

Dr Snežana Miladinović<sup>1</sup>  
Vanredni profesor Pravnog fakulteta  
Univerziteta Crne Gore

Originalni naučni rad  
UDK:347.472 (497.16)

## FOUNDATIONS IN THE GENERAL PROPERTY CODE FOR MONTENEGRO

*U istoriji Crne Gore zadužbinarstvu i zadužbinama pripada posebno mjesto. U pravnoj istoriji, norme kojima su regulisane zadužbine mogu se, bez pretjerivanja, nazvati biserima neprocjenjive vrijednosti. Rečeno posebno važi za odredbe Opšteg imovinskog zakonika za Crnu Goru, izašlog iz pera Valtazara Bogišića.*

*Naime, razdio XI petog dijela Opšteg imovinskog zakonika za Crnu Goru Valtazar Bogišić je posvetio zadužbinama. U svega dvanaest članova Bogišić je uspio da sublimira sve što je potrebno za potpuno, jasno i nedvosmisleno regulisanje zadužbina, počev od pojmovnog određenja, uslova i načina osnivanja, preko pravila o unutrašnjoj organizaciji i načinu rada, do uslova za eventualno preuređenje i prestanak zadužbina.*

*Valtazar Bogišić je u Opšti imovinski zakonik unio model u čijoj osnovi su načela autonomije volje, dobrovoljnosti, trajnosti, društvene korisnosti i javnosti. U ovom tekstu analizirane su odredbe Opšteg imovinskog zakonika kojima su regulisane zadužbine. Ukazano je na njihovu sadržinu, ali i na uticaj koje su izvršile na savremeni model zadužbina.*

**Ključne riječi:** *Zadužbine, Valtazar Bogišić, Opšti imovinski zakonik za Crnu Goru*

---

<sup>1</sup> Dr Snežana Miladinović, Associate Professor of Faculty of Law at the University of Montenegro

"All of us die only once, but great people die twice:  
once when they disappear from the earth,  
and second time when their foundation perishes."  
(Ivo Andrić - "Na Drini ćuprija")

In the history of Montenegro foundations have a special place. In the history of law, norms which regulate the foundations may, without exaggeration, be called pearls of inestimable value. Not only because of their wisdom, beauty of language and contemporary solutions, but because of the fact that they were the cornerstone on which powerful imperial foundations were created, monasteries and churches, hospitals, shelters for strangers, shelters for the poor, orphanages, schools, bridges, fountains for travellers, and also the will of the poor who are by giving little actually giving the most. What is said above is especially true for the regulations of the General Property Code for Montenegro, written by Valtazar Bogišić.

Ways to express humanity, altruism, benevolence and mercy, in consideration of the legal institutes, were numerous, ranging from *donatio mortis causa*, through legacy, inheritance contracts, orders, and foundations<sup>2</sup>. Foundations, initially, were mostly monasteries and churches built by rulers and members of royal families for salvation and eternal memory. The royal foundations were the places at which famous people gathered, decisions crucial for the survival and development of the country were made, real pearls of medieval literature were written, laws were written and kept, the first printing was established, literacy and enlightenment ideas were spread from them, architecture and fresco painting experienced its peak, but also first hospitals, orphanages and schools were built there ... In short, everything that is important for the life of a country and people in our country is concentrated in the shelter of the foundation. In peaceful times, foundations were centres from which important ideas, literacy and culture were spread, and people's identity and individuality was kept. In times of war they were a source of support of any kind, but also of strength to endure and survive against all odds. Because of that the foundations and its founders have had so high position on the scale of values, and their memory is preserved through the centuries, in the people's memory through stories, songs, proverbs, legends...

---

<sup>2</sup>The will had been mainly made by "singles", childless people who have left the property to churches and monasteries for the salvation of souls.

Section XI of the fifth part of the General Property Code for Montenegro Valtazar Bogišić dedicated to foundations. In only twelve articles Bogišić managed to sublimate all that is necessary for full, clear and unambiguous regulation of the foundation, starting with conceptual definitions, conditions and ways of establishing, through the rules of internal organization and working methods, to the conditions for a possible reorganization and termination of the foundation<sup>3</sup>.

When studying the legal structure and customs, which served him as the basis for the formulation of standards on foundations, Valtazar Bogišić encountered a wealth of preserved regulations, charters, and objects, and not less important, the deep-rooted national remembrance, respect and evaluation. There are sources that Bogišić also highly appreciated: proverbs, poems, legends and folk memory<sup>4</sup>.

Bogišić had in details analyzed the text Nomokanon – Svetosavske Krmčije, which is the first in a series of rules that regulate, among other things, foundations as well<sup>5</sup>. Part of a complex system of Krmčije are regulations on the protection of socially vulnerable persons, from which we learn what is considered the social case and what measures were envisaged to mitigate and remedy the situation. For Bogišić particularly important was the part of Nomokanon related to the establishment of "noble houses" through the will. The 25th article of the 45th chapter of Krmčije is: "If someone in the last legacies in writing expresses a desire to establish an honourable house, or a church, or a shelter for strangers, or dwellings of the poor, kitchen or hospital, we order that the church (the house) shall be completed by the expiration of five years with the care of Bishop or elder of the area, and if the deviser determines suitable shelters for foreigners, or

---

<sup>3</sup> Art.755-766 of the General Property Code for the Principality of Montenegro. Snežana Miladinović, Foundations, Službeni glasnik, Belgrade, 2002

<sup>4</sup> Konstantin Jiriček, History of Serbs, Book II, Cultural History, Belgrade, p. 67-82., p.218-231, Radoslav Pavlovic, How churches "flew away" here, Belgrade, 1961., SANU, the Department of Social Sciences, Book III. Recall that Valtazar Bogišić collected folk songs. See: Folk Songs from the oldest mostly coastal records, collected and published by Valtazar Bogišić, LIO, Gornji Milanovac, 2003. (Facsimile edition: Division II Bulletin of the Glasnika Srpskog učenog društva, Book X, folk songs from the most ancient maritime records, collected and published by Bogišić V., Book I, with discussions about "bugarštice" and vocabulary, Belgrade, 1878.).

<sup>5</sup> Dr Miodrag Petrovic, Krmčija of St. Sava on the Protection of the excluded and socially vulnerable people, Belgrade, 1990., P.9-20. The regulations of Krmčije protected the poor, the sick and people with physical defects for whom homes are built. Basically Krmčije is learning about social justice and philanthropy. In connection with the application and interpretation of legal provisions Krmčije provides to "pay more attention to a sense of law, not words, and to interpret the laws to a greater love for man." - compare this regulation of Krmčije with Art. 993 of OIZ stating: "He who knows only the words of the law, still does not know the law when he does not understand its meaning and sense."

foster parents of the poor or other similar trustees or if he enables to his successors this choice, we order that the bishop of the place in every way fulfils written heirs, controlling whether the building is progressing good, so if he finds that managers are not useful, he is authorized to put competent people in their place without any damage in order to make everything done according to the will of the deceased<sup>6</sup>. "It is clear, therefore, that these are norms that regulate foundations mortis causa. Krmčije also contains regulations on the way of establishment, objectives, duration, as well as supervising the work of the foundation.

Work of "honourable homes" also needs appropriate property, and Krmčije as the main source of acquiring real estate assets provided legacy of real estates. "Honourable Homes" were able to inherit property that was intended to feed and help the poor<sup>7</sup>. Part of the property could have been used by renting, but with constant supervision to avoid misuse, thereby damaging the "honourable home" and threatening the beneficiaries. Even the manner of concluding contract of lease was regulated by swearing an oath of staff of "honourable homes" (distributors, managers, archivists) that it will not harm the "honourable house"<sup>8</sup>. Important source of studying the foundations for Bogišić were monastery charters, as *lex specialis* of monasteries and churches, and typicons of monasteries Hilandar and Studenica<sup>9</sup>. Bogišić also thoroughly studied "Dušan's Code", which had, related to the regulation of rights on disposal of heritage in the event of

---

<sup>6</sup> The same, Krmčije (Ilovički transcript) 25th commandment 45th Chapter 219a - 220

<sup>7</sup> Miodrag Perovic, op.cit, p.17., Says that in chapter 1 second branch of Ilovičke Krmčije (242a) it is predicted that "an unnamed property bequeathed to the poor is accepted by " shelter for strangers "and after he sold it, he uses the money to buy the poor what they need. In the event that the city has more "shelters for strangers" in that way bequeathed property is received by the poorest of them, as decided by the bishop and the priests. And if the city does not have a shelter for strangers, the assets shall be divided by bishop or distributor to the poor, or to those who most need it, not keeping anything. "-" Order 242B) Krmčije even provides that "donated property must be free of any burden such as debt and the like. In the event that the bequeathed property is under the weight of some kind, it is in all transferred to the donor or his heirs, so that the honourable house doesn't suffer damages. "

<sup>8</sup> Miodrag Petrovic, mentioned work, p.19. In the commandment 287a) of Krmčije it is said to negotiate leases in the presence of the tenant and his two successors, and in commandment 287b) that the lease cannot last longer than 30 years. Very important is Chapter 6 (287b), which prohibits Honourable House staff and their immediate and distant relatives to be tenants.

<sup>9</sup> Radomir Popovic, Church property in Nemanjić Serbia, Belgrade, 1989., P.5-77th, G. Babić, V. Korać, S. Ćirković Studenica, Yugoslav Review, Belgrade, 1986., P.10-22., 90-94., 146-153., 180-188., Sava-Hilandarac, History of Monastery Hilandar, the National Library of Serbia, Belgrade, 1997. , T. Pejović-monasteries on the territory of Montenegro, Presmedij, Novi Sad, Republic Institute for the Protection of Cultural Monuments, Cetinje, 1995., V. Ćirović, History of the Serbian people, Belgrade, 1997., (Volume I).

death, provided the disposition in favour of the church and the right of inheritance "for the soul to reveal."<sup>10</sup>

In the period of validity of these acts on the territory of present-day Montenegro some very valuable foundations were created. In the Middle Ages in the Skadar Lake basin about twenty great religious buildings of cultural and historic value was built for which this area is known as "Zetska Sveta Gora". In the period from 1376 to 1378 in honour of The Virgin Mary, the Monastery or Starčevo or Starčeva Gorica was built, whose founder was Elder Makarije<sup>11</sup>. Monastery Moračnik was built on Moračnik in about 1400th, which was first mentioned in 1417th in the Charter of Balša III, who was his patron. In the early years of the fourteenth century a church of St. George which was built in Beška, whose founder was Đurađ III Stracimirović Balšić. His wife, Jelena was the founder of a small church of the Holy Virgin, which was built near the church of St. George in 1439th year. These foundations were showered with gifts of rulers and wealthy individuals. Significant foundations were also made and beyond "Zetska Sveta Gora". Stefan Crnojević built in 1471st the monastery and church of the Ascension of the Virgin in Kom at Zabljak, and the ruler of Zeta, Ivan Crnojević in 1485th built the Cetinje monastery (Cetinjski manastir).<sup>12</sup>

Special significance, among few standards that apply to dependent foundations, belongs to Danilo's Code, whose regulation of free testing by

---

<sup>10</sup> Teodor Taranovski History of the Serbian rights in Nemanjić Serbia, Belgrade, 1996., Str.538-572nd, B. Petranović, Inheritance rights of the Serbs on the basis of legal traditions and written documents, Belgrade, 1923., P.1-30. Articles 40., Article 46. and art.174. Dušan's Code cover the proper disposal of heritage .

<sup>11</sup> Bozidar Vukovic - Podgoričanin, by his desire, was buried in this monastery.

<sup>12</sup> There are many examples of legacies for the benefit of the church or monastery, for the salvation of souls of will writers. One of the oldest surviving wills is the will of Đuro Nikolić from 1545 by which he attaches the vineyard to the Cetinje monastery, then Stijepo Dajkov's will from 1628, by which he attached to the Cetinje Monastery " the house and home furnishings, and heritage, and the vineyard, the melons and a mountain and water", will of Vučeta Andrin who attached his belongings to the same monastery "for the salvation of their souls" from 1698, will of Nika Djurović Marović from 1789 who leaves part of his property to the church, and will of Tomo Markov Petrović - father of Njegoš from 29<sup>th</sup> August 1854 who leaves all of his mortgaged property to the church and altruistically forgives debts to his debtors. Details: Savo Marković, mentioned work, p.75-88.

"his own passion"<sup>13</sup> Valtazar Bogišić also had in mind when shaping legal foundation.

Provisions of the General Property Code for the first time on the grounds of Montenegro were regulated as independent, i.e. foundations that are a special "property"<sup>14</sup>. Valtazar Bogišić inscribed in the General Property Code the model which is based on the will of the founder of an foundation, and control by the state over the established objectives, regulations, amendments and termination. It is a model that, basically, even now is accepted by most of codes, and also by modern doctrine. Reasons for modernity, or rather all-time existence, of the solutions inscribed by Bogišić in the General Property Code, lie in the methodology used by Bogišić. In the theoretical analysis and legislative work Bogišić started from the premise that one of the most important legal professions of law is history of law and that its task is studying and exposure of legal phenomena "in their genetic forms and shapes as they occur and alter in wide open spaces and time, their causal bond and causes of their development or relative lag"<sup>15</sup>. "In addition to the study of legal history Bogišić puts emphasis on the study of" living legal structure "and the degree of foreign influence, which is inevitable because, he says," it is a natural tendency to borrow from your neighbours what you do not have or what you think your neighbours have is better. "<sup>16</sup>

Valtazar Bogišić has inscribed in the General Property Code the model which is based on the principle of autonomy of the will, voluntarism, durability, utility, social importance and publicity.

Bogišić says in the General Property Code: "If a man sets up any precious foundation or permanent foundation (e.g. The eternal memory of the soul, feeding the poor or continuing support, refitment of fountains and bridges, etc.) from his own property which is in his free disposal, such

---

<sup>13</sup> Lazar Tomanovic, Inheritance right according to the Danilo's Code, Archive, Book II, Volume 1, Belgrade, 1906., P. 3-30.; Božidar Tomović, Inheritance customary law in Montenegro, Belgrade, 1926., P.52-70.; Aleksa Matanović, Inheritance, customary law in Montenegro, Archive for Legal and Social Sciences, Belgrade, 1928., Book XVI (XXXIII) p.238-358.; Savo Marković, Testament in Montenegrin customary law, Belgrade, 1995., p.17., Petar Stojanović, Some problems of the status and role of churches and church organizations in Montenegro

(Review of the state in the eighteenth, nineteenth and early twentieth century), Historical records, Titograd, book XXX, 3-4/73., p. 291-312.

<sup>14</sup> Art.755-766 of the General Property Code for the Principality of Montenegro

<sup>15</sup> Bogišić Valtazar, About the importance of legal customs, General Property Code for the Principality of Montenegro, selected works, "Unireks", Podgorica and "Službeni glasnik", Belgrade, 1998., P.337.; Pupovci Surja, Valtazar Bogišić - Life and Work, CID , Podgorica, 2004

<sup>16</sup> The same, p.341

foundation becomes independent property as soon as it is established". Foundations were, therefore, formed in the general interest and in accordance with the law. They could have been established by an act of *inter vivos* and *mortis causa*, i.e. foundation could have been established by a document certified by a court or the will. If the foundation was founded by a will it was regulated that a will "should be literate, and that should have been made in the presence of at least three witnesses, of whom two is enough if it is made in the court."<sup>17</sup> Regardless of the manner of establishment "in the document by which the Foundation is established, the exact nature and purpose of the foundation should be determined, as well as the property which is set for its existence and maintenance, and who and how will manage the foundation".<sup>18</sup>

According to General Property Code the foundation is impersonal property which differs from other properties primarily in the purpose for which it is founded. The purpose is characterized by general social usefulness and durability. The purpose of the foundation had to be clearly and unambiguously defined, as it identifies the profile of the foundation, its duration, results, and its eventual renovation or removal. The second condition of foundation is property, provided that Bogišić did not provide any type or value of property as a condition for the establishment of the foundation.<sup>19</sup> The third condition for establishing the foundation was to clearly and accurately determine who and how will manage the foundation.<sup>20</sup> General property code provides the question "who and how will manage the Foundation" to be solved "in the document of establishing the foundation."<sup>21</sup> If the founder of the foundation failed to determine manner of managing the foundation, trustee was "required to manage property conscientiously and carefully, as each good host manages its own home," and was also obliged "to represent the foundation and its estate to everybody else."<sup>22</sup> If it is not decided who will manage the foundation, the manager was appointed by the Guardian authority, i.e. captain's court in which area the foundation is located. The same court also performed supervision over the work of

---

<sup>17</sup> Art.756 p.2. General Property Code for the Principality of Montenegro. This, together with the Order of the Montenegrin Metropolitan legacies and execution of the same, number 673 of 10th May 1891, the only regulation in Montenegrin law of that time which relates to the form of a will. (Proceedings of court laws, decrees and international agreements on judicial profession for Montenegro, Cetinje, 1912, P.195.)

<sup>18</sup> Artl.757. General Property Code for the Principality of Montenegro

<sup>19</sup> Art.757. General Property Code for the Principality of Montenegro

<sup>20</sup> Art.757. General Property Code for the Principality of Montenegro

<sup>21</sup> Art.. 760 Paragraph 1. General Property Code for the Principality of Montenegro

<sup>22</sup> Art.646. General Property Code for the Principality of Montenegro



foundation managers.<sup>23</sup> About the management and control of the foundations of the church, church authorities were consulted.<sup>24</sup>

General Property Code for establishing of the foundations accepted the concession system. Code provided, "that if funds of what is certain to be a property of foundation exceeds value of 1,000 francs, establishing should be approved by state power, so it could come to life".<sup>25</sup> Approval for foundation if the value of its assets didn't exceed 2,000 francs was given by State Council, and over that amount – by the Ruler. For foundations whose estate did not exceed value of 1,000 francs there was no need for the approval, but the court, which certified the document on the establishment, was obliged to notify the State Council. For the establishment of ecclesiastical foundations, in addition to the approval of state authorities, the approval of church authorities was also necessary. The Code stipulates that the approval of ecclesiastical authorities must be obtained before applying request for setting up foundation to the State Council, or Ruler, which depended, as we have seen, on the value of foundation assets.<sup>26</sup>

According to General Property Code both minors, and "all those who are otherwise subject to guardianship"<sup>27</sup> were able to establish the foundation, but only with prior approval of the Custodian and the Guardian authority, which also must have been obtained before submitting the application for approval for setting up the foundation.<sup>28</sup> By explicit command of the Bogišić's Code, foundation was considered established at the time of founder's death, if it was founded by will, or at the time of certification of the document on establishing by the court, if it was established by an act *inter vivos*.<sup>29</sup>

If all above conditions were fulfilled, the foundation would receive separate legal existence – it would become a special property. Foundations, as impersonal properties, existed for the reason of continuing of fulfilling the

---

<sup>23</sup> Art.646. § 2. General Property Code for Montenegro, "In the tangled cases, the District Court, asked by the captain, may give instructions to the Court, either by itself, or after queries and learn the opinion of the Grand Court, as if he acts in the business in question".

<sup>24</sup> Art. 760 p. 2 General Property Code for the Principality of Montenegro

<sup>25</sup> Art.758. Paragraph 1. General Property Code for the Principality of Montenegro

<sup>26</sup> Art.758 p.2. General Property Code for the Principality of Montenegro

<sup>27</sup> Art.755. st.2 General Property Code of the Principality of Montenegro

<sup>28</sup> Art.640-674, Art.963. General Property Code for the Principality of Montenegro

<sup>29</sup> Art.759 p.1 General Property Code for the Principality of Montenegro. In paragraphs 2 and 3 of the same article it is stated: "Even for those types of foundations which are to be approved by the state government, , and that approval is given, the survival of the Foundation shall be counted, however, from the day on which it is founded. But if for some legal reasons the approval is denied, then it shall be counted that the foundation never existed".



objective set by the founders, thanks to the adequate use of property which was intended by the founder, about which its administration was concerned with.

As a rule, the foundation "lasts as it is" <sup>30</sup> in accordance with the will of the founder. If that is not possible, either because the object for which the foundation was established "came in opposition to the regulations that come from newer facts and needs of public life, or it could not anymore, because of change in circumstances, achieve the goal set by its founder" <sup>31</sup>, General Property Code envisaged the possibility that the same "could be reorganized." If the foundation could not be rearranged without major deviations from the will of the founder, foundation would be abolished. Decision on reorganization or abolition of the foundation was made by the State Council, after having obtained the opinion of management foundations, local authorities, and any person who had an interest in it, and if it is foundation of church and also from church authorities. <sup>32</sup> The decision became enforceable only after the order is affirmed by Ruler - Prince Lord. <sup>33</sup>

We see that Bogišić leaves establishing and internal organization, with the required minimum limits, to the founder's free will, while he puts reorganization and termination of their work places in exclusive jurisdiction of the State Council. <sup>34</sup> On one hand, therefore, we have the minimum requirements of form and minimum conditions for the establishing of trusts, and on the other, strictly and thoroughly regulated procedure of their adjustment and termination, which is dictated by the nature and purpose for which the foundation was established.

If certain other assets remained after the abolition of foundation, they would be dealt with in accordance with the will of the founder or, would be simply handed over to some legal entity with a similar purpose. If the foundation had philanthropic purpose, assets were given to "general fund of the poor or any other charity that works in benefit of people in general." <sup>35</sup>

From the above said, we see that Bogišić sought to shape the foundations in a way to suit the spirit of modern times, but also to channel

---

<sup>30</sup> Art. 762 General Property Code for the Principality of Montenegro

<sup>31</sup> Art. 762 General Property Code for the Principality of Montenegro

<sup>32</sup> Art. 763 General Property Code for the Principality of Montenegro

<sup>33</sup> Art. 765 p.2 General Property Code for the Principality of Montenegro

<sup>34</sup> Art. 763 General Property Code for the Principality of Montenegro

<sup>35</sup> Art. 752 p.3 General Property Code for Montenegro. Note also that the Constitution of Montenegro from 1905 guaranteed right to establish the foundation. Not only that. The Constitution provides that the property of foundation "cannot be regarded as state property, and it cannot be used for anything else except for what, for what is bequeathed and intended."

the centuries long tradition of foundations in our region.<sup>36</sup> And he succeeded. Standards which regulated the foundations in General Property Code are even today role models to lawmakers. Through the example of legal regulation of the foundation, in fact, one can conclude Bogišić's correctness of the view that the law does not draw power from the power of the legislator, but the springs of public life, current conditions and practical needs of environment for which the law is passed.

With the hindsight of more than one hundred and twenty years, General Property Code for Montenegro could be viewed as a great "foundation" of a great creator who, as "a stranger" showed through regulations of the Code which are governing foundations how much he met and understood Montenegro, its history, and its future.

---

<sup>36</sup> Here are some of the foundations established at the time of validity of the General Property Code. Đorđije Đurović established the foundation by a will from 27<sup>th</sup> April 1898 to which he left two houses in order "to establish a school in the Bay of Kotor in Topla or town of Erceg-novi, from a revenue of these houses it is to pay the teacher and other school expenses." Čipović Mileta in 1907 by a will left funds to establish schools in Danilovgrad. Đoko Vukmanović established the foundation by a will from 2<sup>nd</sup> January 1915., to help educate their children "from all over Crmnica district." By will of Krsto Lainović in Podgorica from 27<sup>th</sup> January 1918, the foundation was established with the aim to send students from Montenegro to studies abroad, which are obliged "to be in service to their country."

Snežana Miladinović, PhD  
Associate Professor at the Faculty of Law  
University of Montenegro

## FOUNDATIONS IN THE GENERAL PROPERTY CODE FOR MONTENEGRO

*In the history of Montenegro foundations have a special place. In the history of law, norms which regulate the foundations may, without exaggeration, be called pearls of inestimable value. What is said above is especially true for the regulations of the General Property Code for Montenegro, written by Valtazar Bogišić.*

*Section XI of the fifth part of the General Property Code for Montenegro Valtazar Bogišić dedicated to foundations. In only twelve articles Bogišić managed to sublimate all that is necessary for full, clear and unambiguous regulation of the foundations, starting with conceptual definitions, conditions and ways of establishing, through the rules of internal organization and working methods, to the conditions for a possible reorganization and termination of the foundation.*

*Namely, Valtazar Bogišić has inscribed in the General Property Code the model which is based on the principle of autonomy of the will, voluntarism, durability, utility, social importance and publicity.*

*In this article the author analyzed the provisions of the General Property Code, which regulates foundations. It was pointed out to their contents, but also the impact that carried out the foundation of the modern model.*

**Key words:** *Foundations, Valtazar Bogišić, General Property Code for Montenegro*