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V čast Darji Mihelič
In onore di Darja Mihelič
In honour of Darja Mihelič

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CARE FOR MINORS IN MEDIEVAL TOWN STATUTES AT THE JUNCTURE OF THE HOLY ROMAN EMPIRE AND THE REPUBLIC OF VENICE, WITH A NOTE ON THE RECEPTION OF ROMAN LAW

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ABSTRACT

This paper analyses and compares statutory provisions on tutelage for minor children in the Venetian towns of Koper, Izola, and Piran, and compares them with the regulation of the town of Ptuj, which was part of the Holy Roman Empire. It draws on selected notations from the notary books of Piran and, indirectly, documentary sources from Ptuj that reflect the practice corroborating and illustrating findings concerning statutory law. Moreover, from a comparative perspective, the paper aims to establish how Roman law influenced the legal regulation of the care of minor children in the two neighbouring territories that differed in terms of tradition and administrative affiliation.

Keywords: children, tutor, guardian, tutela impuberum, cura minorum, pupillus, Gerhab Istra, statutes, Koper, Izola, Piran, Ptuj, Roman law, reception

LA TUTELA DEI MINORI NEGLI STATUTI DEI COMUNI MEDIEVALI AL CROCEVIA TRA IL SACRO ROMANO IMPERO E LA REPUBBLICA DI VENEZIA CON BREVE RIFERIMENTO ALLA RICEZIONE DEL DIRITTO ROMANO

SINTESI

Nel presente contributo si analizzano e altresì si comparano le norme statutarie previste per la tutela dei minori in epoca medioevale nelle città veneziane di Koper/Capodistria, Izola/Isola e Piran/Pirano, e quelle previste nella città di Ptuj/Poetovio, che faceva parte del Sacro Romano Impero. Si esaminano apposite notazioni emerse dai libri notarili di Pirano e indirettamente dalle fonti documentarie di Ptuj che riflettono la pratica di confermare e illustrare i risultati relativi al diritto allora vigente. Inoltre, si cerca di accertare in una prospettiva comparata come il diritto romano abbia influenzato la regolamentazione giuridica relativa alla tutela dei minori in due territori vicini, ma comunque diversi in termini di tradizione e appartenenza amministrativa.

Parole chiave: bambini, tutore, curatore, tutela impuberum, cura minorum, pupillus, Gerhab, Istria, statuti, Koper/Capodistria, Izola/Isola, Piran/Pirano, Ptuj/Poetovio, diritto romano, ricezione

INTRODUCTION

Until they are of full age, children are generally incapable or only partially capable of acting on their own behalf, which means that their parents must take care of them. In ancient patriarchal societies, this right and duty were mainly imposed on the father. Problems would arise if the father died before his children had reached full age as the latter were then left without the necessary protection. It was not only in the interest of the parents, the broader family, and the children themselves to take appropriate care of the latter and their property, but it was also in the interest of society and the governing authorities. From a historical perspective, such care is even more understandable as life expectancy was considerably lower in the past than today.

As a solution to this problem, the legal institution of the tutelage of persons below the age of puberty or, as it is known in Slovenian law, the guardianship of minors (although nowadays up to the age of 18), evolved.[1] In its various manifestations, this institution can be found in practically every community. Its roots can be traced back to ancient societies (cf. e.g. Yiftach & Faraguna, 2017), while it was further developed and perfected as *tutela impuberis* under Roman law. Subsequently, due to its quality and underpinned by medieval legal science, Roman law marked the development of this institution in several European medieval towns (cf. Pelz, 1966).[2]

"*TUTORS*" ACCORDING TO THE STATUTES OF PIRAN, KOPER, AND IZOLA[3]

Types of tutors

The oldest preserved revision of the Statute of Piran from 1307[4] stipulates, under the title "*De tutoribus pupillorum*", that the tutelage of children until they reach full age after their mother's death falls to the father unless the mother has appointed another tutor by testament and, vice versa, after the father's death tutelage falls to the mother unless the father has appointed another tutor by testament. It is also prescribed that the mother can perform the tutelage so long as she "leads a chaste

1 The term "guardianship of minors" was introduced into Slovenian territory only after World War II. It replaced the established term "tutelage of persons below the age of puberty" found in the Austrian Civil Code (1811). The difference between tutelage (*varuštvo, tutela, Vormundschaft*) and guardianship (*skrbništvo, cura, Kuratel*) and the related terminological issues are dealt with in: Kambič, 2012, 120–121; for the Roman law distinction between *tutela impuberum* and *cura minorum*, esp. 121–123. Please note that in this text *pupillus*, tutor, and the related male pronouns are used to refer to both male and female.

2 For more on the further development and modern Slovenian law, cf. Kambič, 2012, 118–120, 138–140.

3 In this section of this article, a modified part of the discussion in Kambič, 2012, is used.

4 I wish to stress that the Statute of Piran should not serve as a basis for chronological comparisons with other statutes simply because its first preserved revision is the oldest one of all. Such an assumption could lead to incorrect conclusions. Namely, other statutes saw nearly similar development as the Statute of Piran; however, the wording of the older revisions has not been preserved.

life as a widow".[5] If it is established in a procedure before the podesta that she was not leading a chaste life or had squandered the *pupillus*'s property or failed to duly perform the tutelage, her tutelage would be revoked and a more appropriate person appointed.[6] In the event both parents of a child had died and no tutor was appointed by testament, the Statute stipulates that the podesta would appoint a tutor by selecting the most appropriate person.[7]

Very similar provisions in terms of substance and language are also found in the Statutes of Izola (IZO 2, 24, 25) and Koper (KOP 2, 54, 55), except that both regulate this subject, which is covered in the Statute of Piran in a single article (*capitulum*), in two articles, namely for a deceased father separately from a deceased mother.[8] The two statutes also include in the article referring to tutelage following the death of the mother a provision on appointing a tutor should both parents die.[9] Similarly to the Statute of Piran, they emphasise that the public authority should appoint as a tutor a person who offers more and is more suitable (IZO 2, 25; KOP 2, 55). One may conclude that tutelage where several parties were interested was awarded following competitive bidding that determined who was willing to provide the most security.[10]

The described regulation shows that three types of tutors were known in these towns, namely the testamentary, the legitimate, and the magistrate-appointed tutor. It is worth noting that women also had the capacity to become a tutor,[11] which corroborates findings on the fairly equal private-law status of women and men in the Istrian communes (cf. Mihelič, 1978, 23–36; 1999, 329–348; Kambič, 2010, 769–788 (with bibliography)). The mother could not only become a tutor but could also exclude the child's father from this function by testament. This cannot be con-

5 "*Statuimus quod omnis genitor habeat tutelam filiorum et filiarum suarum, et bonorum suorum matre defuncta, nisi ab ipsa in ipsis bonis alius tutor fuerit constitutus, habeat pater filios suos cum bonis eorum in sua potestate donec uenerint ad etatem. Et conuerso mater mortuo patre filiorum suorum sit eorum tutrix, si pater eorum non statuerit in testamento alium tutorem, et habeat tutela eorum donec caste uixerit uiduata.*" (PIR 1, VII, 23)

6 "*Et si de uiccio incontinencie acusaretur, uel de lapidatione bonorum eorum*" (PIR 1, VII, 23).

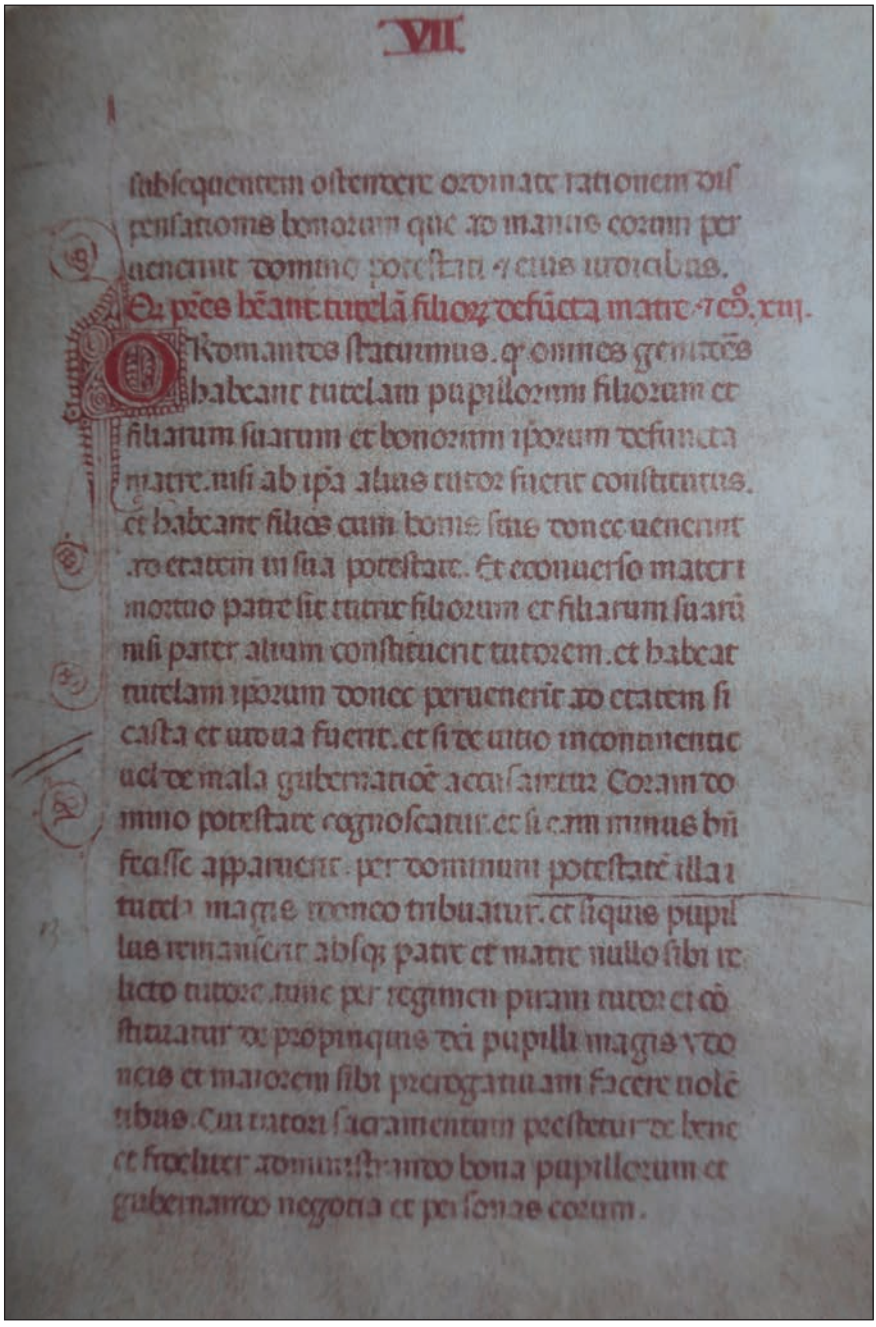
7 "*Ille uero, qui remanserit defuncto patre et matre detur eidem pupillo tutor* (*de propinquis dicti pupilli* – added in subsequent revisions) *ad eius maiorem utilitatem per ipsum dominum potestatem Pyrani.*" (PIR 1, VII, 23) The subsequent revisions better explained the phrases "*ad eius maiorem utilitatem*": "*magis idoneis et meliorem prerogatiuam pupillo facere uolentibus*" (PIR 2, VII, 20 (actually 19)); "*et maiorem sibi prerogatiuam facere uolentibus*" (PIR 4, VII, 13). Cf. KOP 2, 55: "*plus offerenti*".

8 In contrast to those of Piran, the Statutes of Izola and Koper expressly indicate that both a relative or a non-relative can be appointed tutor by testament (*vel consanguineus, vel extraneus tutor*) (IZO 2, 24; KOP 2, 55). Cf. subsequent revisions of PIR 1, VII, 23 (*detur eidem pupillo tutor de propinquis dicti pupilli*).

9 The great similarity in the wording of the mentioned articles in the Statute of Izola and the Statute of Koper was already pointed out by Kos, 2006, 204–205.

10 Cf. KOP 2, 55: "*plus offerenti et magis ydoneo concedatur, dando bonam securitatem redende rationis sue tutele.*" For Trieste, "auctions" (i.e. competitive bidding) for tutelages are mentioned in: Mihelič, 1997, 90; Mihelič, 1999, 332; Mihelič, 2007, 21.

11 The Statute mostly uses the masculine and feminine forms concurrently (*tutor vel tutrix*). Twice the Statute of Koper even states "*tutor uel tutrix utriusque sexus*" (KOP 2, 57).


VII

subsequentem ostenderit ordinate rationem dis
pensationis bonorum que ad manus eorum per
uenerint domino potestati et eius uicariis.
De pœs bēant tutelā filiorū defūcta matre et cō. rnj.
Romanos statuimus. q omnes genitōes
habeant tutelam pupillorum filiorum et
filiarum suarum et bonorum ipsorum defuncta
matre. nisi ab ipa alius tutor fuerit constitutus.
et habeant filios cum bonis suis donec uenerint
ad etatem in sua potestate. Et conuerso matre
mortua patre sic tutrice filiorum et filiarum suarū
nisi pater alium constituerit tutorem. et habeat
tutelam ipsorum donec peruenerit ad etatem si
casta et uidua fuerit. et si de uitio inconuenerit
uel de mala gubernatiōe accusetur. Coram do
mino potestate cognoscatur. et si cum minus bñ
fecisse apparuerit. per dominum potestatē illa
tutela magis idoneo tribuatur. et si quis pupil
lus remanserit absq; patre et matre nullo sibi le
gato tutore. tunc per regimen ipsam tutorē et cō
stituatur de propinquis dēi pupilli magis vti
lis et maiorem sibi prerogatiuam facere uole
ribus. Cum tutor sacramentum prestiterit de bene
et fideliter administrando bona pupillorum et
gubernando negotia et personas eorum.

Fig. 1: Opening chapter on tutors. Statute of Piran from 1384; facsimile (Darovec, 2006).

sidered the emancipation of women in today's meaning of the word, as shown by the fact that the following condition was only applied to the mother as a tutor. She could perform the function of a tutor solely on the basis that she was leading a chaste life and had refused to remarry.[12] Moreover, the article about the mother as a tutor in the Statute of Piran also provided that her tutelage could be revoked if she was found to be unsuitable because she had squandered the child's property.[13]

The administration of property

The first, completely preserved revision of the Statute of Piran stipulates that a tutor must keep the *pupillus*'s property intact.[14] The same wording is found in both the Statute of Izola (IZO 2, 26) and the Statute of Koper (KOP 2, 57).

These provisions are important because they reflect the development of the legal nature of tutelage in the discussed period, showing how tutelage evolved from the private to the public sphere. In the first preserved revision of the Statute of Piran from 1307, the duty to preserve the *pupillus*'s property was only *ius dispositivum,* as the Statute lays down: "*nisi aliud esset dispositum inter eos*" ("except if it was regulated differently between them").[15] Something similar is contained in the second (1332) and third revisions of the Statute of Piran (1358): "*nisi aliud esset de ipsis bonis ordinatum*" where the word "*dispositum*" from the first revision is replaced by "*ordinatum*". The Statute of Izola (1360) clearly maintains this tradition as, besides the addition "*nisi aliud pactum vel dispositum intervenerit inter eos*", it puts the dispositive nature of the provision beyond any doubt: "*Quoniam lex pacto cedit et pacto lex omnis obedit*." ("Because the law is subordinate to an agreement and every law respects the agreement.") (IZO 2, 26). A different regulation is seen in the final, fourth revision of the Statute of Piran (1384), which transfers any deviation from the provision or any other regulation of the relationship to the absolute competence of the authorities: "*nisi iusta causa intervenerit cognita per dominum potestatem et iudices*" ("except if based on a justified reason recognised by the podesta together with the judges") (PIR 4, VII, 14). The latest, namely the Statute of Koper (1432), does not include any addition concerning the possibility of a different regulation of the tutor's duty to keep the *pupillus*'s property intact.

12 "[*D*]*onec caste uixerit uiduata*." (PIR 1, VII, 23). Almost literally the same can be found in: IZO 2, 25; KOP 2, 55.

13 PIR 1, VII, 23. By analogy and based on other provisions, this condition probably also applied to the father. Cf. IZO 2, 27. The Statute of Koper exempted the father from responsibility (*excepto patri*) in such cases (KOP 2, 57).

14 "[*T*]*enere in culmo sine lucro et dampno*" (PIR 1, VII, 24). The term "*in culmo*" can be translated as "in the best condition" or "in entirety". Perhaps the meaning of this term was also problematic for the Piranians and they supplemented the text in the fourth revision: "*in culmine tenere sine diminutione uel damno*" (PIR 4, VII, 14).

15 This formulation most likely referred to an order based on which the testator absolved the tutor from liability for any loss. See the term "*ordinatum*" in the later revisions of the statute.

Inventory

A tutor's next duty as found in the statutes of all three coastal towns is the duty to compile within 30 days an inventory of the *pupillus*'s entire property.[16] According to the Statute of Piran[17] and the Statute of Izola[18], whose wording is quite identical, a tutor had to execute a public document before a public notary, whereas in Koper a tutor had to compile two copies of an inventory, one being deposited with the *vicedominum* (KOP 2, 57).[19] The statutes determined a pecuniary penalty for tutors in breach of this provision. Furthermore, a pecuniary penalty was determined for a tutor who had concealed an inventory item. In such case, the tutor had to return to the *pupillus* all concealed items of property and their tutelage was revoked. According to the Izola and Koper statutes, the penalty amounted to 25 libras (IZO 2, 27; KOP 2, 57). The first completely preserved revision of the Statute of Piran stipulated that the amount of the penalty to be paid to the commune was determined at the podesta's discretion (PIR 1, VII, 25). The third and fourth revisions of the Statute of Piran laid down a penalty of 50 libras, half of which was paid to the commune and the other half to the *pupillus* (PIR 3, VII, 21; PIR 4, VII, 14). In addition to the amount of the penalty, the Statute of Piran differed from the other two in terms of the formal guidelines for carrying out the inventory.

The Statute of Izola, for example, requires a tutor to compile an inventory in the presence of two kinsmen of the *pupillus*. They must record in the inventory the age of the *pupillus* and his entire property, including movable property, which must be evaluated in monetary terms jointly by the tutor, the podesta's authorised representative, and two or three of the *pupillus*'s kinsmen. If there were no kinsmen, the Statute provides: "*faciat de auctoritate domini potestatis*" (IZO 2, 27), which may be understood as if the podesta as a public authority should in such a case ensure that the inventory reflects the actual state of the *pupillus*'s property, perhaps by imposing on his authorised person the duty to make an inventory or at least by appointing two trustworthy witnesses. A tutor is obliged to take care of the property in the inventory in line with the provisions of the Statute (IZO 2, 27).

Security

The security by which a tutor guaranteed to honestly perform his duty was only instituted in the Statute of Piran in the second entirely preserved revision.[20] The fourth revision is even more explicit about such security: "*Cui tutori sacramentum*

16 The third and fourth revisions of the Statute of Piran shortened the deadline for compiling the inventory to 15 days (PIR 3, VII, 21; PIR 4, VII, 14).

17 "[*O*]*mnis tutor et tutrix teneatur infra triginta dies uniuersa* (added in the next revision: *bona*) *pupillorum abreuiare, et aduentarium* (amended in the next revision to: *inuentarium*) *facere, et hoc pateat per publicum instrumentum.*" (PIR 1, VII, 25)

18 "[*O*]*mnis tutor vel tutrix teneatur infra XXX dies bona universa pupillorum suorum abreviari facere et de his omnibus inventarium facere ut per publicum pateat instrumentum*" (IZO 2, 27).

19 On the public notaries and *vicedomini* in Istrian towns, cf. Darovec, 2010, 789–822; Darovec, 2015.

20 "*Et tutoribus debeat dari sacramentum per dominum potestatem de bene administrando negocia pupillorum.*" (PIR 2, VII, 20 (19))

prestetur de bene et fideliter administrando bona pupillorum et gubernando negotia et personas eorum" (PIR 4, VII, 13). It is clear from this formulation how the tutor's duties were perceived. Namely, he guaranteed to "administer the *pupillus*'s property effectively and in good faith, take care of the *pupillus*'s affairs, and (also) his person".[21] The Statute of Koper is more concise about the security,[22] whereas the Statute of Izola does not contain any provision about this matter.

Account

The first entirely preserved revision of the Statute of Piran does not mention that a tutor should submit an account of the managed affairs at the end of the tutelage. Already the second revision exhaustively prescribed such accounting, clearly stipulating that a tutor must as soon as possible (*quam cicius poterit*) but no later than two months after the end of the tutelage compile and submit an account and hand over all of the property to the *pupillus*. A penalty of 25 libras was imposed for failing to comply with this provision (PIR 2, IX, 40; cf. PIR 4, VII, 15). Something similar is found in the Statute of Izola, under which a tutor, after the tutelage had come to an end, had to forthwith (*sine aliqua dilatione vel termini prolungatione*) hand over such property to the *pupillus*, namely, the real property improved and not deteriorated (*meliorata, non deteriorata*) and the movable property in undiminished value pursuant the inventory. The Statute of Izola does not explicitly mention that an account must be submitted (IZO 2, 27). The Statute of Koper briefly stipulates that a child of full age can request from the tutor an account and his property at any time within 10 years following the end of the tutelage (KOP 2, 57, 58). Conversely, the Statutes of Piran and Koper include special provisions on the method of delivering the property to the *pupillus* once the tutelage has ended (KOP 2, 57; PIR 4, VII, 15).

Termination of a tutelage based on the *pupillus*'s age and his legal capacity to act

Tutelage usually ended when the *pupillus* reached full age. In Piran, the full age of girls and boys was 12 and 14 years, respectively.[23] Under the Statutes of Izola and Koper, the age limit was higher, namely 14 for girls and 15 for boys (IZO 2, 28; KOP 2, 57). During the period of tutelage, *pupilli* were not allowed to legally bind themselves by entering into a contractual obligation or to alienate

21 The fact that a tutor must take care of the *pupillus*'s property and person is also seen in the formulations of other provisions, such as IZO 2, 24: "*pater tutelam filiorum suorum habeat et bonorum*", and also in the testamentary clauses (see below for examples).

22 "[*D*]*ando bonam securitatem redende rationis sue tutele pro ut domino potestati uidebitur expedire*" (KOP 2, 54).

23 The last revision of the Statute of Piran already uses the legal term "*legitime* [...] *aetatis*" (PIR 4, VII, 16; cf. Mihelič, 2011, 37).

Fig. 2: Portrait of the Vendramin Family by Titian; detail (National Gallery, London, UK).

their property.[24] They could only enter into legal transactions with their tutor's and the relevant authority's approval,[25] whereby the Statute of Izola expressly adds that the podesta must first establish that any sale would benefit the *pupillus*.[26] Otherwise, such a transaction was deemed invalid, and the other contracting party had to return the property to the *pupillus*.[27]

Despite the end of the tutelage, as a rule, former *pupilli* did not attain full legal capacity to act because the ban on assuming liability and alienating property continued to apply to them: in Piran, to girls up to 15 years of age and to boys up to 18 years of age (PIR 1, VII, 26); in Izola, both up to 18 years of age (IZO 2, 28); and in Koper both up to 20 years of age.[28] Until former *pupilli* reached the mentioned age limit, they held practically the same position in terms of their capacity to act as if they were still under tutelage. The third and fourth revisions of the Statute of Piran already designated these persons as "*minores*".[29] They were not allowed to legally bind themselves or alienate their property. In Izola and Piran, such a minor depended on the approval of the podesta (*licentia domini potestatis*) when concluding a legal transaction, whereas in Koper minors also depended on the approval of the relevant authority and two specially appointed relatives, who had to be stated in the transaction document (PIR 3, VII, 23; IZO 2, 28; KOP 2, 57).

Under the Statutes of Piran and Izola, in contrast to *impuberes* under tutelage, minors were allowed to enter into marriage and make a will "but in doing so they needed the approval of their (blood) relatives" (PIR 1, VII, 26; IZO 2, 28). The Statute of Koper differs inasmuch as it confers the capacity to enter into marriage and make a will on girls 13 and boys 14 years of age, even though the tutelage for girls and boys only ended at age 14 and 15, respectively (KOP 2, 57). The Statutes of Izola and Koper restrict disposition by testament even further as a *pupillus* could only make a will if his life was threatened by a disease (*gravatus infirmitate*) (IZO 2, 28; KOP 2, 57).

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24 "[*N*]*ullus pupillus* [...] *possit* [...] *aliqua sua bona alicui uendere, donare, pignorare, uel alio modo alienare*" (PIR 1, VII, 26); "*aliquam rem mobilem vel immobilem vendere vel donare vel alicui obligare sive aliquo modo obligare*" (IZO 2, 28); "*nemo utriusque sexus possit se obligare uel bona sua mobilia et immobilia uendere, obligare uel modo aliquo alienare*" (KOP 2, 57).

25 "[*U*]*erbo tutoris et coram domino potestate*" (PIR 1, VII, 26); "*auctoritate tutoris et licentia et auctoritate domini potestatis et suorum iudicium*" (PIR 4, VII, 16); "*verbo tutoris et de verbo et auctoritate domini potestatis Insule*" (IZO 2, 28).

26 "[*C*]*ognito prius per potestatem quod illa res, que venditur, converti debeat in utilitatem pupilli.*" (IZO 2, 28)

27 "*Et si aliter facta fuerit* [...] *non ualeat, neque omnino teneat*" (PIR 1, VII, 26); "*et si aliter factum fuerit nullius ualoris existat, et quidquid emptor dederit amittat*" (PIR 4, VII, 16); "*Et talis alienatio vel obligacio careat firmitate*" (IZO 2, 28); "*Et aliter factum fuerit, omnino emptor qui emit uel obligationem receperit, amittat et talis uenditio, alienatio seu obligatio careat firmitate*" (KOP 2, 57).

28 The Statute of Koper nomotechnically shortened the rules without any consequences for the substance which is equivalent, including the mentioned differences, to that of the other two statutes (KOP 2, 57).

29 "*Minores uero annis decemocto masculi et femine quindecim non possint de bonis suis facere aliquam venditionem, dationem uel obligationem alicui persone.*" (PIR 4, VII, 16) Similarly: PIR 3, VII, 23.

Regulation under the Statute of Izola as another example of local specifics

The presented common characteristics of how tutelage was regulated in the statutes of today's Slovenian coastal towns reveal differences in certain elements. Besides these differences, the statutes include specific provisions not found in other statutes of the discussed towns, highlighting the fact that in every town the broader issue of tutelage was dealt with from a unique perspective, most probably one that stemmed from the most pressing problems in the community at the time. An example of such a regulation is found in the second volume of the Statute of Izola.[30] Its extensive Article 27 includes certain statutory provisions alongside provisions on inventory.

In the event a court ordered a tutor to pay the debt of a *pupillus* or his parents, the Statute prescribes that the tutor should pay it from the *pupillus*'s movable property.[31] If the latter was insufficient, a tutor could also sell any real property to repay the debt, based on the podesta's approval. He had to choose that item of real property that resulted in the smallest loss to the *pupillus* (*de bonis immobilibus ipsorum pupilorum minus damnoris*).[32] The care taken by the relevant authority to ensure that the tutor does not conceal the actual proceeds of an item sold that exceeds the amount of the debt is evident in the requirement that the tutor must record any surplus in the inventory of the *pupillus*'s property within 15 days of receiving payment for the property sold or otherwise face a penalty of 25 libras (IZO 2, 27).

In the same article, the *pupillus*'s property was further protected from the tutor by a provision that permitted the *pupillus* to request from the tutor, within 1 year of the end of the tutelage or of the day the tutor submitted the account to him, to return those items of the *pupillus*'s property which the tutor had purchased from him either by himself or through a third person, so long as the *pupillus* returned the proceeds to the tutor. If the tutor refused to do so, the podesta had to ensure that the items were returned and the proceeds reimbursed (IZO 2, 27). Any purchase agreement based on which the tutor could acquire the *pupillus*'s property was thus challengeable. The *pupillus* could also challenge any sale of his property to a third person whenever an item sold eventually ended up among the tutor's assets. In order to regain this property, he had to pay the tutor an amount equal to the proceeds of the sale of the item to the first buyer (IZO 2, 27).

30 As regards the Statute of Piran, I mention only the provision indicating that the tutor had the right of usufruct to the *pupillus*'s property: "*Et ipsi tutores habere debeant omnem usufructum et utilitatem de bonis, que ad eorum manus pervenerint, donec pupilli ad legitimam peruenerint etatem.*" (PIR 4, VII 7, 14) I shall not delve into the institution of *tutela (usu)fructuaria* in this article.

31 The statutes also contain provisions enabling a better legal standing in special cases for *pupilli* as debtors. Cf. e.g. IZO 2, 36, 80; IZO 1, V, 166, 174.

32 This probably included those items of real property that the *pupillus* could do without and whose value was proportionate to the amount of the debt (IZO 2, 27).

Highlights of Piranian practice

Given that the key statutory provisions on tutelage in the three coastal towns are basically very similar and that documentary sources for Izola and Koper are very scarce, the preserved Piranian material can serve as *pars pro toto* for establishing the practice in the other two neighbouring towns. The notations (*imbreviaturae*) of the Piranian testaments show that the appointment of tutors was a frequent element and, given the well-established clauses, also a typical one whereby the testators generally appointed the surviving spouse as the tutor.[33] This means that mothers were also often appointed tutors and that mothers as testators explicitly appointed their husbands (i.e. the children's father) tutors of their children.[34] There are also testaments where another person was appointed tutor even though the spouse was still alive. Let us consider some examples from the earliest preserved *imbreviaturae* written by Piranian public notaries in the last quarter of the 13th century.

Iohanes Ausillina appointed his wife Florita tutor of his children: "*Bona et pueros et puella dimisit et iudicavit tuturia uxoris sue Florite ad regendum bona et pueros et puellas, dum ad ettate plenisimam prouenerint.*" (Testament, 8 July 1285) (Mihelič, 1986, 69). Mateulda, the wife of Almerico Petrogna, appointed her husband the tutor of her children: "*Bona et pueros dimisit et iudicauit in tenuta et tutorie viri sui Almerici ad regendum bona et pueros, dum ipersis ad etatem plenisimam prouenerint.*" (Testament, 9 February 1290) (Mihelič, 2009, 80).

There could be several tutors at once, as, for instance, shown by the testament of the Piranian townsman Pellegrini, who appointed both his wife and his brother tutors of his daughter: "*Et bona et puella dimisit in tutoria uxoris sue Gafere et fratri suo Ade ad regendum bona et puellam dum ad ettatem plenisimam peruenerit.*" (Testament, 15 August 1285) (Mihelič, 1986, 77–78).[35]

At first glance, the *imbreviatura* in the testament of Artuico, son of Alberic de Artuico, appears unusual because it shows that the testator appointed his parents as the tutors of his children (*Et dimisit bona et puero et puelle in potestate et tutoria patri sui et matri sue Isocte ad regendum bona et pueros, donec ad ettatem plenisimam peruenerint*) (Testament, 26 January 1287) (Mihelič, 1986, 145–146), even though his wife was still alive and the testament entitled her to certain benefits.[36] The reason for appointing only the testator's parents as the tutors is revealed once the whole *imbreviatura* is read. Namely, the testator co-owned property with his father and mother (*omnium bonorum mobilium et inmobilium, quae nunc posidet cum patre et matre sua*). Moreover, the testament stipulated

33 See the *imbreviaturae* of the testaments in: Mihelič, 1984; 1986; 2002; 2006; 2009; 2016; 2018.

34 As regards women as tutors, grandmothers were also appointed.

35 Mihelič, 1986, 77–78. Cf. Mihelič, 2018, 131 (Testament, 25 December 1302: "*Item dimissit tutorum et suos fidelles comissarios de se et filiorum suorum uxori sue Romedie et Andrea fratri suo*").

36 Cf. Testament, 6 September 1308 (Mihelič, 2018, 142–143) where the appointed tutor of the children after the death of the testator was first her mother and then her husband ("*Item dimisit suis fideles comisariis et tutores filiorum et filiarum suarum domina Suriana mater sua et Venerio Gallo viro suo*").

that in the event all children died before reaching full age, their property would belong to the testator's parents, i.e. the children's tutors (*Et si omnes deceperit sine ettate, tunc dicta bona uertetur patri mei Alberici et metris mee Isocte*). The testator also instructed that in the event his daughters married, their inheritance would belong to his son. The testamentary clauses from the mentioned notation reflect an older regulation whereby the property was still tied to the family.[37] In the preserved sources, testaments where the husband did not appoint his wife the tutor of their children are scarce.[38]

Apart from the *imbreviaturae* of testaments, the practice related to statutory provisions is reflected in the preserved inventories of the *pupillus*'s property, contracts entered into by tutors on behalf of their *pupilli*, and the notes on disputes before a podesta about a *pupillus*'s property (cf. Mihelič, 2007, 26).[39] Shedding some light on the practice, the described material is chiefly important for two reasons. On one hand, it confirms that the provisions on tutelage were actually implemented, while, on the other, the *imbreviaturae* from the last quarter of the 13th century indicate that the regulation of tutelage existed – at least as far as the appointment of testamentary tutors and the linked relative equality between husband and wife (i.e. father and mother) – already before it is evidenced in the first completely preserved Statute of Piran from 1307, which, of course, is not surprising.

The reception of Roman law

When comparing the regulation of tutelage in the statutes of the coastal towns with Roman law, it can immediately be established that the latter considerably influenced such regulation; this is demonstrated by the following, besides the Latin terminology that complies with the Roman law sources: the types of tutelage, the priority of testamentary tutors over other tutors, the right of a mother to become the tutor of her children on the condition that she does not remarry, the duty to compile an inventory of the *pupillus*'s property, the possibility of the revocation of a tutelage in the case of a tutor's misconduct, the restriction of the disposal of a *pupillus*'s property subject to the relevant authority's approval, the duty to administer the property with due care and, under the Statutes of Piran and Koper, the security provided by the tutor.[40]

In addition to the Roman law roots, the provisions of all three statutes reflect the local specifics, which is not unusual. Despite recognising the authority of common law, a generally accepted belief applied, namely that statutory law holds precedence

37 For more details, cf. Kambič, 2010, esp. 784.

38 For example, Mihelič (1978, 31–32, n. 95) mentions a testament where the father appointed his parents as the tutors even though the child's mother was still alive. In this case, which Mihelič views as quite exceptional, the mother reached a judgement with the court that she could take care of the child until the age of 2 years. She also received compensation for food and costs from the child's property.

39 For examples of an inventory, cf. Mihelič, 2006, 151–152; 2013, 30–41.

40 Regarding the basics of the Roman law regulation of tutelage, cf. Kambič, 2012, 121–127.

Fig. 3: Mother with child in front of a judge. Illumination from the manuscript of the Justinian's Digest; Bologna, around 1300 (Ebel, Fijal & Kocher, 1988, 85).

over common law.[41] A typical example of such a regulation according to all the statutes is a legitimate tutelage. In contrast to Roman law, only the child's parents could be legitimate tutors. Unlike Roman law, tutelage in Izola, for example, ended at the age of 14 for girls and 15 for boys.[42] The former *pupilli* remained under some kind of guardianship until they reached a specific age, which indicates the idea of the Roman *cura minorum* even though the age limit was lower than under Roman law (25 years) in all of the discussed towns.

In spite of the locally specific provisions, the regulation of tutelage under the statutes examined may be considered the result of early reception.[43] This is also congruent with the then general development tendencies as the influence of Roman law on the institution of tutelage can be detected in many other towns.[44] We note that the same or a very similar arrangement of tutelage as found in what are today the Slovenian coastal towns was also in place in other Istrian towns under Venetian rule.[45]

"*GERHAB*" ACCORDING TO THE STATUTE OF PTUJ

Introductory remarks

Ptuj is one of the few Slovenian inland towns that received written law in the form of a statute and not as privileges, as was common in most other inland towns. The Ptuj municipal law not only applied to Ptuj but was also bestowed on some other towns in Styria and even Carniola (Simič, 1998, 45). In the discussed period, Ptuj was a town of the Prince-Archbishopric of Salzburg, part of the Holy Roman Empire.

41 Roman law was only applied subsidiarily where the domestic, local, or particular law lacked an appropriate provision (*Ubi cessat statutum, habet locum ius civile*). For the hierarchy of the rules, cf. Bellomo, 1995, 78, 151–152. For an example regarding Piran, cf. Kambič, 2010, 771, n. 10.

42 Nevertheless, at the age of 14 they could enter into a valid marriage and, in exception, make a will with the approval of their relatives, which complied with Roman law at least to some extent.

43 The same conclusion has already been reached regarding inheritance law (cf. Kambič, 2005, 93–95).

44 Cf. Coing, 1985, 256, n. 5–6, where a typical example is the Venetian Statute of 1242. Although the influence of learned law is obvious from the glosses in the statute, in our opinion it is not possible to talk about the broad reception of Roman law. See the scarce provisions on tutelage in the second volume of statutes (Cessi, 1938, 102–104). A more extensive reception subsequently occurred in Venice. After an examination of the Statute of J. Tiepolo from 1242, the assumption that the Venetian statutory regulation of tutelage had to be respected in towns under Venetian rule while compiling statutes could not be confirmed. For the basic characteristics of the subsequent regulation of tutelage in Venice, cf. Manin, 1848, 29–31.

45 A brief summary is found in, e.g., Mogorovič Crljenko 2011, 149–151. Cf. Margetič 1996, 198–200, 256; for Reka/Fiume, cf. Karbić, 2011, 127–128. See also: Statute of Buzet (1435), 96–103, Statute of Vodnjan (1492), II, 20; Statute of Umag (1528), III, 39–43. The latter corresponds almost literally to the last revision of the Statute of Piran from 1384, along with the alphabet acrostic. As to the acrostic, cf. Pahor, 1997/80, 148; Kambič, 2007a, 151–152; 2007b, 136.

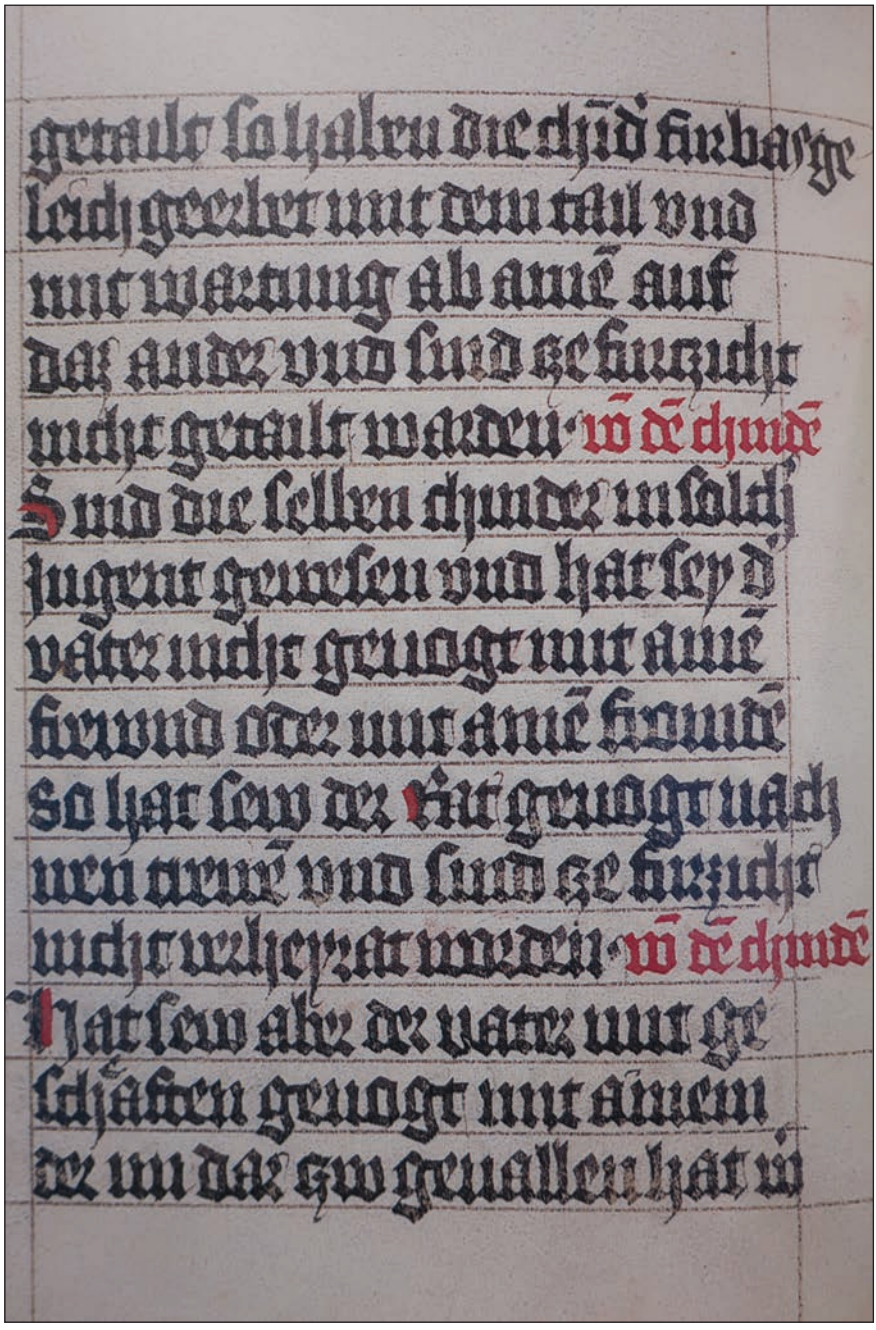

Fig. 4: Article on tutors, Statute of Ptuj from 1376; facsimile (Masten, 1998).

The first Statute of Ptuj, issued in 1376, was later replaced by a second one in 1513. Although the second is considerably more comprehensive than the first one, it merely standardises in greater detail and more extensively the already established institutions, thereby mainly failing to introduce any substantive novelties. The first Statute of Ptuj is interesting for the purpose of this paper because it enables a comparison with the almost contemporaneous Statute of Izola from 1360 and the final revision of the Statute of Piran from 1384.[46]

Types, administration of property, inventory, and account

The first Statute of Ptuj dedicates four articles to tutelage. Compared to the statutes in the coastal towns, the regulation is quite modest and incomplete.[47] All provisions on tutelage are entitled "On children" (*Von (den) Chindern*) and form part of inheritance law provisions with the same title, whose starting point is the existence or non-existence of a testator's children. It appears that the fundamental substance of the articles on tutelage mainly answers the question of who can become a tutor and in what way, whereas all other questions seem to be subordinate thereto in terms of legal drafting.

The first two provisions on tutelage (Articles 144 and 145)[48] reveal that a child's tutor was appointed by the child's father by means of a legal transaction (*mit geschåften*). It is stipulated that a father was allowed to appoint as tutor a person who was not a relative (*gewogt* […] *mit ainem frewnd oder mit einem fromden*). The Statute, therefore, shows that a father could choose a tutor at his own discretion, and could thus appoint either a relative (*frewnd*) or a person other than a relative (*fromde*) even if relatives were available (PT 1, 144).[49] When a tutor was not appointed by the child's father, the town council had the duty to do so (PT 1, 144). We may conclude from the wording of Article 145 that the Statute obliged the tutor to act with due care (*der selb hat die chinder gehandelst nach seinen trewen*).

The next two provisions stipulate a specific situation. In the event a tutor dies before his *pupillus* has reached the age of puberty, the tutor is allowed to appoint

46 For a comparative analysis of the inheritance law provisions of the Statutes of Piran and Ptuj, cf. Kambič, 2007a; 2007b.

47 The rest of tutelage was very likely governed by common law, which, unfortunately, lacks any sources. The Statute probably regulated only what was considered most important or what could be contestable.

48 "*Sind die selben chinder in solcher jugent gewesen und hat sey der vater nicht gewogt mit ainem frewnd oder mit einem fromden, so hat sew der rat gevogt nach iren trewen und sind cze furzicht nicht verheyrat worden.*" (PT 1, 144) "*Hat sew aber der vater mit geschåften gevogt mit einem, der im darczw gevallen hat, wer der halt gewesen ist, der selb hat die chinder gehandelst nach seinen trewen.*" (PT 1, 145)

49 This is indirectly confirmed by the last part of PT 1, 146. The term *fromde* might also be interpreted as someone not related to the *pupillus* in the sense of the closest relative under the father's paternal power (cf. Simič, 1983, 131–132).

another tutor at his own discretion, without the approval of the child's relatives.[50] If the tutor dies without having first appointed another tutor for the child, a tutor must be appointed by the town council.[51] The latter was also allowed to appoint a tutor at its own discretion, taking the child's best interests into account, as the provision stipulates that it should appoint a tutor "in its honesty" (*nach iren treuen*), whereby the tutor was not necessarily a relative of the child. Furthermore, the mentioned article adds that every tutor, whether related to the child or not, is responsible to the council regarding the children's property (*dem rat mů̈ssen verantwurten der chinder hab*) (PT 1, 147).

As we can see, the first Statute of Ptuj regulates tutelage very basically, concerning the origin, duty of careful conduct, and accountability of the tutor (to the town council), yet even these provisions are quite modest.

The second, 137-year-younger Statute of Ptuj still regulates this matter within the inheritance law provisions, except that it is now condensed in a single article entitled "On tutors" (*Von der gerhabenn*) (PT 2, 63). Other than the modified wording, there are no particular substantive changes in the article. The difference compared to the first Statute is only the option of appointing several tutors. Still, we come across an important novelty towards the end of the second statute, in Article 203 entitled "On making an inventory of the property left" (*Von verlassner gueter inventierung*).[52] The article stipulates the obligation of the judge and the town council to ensure, prior to surrendering the property to the tutor's administration, that a trustworthy inventory of the property be made and saved, with the explanation that minor heirs will know what to request from their tutors upon reaching full age (PT 2, 203).

The influence of Roman law

The reception of Roman law in the civil law provisions of the first Statute of Ptuj from 1376 was already discussed by Kranjc (Kranjc, 1997a; Krajnc, 1997b). Based on Coing's general observation that tutelage was subject to reception relatively early

50 "*Ist aber derselb gerhab und inhaber mit dem tod abgangen, ee daz die chinder darczw chomen sind, das sie eins vogtz geraten mo̊hten, der selb gerhab hat sew wol mů̈gen vogten mit einem andern, wer im darczw gewallen hab, und hat darczw nicht bedurffen der frewnt willen.*" (PT 1, 146)

51 "*Ist aber der selb gerhab abgangen und hat die chinder nicht gewogt, so hat sew der rat gevogt nach iren trewen recht alz vor. Der selb gerhab, den der rat darczw genomen hat, er sei frewnt oder fro̊mder gewessen, hat dem rat mů̈ssen verantwurten der chinder hab, untz daz die chinder czw in selb chomen sind.*" (PT 1, 147)

52 The article refers to a decedent's estate in the case of minor heirs as well as to property without an heir or a known owner. We refer only to those parts that are relevant to tutelage: "*Geet ain burger oder inwoner der statt Pettaw mit tod ab, der unvogtper erben hinder sein verlasst* [...] *so sollen richter unnd rat desselben gelassen hab* [...] *bewarn und versenetirn lassen und* [...] *gerhaben* [...] *nit ee eianntwurten, sy hietten dann die vor aygenntlich beschriben und in ain glawbwidrig inventari precht. Dasselb inventari sollen richter unnd rat behallten, damit die unvogtpern erben zu iren vogtpern jarn an yr gerhaben yre gueter nach solhem inventari wissen ze erfordern*" (PT 2, 203).

on (Coing, 1985, 255–257), Kranjc is not surprised by the similarity between the provisions of the Statute of Ptuj and Roman law (Kranjc, 1997a, 238). In his opinion, four articles that stipulate tutelage law "show fairly characteristic traits of Roman tutelage" (Kranjc, 1997a, 237). While comparing the mentioned provisions with Roman law, he emphasises the substantive equality of Roman law and the Statute of Ptuj, treating any potential differences as merely "ostensible" (Kranjc, 1997a, 238). He characterises both types of tutors in the Statute of Ptuj, namely a testamentary tutor (*tutor testamentarius*) and that appointed by the relevant authority (*tutor dativus*), as being typical of Roman law (Kranjc, 1997a, 238). He considers the fact that, according to the Statute of Ptuj, a testamentary tutor may, in his own testament, appoint a new tutor for his *pupillus*, to only be an ostensible difference with Roman law and based on inventive interpretations establishes "perfect congruity" between Article 146 of the Statute of Ptuj, which stipulates this matter, and Roman law (Kranjc, 1997a, 238). Similarly, regarding Article 147, which stipulates a tutor's duty to be accountable to the town council, he establishes "merely an ostensible difference" with Roman law, as in his words the regulation of a tutor's responsibility in the Statute of Ptuj and in Roman law was "substantively equal" (Kranjc, 1997a, 239). With the assertions as to the regulation of tutelage stated above, Kranjc negates the findings of the Austrian historian Baltl, which was also accepted by Wesener, namely that the provisions of the Statute of Ptuj fell completely within the scope of "German law" (Baltl, 1962, 32–33; Wesener, 1989, 34–35).

In our opinion, the similarity of the regulation of tutelage according to the Statute of Ptuj and under Roman law is fairly indirect. To some extent and roughly, the provisions are reminiscent of Roman law, yet the similarities can hardly be ascribed to the direct influence of Roman law, nor can one claim complete congruity with Roman law.[53] Even if there is a potential similarity or congruity of solutions with various Roman law sources, especially as a result of very creative interpretation, this cannot in itself be an argument for the reception of Roman law. Another problem with establishing the influence of such reception in tutelage law is that, similar to, e.g., intestate inheritance, tutelage is also stipulated by provisions that can be considered traditional, in the sense that we come across substantively equivalent or very similar provisions in different periods and different societies in a similar development phase. They somewhat represent natural laws that emanate from the most rational or self-evident reaction to a concrete situation.[54]

We could say that the ideas of so-called learned law, adjusted to local specifics, probably helped strengthen the position of public authority in tutelage matters[55] and restrict the role of relatives. This indicates some loosening of familial ties within

53 In his general conclusion about the influence of Roman law on the civil law provisions of the Statute of Ptuj, Kranjc was also somewhat reserved about the direct influence of Roman law (Kranjc, 1997a, 241–242; Krajnc, 1997b, 575).

54 For inheritance law, cf. Kambič, 2007, 141.

55 The tutor is held accountable to the town council.

Fig. 5: Verdict in a dispute concerning tutelage. Illumination from the manuscript of the Justinian's Digest; Italy, 14th century (Ebel, Fijal & Kocher, 1988, 7).

society. As is evident from the special emphases in certain statutory provisions, a father, tutor or authority could, at their discretion, appoint a tutor without any obligation to consider the child's relatives.[56] Perhaps this course was also taken by regulations that failed to introduce statutory tutelage, which under Roman law was performed by the closest relative in the event a tutor was not appointed by testament.[57] The specifics of the social circumstances are also reflected in the right of the tutor appointed by the father to appoint a new tutor in their testament, as well as the fact that the Statute of Ptuj mentions the mother neither as a person who can appoint a tutor nor as an appointed tutor.

The only relatively solid indicator of reception is the provision added in the second Statute of Ptuj that stipulates that, prior to appointing a tutor, an inventory of the *pupillus*'s property must be taken.[58] As for the rest, the second Statute, despite its relatively late year of issuance with respect to the first one, does not bring about any novelty in terms of reception.

It thus seems probable that, regarding tutelage, the Statute of Ptuj assumed[59] another legal source created under the indirect influence of learned law, which was, as was often the case, adjusted to the specifics of the then social conditions.

Finally, the fact that the regulation on tutelage in the Statute of Ptuj is far from being completely in line with Roman law is evidenced by the provision which stipulated that a testament was only valid if the testator did not leave any children.[60] This provision is corroborated by the preserved testamentary documents from Ptuj as they all demonstrate that the testators did not have any living children.[61] Therefore, a tutor appointed by the child's father, under the Statute of Ptuj, cannot be termed a testamentary tutor (*tutor testamentarius*) in the sense of Roman law. In Ptuj, the child's father appointed a tutor by means of another legal transaction, termed *Geschåft* in the Statute, and not by a testament within the meaning of Roman law.[62]

CONCLUSION

After comparing the provisions on tutelage in the above-mentioned statutes of what are today Slovenian coastal towns with those in the Statute of Ptuj, we can reiterate what we have already established in an earlier study contrasting the inheritance law provisions of the Statutes of Ptuj and Piran (Kambič, 2007, 150–151). Municipal statutes reflect social conditions in the relevant territory. From this perspective, we

56 A similar emphasis is also found in the Statutes of Izola and Koper (*vel consanguineus, vel extraneus tutor*) (see footnote 8).

57 In those societies where it was applied, this was, as a rule, the closest relative; in coastal towns, the father or the mother.

58 An expression from Roman law (*in ain glawbwidrig inventari precht*) was already used (PT 2, 203).

59 Kranjc (1997, 241) also mentioned this as a possibility in the conclusion of his paper.

60 For more, cf. Kambič, 2007a, 135–136; 2007b, 120–121. Such regulation was also valid in the broader territory.

61 None of the preserved testaments includes the appointment of a tutor.

62 For more on the topic of last wills in Ptuj, cf. Kambič, 2007, 136.

may say that the statutes of the coastal towns, on one hand, and the Statute of Ptuj, on the other, regulate two communities in a slightly different phase of development, characterised by different cultural, legal, and administrative environments.

The statutory regulation of tutelage law re-affirms the fact that the law developed faster in the coastal towns and was higher in quality than those in the inland towns. Besides their more complex social conditions, this was substantially a result of Roman law, i.e. learned law, and its protagonists.[63] Already the first, completely preserved revision of the Statute of Piran from 1307, for example, was on a higher level than the first Statute of Ptuj, written nearly 70 years later. The same applies to the second Statute of Ptuj issued already at the beginning of the Early Modern Period, i.e. more than 200 years after the Statute of Piran. If coastal statutes or their revisions, emerging from the second half of the 14th century on, are included in the comparison, the difference becomes all the more evident. Statutory law in Ptuj over the 137 years from the first to the second statute practically did not change in terms of content. More than two centuries had to pass before the norms of the written law valid in Ptuj achieved the level of those in the mentioned coastal towns, at least as far as the completeness of the regulation is concerned.

Thus, Roman law could leave its mark in those environments where the socio-economic conditions required for its enforcement were ripe. Only in such an environment could a learned lawyer ensure that the law supported and even accelerated the development of social relations, Even by accepting the quite plausible hypothesis that somebody who knew Roman law was behind the civil law norms of the Statute of Ptuj, we must realise that he could not introduce legal norms that failed to consider the reality of the then society. Even in coastal towns where the influence of learned law was evident, a considerable amount of local specifics was preserved, which, in terms of the hierarchy of legal rules, held priority over common law, as was also the case in other parts of Europe.

The influence of learned law on the statutes of the discussed coastal towns is thus primarily seen in their content. It is reflected in the direct introduction of Roman law rules, i.e. the rules of Justinian law, as well as the adoption of solutions that are not a direct result of Justinian legislation, but a product of the science of *ius commune*. Contrary to the law contained in the statutes of the coastal towns, such a strong influence cannot be confirmed in the provisions on tutelage in the Statute of Ptuj.

Apart from the mentioned substantive influence, the sophistication of the learned law in the statutes of the coastal towns is also perceived in formal terms. In contrast to both Statutes of Ptuj, this is mainly seen in the more sophisticated legal drafting, systematics, abstractness, clarity, and elegance. To a great extent, the credit for all of the above goes to the learned lawyers who drafted the statutes.

63 The acceleration of reception in the mentioned coastal towns was mainly due to the fact that at the end of the 13th century they came under the Venetian rule. Municipal magistrates and notaries were an important factor in such reception. For criminal law, cf. e.g., Povolo, 2015, 195–244.

SKRB ZA NEDORASLE OTROKE PO STATUTIH SREDNJEVEŠKIH MEST NA STIČIŠČU SVETEGA RIMSKEGA CESARSTVA IN BENEŠKE REPUBLIKE S KRATKIM OZIROM NA RECEPCIJO RIMSKEGA PRAVA

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POVZETEK

Po Piranskem, Izolskem in Koprskem statutu sta smela varuha otroku z oporoko določiti oče in mati. Če tega nista storila, je varuštvo po očetovi ali materini smrti pripadlo preživelemu staršu. Kadar ga več ni bilo, je varuha določil podestat, pri čemer je imel prednost tisti kandidat, ki je ponudil najvišjo varščino, s katero je jamčil, da bo pošteno opravljal svojo dolžnost. Varuh je moral varovančevo premoženje ohraniti neokrnjeno. V določenem roku ga je bil dolžan popisati, če tega ni storil ali če je pri tem kaj utajil, je bil kaznovan, zaradi utaje so mu varuštvo tudi odvzeli. Po koncu varuštva je moral varuh predložiti obračun poslov, ki jih je sklepal za varovanca ter mu prepustiti celotno premoženje. Varuštvo se je praviloma končalo z varovančevo polnoletnostjo (v Piranu in Kopru z 12. letom za deklice, s 14. letom za dečke; v Izoli s 14. letom za deklice in s 15. letom za dečke). Dokler je varuštvo trajalo, se varovanci niso mogli sami veljavno zavezati, niti niso mogli odsvajati premoženja. Pravne posle so lahko sklepali le s soglasjem varuha in oblastnega organa. V nasprotnem primeru je bil tak posel neveljaven, in sopogodbenik je moral premoženje vrniti varovancu. Kljub končanemu varuštvu nekdanji varovanci načeloma niso postali polno poslovno sposobni, dokler niso dosegli določene dobe (v Piranu dekleta 15. leto in dečki 18. leto; v Izoli oboji 18. leto; v Kopru oboji 20. leto). Zelo podobna ureditev varuštva kot v omenjenih mestih je veljala tudi v ostalih istrskih komunih pod beneško oblastjo. Kljub nekaterim lokalno specifičnim določilom jo lahko brez dvoma štejemo za rezultat zgodnje recepcije rimskega prava. Ptujska statuta varuštvo urejata zgolj v najosnovnejših potezah in zelo skopo. Otroku je varuha lahko postavil oče s pravnim poslom, ki ni imel značaja rimskega testamenta. Za primer, če bi varuh umrl, še preden bi varovanci dorasli, je smel varuh po svoji prosti volji, brez soglasja otrokovih sorodnikov, postaviti drugega varuha. Če je otrok ostal brez varuha, mu ga je določil mestni svet. Varuh je bil zavezan k skrbnemu ravnanju in je odgovarjal za premoženje otrok mestnemu svetu. Drugi Ptujski statut dodaja še varuhovo dolžnost, da sestavi popis varovančevega premoženja. Razen slednjega, določila obeh Ptujskih statutov ne kažejo neposrednega vpliva recepcije. Statutarna ureditev varuškega prava potrjuje dejstvo, da je bil pravni razvoj v obalnih mestih na Slovenskem, ki so bila v obravnavanem obdobju pod beneško oblastjo, praviloma hitrejši in kvalitetnejši kot v celinskih, ki so pripadala Svetemu rimskemu cesarstvu. K temu je bistveno doprineslo rimsko pravo.

Ključne besede: otroci, varuh, skrbnik, tutela impuberum, cura minorum, pupillus, Gerhab, Istra, statuti, Koper, Izola, Piran, Ptuj, rimsko pravo, recepcija

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