated in the Statute:

'... and from all profit that the Lord would grant from that money, but also from the ship cargo transport charges, on the outbound and the homebound voyage, as also from other revenues that the ship would acquire, two parts are to be given to the ship and its mariners, and the third part will belong to that money.'- XLII Chapter, Volume

trgovcu, zbog povećanog rizika po kapital, dok su drugu, delili na jednake delove, vlasnik broda i mornari:

'Ako bi dubrovački brod isplovio izvan Jadrana s entegama, uz dozvolu vlasnika novca, taj novac ide (plasira se) na izričit rizik vlasnika, koji prethodi od mora i ljudske sile. I od sve dobiti koja se ostavi, polovina pripada entegama, a druga polovina brodu s mornarima.' - LXIII glava VII knjige - O brodovima koji isplovjavaju van Jadrana. (*'Si navis vel lignum Ragusii exiret de Culfo cum entegis de voluntate dominorum monete, ire debeat ipsa moneta ad fortunam dominorum maris et gentis clare factam. Et de toto prode quod habebunt, entege predictae habeant medietatem lucri, et alteram medietatem habeat navis cum marinariis'* - Stat. Rag, Lib. VII, cap. XLIII - *De navibus que exeunt de Culfo*).

Zakonodavac Republike štitio je, s druge strane, i novčani kapital. Da bi se on zaštitio od mogućih zloupotreba, bilo je zabranjeno mornarima i navigatoru, da ulažu sopstveni novac, uključujući i onaj od parasprodija u ma koji trgovački posao, sve dok se ne iscrpi suma data za entege (LIII glava VII knjige Statuta Dubrovnika - *O onima koji ne ulože sav novac*, Stat. Rag, Lib. VII, cap. LIII - *De hiis qui non investiunt omnes denarios*). Ukoliko bi se desilo, da mornari ipak padnu u iskušenje, pa postupe uprkos ovoj zabrani, zarad nekog unosnog posla, svaki vlasnik broda, koji nije bio na tom putovanju, bio je po Statutu ovlašćen, da uz naknadu otkupi, preuzme od mornara kupljenu robu, i to za sumu do visine neiskorišćenih

entega [Marinović, 1963, str. 443-446.].

Gubitak nastao iz trgovačkog poduhvata zbog koga je entega sklapanja, srazmerno je raspoređivan, na isti način kao i dobit. Isto tako, u jednakim udelima kao što su delili i dobit, svi ugovarači u entegi, snosili su gubitak, nadoknađujući štetu svako za sebe, rečima Statuta:

'Određujemo da svi brodovi koji plove sa entegama Dubrovčana, pa izgube deo novca uložnog u entege, kao i od robe, ili žita, ili kakvog god drugog uloga u entege, na isti način kao što bi imali udeo u dobiti, snosiće i štetu, svako za sebe, i brod i mornari.' - glava XLIX knjige VII Statuta Dubrovnika - *O onima koji izgube deo entega* (*'Statutimus quod omnes naves vel ligna que vadunt cum entegis de hominibus Ragusii et perdunt de denariis qui sunt entegati, et eciam tam de mereibus quam de blado, vel de quolibet alio quod esset entegatum, sicut ipsi debent habere partem de prode, ita volumus ut ipsi debeant portare dampnum in restitutione, quilibet per se, tam navis quam marinarii.'* (Stat. Rag, Lib. VII, cap. XLIX - *De hiis qui perdunt entegis*).

Trgovački rizik snosili su, videli se iz odredbi Statuta, svi koji su se udružili u entegu, ali do visine vrednosti svog uloga. Gubitak nastao u trgovini nije mogao da pređe vrednost uložnog u entegu, ni za jednu od tri strane. Šteta koju bi udruženje pretrpelo usled više sile, posmatrana je i regulisana dvostepeno. Oštećenja na brodu nastala zbog lošeg vremena, ili gusarskog napada, padala su na teret ostvarene dobiti koja je pripadala brodovlasniku, kao i na teret dobiti od entega, ali nikako ne od glavnice entega (glava XLVII knjige VII Statuta Dubrovnika - *O brodu koji pretrpi brodolom*, Stat. Rag, Lib. VII, cap. XLVII - *De navi que patitur naufragium*). Nameće se zaključak da je brodovlasnik mogao samo delimično da računa na obeštećenje od ostvarene dobiti od mase imovine koju je prevezio, naravno ukoliko ju je bilo. Ako je nije bilo, ili ako nije bila dovoljna, teret štete nije imao na koga drugog da padne, osim na njega. Isto tako, gubitak novca ili robe u koju je novac od entega uložan, padao je na isključivi teret

VII of the Statute of Dubrovnik - On the money sailing with the ship ('... *et de toto prode quod inde Dominus dederit de dicta moneta, et eciam de nauulo eundo et reddeundo et de aliis utilitatibus quas habere possit ipse navis vel lignum, duas partes lucri habeat navis et marinarii, et terciam partem ipsa moneta habere debet*' - Stat. Rag. Lib. VII, cap. XLII - *De pecunia que vadit cum navi*).

In case the vessel was sailing beyond the territory of the Adriatic Sea waters, profit was to be allocated in such a way that all gains acquired would be divided into half, one half given to the merchant because of a higher risk to which his capital was exposed, and the other half to be divided in equal parts by the ship owner and the mariners:

'If the Dubrovnik ship was to sail outside of the Adriatic waters with the entegas, with the permission of the owner of the money, such money would go (be placed) at the explicit risk of the owner, the risk arising both from the sea and from the human force. And from all profit gained, one half would belong to the entegas, while the other part would be given to the ship and its mariners.' - LXIII Chapter, Volume VII - *On ships sailing beyond the Adriatic Sea*. ('*Si navis vel lignum Ragusii exiret de Culfo cum entegis de voluntate dominorum monete, ire debeat ipsa moneta ad fortunam dominorum maris et gentis clare factam. Et de toto prode quod habebunt, entege predictae habeant medietatem lucri, et alteram medietatem habeat navis cum marinariis*.' - Stat. Rag. Lib. VII, cap. XLIII - *De navibus que exeunt de Culfo*).

Legislator of the Republic was protecting, on the other side, the monetary capital. In order to protect it from the possible misuse, it was prohibited to the mariners and the navigator to invest their own money, including the money from parasprodia in any trading deal, for as long as the sum given for entega was not exhausted (LIII Chapter, Volume VII of the Statute of Dubrovnik - *On those who do not invest all the money*, Stat. Rag. Lib. VII, cap. LIII - *De hiis qui non investiunt omnes denarios*). If it would happen that the mariners would fall in the temptation and act against this prohibition, for purpose of some lucrative deal, every ship owner who was not present during that voyage, would be authorized under the Statute, to repurchase, with compensation, and take over from the mariners the goods so acquired, and this for the amount up to the sum of the unused

entegas [Marinovic, 1963, p. 443-446].

The loss incurred from the trading venture for purpose of which entega was established, would be proportionally distributed, in the same manner as in the case of profit, compensating for the damage everyone for himself, according to the wording of the Statute:

'We hereby decree that all the ships navigating with entegas of Dubrovnik dwellers, if they should loose a part of money invested in entegas, but also in some of the goods, or wheat, or any other stake in entegas, in the same manner in which they were to have their share in the profit, they will bear the losses, every man for himself, and the ship and mariners.' XLIX Chapter, Volume VII of the Statute of Dubrovnik - *On those losing a part of entega* ('*Statutimus quod omnes naves vel ligna que vadunt cum entegis de hominibus Ragusii et perdunt de denariis qui sunt entegati, et eciam tam de mereibus quam de blado, vel de quolibet alio quod esset entegatum, sicut ipsi debent habere partem de prode, ita volumus ut ipsi debeant portare dampnum in restitutione, quilibet per se, tam navis quam marinarii*.' (Stat. Rag. Lib. VII, cap. .XLIX - *De hiis que perdunt entegis*).

The trading risk was borne, as prescribed in the provisions of the Statute, by all those who have associated themselves in the entega, but only up to the amount of value of their stake. The loss incurred in trading could not exceed the value invested in entega, for none of the three parties. The damages suffered by the association in case of force majeure were regulated in two degrees. Damages caused to the sailing vessel by bad weather, or a pirate attack, were charged on the profit made which was allocated to the ship owner, and also on the entega gains, but never on the principal sum of the entega (XLVII Chapter, Volume VII of the Statute of Dubrovnik - *On the sailing vessel suffering a shipwreck*, Stat. Rag. Lib. VII, cap. XLVII - *De navi que patitur naufragium*). The conclusion is imminent here that the ship owner could only count in part on the indemnity from the profit made of the mass of the assets that he was transporting, of course, if there was any. If it was not present, or not sufficient, the burden of damage could not be borne by anyone else but himself alone. Concurrently, the loss of money or goods that the entega money was invested in was charged exclusively on the owner of the money entega - the merchant. Furthermore,

vlasnika novčanih entega - trgovaca. Statut, štaviše, navodi da ovima nije dozvoljeno, da od vlasnika broda i mornara traže, da štetu nadoknade makar u nekom delu. Vlasnik kapitala je, očigledno, snosio sav rizik za novac i robu koja se prevozila, bilo na Jadranu, bilo van njega (Stat. Rag, Lib. VII, cap. XLIX).

Svi ulagači trgovci srazmerno su snosili nastalu štetu na jednoj od novčanih ili robnih entega, budući da smo rekli, da su sve pojedinačno, zajedno sa ostalima činile zajedničku masu (glava XLIV knjige VII Statuta Dubrovnika - *O brodovima koji plove sa enetgama*, Stat. Rag, Lib. VII, cap. XLIV - *De navibus que vadunt cum entegis*). Ova, XLIV odredba VII knjige Dubrovačkog statuta, govori samo o 'gospodarima entega' - '*dominorum entegarum comuniter*', ne određujući specifično da li se radi o trgovcima, karatisitima (suvlasnicima broda), ili pomorcima. No, pošto je ranije utvrđeno da u entegi svako ostaje vlasnik svog uloga, i pošto je izrekom rečeno da štetu na brodu snose njegovi vlasnici, mišljenja smo da se ovaj propis odnosi samo na entege u vlasništvu trgovaca. Drugačije tumačenje bi dovelo do preklapanja pravnih normi i do pravne konfuzije.

Drugi stav odredbe govori dalje u prilog našeg tumačenja. U njemu se govori o robi koja se poverava na početku sklapanja entege, za prodaju i kasniji ulog u entegu. Ona je izdvojena kao posebna trgovačka roba - tovar, do trenutka prodaje i transformacije u novac. Jednom kada se kao novac pridruži masi entega, deli sa njima istu sudbinu. Odredba, dakle, do kraja i sledstveno govori o trgovačkim entegama.

Potpuni nestanak broda u brodolomu, ili usled neprijateljskog ili gusarskog napada, praktično je poništavao entegu kao udruženje za pojedinačni trgovački poduhvat: celokupna šteta nestanka plovila pogađala je samo njegove predašnje vlasnike. Delimično učešće u nadoknađivanju štete, predviđeno je isključivo iz dobiti koju je sam brod ostvario, kao i do visine dobiti trgovaca, s tim da se nikako ne

dira u njihov osnovni, uloženi kapital. Potpuna havarija i nestanak plovila, razvrgavao je entegu kao trgovinsko udruženje, ne ostavljajući nikakve obaveze iza sebe (Stat. Rag, Lib. VII, cap. XLVII - *De navi que patitur naufragium*).

Na brodovlasniku je, tako, počivao sav rizik propasti broda, što znači da entega nije bila do kraja razvijeno društvo kapitala, koje bi bilo vlasnik sve imovine kojom je raspolagala. Naprotiv, brodovlasnik je ostajao vlasnik broda i sve vreme dok je on činio deo entege.

Elementar demokratčnosti prati entege kao njihov sastavni deo, jer se dobit od entega brodske posade raspoređivala na jednake delove između svih članova posade, bez obzira da li se radi o kapetanu, ili mornarima.

Entega, kao način udruživanja rada,

kapitala i sredstava - broda, pokazuje veliku prilagodljivost tržištu i uslovima poslovanja u pomorskoj trgovini srednjeg veka. Statut je zbog toga na ovo udruživanje obratio posebnu pažnju, čuvajući interese sva tri njegova segmenta, i to u okvirima trgovačkog

poduhvata zbog koga je nastajalo.

Sve izvan tog poduhvata, izvan entega samih, vraćalo se u uobičajene vlasničke i privredne odnose. Tako je brodovlasnik snosio rizik za propast broda, jer njegovom propašću propada i trgovački poduhvat, pa entege gube suštinu i smisao. Propast same trgovine, u potpunosti opet pada na trgovce, one koji daju kapitalni deo entege, i ne može teretiti posadu, jer enetega nije ispunila zadatak zbog koga je osnovana, pa onda ni za mornare ne može biti nikakvih posledica. Rizik koji su oni snosili nije se ticao ni broda, niti novčanog kapitala, već samo izmakle dobiti u slučaju poslovanja s gubitkom iz različitih razloga. Njihov rad kao ulog, bez rizika vezanog za kapitalni deo entege, daje joj obeležje društva lica.

Novčani kapital, kao najfleksibilniji i najbržeg prometa, lako bi ugrozio i brodovlasnike i pomorce, da nije bilo ove statutarne zaštite. Bez nje bi brzo čitava trgovina, svi koji u njoj učestvuju i sva sredstva kojima

Statute stipulates that those (merchants) were not allowed to seek from the owner of the ship and mariners compensation of damages even in the least part. Owner of capital was, obviously, bearing the burden of entire risk for the money and goods that were transported, either in the Adriatic waters, or beyond (Stat. Rag. Lib. VII, cap. XLIX).

All the investing merchants were proportionally bearing the damages suffered by one of the monetary or commodity entegas, in view of the fact as we have already mentioned, that all of them, both individually and together with others, jointly were making up for the common entega mass (XLIV Chapter, Volume VII of the Statute of Dubrovnik - *On ships navigating with entegas*, Stat. Rag. Lib. VII, cap. XLIV - *De navibus que vadunt cum entegis*). This one, the XLIVth provision of Volume VII of the Dubrovnik Statute speaks only of '*the entega masters*' - '*dominorum entegarum comuniter*', without specifying whether they are merchants, caratistas (co-owners of the ship), or mariners. Nevertheless, as it was previously found that in an entega everyone remains the owner of his invested stake, and as it was prescribed in the provision that the damage suffered by the ship is borne by its owners, we are of the view that this provision pertains only to the entegas that were owned by the merchants. Any other interpretation would lead to the overlapping of the legal norms and to the legal confusion.

The second paragraph of the provision further speaks in favor of our interpretation. It deals with the goods that are being entrusted, at the beginning of contracting of the entega, for sale and a later stake in the entega. It is singled out as particular trading goods - the cargo, up to the moment of sale and transformation into money. Once it has joined, in the form of money, the entega mass, it shares with it the same destiny. The provision, therefore, all through to the end and consistently speaks of the trading entegas.

Complete disappearance of the ship during the shipwreck, or caused by any hostile or pirate attack practically annihilated the entega as an association for a particular trading venture: the entire damage of the ship disappearance was the loss incurred solely by the vessel's previous owners. Partial participation in the

compensation of damage, foreseen exclusively from the profit that the ship itself made, and up to the amount of merchants' gains, provided in no case whatsoever that their basic invested capital was to be used. Total damage or disappearance of the sailing vessel was terminating the entega as a trading association, without leaving behind any liabilities (Stat. Rag. Lib. VII, cap. XLVII - *De navi que patitur naufragium*).

Hence, the ship owner was bearing the entire risk of the ship disappearance, which means that entega was not a completely developed capital association that would be the owner of all the property under its disposal. On the contrary, the ship owner remained the owner of the sailing vessel throughout the time it was part of the entega.

Democratic element was present in the entegas as their component part, in the light of the fact that the profit from entega the ship crew were distributing in equal shares amongst all the members of the crew, regardless of the rank, whether it was the ship's commander, captain, or the mariners.

Entega, as the form of associating labour, capital and assets - the ship, shows a great adaptability to the market and business conditions prevailing in the maritime trade of the middle ages. Hence the Statute paid its special attention to this form of association, safeguarding interests of all of its three segments, and this within the framework of the trading venture for which it was established.

Everything beyond this venture, beyond entegas themselves, would be returned to the initial ownership and commercial relations. Hence the ship owner was bearing the risk of the ship disappearance, as with its destruction the entire trading venture fails, and entegas lose their essential meaning and *raison d'être*. Failure of trade itself was fully borne by the merchants, those who were providing capital stake in the entega, and could not be burdened on the crew, as the entega had failed to fulfill its task for which it was established, so for the mariners there could be no consequences to bear. The risk they were facing was not related either to the ship or the money capital, but only to the lost profit in case of business dealing with the loss for various reasons. Their labour as a stake, without the risk related to the capital

se obavlja, završila u rukama nekoliko porodica, vlasnika finansijskog kapitala. A to bi Dubrovnik lišilo demokratije, kao toliko cenjenog društvenog uređenja, makar i u aristokratskom obliku, i pretvorilo ga u oligarhiju, vremenom seleći

društveno bogatstvo u samo nekoliko porodica, osiromašujući sve ostale građane i nobile, i svakako uzrokujući društvene turbulencije.

No, to ne znači da i sam novčani kapital nije bio zaštićen. Interes samog kapitala, kao okosnice entege, bio je sačuvan institutom prava prečeg ulaganja: nijedan član posade nije mogao ulagati sopstveni novac u kupovinu robe, pre nego što se iscrpu trgovačke entege, one date u novcu. Primat zarađivanja davan je, tako, vlasnicima novčanog kapitala, što sa svoje strane govori o punoj svesti zakonodavaca Republike o važnosti obrta kapitala i trgovine.

Konačno, kao i rad i brodovlasništvo, i sami trgovci, sa svojim kapitalom, zaštićeni su bili dok se trgovački poduhvat ostvaruje, odnosno dok entege postoje, ali gubitak od njegove propasti snose samo oni.

Republika Sv. Vlahu pažljivo je čuvala u entegama sva tri neophodna segmenta svog privrednog i društvenog prosperiteta: oni koji su se bavili pomorstvom, one koji su trgovali i one koji su ulagali u brodovlje. Zapostavljanje samo jednog od njih, podređivanje interesima drugog, ili druga dva segmenta, srušilo bi temelje dubrovačke trgovačke moći u krtakom vremenu. Zakonodavci su očigledno bili svesni da, stešnjeni između planina i mora, nemaju ništa drugo do brodova, onih koji njima upravljaju i onih koji na njima trguju. Entege su, svakako, nastale spontano, ali ih je Statut normirao u najboljem obliku i time učvrstio načine poslovanja i bogaćenja Dubrovnika.

Koleganca

Pored entega, Statut nam daje podatke i o drugoj vrsti pomorskog trgovačkog udruženja - *collegantia*, koje je bilo od posebnog značaja za

one Dubrovčane, koji nisu imali mogućnosti da samostalno putuju i trguju. Termin poreklo vodi od latinske reči *colligere*, skupiti, združiti [Pomorska enciklopedija, II, 1955, str. 252]. *Collegancia* (*collogancia*, *colligancia*) predstavlja srednjovekovno

trgovački udruženje koje se pored Dubrovačkog, javlja i u statutima drugih dalmatinskih gradova - Splitskom (1240), Zadarskom (1305), Paškom (1433) i Šibenskom (XVI vek) [Pomorska enciklopedija, *ibid*]. Dubrovački Statut dozvoljava je samo između dubrovačkih građana (Stat. Rag. Lib. VII, cap. L). Po Kostrenčiću, *collegantia* je tipično naše trgovačko društvo, vezano za domaće obale Jadrana, s tim što po tipu pripada i moglo bi da se uklopi u mnogo šire društvo *commenda* (komanditno), koje je ozbiljno delovalo na Sredozemnom moru [Kostrenčić, *ibid*, str. 288].

Kolegancu, kao vrstu ugovora *commenda marittima* (pomorski komanditni), mogla su da čine i samo dva ugovarača. Prva ugovorna strana, *socius stans*, unosila je u društvo isključivo novac ili robu, koju je poveravala i kojom je trgovala druga ugovorna strana, *tractator*, i koji je umesto kapitala, u društvo ulagao svoj rad [Brajković, *ibid*, str. 197]. J. Cvejić ističe, da termine *socius stans* i *tractator*, ne možemo baš da vežemo za dubrovačke izvore, već za kasnije, italijansko pravo [Cvejić, *ibid*, str. 357]. Na oko, koleganca je ličila na rimsku *societas*, ali samo spolja, jer za kolegancu je manje bitno udruživanje, a više dobijanje kredita udruživanjem. Po odredbama nekih Sredozemnih statuta, koleganca je bila jednostrani ugovor, jer je isključivo *socius stans*, ugovarač koji je u društvo unosio kapital, snosio sav rizik ugovorenog posla, dok je *tractator*, koji je ugovarao, samo obavljao poslove [Pomorska enciklopedija, *ibid*; Cvitanić, *ibid*, str. 222]. Stoga, ma koliko da sa konačnom preciznošću ne možemo da odredimo pravnu prirodu kolegance, što smo uostalom već imali i kod entege, smatraćemo, da ovaj trgovački institut svakako ponajviše odgovara pravnom poslu generalnog kredita [Marinović, *ibid*, str. 446].

part of the entega, gives them the features of the partnership.

Monetary capital, as the most flexible and of the fastest turnover, could easily endanger both the ship owners and mariners if this particular statutory protection was absent. Without it the entire trading would soon, together with all of those participating in it and all the assets used for its implementation, finish in the hands of only a few families, owners of financial capital. And that would deprive Dubrovnik of its democracy, that so much treasured social set up, albeit in an aristocratic form, and would have transformed it into an oligarchy, relocating over time social wealth into the hands of only a few families, with the remaining citizens and nobility impoverished and certainly causing social turbulences.

Yet this does not necessarily mean that the monetary capital itself was not also protected. The interest of capital itself, as the backbone of the entega, was safeguarded through the institute of prior right of investment: none of the crew members was allowed to invest his own money in the purchase of goods, before the trading entegas were exhausted, those given in money. Hence the priority in earning was given to the owners of monetary capital, which on its own side speaks of the full awareness that the Republic's legislator had of the importance of capital turnover and trade.

Finally, just like labour and ship ownership, merchants themselves together with their capital were protected for as long as the trading venture was in progress, i.e. for as long as the entegas exist, but the loss incurred from entega failure was borne by merchants alone.

The Republic of Saint Blaise was diligently preserving in the entegas all of the three necessary segments of its economic and social prosperity: those engaged in the maritime navigation business, those who were trading, and those who were investing in sailing vessels. Neglect of only one of them, subordination to the interests of the other, or rather the other two segments, would have crushed the foundations of the Dubrovnik trading power over a very short period of time. Legislator obviously was aware that Dubrovnik, squeezed between mountains and the sea, did not have anything else but the ships, those who were

navigating them and those who were trading on them. Entegas have certainly appeared spontaneously, but the Statute regulated their norms of operation in the best possible form having thus reinforced the manner in which business was conducted and the opulent prosperity of Dubrovnik achieved.

Collegantia

In addition to the entegas, Statute offers us data on yet another form of maritime trading association - *collegantia*, which was of particular importance for those Dubrovnik dwellers that did not have the options for independent travel and trading. The term derives from the Latin word *colligere*, to collect, pool together [Maritime Encyclopedia, II, 1955, p. 252]. *Collegancia* (*collogancia*, *colligancia*) is the term designating mediaeval trading association which appears, further to the Dubrovnik one, also in the statutes of other Dalmatian cities - Statute of Split (1240), Zadar (1305), Pag (1433), and Sibenik (16th century) [Maritime Encyclopedia, *ibid.*]. Dubrovnik Statute allows *collegantia* only to be established between Dubrovnik citizens (Stat. Rag. Lib. VII, cap. L). According to Kostrencic, *collegantia* is typical for our trading society, linked to the domestic Adriatic coasts, although in its type it could have belonged and fitted in the much broader society *commenda* (comandite society), which had some serious operations along the Mediterranean Sea [Kostrencic, *ibid.*, p. 288].

Collegantia, as the type of contract *commenda marittima* (maritime comandite contract) could be agreed upon even by two contracting parties alone. The first contracting party, *socius stans*, was investing in the society exclusively money or goods, which it was confining to the other contracting party, *tractator*, that would be engaged in trading of the same, and which instead of capital was investing in society its labour [Brajkovic, *ibid.*, p. 197]. J. Cvejic argues that the terms *socius stans* and *tractator* can not be really linked with the Dubrovnik sources, but rather with some later ones, of the Italian law [Cvejic, *ibid.*, p. 357]. *Collegantia* appeared at a glance similar to the Roman *societas*, but only on the outside, as for *collegantia* much less important was forming the association

Suprotno statutima ostalih dalmatinskih gradova, po kojima je *socius stans*, mogao u društvo da uloži i brod ili pak neki karat, po dubrovačkom pravu mu to nije bilo dozvoljeno, jer se kolegancu zasnivala samo i jedino na ulaganju novca ili robe. Ali, pošto je Statutom bilo dozvoljeno i da se drugačije ugovara, nije nemoguće, da je verovatno i u Dubrovniku, u kasnijem periodu, ovaj institut od prvobitne jednostavne forme, kasnije dobio nov i složeniji oblik i da nije isključeno, da je tada u kolegancu mogao da se unese i brod, ili pak neki njegov deo [Danilović, 1970, str. 289-290]. Ovaj ugovor, zapravo, predstavlja izvesnu kombinaciju ugovora o ortakluku i ugovora o nalogu, pa se može tretirati i kao jedan i kao drugi, odnosno i kao uspostavljanje privrednog društva, i kao trgovački posao. Poseban značaj koji je imala kolegancu, bilo je to, što je predstavljala jedan od načina da se dođe do kredita, a pretpostavlja se da se izrodila iz pomorskog zajma, pošto je ugovaranje kamata, znamo, Statutom bilo zabranjeno. Njen prototip, imamo u vizantijskom ugovoru *ηρεοκοινονιφα* [ibid, str. 290], a proizašao je iz običaja koji su bili rašireni među trgovcima po Sredozemlju. Svakako su ga poznavali i Arapi, pod imenom *kirad* i *scirkatinan*. Postoje i podaci, da su se pod imenom kolegancu, zaključivali i ugovori, kod kojih se novac nije ulagao u pomorsku trgovinu, niti u trgovinu uopšte, već se pod istim, ili sličnim uslovima davao na korišćenje zanatlijama. U tim se ugovorima naglašava, da će traktator koristiti novac samo u okviru svoje delatnosti, da će raditi 'de arte sua'. Često se u njima nalazi i klauzula kojom se zanatlija obavezuje da novac neće iznositi iz Dubrovnika [Cvejić, 1957, str. 357. i 360/361].

Iako kolegancu nije strogo vezana za pomorstvo, već je institut trgovačkog prometa uopšte, regulisana je u okviru VII knjige Dubrovačkog statuta, u kojoj se nalazi *sedes materiae* pomorskog prava, što nas nesumljivo dovodi do zaključka, da je dubrovačka trgovina,

svakako u eri statutarnih propisa, bila pretežno pomorska. Statut kolegancu reguliše u dve susedne odredbe, na sledeći način:

'Ukoliko bi Dubrovčanin primio od drugog Dubrovčanina u koleganciju novac ili robu radi plovidbe po Jadranu, on ih mora držati na rizik onog čiji su. Od dobiti koju ostvari, dva dela dobija vlasnik novca ili robe, a on treći deo, ukoliko vlasnik nije sa njim drugačije ugovorio. I neka bude znano da on ne sme da napusti vode Jadrana bez dozvole vlasnika, a ako bi to učinio i nešto se dogovdi novcu, sav rizik pada na njega i na njegova dobra.' - glava L knjige VII Statuta Dubrovnika - O onima koji primaju koleganciju za plovidbu po Jadranu ('Si Raguseus accipit in colloganciam tam denarios quam merces ab alio Ragusino causa navigandi infra Culfum, ipsos denarios seu merces debent habere ad fortunam ejus cujus sunt clare facte. Et de lucro quod habebit dominus denariorum vel mercium, debet habere duas partes, et ipse habebit terciam; salvo si ipse dominus pactum aliud cum eo fecisset. Et est sciendum quod ipse non debet exire de Culfu sine voluntate ejus, et si exiret sine ejus voluntate et aliquid deveniret de denariis, totum periculum maneat super eum et super bona sua' - Stat. Rag, Lib. VII, cap. L - De hiis qui accipiunt colegancias intra Culfum), i

'Ako Dubrovčanin primi u koleganciju novac ili robu, pa nešto od toga izgubi, a vlasnik novca ili robe želi da ih preuzme, neku mu je to slobodno, a onaj koji je izgubio njihov deo neka ne snosi štetu. Ukoliko vlasnik novca želi da mu ga ostavi, on je dužan da ga zadrži i sa njime da posluje dok ne bude mogao da nadoknadi štetu. Ovo se odnosi na trgovca, a ne na brod, osim ako nije bilo drugačije ugovoreno.' - glava LI knjige VII Statuta Dubrovnika - O onima koji nešto prime u koleganciju pa od toga izgube deo ('Si aliquis Raguseus accipit in colleganciam

tam denarios quam merces et ipse amitteret de ipsis denariis vel mercibus, et dominus monete vel mercium velet recipere ipsam, licitum sit ei facere; et ille qui perdiderit de eo, nullum dampnum substineat. Si vero dominus denariorum voluerit ipsos dimittere eidem, ille tenetur ipsos denarios tenere et cum eis navigare, donec satisfacere

than obtaining credit through such association. According to the provisions of some of the Mediterranean statutes, collegantia was a unilateral contract, because it was exclusively *socius stans*, contracting party that was investing capital in the society, that was bearing the entire risk of the contracted transaction, while *tractator*, the other contracting party, was only executing work on the transaction [Maritime Encyclopedia, *ibid*; Cvitanic, *ibid*, p. 222]. Hence, no matter how unable we are to determine collegantia legal nature with final precision, the case that we have already encountered with entega, we shall deem that this trading institute certainly corresponds the most to the legal operation of general credit [Marinovic, *ibid*, p. 446].

Contrary to the statutes of other Dalmatian cities, under which the *socius stans* could have invested in the society a ship or some carat, according to the Dubrovnik law he was not allowed to so proceed, because collegantia was based only and uniquely on the investment of money or goods. Yet as it was allowed under the Statute to draw contracts in a different manner, it is not impossible that probably even in Dubrovnik, in the later period, this institute from its original simple form had later on obtained a new and a more complex form, so it is possible that at such a later date it was allowed to invest in collegantia also a ship or some of its parts [Danilovic, 1870, p. 289-290]. This contract actually is a certain combination between the partnership agreement and the contract order, so it may be treated both as the former and as the latter one, i.e. both as establishment of the commercial society, and as the trading transaction. Collegantia was especially important because it represented one of the ways to obtain credit, and the assumption is that it was born from the maritime loan because interest rate contracting, as we know, was forbidden under the Statute. Its prototype can be found in the Byzantine contract *ηρεοκοιτωνια* [*ibid*, p. 290], and it derived from the customs that were widespread among the merchants trading in the Mediterranean. It was certainly known to the Arabs, under the name *kirad* and *scirkatinan*. There is data indicating that under the name collegantia contracts were concluded where money was not invested in

the maritime trade, and not in trading at all, but under the same or similar conditions and terms it was given for use to the craftsmen. There is an emphasis in those contracts that *tractator* will use the money only within the scope of his craft, that he will work '*de arte sua*'. The clause that can often be found in them is the one binding the craftsman not to expatriate the money from Dubrovnik [Cvejic, 1957, p. 357 and 360/361].

Although collegantia is not strictly linked with the maritime affairs, but is an institute of trading operations in general, it is regulated within the Volume VII of the Dubrovnik Statute, in which there is *sedes materiae* of the maritime law, which indubitably leads to the conclusion that the Dubrovnik trade, certainly in the era of statutory regulations, was mostly maritime one. Statute regulates collegantia in two successive provisions, in the following manner:

'If a Dubrovnik citizen would receive from another Dubrovnik citizen collegantia in the form of money or goods for purpose of sailing along the Adriatic, he must hold them at the risk of the one whose they are. From the profit made, two parts are to be given to the owner of money or goods, and the recipient person receives the third part, unless otherwise contracted with the owner. And let it be known that he must not leave the waters of the Adriatic without permission of the owner, and if he would so proceed and something would happen to the money, the entire risk is to be borne by him and his property.' - L Chaper, Volume VII of the Statute of Dubrovnik - *On those who are receiving collegantia for sailing along the Adriatic* ('*Si Raguseus accipit in colloqanciam tam denarios quam merces ab alio Ragusino causa navigandi intra Culfum, ipsos denarios seu merces debent habere ad fortunam ejus cujus sunt clare facte. Et de lucro quod habebit dominus denariorum vel mercium, debet habere duas partes, et ipse habebit terciam; salvo si ipse dominus pactum aliud cum eo fecisset. Et est sciendum quod ipse non debet exire de Culfu sine voluntate ejus, et si exiret sine ejus voluntate et aliquid deveniret de denariis, totum periculum maneat super eum et super bona sua*' - Stat. Rag. Lib. VII, cap. L - *De hiis accipiunt colegancias intra Culfum*), and

'If Dubrovnik citizen would receive in collegantia money or goods, and should loose some of that, and the owner of the money or goods wishes to take them over, let him be free to so proceed, and the one who has

poterit dampnum ipsum. Et hoc intelligatur de mercatore et non de nave, salvo si aliud pactum esset inter eos - Stat. Rag., Lib. VII, cap. LI - *De hiis qui accipiunt aliquid in colegancia et amittunt de eis*).

Uz ove odredbe, kolegancu ćemo naći i među onim procesnim, u okviru III knjige Statuta: glava XIII - *O tuženom koji se spremio za put* (cap. XIII - *De vocato ad placitum qui est supra vigium*), glava XX - *O onima koji e pozivaju na stanak* (cap. XX - *De hiis que petuntur in stanico*) i glava XLVI - *O aptagima* (cap. XLVI - *De aptagi*). Dubrovački Statut je kroz svoje odredbe predvideo samo najjednostavnije forme ugovora o koleganci, koje su se svakako kroz praktičan život menjale i usavršavale.

Po Odredbama Dubrovačkog Statuta, kod kolegance se dobit raspoređivala tako, što je vlasnik kapitala dobijao njene 2/3, dok je traktatoru sledovala 1/3 iste, sem ukoliko nije drugačije bilo ugovoreno, što je bilo dopušteno i samim Statutom i što u Dubrovniku nije bila retkost. Dobit se mogla raspoređivati i u skladu sa deklaracijom o snošenju rizika, što je onda moralo da se unese u notarsku ispravu, u koju se upisivalo na čiji rizik uložena roba ili novac idu u promet [Čremošnik, ibid, str. 9]. Mletački statut, pak, za razliku od Dubrovačkog, za ulagača kapitala predviđa čak 3/4 od ostvarene dobiti, dok se za traktatora izdvaja samo 1/4 ostvarenog prihoda [Danilović, 1970, str. 293-294].

U Dubrovniku su trgovački rizik za eventualni gubitak u poslovanju snosila oba ugovarača, ali s bitnom razlikom: *socius stans* snosio je rizik za svoj kapital, dok je *tractator* reskirao samo ugovorenu dobit, naknadu za uloženi rad. Shodno ovakvom rešenju, ukoliko je *tractator* završio preduzeti posao uz delimičan gubitak, nije bio u obavezi da ga nadoknađuje *socius stans*-u, vlasniku kapitala, već je samo ostajao bez planiranog prihoda. U ovakvoj situaciji, vlasnik kapitala imao je dve mogućnosti: prvu, da od *tractatora*-a traži da mu vrati preostali kapital, i drugu, da dâ nalog *tractator*-u, da i dalje nastavi s poslom, ne bi li

pokušao da nadoknadi gubitak. Zakonodavac u citiranoj odredbi LI, izričito navodi da *tractator* nema obavezu da nastavi s radom na istom brodu, već da se to isključivo odnosi na trgovca, koji će obrtom kapitala pokušati da vrati izgublenu dobit.

Po Dubrovačkom statutu, rizik za eventualnu štetu i gubitak glavnice, u svim slučajevima više sile, u celosti je snosio *socius stans*, što je i razumljivo, jer je on bio isključivi vlasnik kapitala. Od ovog pravila se odstupalo (cap. L), za slučaj kada bi *tractator* neovlašćeno napustio Jadran (*extra Culfum*), jer se kolegancu mahom ugovarala za poslove na Jadranu. U tim prilikama bi jedino *tractator* bio odgovoran za nastalu štetu, koju je bio dužan da nadoknadi ne samo svojim radom, nego i ličnim dobrima.

Postoji, međutim, i posebna odredba koja štiti *tractator*-a, za slučaj da nema sredstava, ličnih dobara iz kojih bi namirio nastalu štetu, i kojom se precizira da tada neće odgovarati za dugove nastale iz kolegance (Stat. Rag, Lib.

III, cap. XLVI). Osim ove odredbe postoji još jedna koja štiti traktatora, ali i trgovinu kao delatnost, i njoj se kaže da se tuženom, *tractator*-u dužniku, rasprava odlaže na duži rok od uobičajenog, da bi imao vremena da završi putovanje koje je započeo (Stat. Rag, Lib.

III, cap. XIII). Iz ove statutarne odredbe, možemo da vidimo, da je Republici i dubrovačkom zakonodavcu opšti interes bio iznad ličnog, da im je pomorska trgovina očigledno bila na prvom mestu. Na osnovu analize odredbi statuta srednjovekovnih gradova koje smo pomenuli na početku ovog teksta, a koje se tiču kolegance, postoje i mišljenja da su rizik za štetu snosila oba ugovarača *pro rata* [Brajković, ibid, str. 197-200].

Roganca

Roganca - *rogantia*, *rogadia*, nazvana po latinskom glagolu *rogo* - tražiti, pitati, prema Dubrovačkom statutu je ugovor kojim se zasniva specijalna vrsta mandatnog posla, kojim prva ugovorna strana - *rogans*, poverava

lost a part thereof let him not bear losses. If the owner of the money wishes to leave the money to him, he is bound to keep it and do business with it for as long as he will be able to compensate the damages and losses. This pertains to the merchant, but not to the ship, except if not otherwise contracted.' - LI Chapter, Volume VII of the Statute of Dubrovnik - On those who receive something in collegantia and loose a part thereof ('Si aliquis Raguseus accipit in colleganciam tam denarios quam merces et ipse amitteret de ipsis denariis vel mercibus, et dominus monete vel mercium velet recipere ipsam, licitum sit ei facere; et ille qui perdidit de eo, nullum dampnum substineat. Si vero dominus denariorum voluerit ipsos dimittere eidem, ille tenetur ipsos denarios tenere et cum eis navigare, donec satisfacere poterit dampnum ipsum. Et hoc intelligatur de mercatore et non de nave, salvo si aliud pactum esset inter eos.' - Stat. Rag. Lib. VII, cap. LI - De hiis qui accipiunt aliquid in colegancia et amittunt de eis).

In addition to these provisions, we can find collegantia also among the process clauses in Volume III of the Statute: XIII Chapter - On the accused who was preparing for the voyage (XIII Chapter - De vocato ad placitum qui est supra vigium), XX Chapter - On those who are convened to a stancio (cap. XX - De his que petuntur in stancio), and XLVI Chapter - On aptagi (cap. XLVI - De aptagi). Dubrovnik Statute, in its provisions, envisaged only the simplest forms of collegantia contracts, which have certainly through practical life been amended and perfected.

Under the Clauses of the Dubrovnik Statute, in case of collegantia profit was distributed in such a way that the owner of capital would receive 2/3 of it, while the tractator would be entitled to 1/3 of the same, except if otherwise contracted, which was permitted in Dubrovnik and not infrequently applied. Profit could also be distributed in accordance with a risk bearing declaration, but in such a case this had to be recorded in the notary public document where it was written who was to be responsible for the risk of the invested goods or money being sent into the trading venture [Cremosnik, *ibid*, p. 9]. Venetian Statute, however, opposite to the Dubrovnik one, prescribed for the investor of capital even as much as 3/4 of the profit made, while allocating to the tractator only 1/4 of the earnings [Danilovic, 1970, p. 293-294].

In Dubrovnik, trading risk of eventual loss

in business was borne by both contracting parties, but with a significant difference: *socius stans* was bearing the risk of his capital, while the *tractator* was only exposed to the risk of loss of the contracted gain, compensation for his labour invested. Concordant with such an arrangement, if a *tractator* had completed the venture undertaken with a partial loss, he was not bound to compensate for such a loss *socius stans*, the owner of capital, but only remained empty handed with respect to the planned earnings. In such a situation, the owner of capital had two options: firstly, to demand from the *tractator* the return of the remaining capital, and secondly, to give the order to the *tractator* to continue and carry on with the business at hand, in order to try and compensate for the loss incurred. Legislator explicitly states in the quoted provision LI that *tractator* had no obligation to continue with the work on board the same ship, but that this exclusively pertains to the merchant who had to try, through capital turnover, to return the lost profit.

Under the Dubrovnik Statute, risk of eventual damages and loss of the principal sum, in all cases of force majeure, was fully to be borne by *socius stans* which is understandable, as he was the exclusive owner of capital. Certain exemptions were made to this rule (cap. L), in case *tractator* would, in an unauthorized manner, set sail beyond Adriatic Sea (*extra Culfum*), as the collegantia was mostly contracted for trading venture along the Adriatic. In such situations, *tractator* would be the only person held liable for the damages incurred, that he was duty bound to compensate for not only through his labour, but also from his personal goods.

There is however a certain particular provision which is offering protection to the *tractator* in case he should be devoid of assets, personal goods from which he would be able to compensate for the damages caused, and which specifies that in such a case he would not be held liable for the debts ensuing from the collegantia (Stat. Rag. Lib. III, cap. XLVI). In addition to this provision, there is yet another one that is protecting *tractator*, but also trading as a business activity, and it reads that the accused *tractator* - the debtor, will have his court hearing postponed to a time period longer than the usual one, in order to give him time to complete the voyage that he had embarked upon

drugoj ugovornoj strani - *rogatus*-u, da nešto, određenu stvar - *aliquid* prenese i preda nekom trećem. Statut je određuje na sledeći način:

'Kogod primi nešto u roganciju, neka bude znano da on to ne sme odvajati niti od sebe, niti od svojih stvari; ako bi to što je primio u roganciju odvojio od sebe i od svojih stvari, pa se to ošteti ili uništi, onaj koji je to prevezio i primio dužan je da nadoknadi onoj osobi od koje je primio, osim ako nije drugačije ugovoreno, pa je tu stvar primio pred pouzdanim svedocima.' - glava LV knjige VII Statuta Dubrovnika - O roganciji (*'Quicunque recepit aliquid pro rogancia, sciendum est quod ipse non debet dovodere nec separare a se et suis rebus illud quod ipse recepit, et si separare a se et suis rebus illud quod ipse recepit, et si separaret a se et a suis rebus illud quod recepit pro rogancia, et dampnum aliquod adveniret de eo vel perderetur, ille qui eum portavit et recepit tenetur emendare illud illi persone a qua recepisset salvo quod, si inter se fecissent aliud pactum, secundum illud pactum ille recepisset coram ydoneis testibus rem illam'* - Stat. Rag, Lib. VII, cap. LV - *De rogancia*).

Na sličan način reguliše je i Statut Brača:

'... ako bi nekoj osobi bilo dato od strane druge, ili drugih osoba, da nešto treba drugima da preda ili da do njihove kuće (prebivališta) odnese...' '... si alicui personae datum fuerit, siue commissum aliquid per aliquam personam, quod deberet alteri dare, vel ad domum illius qui daret...' (glava XI knjige II Bračkog Statututa - Lib. II, cap. XI). O rogaciji govore i Statuti Raba, Lib. III, cap. XX, Skradina, cap. XVII, Splita, Lib. VI, cap. XXXVII. Ovaj ugovor, predstavlja kombinaciju između ugovora o ortakluku i ugovora o nalogu, pa se može tretirati bilo u okviru jednog ili drugog.

Pod rogancom se najčešće podrazumevala usluga, koju bi neki putujući trgovac najčešće učinio svom kolegi, da na njegovu molbu, preda trećem licu na određenom mestu robu ili novac, ili se pak poveravalo izvršenje nekog privrednog posla [Pomorska enciklopedija, VI, 1960, str. 661]. Ugovarači su mogli i drugačije da se dogovore, da sklope ugovor koji bi rogatusa obavezivao ne samo da primi određene stvari pred svedocima, nego i da ih pred njima i prenese i preda (Stat. Rag, Lib. VII, cap. LV). Nesumnjivo, da se na ovaj način, gubio odnos poverenja među ugovaračima, tim pre što su ugovor o roganci najčešće međusobno zaključivali poznanici, tako da su

sporovi koji su se ticali rogancija, stvarno bili retki [Kostrenčić, *ibid*, str. 289-290].

U Dubrovačkom statutu, roganca se pominje i u LII odredbi iste knjige - O mornaru koga njegovi drugovi pošalju s novcem (*De marinario qui mittitur cum denariis a sociis suis*), kroz izraz *tramessa* - *'Ako bi mornara poslali njegov kormilar i njegovo društvo mornara s novcem u neko mesto radi (nabavke) brodskog tereta, ili zbog iskrcaavanja, ili posredovanja, ili iz nekog drugog razloga, tome mornaru u (eventualnom) sporu sa kormilarom i mornarima, u vezi novca i poslova koje je trebalo da obavi, osim ako bi imali svedoke u koje treba imati poverenja.'* (*'Si marinarius, a suo nauclerio cum societate sua et suorum marinariorum, mitteretur cum denariis ad aliquem locum per caricum navis vel ligni vel per repustara aut per tramessam vel per aliquem modum, marinarius ille habet credenciam de denariis et factis illis pro quibus missus fuerit, contra nauclerium et dictos marinarios suos; salvo quod inter se haberent ydoneos testes, qui habere debent credenciam'*). Ovaj pravni posao, najčešće su sklapali kapetan i mornari na jednoj strani, sa određenim mornarom na drugoj. Obično bi ovde prva ugovorna strana, poveravala drugoj, rogatusu-mornaru, da prenese novac u određeno mesto, ili pak da obavi neki posao za njih. Statut još kaže, da ukoliko bi došlo do spora između ugovarača, treba da se veruje rogatusu, sem ako nije u pitanju ugovor koji je sklopljen pred valjanim svedocima, čijem iskazu će se onda dati prednost.

Rogancija nije bila običan mandatni posao, već kao što smo na početku rekli, specijalni, jer je postojala obostrana korist ugovarača, ali i rizik za eventualni gubitak, što se vidi iz toga da mandatar odgovara za svu štetu (*omnis culpa*), kao u rimskom pravu, koja se ovde ispoljava kao *culpa levis in concreto* (konkretna šteta), što će reći, da je mandatar bio dužan da uobičajeno postupi sa stvarima koje su mu poverene, istovetno kao

(Stat. Rag. Lib. III, cap. XIII). We can perceive from this statutory provision that for the Republic and the Dubrovnik legislator global and common interest was of an utmost importance beyond and above the personal and individual one, and that maritime trade was obviously ranking first in their esteem. On the basis of analysis made of the provisions contained in the statutes of mediaeval cities that we have mentioned at the beginning of this paper, which pertain to collegantia, there are also views that the risk of damages was being borne by both contracting parties, in the *pro rata* manner [Brajkovic, *ibid*, p. 197-200].

Rogantia

Rogantia, rogadia, called after the Latin verb *rogo* - to search, to inquire, according to the Dubrovnik Statute is a contract concluded for a special type of mandatory transaction, in which the first contracting party - *rogans*, is entrusting to the other contracting party - *rogatus*, to take a certain object, an item - *aliquid*, and hand it over to a third person. The Statute prescribes as follows:

'Whoever shall receive something in rogantia, let it be known that he can neither separate it from himself, nor from his own belongings, because if he would separate what he had received in rogantia either from himself or from his belongings, and that particular thing would be damaged or destroyed, the person that was transporting it and received it would be held liable to give compensation to the person from whom he had received it, except if not otherwise contracted, and had received that thing in the presence of reliable witnesses.' - LV Chapter, Volume VII of the Statute of Dubrovnik - *On rogantia* (*'Quicumque recepit pro rogancia, sciendum est quod ipse non debet dovodere nec separare a se et suis rebus illud quod ipse recepit, et si separaret a se et suis rebus illud quod ipse recepit et si separaret a se et a suis rebus illud quod recepit pro rogancia, et dampnum aliquod adveniret de eo vel perdetur, ille qui eum portavit et recepit tenetur emendare illud illi persone a qua recepisset salvo quod, si inter se fecissent aliud pactum, secundum illud pactum ille recepisset coram ydoneis testibus rem illam.'* - Stat. Rag. Lib. VII, cap. LV - *De rogancia*).

In the similar manner rogantia is regulated by the Statute of Brac:

'...if a person is to be given something by some

another person or persons, something that he should hand over to others or bring it up to their house (dwelling premises)...' *'... si alicui personae datum fuerit, siue commissum aliquid per aliquam personam, quod deberet alteri dare, vel ad domum illius qui daret ...'* (XI Chapter, Volume II of the Brac Statute - Lib. II, cap. XI). Statute of Rab also speaks of rogantia, Lib. III, cap. XX, Statute of Skradin, cap. XVII, and Statute of the city of Split, Lib. VI, cap. XXXVII. This contract is a combination between the partnership agreement and the order contract, and may be treated within either the former or the latter category.

Rogantia was most often interpreted as a service to be rendered by some traveling merchant, most often as a favor to his colleague, at his request, to hand over to a third person and at a certain place the goods or money, or to carry out execution of some commercial transaction when so entrusted [Maritime Encyclopedia, VI, 1960, p. 661]. Contracting parties were free to agree otherwise, to conclude the contract that would be binding the rogatus not only to receive certain items in the presence of witnesses, but also to transport and hand them over in the presence of witnesses (Stat. Rag. Lib. VII, cap. LV). Undoubtedly, in prescribing this manner of execution there was a certain loss of trust between the contracting parties if such was to be the case, even more so as the rogantia contract most often was being concluded between acquaintances, so that the disputes arising from rogantia were really very seldom to be found [Kostrencic, *ibid*, p. 289-290].

In the Dubrovnik Statute, rogantia is being mentioned also in the LII provision of the same volume - *On the mariner who is being sent by his mates with the money (De marinario qui mittitur cum denariis a sociis suis)*, through the term *tramessa* - *'If the mariner was to be sent by his helmsman and his sailor mates with the money to some place for purpose of (supplying) ship cargo, or for purpose of disembarking, or intermediation, or for some other reason, and that mariner enters in a (eventual) dispute with the helmsman and the mariners in connection with the money and the business that he was to conduct, except is there were credible witnesses to that effect.'* (*'Si marinarius, asuo nauclerio cum societate sua et suorum marinariorum, mitteratur cum denariis ad aliquem locum per caricum navis vel ligni vel per repustara aut per tramessam vel per*

što bi činio i da su njegove, 'Kogod da primi nešto za roganciju... ne sme da ih odvaja od sopstvenih stvari i mora da ih da ih čuva uz svoje' (Stat. Rag, Lib. VII, cap. LV - 'Quicumque recepit aliquid pro rogancia, sciendum est quod ipse non debet dividere nec separare a se suis rebus illud quod ipse recepit'). To znači, da ukoliko njegovom *culp*-om, stvar pretrpi neku štetu, da je dužan u celosti, sam da je nadoknadi rogans-u '... ako bi to što je primio u roganciju odvojio od sebe i od svojih stvari, pa se to oštetiti ili uništi, onaj koji je to prevezio i primio dužan je da nadoknadi onoj osobi od koje je primio' ('... et si separaret a se et a suis rebus illud quod recepit pro rogancia, et dampnum aliquod adveniret de eo vel perderetur, ille qui eum portavit et recepit tenetur emendare illud illi persone a qua recepisset...'), što se naravno nikako nije odnosilo na štetu nastalu usled gusarskog napada ili zbog brodoloma.

Kotorski statut, takođe, u glavi CCCLXXII - O rogacijama, govori pre svega o krivici za gubitak poverene stvari i o naknadi štete: 'Zbog toga što su se mnoge štete dešavale usled rđave brige za rogacije, stoga odlučujemo da ako bi neko rogaciju izgubio i mogao dokazati parničnim putem da mu je bila silom oteta, neka se računa kao izgubljena, a ako ne bi mogao dokazati, onaj koji je nosio dužan je da nadoknadi od svog sopstvenog'. ('Quia multa damna

proueniebant de mala procuracione Rogaciorum, idcirco volumus, quod si aliquis Rogaciam amiserit, & poterit ostendere per rationem, quod fibi violenter accepta fuit, fit amissa, quod si ostendere non poterit, portator teneatur ipse de suo proprio componere.' - cap. CCCLXXII - De Rogacijs)

Iako rogatus nije imao pravo na udeo u ostvarenoj dobiti, ne treba sumnjati, da je i kod ovog pravnog posla, mada to nigde ne stoji, mandatar svakako imao koristi od onog što mu se poveravalo. I Vladislav Brajković sumnja, da se kod ugovora o roganci, radi o običnom mandatnom poslu, pre svega zbog toga, što se nikako ne može isključiti određeni protiv teret rogansa, jer nam je onda potpuno neshvatljiva tolika obaveza koju na sebe preuzima rogatus. Po ovom autoru, rogans je na sebe uzimao određene dužnosti, ali koje i u kom obimu, ne može se zaključiti ni iz postojećih statutarnih propisa, a ni iz dostupnih arhivskih isprava [V. Brajković, *ibid*, str. 203-205.]. Posebno stoga, što i ovde, videli smo, Statut precizira da '... ugovarači mogu i drugačije da se dogovore...' '... salvo quod, si inter se fecissent aliud pactum...' (Stat, Rag, Lib VII, cap. LV) [A. Marinović, Pomorsko pravni propisi sredovječnog dubrovačkog statuta, str. 447-448].

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aliquem modum, marinarius ille habet credenciam de denariis et factis illis pro quibus missus fuerit, contra nauclerium et dictos marinarios suos; salvo quod inter se haberent ydoneos testes, qui habere debent credenciam'). This legal action was most often concluded between the captain of the ship and mariners, on the one side, and a certain mariner on the other. Usually in such a case the first contracting party would entrust to the other contracting party, the rogatus-mariner, the task of transferring the money to a certain place, or of performing some job for their account. The Statute also prescribes that if there should be a dispute arising between the contracting parties, the credit of trust is to be given to the rogatus, except in case of a contract concluded in the presence of the credible witnesses whose testimony will be given the primacy.

Rogantia was not an ordinary mandatory job, but as we have already stated at the beginning, it was a special task involving mutual benefit for the contracting parties, but also risk of eventual loss, evident in the light of the fact that mandator is held liable for all the damages (*omnis culpa*) as the Roman law prescribes, which is expressed here as the *culpa levis in concreto* (concrete damage), which in turn designates that mandator is bound to proceed in the customary manner with the items that he was entrusted with, in an identical manner as he would treat them if they were his own. 'Whoever is to receive something in rogantia... must not separate such an item from his own belongings and must safeguard it together with his own ones'. (Stat. Rag. Lib. VII, cap. LV - '*Quicumque recepit aliquid pro rogancia, sciendum est quod ipse non debet dividere nec separare a se sui rebus illud quod ipse recepit*'). This means that in case through his *culpa* the item is to suffer some damage, he is bound to compensate, himself alone and in full, the rogantia so entrusted. '... if he was to separate from himself the item that he had received in rogantia and from his own belongings, and the item would suffer damage or be destroyed, the person that was transporting it and received it is liable to compensate such damage or loss to the person from whom he had received it in trust.' ('... *et si separaret a se et a suis rebus illud quod recepit pro rogancia, et dampnum aliquod*

adveniret de eo vel perderetur, ille qui eum portavit et recepit tenetur emendare illud illi persone a qua recepisset...'), which certainly did not pertain to the damage suffered during a pirate attack or due to shipwreck of the vessel.

Statute of the city of Kotor also, in the CCCLXXII Chapter - *On rogancia*, speaks primarily of the culpability for the loss of the entrusted item and compensation of damage so caused: '*Mindful of the fact that many damages were occurring because of poor care for rogantia, we hereby decree that if any person would loose rogantia and could prove in a litigation procedure that it was taken from him by force, it shall be deemed as lost, and if he would not be able to prove this fact, the one who was entrusted with the item would be held liable to compensate for it from his own goods*'. (*Quia multa damna proueniebant de mala procuracione Rogaciorum, idcirco volumus, quod si aliquis Rogaciam amiserit, & poterit ostendere per rationem, quod sibi violenter accepta fuit, fit amissa, quod si ostendere non poterit, portator teneatur ipse de suo proprio componere.*' - cap. CCCLXXII - *De Rogacijs*).

Although rogatus had no right to a share in the profit made, there should be no doubt that in this legal action as well, although this is nowhere to be found in writing, mandator certainly had benefits from what he was entrusted to accomplish. Vladislav Brajkovic also has his own doubts that in case of the rogantia contract it is a case of an ordinary mandatory transaction, first of all because it is not possible at all to exclude a certain counterweight of rogantia, as otherwise it would not be comprehensible how could such a substantial obligation have been taken upon himself by the rogatus. According to this author, rogans was taking upon himself certain duties, but which ones and in what scope can not be concluded either from the existing statutory regulations or from the accessible archive documents [V. Brajkovic, *ibid*, p. 203-205]. Especially because, as we have seen here, the Statute is specifying that '*... contracting parties may agree otherwise*', '*...salvo quod, si inter se fecissent aliud pactum...*' (Stat. Rag. Lib. VII, cap. LV) [A. Marinovic, *Maritime legal regulations of the mediaeval Dubrovnik Statute*, p. 447-448].