

**BLOOD-MONEY IN HOMER – ROLE OF *ISTOR* IN THE
TRIAL SCENE ON THE SHIELD OF ACHILLES
(IL. 18, 497-508)***

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*The author examines controversial verses depicting trial scene in a homicide case on the shield of Achilles in Iliad. The author firstly points to few unclear issues: a) what was core of the case – a question of facts (whether the blood-money for a homicide - *poinē* has been paid or not) or it was a legal question (could a blood-feud be replaced with a recompensation)?; b) did the litigants voluntarily present their dispute for settlement by the arbiter to avoid self-help (arbitration theory) or the issue was a part of the public control of self-help?; c) who decides the case (gathered people, collective of elders – *gerontes* or an individual – *istor*) and to whom goes deposited amount of 12 talents of gold? The main focus of this*

* This paper is dedicated to the memory of Lujó Margetić, Croatian legal historian and member of the Croatian Academy of Sciences and Arts. He was the first legal scholar in ex-Yugoslavia who investigated ancient Greek legal history. My debt to his academic influence and profound friendship is immense.

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article is concentrated upon istor, who is defined as an arbiter or a judge in the existing literature. The author offers an innovative approach that the istor was neither a judge nor an arbiter but a person of public faith, and compares it with the *mnāmōn* in the Code of Gortyn in 5th century Crete (one who knows, one who remembers). He also invokes legal anthropology to suggest parallels with the medieval institution of *pristav*, who kept a memory of court rulings, helped judges in Slavic medieval law, and was a kind of guarantee of different legal acts. The last anthropological parallel comes from customary institution among Albanians at Kosovo and Metohia, namely the court of elders (*plechnija*) and institution of *dorzon* who was a guarantee that the opinion of the *plechnar* will be respected. The final conclusion is that istor was a person of public faith and a guarantor in blood-money case, one who was present and who knows important facts about the blood-feud agreement.

Key words: homicide, blood-feud, self-help, arbitration, Code of Gortyn

The description of the famous homicide trial depicted on the shield of Achilles in *Iliad* is one of the most controversial and disputed issues in Homeric law. It is challenging both in terms of translation, as well as in legal explanation and significance of the case.

At first, let us have a look at a number of English translations to perceive different linguistic approaches and explanations caused by the problematic diction of Homer.¹ Variety of translations of the word *istor* is very significant, causing many important consequences in understanding the *istor*'s role and perception of the whole text and scene.

1. HOMER, *Iliad* XVIII, 497-508 – TEXT AND TRANSLATIONS

λαοὶ δ' εἰν ἀγορῇ ἔσαν ἀθρόοι: ἔνθα δὲ νεῖκος
 ὠρώρει, δύο δ' ἄνδρες ἐνεΐκεον εἵνεκα ποινηῆς
 ἀνδρὸς ἀποφθιμένου: ὃ μὲν εὐχέτο πάντ' ἀποδοῦναι
 δῆμῳ πιφασκῶν, ὃ δ' ἀναιετο μηδὲν ἐλέσθαι: 500
 ἄμφω δ' ἰέσθην ἐπὶ ἴστορι πείραρ ἐλέσθαι.
 λαοὶ δ' ἀμφοτέροισιν ἐπήπυον ἀμφὶς ἀρωγοί:

¹ I am particularly grateful to Prof. Victor Castellani (University of Denver, Chair of the Department of Languages and Literatures), for offering me most relevant English translations of the *Iliad* and for many valuable discussions and suggestions. Translations in other languages take a similar approach in translating word *istor*, but some of them offer a bit more flexible linguistic solutions. However this paper is limited mostly to English translations.

κῆρυκες δ' ἄρα λαὸν ἐρήτυον: οἳ δὲ γέροντες
 εἶατ' ἐπὶ ξεστοῖσι λίθοις ἱερῶ ἐνὶ κύκλῳ,
 σκῆπτρα δὲ κηρύκων ἐν χέρσ' ἔχον ἠεροφώνων: 505
 τοῖσιν ἔπειτ' ἦϊσσον, ἀμοιβηδὶς δὲ δικάζον.
 κεῖτο δ' ἄρ' ἐν μέσσοισι δύο χρυσοῖο τάλαντα,
 τῶ δόμεν ὃς μετὰ τοῖσι δίκην ἰθύντατα εἴποι.

W. H. D. Rouse (1938)²:

A crowd was in the market-place, where a dispute was going on. Two men disputed over the blood-price of a man who had been killed: one said he had offered all, and told his tale before the people, the other refused to accept anything; but both were willing to appeal to an *umpire* for the *decision*. The crowd cheered one or the other as they took sides, and the heralds kept them in order. The elders sat at the Sacred Circle on the polished stones, and each took the herald's staff as they rose in turn to give judgment. Before them lay two nuggets of gold, for the one who should give fairest judgment.

E. V. Rieu (1950)³:

But the men had flocked to the meeting-place, where a case had come up between two litigants, about the payment of compensation for a man who had been killed. The defendant claimed the right to pay in full and was announcing his intention to the people; but the other contested his claim and refused all compensation. Both parties insisted that the issue should be *settled* by a *referee*; and both were cheered by their supporters in the crowd, whom the heralds were attempting to silence. The Elders sat on the sacred bench, a semicircle of polished stone; and each, as he received the speaker's rod from the clear-voiced heralds, came forward in his turn to give his judgment staff in hand. Two talents of gold were displayed in the centre: they were the fee for the Elder whose exposition of the law should prove the best.

Richmond Lattimore (1951)⁴:

The people were assembled in the market place, where a quarrel had arisen, and two men were disputing over the blood price

² W. H. D. Rouse, *The Iliad*, Cambridge 1938.

³ E. V. Rieu, *The Iliad, By Homer*, Middlesex 1950.

⁴ R. Lattimore, *The Iliad of Homer*, Chicago 1951.

for a man who had been killed. One man promised full restitution in a public statement, but the other refused and would accept nothing. Both then made for an *arbitrator*, to have a *decision*; and people were speaking up on either side, to help both men. But the heralds kept the people in hand, as meanwhile the elders were in session on benches of polished stone in the sacred circle and held in their hands the staves of the heralds who lift their voices. The two men rushed before these, and took turns speaking their cases, and between them lay on the ground two talents of gold, to be given to that judge who in this case spoke the straightest opinion.

Robert Fitzgerald (1974)⁵:

A crowd, then, in a market place, and there two men at odds over satisfaction owed for a murder done: one claimed that all was paid, and publicly declared it; his opponent turned the reparation down, and both demanded a *verdict* from an *arbiter*, as people clamored in support of each, and criers restrained the crowd. The town elders sat in a ring, on chairs of polished stone, the staves of clarion criers in their hands, with which they sprang up, each to speak in turn, and in the middle were two golden measures to be awarded him whose argument would be most straightforward.

Martin Hammond (1987)⁶:

The men had gathered in the market-place, where a quarrel was in progress, two men quarrelling over the blood-money for a man who had been killed: one claimed that we was making full compensation, and was showing it to the people, but the other refused to accept any payment: both were eager to take a *decision* from an *arbitrator*. The people were taking sides, and shouting their

⁵ R. Fitzgerald, *Homer, The Iliad*, New York 1974.

⁶ M. Hammond, *Homer: The Iliad. A New Prose Translation*, London 1987.

support for either man, while the heralds tried to keep them in check. And the elders sat on the polished stone seats in the sacred circle, taking the rod in their hands as they received it from the loud-voiced heralds: then each would stand forward with the rod, and give his judgment in turn. And two talents of gold lay on the ground in the middle of their circle, to be given to the one who spoke the straightest judgment.

Robert Fagles (1990)⁷:

And the people massed, streaming into the marketplace
where a quarrel had broken out and two men struggled
over the blood-price for a kinsman just murdered.
One declaimed in public, vowing payment in full—
the other spurned him, he would not take a thing—
so both men pressed for a *judge* to *cut the knot*.
The crowd cheered on both, they took both sides,
but heralds held them back as the city elders sat
on polished stone benches, forming the sacred circle,
grasping in hand the staffs of clear-voiced heralds
and each leapt to his feet to plead the case in turn.
Two bars of solid gold shone on the ground before them,
a prize for the judge who'd speak the straightest verdict.

Michael Reck (1994)⁸:

And a crowd had gathered where a quarrel
had arisen about the proper fine
for a murder: one man offered to pay,
another declined to accept the sum,
and both had requested *arbitration*.
The crowd stood cheering for their favorites
as heralds held them back, and the elders
sat on smooth stones in the sacred circle,
and each one held the herald's staff in turn

⁷ R. Fagles, *The Iliad*, New York 1990.

⁸ M. Reck, *Homer: The Iliad*, New York 1994.

when he sprang up to announce his verdict.
and in the middle lay two gold pieces
for the one whose judgment was accepted.

Stanley Lombardo (1997)⁹:

There was a crowd in the market-place
And a quarrel arising between two men
Over blood money for a murder,
One claiming the right to make restitution,
The other refusing to accept any terms.
They were heading for an *arbitrator*
And the people were shouting, taking sides,
But heralds restrained them. The elders sat
On polished stone seats in the sacred circle
And held in their hands the staves of heralds.
The pair rushed up and pleaded their cases,
and between them lay two ingots of gold
For whoever spoke straightest in judgment.

Anthony Verity (2011)¹⁰:

In the meeting-place a crowd of citizens had formed;
a dispute had arisen there, and two men were quarreling
over the blood-money of a man who had been killed.
One claimed he had paid it in full, appealing to the people,
while the other said he had received nothing; both were anxious
to go to an *arbitrator* for *judgement*. The people took sides,
shouting support for both; heralds were holding them back,
while the elders sat on polished stones in a sacred circle,
holding in their hands the loud-voiced heralds' staffs.
The disputants rushed up to these men, and they gave their judgements
In turn; two talents of gold lay before them, to be given to

⁹ S. Lombardo, *Homer Iliad*, Indianapolis 2011.

¹⁰ A. Verity, *The Iliad*, Oxford 2011.

The judge who should deliver to them the straightest verdict.

Stephen Mitchell (2011)¹¹:

At the place of assembly, meanwhile, a crowd had gathered.
A quarrel had broken out, and two men were disputing
About the blood-price for someone who had been killed.
One man was claiming the right to pay for the death,
While the other refused to accept any compensation,
And each was eager to plead his case to the *judges*.
The people were cheering them on, some taking the side
Of one, some taking the other's side, while the heralds
Tried to control the crowd, and the city elders
Were seated on polished stone chairs in the sacred circle,
Holding the heralds' staffs. The men stood before them,
And each made his case, and the elders rose and gave judgments.
Two bars of solid gold, one from each side,
Were displayed in the center; they were to be awarded
To the judge who was thought to give the clearest opinion.

The adequacy and accuracy of the translated verses of the Homeric poem is very disputable and it exceeds general concern about exactness in translating ancient Greek legal texts. The old Italian male chauvinistic aphorism about translations and woman fits quite well to this situation: "Le traduzioni sono come le donne. Quando sono belle non sono fedeli, e quando sono fedeli non sono belle" (Carl Bertrand). But in Il. 18, 497-508 the attractiveness of translation, it is not at stake. It is about something much more important – about its content. Translating legal terminology is particularly delicate as it depends on different legal cultures, distinctive terminology, specific legal concepts, diverse backgrounds, etc. And in the Homeric environment, which is not so well known to a modern reader in general, explaining exact meaning of some terms looks like a mission impossible at times. It refers particularly to the notion of the *istor*, as it is not only a linguistic issue but much more a matter of how to understand the essence of a legal institution.

¹¹ S. Mitchell, *The Iliad*, New York 2011.

Ending the overview of some usual English translations by philologists who act sometimes like poets, let us see the offers by two prestigious English speaking scholars well acquainted with Greek history, culture and law. The first one is N.G.L. Hammond, the author of the famous *A History of Greece to 322 B.C.*, who suggests following:

“Men-at-arms were gathered together in assembly. There a quarrel had arisen between two men over retribution for the killing of a man. One promised to give full compensation, making his declaration in public; the other refused to accept anything. Both were eager to obtain a *conclusion* at the hands of *one-who-knows*. Men-at-arms were speaking urgently in favor of each, supporting either side, and the folk were being held back by the heralds. And the elders were seated on polished stones in a sacred circle and they were taking hold of maces from the clear-voiced heralds. Then with the maces they were starting up and giving judgment each in turn. In the midst of them were set two talents of gold, to be presented to whoever among them should express his judgment in the straightest manner.”¹²

The second distinguished scholar, basically a historian, but also one of the most knowledgeable modern authorities on ancient Greek law, Douglas MacDowell, offers translation of the trial scene as follows:

“In the assembly place were people gathered. There a dispute had arisen: two men were disputing about the recompense (*poine*) for a dead man. The one was claiming to have paid it in full, making his statement to the people, but the other *was refusing to receive anything*; both wished to obtain *trial* at the hands of a *judge*. The people were cheering them both on, supporting both sides; and heralds quieted the people. The elders sat on polished stones in a sacred circle, and held in their hands sceptres from the loud-voiced heralds; with these they were then hurrying forward and giving their judgments in turn. And in the middle lay two talents of gold, to give to the one who delivered judgment most rightly among them” (18.497-508).¹³

However, MacDowell discloses that lines 18.499-500 could be turned into: “the one was claiming to have paid it in full ..., but the other *was denying that*

¹² N. Hammond, “The Scene in *Iliad* 18, 497-508 and the Albanian Blood-Feud”, *Bulletin of the American Society of Papyrologists* 22 (1985), 81. Hammond believes that “one-who-knows” is the elder whom the parties choose who convenes the assembly, 85, fn. 24.

¹³ D. M. MacDowell, *The Law in Classical Athens*, London 1978, 19.

he had received anything".¹⁴ It is clear that those two possible translations (interpretations, understandings) of the legal issue and essence of the dispute, can affect explanation of the role of *istor*. It means that many options could be under consideration.

2. RELATED ISSUES

The whole scene is very curious, it presents a wide variety of questions and it has generated diverse readings and hypotheses on many issues, apart from the query who the *istor* was and what was his role. All these problems are interconnected in some aspects.

2.1. The first great, chronic controversy was mentioned by MacDowell in the passage quoted above. What was core of the case? Was it a question of facts: whether the blood-money for a homicide (*poine*) has been paid or not? Or it was a legal question – whether the blood-money is acceptable or not? Is it tolerable that a killer can pay a fine (ransom) for his act or not? Could a blood-feud be replaced with a recompensation?

The issue was opened many decades ago, but it is not yet closed. After a long relative accord that the scene is about accomplishment of a certain blood-price, Sidgwick wrote in 1894: "But during the last twelve years there has been a tendency to prefer an interpretation historically more impressive, according to which the dispute is not about a mere payment of money, but on the question whether a blood-feud shall be extinguished by the acceptance of a composition".¹⁵ The battlefield is still open.

Curiously the older, traditional approach (issue of fact) was supported mostly by lawyers or those whose main field of expertise was ancient Greek law.¹⁶ The second opinion (issue of law) was mainly favored by linguists and

¹⁴ *Ibid.*

¹⁵ H. Sidgwick, "The Trial Scene in Homer", *The Classical Review* 8, 1-2 (1894), 1 – 3.

¹⁶ Just to mention some of them following Westbrook's selection: G. M. Calhoun, *The Growth of Criminal Law in Ancient Greece*, Berkeley 1927, 18; R. J. Bonner, G. Smith, *The Administration of Justice from Homer to Aristotle*, I, Chicago 1930, 31 – 35; H. Hommel, "Die Gerichtsszene auf dem Schild des Achilleus. Zur Pflege des Rechts in homerischer Zeit", in: *Palingenesia IV*, Wiesbaden 1969, 16; A. Primmer, "Homerische Gerichtsszenen", *Wiener Studien* 4 (1970), 11 – 13; E. Cantarella, *Studi sull' omicidio in diritto greco e romano*, Milan 1976, 73 – 74. G. Thür, "Zum *dikazein* bei Homer", *Zeitschrift der Savigny Stiftung* 87 (1970), 426 – 444 is resolute that the

historians (of course, with considerable exceptions).¹⁷ Supporting that view, Leaf asked why should such a big social theatre be arranged if the issue is only whether the sum of money has been paid or not? However, the theory of legal issue appeared to have been more complicated, as new questions and possible options inevitably arose out of it. In Michael Gagarin's words the disagreement is between the relatives of the victim who can not agree about acceptance of the compensation.¹⁸ Gagarin also points that the amount in that case must have been so high that such a payment would probably have been made in front of witnesses. A similar point was accurately raised before him by Köstler.¹⁹ Many other particular, additional issues in this affair remained undecided.

2.2. A closely related dilemma is whether the litigants have voluntarily presented their dispute for settlement in front of the arbiter to avoid self-help? Gagarin is one of the most famous contemporary followers of the older, quite popular "Schiedsgerichtstheorie" (arbitration theory).²⁰ According to his explanation the *basileus* or the group of elders offered conciliation through the middle solution acceptable for both parties. In that way the traditional arbitration theory was enhanced with the idea of compromise.

The other hypothesis is less complicated and speculative. It asserts that the killer has sought protection against the forceful use of self-help, claiming that he has paid a ransom – *poinë*, and therefore he is supposed to avoid revenge. Consequently the subject is a matter of fact – whether or not the defendant

dispute concerns a simple matter of facts, whether or not the *poinë* has been paid, whether the obligation was fulfilled or not, 431.

¹⁷ W. Leaf, "The Trial Scene in *Iliad* XVIII", *Journal of Hellenic Studies* 8 (1887), 122 – 132; R. Köstler, *Homerisches Recht*, Wien 1950, 69; D. M. MacDowell, *op. cit.* (fn. 13), 19 – 20; M. Gagarin, *Drakon and Early Athenian Homicide Law*, New Haven 1981, 13 – 16; M. Gagarin, *Early Greek Law*, Berkeley 1989, 32 – 33; N. Hammond, *op. cit.* (fn. 12), 81; R. Westbrook, "The Trial Scene in the *Iliad*", *Harvard Studies in Classical Philology* 94 (1992), 53 – 76, etc.

¹⁸ M. Gagarin, *op. cit.* (fn. 17) (1981), 13 – 16.

¹⁹ M. Gagarin, *op. cit.* (fn. 17) (1989), 28 – 33. R. Köstler, *op. cit.* (fn. 17), 69.

²⁰ M. Gagarin, *op. cit.* (fn. 17) (1989), 27. Arbitration theory was accepted by many important older authorities like J. H. Lipsius, *Das Attische Recht und Rechtsverfahren*, Leipzig 1905-1915, 6; R. J. Bonner, G. Smith, *op. cit.* (fn. 16), 31; K. Latte, *Heiliges Recht*, Tübingen 1920, 2f.; G. M. Calhoun, *Introduction to Greek Legal Science*, Oxford 1944, 9, etc. The general premise of this theory was that private arbitration had been gradually transformed into a compulsory trial before public authorities.

has paid a wergild, blood-money, *poinē*. Accordingly the case was not a private arbitration, but a kind of public control of self-help. This assumption has been raised by Wolff and was widely accepted for many years by the majority of scholars, particularly by legal historians.²¹ On the other hand Gagarin has revived the arbitration theory, together with the claims that a legal issue is at stake.²²

After convincing criticism of Gagarin's postulates that adduced the concept of arbitration, Thür turned back to Wolff's approach. However, Thür also rejected some elements of Wolff's theory and tried to modify it. Wolff was claiming that the elders had to resolve the case immediately and definitely (taking into account reactions of the gathered people, who supported by shouting judgment of the most convincing elder). However, Thür believes that each elder proposed not a final decision but only formulated an oath (a method of proof for *Beweisurteil*) and decided which of the litigants had to submit to it.²³ Therefore, Thür reiterates attitude that the issue is simply about the fact – whether or not *poinē* has been paid. On the other side, on the basis of comparative data from the Near East legal systems and oriental legal traditions, Westbrook asserts that the court was not deciding only about the facts (accomplishing of *poinē*), but also whether the plaintiff is entitled to revenge.²⁴ Nevertheless, thanks to relatively recent contributions by Eva Cantarella and Gerhard Thür, it seems that at this moment the prevailing view is that the Homeric trial scene is not an arbitration process but public control of self-help, and that its subject matter was the issue of facts.²⁵

²¹ H. J. Wolff, "The Origin of Judicial Litigation among the Greeks", *Traditio* 4 (1946), 31 – 87 (34 pp.). His approach was accepted by many eminent scholars like A. R. W. Harrison, *The Law of Athens*, II, Oxford 1971, 69 – 72; E. Ruschenbusch, "Der Ursprung des gerichtlichen Rechtsstreits bei den Griechen", in: *Symposium 1977, Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Cologne 1982, 1 – 8, etc.

²² M. Gagarin, *op. cit.* (fn. 17) (1989), 31 – 33. Before Gagarin it was H. Hommel, *op. cit.* (fn. 16), 16 who reaffirmed the arbitration.

²³ G. Thür, "Oath and Dispute Settlement in Ancient Greek Law", in: *Greek Law in its Political Setting: Justification not Justice* (eds. L. Foxhall, A. Lewis), Oxford 1996, 61: "the magistrate does not decide on guilt or innocence but only gives a judgement about the oath-formula which, if taken, will automatically resolve the dispute". His view was supported by R. Sealey, *The Justice of the Greeks*, Ann Arbor 1994, 100.

²⁴ R. Westbrook, *op. cit.* (fn. 17), 53. His view was followed by G. Nagy, "The Shield of Achilles. Ends of the *Iliad* and beginnings of the Polis", in: *New Light on a Dark Age* (ed. S. H. Langdon), Columbia, London 1997, 194.

²⁵ E. Cantarella, "Dispute Settlement in Homer: once again on the Shield of Achilles", in: *Mélanges en l'honneur Panayotis D. Dimakis*, Athens 2002, 147 – 165 (= E. Cantarella, "Dispute Settlement in Homer: once again on the Shield of Achilles", in:

2.3. The next controversial issue is who is entitled to get the two talents and who is paying them? This is also an old debate: “some understand that the two talents of gold are to go to the judge who gives the best judgement, others that they are to go to the litigant who pleads his cause best”, as Sidgwick also put it by the end of the last century.²⁶ We do not know much more today. Is it a blood-price that goes to the victim’s family, a bet of the two parties which will be taken by the winner, like a genuine wergild deposit?²⁷ Or it was a judicial wager (fee, award) that goes to the elder who gives the best verdict, a kind of a “court fee”?²⁸ Myres supposed that it was a customary fee for someone who gives a voluntary decision from the *agora* (crowd), if this decision was adopted by the elders as better than their own.²⁹ Wolff believes that the two talents were to go to the elder who won the greatest applause from the crowd.³⁰ However, there is also another controversial issue raised by Rodolphe Dareste some time ago connected to that amount: are the two talents a sum of money that goes as an extra value to the winner, which he will take along with the initial amount which was at stake?³¹ These are very problematic, peculiar and extremely arguable topics to deal with and must be set aside here, particularly as the list of questions is not closed.

2.4. In fact the most important inquiry for us here is: who is in charge to decide the case? Gathered *people*, a crowd, a kind of democratic body, as Lanni states, following MacDowell’s and Wolff’s basic reasoning?³²

Diritto e società in Grecia e a Roma, Milano 2012, 171 – 192); G. Thür, “Der Reini-gungseid im archaischen griechischen Rechtsstreit und seine Parallelen im Alten Orient”, in: *Rechtsgeschichte und Interkulturalität* (eds. R. Rollinger, H. Barta, M. Lang), Wiesbaden 2007, 179 – 195).

²⁶ H. Sidgwick, *op. cit.* (fn. 15), 1. R. J. Bonner, G. Smith, *op. cit.* (fn. 16), 37 – 38 outline in detail different explanations of the two talents’ purpose.

²⁷ J. H. Lipsius, *op. cit.* (fn. 20), 4. He was followed by many others in that view.

²⁸ G. Glotz, *La solidarité de la famille dans le droit criminel en Grèce*, Paris 1904, 128. Similar was the view of Sir H. S. Maine, *Ancient Law*, London 1861, 386. He argued that the amount was a deposit by the litigants for the judge who shall explain the grounds of his decision most to the satisfaction of the audience.

²⁹ J. L. Myres, *Political Ideas of the Greeks*, New York 1927, 64.

³⁰ H. J. Wolff, *op. cit.* (fn. 21), 42.

³¹ R. Dareste, “Sur un passage de l’Iliade”, in: *Annuaire de l’Association pour l’encouragement des études grecques en France* 18 (1884), 94.

³² A. Lanni, *Law and Justice in the Courts of Classical Athens*, Cambridge 2006, 139 fn. 89. She claims that in the trial scene depicted on the shield of Achilles, “the crowd

If not the people, *gerontes* were supposed to decide through a formal public procedure, as Gagarin and many others suggest. The source is quite explicit by saying that they, the elders *dikazon* (line 18.506) – give a verdict.³³ Also, as mentioned, Thür has offered an interesting compromising idea that *gerontes* do not propose a concrete settlement of the dispute but rather a method of proof (*Beweisverfahren*).³⁴

But, what is then the role of *istor*? Why is he present at all? Why do the people expect some say from him? Is his say a kind of verdict? And, therefore, is he a kind of judge or at least an arbiter? MacDowell suggests three possibilities. According to him, *istor* can be: a) the chairman of the proceedings (either the king, or an elder who presides over the others); b) the elder whose opinion is considered by the people to be the best (the opinion which receives the most applause is the one which is accepted); c) it refers to all the elders, and the view of the majority prevails. Although he claims that none of solutions can be definitely disproved, he inclines to b), and stresses the role of people who will decide which elder's judgement is to be accepted.³⁵

Let us remember that almost all translations suggest that the *istor* is either a judge or an arbiter (nevertheless some translators try to soften the word “arbiter” with “umpire” or “referee”). However, both the first and the second theory (judge or arbiter) are facing with a great problem: how to explain the relationship between the *istor* and the *gerontes* then?³⁶ If the *istor* is a judge,

played a vital role in the decision making process: various elders take turns wielding the scepter and suggesting a ruling, but it is the *crowd* who decides by acclamation which ruling is accepted”; D. M. MacDowell, *op. cit.* (fn. 13), 21; H. J. Wolff, *op. cit.* (fn. 21), 41. Of course, the presence of people from the community is not irrelevant, but it is quite doubtful if they had a final say in making decisions.

³³ Parties plead their case in a public forum (in the *agora*) to a circle of elders, each of whom in turn takes a scepter (a symbol of public authority), stands, and pronounces a settlement. Clearly this is a formal, public procedure, providing a means for litigants to bring their disputes to an authoritative body for settlement, M. Gagarin, *op. cit.* (fn. 17) (1989), 26 – 33.

³⁴ G. Thür, *op. cit.* (fn. 23), 57 – 73: *gerontes* offered a method of proof by means of which the dispute will automatically be settled (and let us add: it could explain the presumption that one who suggested the best “method” achieves the award, a kind of judicial wager). According to his opinion, the dispute is about a simple matter of fact, whether or not the *poine* has been paid.

³⁵ D. M. MacDowell, *op. cit.* (fn. 13), 20 – 21.

³⁶ This is also an old dilemma raised by H. J. Wolff, *op. cit.* (fn. 21), 37 – 38. He cites Jolowicz's comparative law explanation based upon comparison of the *istor* with the English jury in its most primitive form and with the medieval Germanic law.

what are the *gerontes* doing then? If the *istor* is an arbiter and his opinion ends the dispute, what kind of role should play a body of the distinguished elders? Or, as many scholars suppose, the *istor* is to be found amongst the elders: the *istor* will be the one who wins the award (Dareste, Wolff).³⁷

3. THE *ISTOR* – NEITHER A JUDGE NOR AN ARBITER

Let us try to add to the lively discussion a rather different approach, which would not confront or merge the roles of the *istor* and of the *gerontes*. My presumption is that the *istor* was something else, a kind of a separate “institution”, a specific authority which is neither a judge nor an arbiter. The explanation is going to be based upon linguistic arguments, other verses in *Iliad* where *istor* was mentioned, and to some cases from comparative legal history.

Raymond Westbrook, with his comparatist approach, tries to explain the trial scene in *Iliad* having in mind parallels with legal tradition and procedure in murder cases of Ancient East. He explains many controversial Greek terms from the trial scene (εὔχεται, ἀποδοῦναι, πάντι(α), πιφάσκων, ἀναίνετο, ἐλέσθαι)³⁸, but declines to clarify the key nouns ἴστωρ and γέροντες. No wonder, as there are many linguistic obstacles, apart from the difficulty arising from common sense: if the *istor* decides, what is then the role of the elders? And, on the other hand, if the *gerontes* are those who are supposed to rule, why should the *istor* be involved in the procedure at any point? The only remaining solution to this puzzle, which became widely accepted, is that the *istor* was one of the *gerontes* (the one who gives the best verdict).³⁹ However, this popular attitude meets an unpleasant linguistic obstacle: the poet says *epi istori peirar helesthai*, not that the *istor* is supposed to *dikazein*. *Dikazein* is the job of the collective body of *hoi gerontes*, as clearly declared in verse 18.506.⁴⁰

³⁷ G. Thür, *op. cit.* (fn. 23), 67 is resolutely against that general assumption with sound reasons.

³⁸ “The one was claiming (*eukheto*) to pay (*apodounai*) all (*panta*) expounding (*piphauskōn*) to the *demos*; the other was refusing (*anaineto*) to take (*helethai*)”, R. Westbrook, *op. cit.* (fn. 17), 73 – 76.

³⁹ To mention only H. J. Wolff, *op. cit.* (fn. 21), 38; D. M. MacDowell, *op. cit.* (fn. 13), 20; M. Gagarin, *op. cit.* (fn. 17) (1989), 31. But G. Thür, *op. cit.* (fn. 23), 67 rightly states that he would disassociate the *istor* from the elder winning the award.

⁴⁰ G. Thür, *op. cit.* (fn. 23), 67 has shown that theory about the *istor* as one of *gerontes* who gave the best ruling (as Wolff believed) is not convincing, as well as MacDowell’s statement that the *istor* is “the elder whose opinion is considered by the people to be the best”. It is a very speculative idea, particularly when it is connected with the role

This is probably why Fagles (1990) has found the best solution in his English translation by avoiding words like “decision” or “verdict” or “arbitration”, which were so frequently used by other translators. He opted for a more flexible wording for *peirar helesthai* - to “cut the knot”, similarly as Rieu (1950) translated it more neutrally with “should be settled”.⁴¹ They do not take for granted in what capacity the *istor* will act (judge, arbiter or something else) and what kind of legal effect his statement will have (verdict, decision, judgement, or simply a statement).

Also, if one wants to keep more or less dependably with the phrasing of the original text, *epi (istori)* should be translated “in front of (*istor*)” or maybe “at the hands of (*istor*)”, as MacDowell translates. It hardly refers to a certain decision making procedure “by”, “from” the *istor*. The parties simply wanted to solve their case in his presence on the basis of his statement.⁴² In short, at philological ground nothing suggests that the *istor* was a person who was supposed to give a judgement (*dikazein*). And, of course, as *istor* is used in singular, there is no room to compare him with a collective body of the *gerontes*, elders (except by the very dubious hypothesis that the *istor* is one of the elders, possibly the one who offers the best decision).

In consequence, it seems that compelling philological support for translating and understanding that the *istor* gives a final decision or a verdict is lacking. We should therefore conclude that the *istor* was probably not a judge. He was doing something else.

3.1. The problem in translating is difficult inasmuch as the word *istor* itself is quite vague and unclear. The root-value of the word, related to the defective-irregular verb (*w*)*oida*, with the stem *wid-*, indicates “awareness” or “knowing”

of the crowd allegedly supposed to decide which decision was the best. The issue of how could it be done (through applauds or cheers), as MacDowell suggests, is also very speculative. It was evidently not performed by some voting procedure.

⁴¹ Or “to obtain a limit” as Elmer suggested recently, D. F. Elmer, *The Poetics of Consent, Collective Decision Making and the Iliad*, Baltimore 2013, 186.

⁴² I am grateful to comment by Omi Hatashin during my lecture at the University of Tokyo, who pointed latter in our correspondence, that the Greek preposition *epi* takes the corresponding genitive case when it means ‘near’, ‘in the presence of’, or ‘by’ (locality). Therefore, the relevant text should read *epi istoros* (genitive case) in order to mean ‘in the presence of *istor*’. But, *epi istori* in the dative suggests that *iēmi* in the context of *Iliad* 18.501 is a verb of motion, and it could rather be translated as “relying on the evidence (testimony) of a witness”. In that case, the *istor* could be a witness, but also any other person on whose statement the decision depends.

of some kind – “seeing” as *correct* perception.⁴³ Application of the same word in Hesiod, and in tragedy centuries later as both Sophocles and Euripides use it, suggests that an (*h*)*istor* is “experienced, aware, in the know”, “one who knows”⁴⁴, one who saw something. Worth mentioning is that many Slavic languages use the same root, better to say the same word – noun *vid* (to denote “eyesight”) and verb – *videti* (“to see”), equally as *video* in Latin. In that sense *oida* could mean “I know what I have seen”. The *istor* is consequently the one who saw something and who therefore knows something well.

Does such etymology point to a judge or arbiter? Does the whole wording of the line 18.501 points to judicial decision? Maybe yes for a contemporary reader, but it is doubtful how it was perceived in the Homeric time.

Not only logical discrepancy in relationship *istor/gerontes*, as mentioned above, points that the *istor* can be neither an arbiter nor a judge (or one of the elders who gave the best verdict). There is also an important philological ground – *istor* does not *dikazein* but *peirar helesthai*. The phrasing *peirar helesthai* (line 18.501), often translated as “decision”, should rather be “choose an end”, “obtain a limit” effected by means of hearing what the *istor* will say. He does not make a decision, but he “resolves” the issue, “cuts the knot” by his statement. In my view, to “end the dispute” would be the most appropriate translation of that phrase. And after the *istor*’s act *peirar helesthai*, the operative, final decision lies in the hands of the elders who are supposed to *dikazein*.

With what could a statement by the *istor* deal, what could it be about, what could be its content and purpose? Of course, the answer depends upon the character of the dispute: which of two alternative proposed scenarios is at issue?

⁴³ Digamma (w) was a part of the word (*w*)*oida*, so that *istor* was in Boeotian and maybe epic-Aeolian – (*w*)*istor*. I am grateful to Prof. Victor Castellani for this observation and discussions of the issue, particularly for describing the applications of *istor* in Hesiod, Sophocles and Euripides noted below.

Gagarin, *op. cit.* (fn. 17) (1989), 31 fn. 37 also asserts that the word *histor* (with initial *h*, and adds in brackets “arbiter”!) is derived from a root meaning “to see, to know”. But, he is of the opinion, without any argument, that it designates not a person who knows a particular fact, but someone who has the general wisdom to settle disputes!

It is curious that in all editions of the Liddell-Scott Dictionary there is no translation for the word *istor* as a noun. There is only an explanation of the verb *istoreō* with meanings of “examine, observe, inquire of, ask”, etc, but also “to give an account of what one has learnt, record”, G. Liddell, R. Scott, *A Greek and English Lexicon*, Oxford 1869, 842.

⁴⁴ R. J. Bonner, G. Smith, *op. cit.* (fn. 16), 35 fn. 2 and H. J. Wolff, *op. cit.* (fn. 21), 38 state firmly that the word *istor* means “expert or one who knows”.

The first one is that the contention was over facts. In that case the *istor* might have been a competent person to say (attest, confirm, report) if the amount was properly paid or not. If it was, it would mean the end of the story and no further decision would be needed. On the other hand, if he asserts that the amount was not appropriate or was paid only partially, this opens room for the decision by men of wisdom, respectable *gerontes*, about what to do next. They could offer different opinions on what, in that case, should be the consequence for the delinquent.

The second possibility – that the matter of controversy was a legal issue – includes at least two potential roles for an *istor*. Firstly, as a person who was present during previous cases as a kind of an official responsible to store in memory what he had seen, he might only give a statement on what he remembers about the similar cases (*istor* – a rememberer). Secondly, at the same time, he could be expected to remember the outcome of this actual case, in order to attest in the future what the result was in this case.

On these terms, *istor* would again be neither a judge nor an arbiter, but only a person who will offer a preliminary relevant statement about what he knows. Of course, this is hypothesis; however, all other explanations of the trial scene in *Iliad* are more or less speculative as well. In any case, philology and wording of the poem do not favor conclusion about *istor* as a judge or an arbiter.

This is why at this point, after we must dismiss so many different English translations, Thür's attempt at German translation offers the most moderate and sensible path. He avoids any modern term as a possible explanation for the *istor* and stays with the Greek specific word, suggesting some possible meanings in parenthesis: "Beide waren bereit, bei einem *istor* (einem 'Wissenden': Schiedsrichter, Richter, Zeugen?) die endgültige Entscheidung zu nehmen".⁴⁵ It fits well with Bonner-Smith's translation "expert" or "one who knows".⁴⁶ Cantarella made an important step forward by suggesting that the *istor* was a person who had been present at the moment of payment, but not as a simple witness. Instead, he had played a specific role in delivering the *poinë*, similar to the role played by Odysseus during the payment of the ransom to Achilles in *Iliad* Book 19.⁴⁷

⁴⁵ G. Thür, *op. cit.* (fn. 25), 182. Just to add that Wolff, who argued against arbitration theory, did not find a better translation for *istor* apart of *daysman* (mediator), H. J. Wolff, *op. cit.* (fn. 21), 37.

⁴⁶ R. J. Bonner, G. Smith, *op. cit.* (fn. 16), 35, fn. 2; H. J. Wolff, *op. cit.* (fn. 21), 38.

⁴⁷ E. Cantarella, *op. cit.* (fn. 25) (2002), 160 – 161 (= (2012), 186 – 187).

Therefore, as Cantarella has clearly shown, “one who knows” might not only be an arbiter, judge or witness. Comparative legal history could provide other possibilities as well. So we approach the core of the issue. However, before getting to that, let us briefly recall another place in the *Iliad* where *istor* is also mentioned.

3.2. Some help may come from the only instance left in the *Iliad* where Homer uses the same word *istor*, depicting another famous scene of the funeral games. In the *Iliad* 23, 486 Idomeneus and Little Ajax are in dispute over which of them has correctly recognized whose horses and chariot are in the lead, and they propose laying a bet on it and appointing Agamemnon as *istor*. Agamemnon is also their superior, Achaean commander-in-chief, and would be unlikely to decide until he can *see* for himself! Eyewitness, *testis*, observer, spectator, bystander fits well in this relationship. It might seem to a modern reader to be the function of witness. However, he was surely not a witness in a juridical sense, as he was not produced by one party for the purpose of confirming his plea.⁴⁸ Gagarin believes that Agamemnon is an arbiter in this case and that he decides the outcome of the race.⁴⁹ However, it would be quite bizarre for the king Agamemnon to be a witness or an arbiter in such a trivial situation. He could only, at the very least, give a statement on his impression (knowledge) according to his perception of what he had seen.

In addition Thür claims quite plausibly that Agamemnon is not supposed to *decide* outcome of the race: in the event everybody will be able to observe who actually will have come in first. According to Thür, Agamemnon’s only task would have been to hold the stake money and hand it over to the winner. That is why Thür believes that Agamemnon did not have to act as *arbitrator*, rather he was a *guarantor* that the bet would be paid out correctly.⁵⁰

Some parallels can be detected between the two Homeric scenes, although the word *istor* is used in the shield scene in a quite different context than during the chariot race (different circumstances, different social rank of *istor*, and different societal importance of the case). The *istor* is the one who knows something from his personal experience (“knower”), who acts as a person of public trust about something that he observed by his own eyes, and who is at some point supposed to give a statement on what he knows and who guaran-

⁴⁸ It was rightly observed already by H. J. Wolff, *op. cit.* (fn. 21), 38.

⁴⁹ M. Gagarin, *op. cit.* (fn. 17) (1989), 31 fn. 37.

⁵⁰ G. Thür, *op. cit.* (fn. 23), 67.

tees fair outcome. Nothing more than that. What this statement will mean and what kind of power and effect his statement will have depends upon his authority.

In any case, the statement of the *istor* is not a judgement, a verdict in a legal sense. A verdict (as a possible outcome of *dikazein* in 18.506 and 508) is a result of certain procedure. The *istor* is only supposed to give a report (statement) which can help in solving the dispute because of his authority. In the same way Agamemnon was not formally a judge in the case of a chariot race but only a person who saw the event and whose opinion is reliable. Therefore Hammond is fully convinced that there is no doubt: *istor* means “one who knows”, in the Achilles’ shield scene as well as at *Iliad* 23.486.⁵¹ I would put the matter in a more general and broader formulation: as a result of seeing something (*oida*), the *istor* is a person who knows something and reports on that as a trusted person of public authority.

3.3. Finally, we come to the most sensitive point – available arguments from comparative legal history and anthropology. Of course, the value of such material is often subject to question.⁵² Nevertheless, we evidently lack more secure evidence in Greek sources, in documents and by etymology, for the actual meaning of *istor*, in particular concerning his role in judicial procedure. This is why Wolff firmly believes that the shield scene “is one of the cases where the comparative method is the way to illuminate a story which is not told with sufficient precision”.⁵³ Therefore it makes sense to take into account examples from other early, preliterate or mostly illiterate societies that socially and culturally correspond to the Homeric world.⁵⁴ Similar problems often find similar

⁵¹ N. G. L. Hammond, *op. cit.* (fn. 12), 81.

⁵² G. Thür, *op. cit.* (fn. 23), 57 rightly points that there is a risk in anthropological approach. Similarities could sometimes be misleading. Nevertheless at some point an anthropological and comparative approach remains the only way forward for our investigation if the evidence from literary sources has been fully exhausted. For understanding of the Homeric shield scene, after many decades of unsettled controversy, there is little left in documentary Greek sources to be examined.

⁵³ H. J. Wolff, *op. cit.* (fn. 21), 35.

⁵⁴ M. Gagarin, *op. cit.* (fn. 17) (1989), 30 – 31 also tries to find some explanations of the trial scene in Homer using the analogy with some African societies. K. A. Raafalub, “Homeric Society”, in: *A New Companion to Homer* (eds. I. Mooris, B. Powell), Leiden 1997, 648 asserts that, generally speaking, customs in early societies have their analogies in other cultures and can be explicated with the help of anthropology and sociology.

responses in diverse civilizations. A salient common feature – to us, a problem – of early societies and their judicial processes was *oral* ruling and absence of writing to record actions and indeed of any written evidence.⁵⁵

3.3.1. One institution comparable to *istor*-ship comes from the Cretan city of Gortyn. Fortunately, its legal system is quite well known because of the well preserved “Code of Gortyn” from the 5th century B.C.⁵⁶ Despite the interval of time between the Homeric period and the time of the Gortyn codification, comparison could be valid, parallels instructive, inasmuch as the two societies involved shared similar impediments in times when writing was absent or at least not widespread.

We find in Gortyn a quite well-known and important court official – the *mnāmōn* (the Doric form of the word, having the root in *mnēmē*, *mnēmoneuō* – “remember”, with a specific Doric long alpha instead of Attic eta). Therefore the *mnāmōn* is “rememberancer”, “rememberer”. “memorizer”, “recorder”, “a man of memory”.⁵⁷ If one follows etymology, sense and logic of the word *mnāmōn*, its meaning overlaps with that of the *istor* as “one who knows”.

One of the duties of the *mnāmōn* in Gortyn was to keep the record in his mind as long as he lived and to give information of previous decisions when it is needed.⁵⁸ He is a person whose duty is to see, to watch, to follow the case and to remember its outcome.⁵⁹ He is a “living archive” of cases which were

⁵⁵ A valuable book that considers ancient Greek experience with law and writing is M. Gagarin, *Writing Greek Law*, Cambridge 2011.

⁵⁶ R. Willetts, *The Code of Gortyn*, Berlin 1967 is still the most useful edition with English translation.

⁵⁷ A. Lanni, *op. cit.* (fn. 32), 126 fn. 39 translates *mnāmōn* as “rememberer”, also in A. Lanni, “Precedent and Legal Reasoning in Classical Athenian Courts: A Noble Lie?“, *The American Journal of Legal History* 43, 1 (1999), 27-51 (46). J. Davies, “The Code of Gortyn”, in: *The Cambridge Companion to Ancient Greek Law* (eds. M. Gagarin, D. Cohen), Cambridge 2005, 310 translates *mnāmōn* as “rememberancer”.

⁵⁸ *Code of Gortyn*, IX 31: “If the suit be with reference to a judgment won, the judge and the recorder... shall testify”. Therefore R. Willetts 47 translates there *mnāmōn* as “recorder”.

⁵⁹ *Mnāmōn* is also mentioned explicitly in the *Code of Gortyn*, XI 16 but rather as a kind of judiciary official: “...and he shall deposit ten staters with the court, and the secretary (of the magistrate) who is concerned with strangers shall pay it to the person renounced” (Willetts, 49 translates *mnāmōn* here as “the secretary”). *Mnāmōn* is mentioned for the third time in *Code of Gortyn*, XI 53: “and let the initiator of the suit make his denunciation to the woman and the judge and the secretary (of the court)” – Willetts’ translation is “the secretary” again.

decided in the past, a person who keeps in his memory judicial processes. It is rightly claimed that the *mnāmōn* “share with the judge the potential power of being a witness to the results of past cases, hence both officials have authoritative knowledge”.⁶⁰ The *mnāmōn* was likely an early helper to Cretan *kosmoi* and only later in the long flow of legal history did he end up as a scribe in Hellenistic inscriptions. Beside *mnāmōnes* in Gortyn and Crete, some other Greek localities used *hieromnāmōnes* with the same or similar function (at Delphi and at Tiryns, Argos, Mycene and elsewhere in the Peloponnese).⁶¹ It seems that a comparable institution was quite widespread all over Greece, probably as a remnant of a common, earlier legal tradition. Although there is no solid source to confirm connection between these institutions and that of *istor*, an analogy seems quite plausible. In these two preliterate societies (the time distance between them notwithstanding), the *istor* could have had a similar role to that of the *mnāmōn* in Gortyn and other parts of Greece centuries later.⁶² At least the *istor* was a person of public authority, a person who knows (remembers) something and reports on that at the court under circumstances when there were no written records of any legal or judicial acts.

3.3.2. A very similar tradition is well attested within the old Slav customary law, among many Slavic people during the preliterate age. *Pristav* was a person of “public trust”⁶³, engaged to assist the judge in running judicial procedure. In

⁶⁰ R. Thomas, “Writing, Law and Written Law”, in: *The Cambridge Companion to Ancient Greek Law* (eds. M. Gagarin, D. Cohen), Cambridge 2005, 48. M. Gagarin, “Letters of the Law: Written Texts in Archaic Greek Law”, in: *Written Texts and the Rise of Literate Culture in Ancient Greece* (ed. H. Yunis), Cambridge 2003, 59 – 77 rightly observes that at Gortyn, the *mnāmōn* continues to remember oral judicial proceedings even after writing has been established, 63. He also rightly adds that he remembered the proceedings and outcomes of trials and certain other matters, but he did not remember rules, which were now preserved in writing. Nor is there any evidence that he remembered the outcomes of earlier cases as precedents or rules for new cases, 68.

⁶¹ R. Thomas, “Written in Stone? Liberty, Equality, Orality and the Codification of Law”, in: *Greek Law in the Political Settings*, Oxford 1996, 9 – 32. This is one of the best overviews in the literature of the role and evolution of *mnāmōnes* in ancient Greece, 18.

⁶² I am following here the path of thinking traced by L. Margetić, “Pokušaj pravne interpretacije sudske scene na Ahilovu štitu” [An Attempt to Interpret the Trial Scene on the Shield of Achilles], in: *Zbornik radova posvećen Albertu Vajsu*, Beograd 1966, 51 – 58.

⁶³ The most comprehensive book on *pristav* is M. Kostrenčić, *Fides publica (javna vera) u pravnoj istoriji Srba i Hrvata do kraja XV veka* [Fides publica (public trust) in Legal

the transitional period when court decisions were not written, but given only orally by the judge, *pristav* “was given” to the person who won the case as a warranty, in order to have a valid proof in the future about the result of the trial. Although *pristav* assisted to the judge in some other procedural actions, his most important duty was to report about the outcome of certain cases.⁶⁴ *Pristav* was not a court official comparable to the judge, both in knowledge and in social background and authority. However, he usually was a person from a well-known family, with social prominence and prestige, in any case a person of public trust. That institution and that person were highly respected, as they helped society to avoid new quarrels and disputes about results of some earlier cases and to ensure a kind of judicial stability and continuity.

Pristav kept a condensed memory of courts and rulings in undeveloped, non-literate societies. Only gradually, during a long process, was transformed into an assistant of the judges.⁶⁵ It is clear that in the beginning *pristav* was not a permanent judicial position – a man of that designation was only delegated by a judge to the winning party of a particular case as a guarantee, in order to facilitate enforcement of judgement or even, if necessary, to help in clarification of the court decision. If a problem arose *pristav* was there to give a statement about the facts that he had seen and knew, always in the presence of the interested parties. This is why Slavic medieval sources define *pristav* as *assertor veritatis* or the one who is used *pro testimonio* or “for a stronger conviction”.⁶⁶ He was not expected to have any kind of professional experience but only to be recognized by his community as an honest and impartial person. As attested

History of Serbs and Croats up to the end of XV century], Beograd 1930. At one point Kostrenčić compares the functions of *mnāmōn* and *pristav*, 68. He claims that in the time when literacy was not yet well developed and when judgements were not written, it was a problem to maintain a lasting record of court rulings. Therefore *pristav* had to be present all the time during the court procedure, particularly when the judgement was given. At the end of the process the judge would assign the *pristav* to the winning party to support him in enforcing the judgement or to help to interpret the essence of the court decision at some later time, 21.

⁶⁴ This role of *pristav* is nearly the same as the role of *mnāmōn* in the Code of Gortyn IX 31. M. Kostrenčić, *ibid.*, 5 defines *pristav* as a person whose oral statements were privileged as those of public trust.

⁶⁵ The developed function of the *pristav* has a very significant parallel to *mnāmōn* in the Code of Gortyn XI 16. Therefore S. Novaković, *Zakonik Stefana Dušana cara srpskog [Code of Stephen Dushan, the Serbian Tzar]*, Beograd 1898 (commentary with the Art. 56) perceives *pristav* as an assistant of a judge.

⁶⁶ M. Kostrenčić, *op. cit.* (fn. 63), 16.

in sources from medieval Dalmatia he was later also employed to call upon parties to the trial, to perform preliminary investigation, to test witnesses, to be present during the oath taking procedure, etc. Only gradually, in the further evolution of the institution, did *pristav* become a kind of scribe, at the very end of the office's development a kind of notary public.⁶⁷

Pre-literate societies or early literate ones with a poor literacy rate had a serious problem with recording the court decisions. Although the corresponding institutions in the Gortyn Code (*mnāmōn*) and the old Slavic person authorized by customary law (*presto*) belong to different eras than the *Iliad*, their function, social environment, and at least some likeness in logic and purpose of the three institutions invite comparison. Consequently they could be a kind of road sign toward clarifying the role of the *istor* in Homer.

3.3.3. Quite a long time ago Walter Leaf had launched an idea, basically one expressed before him by Sir Arthur Evans, that customary material from Northern Albania could be of help in understanding the Homeric trial scene.⁶⁸ However, Leaf complained that the evidence was scarce and expected that Evans would report more on the blood-feud in North Albania. Unfortunately, this did not happen, as Evans soon moved his investigations to Montenegro and Crete.⁶⁹ About a century later, in the 1980s, N. Hammond stressed again the importance of studying Albanian custom as a possible source for better consideration of the trial in *Iliad* and gave an outline on that.⁷⁰ He had recalled

⁶⁷ S. Avramović, "Pravnoistorijski aspekti notarijata" [Aspects of Notary Public in Legal History], in: *Javnobeležničko pravo*, Beograd 2005, 35 – 83.

⁶⁸ W. Leaf, *op. cit.* (fn. 17), 122 – 132.

⁶⁹ Missing that, Leaf recalls examples from early Roman law to explain the trial scene in Homer. In the prevalent comparativist manner of that time, he believed that a signpost could be found in the interesting passage mentioned in Sir Henry Sumner Maine's *Ancient Law* (375-377 of the fifth edition) who connects the *Iliad* trial scene with the early Roman procedure of *legis actio sacramenti*. He believed that the "Roman *praetor* is represented here by the *istor*, referee or 'daysman', to whom both parties are anxious to leave the settlement of the dispute". However, as the case in the *Iliad* is not private one, which the *praetor* can decide without further ado, the *istor* therefore cannot settle it alone and must call the council to his aid, W. Leaf, *ibid.*, 127. Although this Roman parallel is very problematic, it clearly shows that efforts to explain the trial scene in *Iliad* by comparing it with primitive procedures in other legal systems are inevitable.

⁷⁰ He offered a short contribution with a similar approach – to link the trial scene from Homeric society with the Albanian customary law of a more recent time, N. Hammond, *op. cit.* (fn. 12), 79 – 86.

his travel and research in Albania in the 1930s and the researches of Margaret Hasluck.⁷¹ He mainly accepts her findings, and his parallels are mostly based upon comparisons with the procedure as found in the so called *Code of Leke Dukagjini* (*Kanuni i Lekë Dukagjinit*).⁷² Hammond mainly deals with the most controversial rules of the *Kanun* (on procedure: how murder was handled to avoid blood-feud, particularly in book 10, articles 886-990). Despite his great authority in ancient Greek history⁷³, he used second-hand sources for Albanian customary law and he failed more thoroughly to investigate two important institutions, those which could be more closely pertinent to the Homeric trial scene. It is no wonder that he missed them. Most papers dealing with those old Albanian customary institutions are published in languages that are not widely understood (Albanian, Serbian).

Indeed, there is interesting and likewise relevant material coming from the research on customary law of Albanians in the area of Kosovo and Metohia (not only Northern Albania). It appears in a number of works written in Serbian, including two PhD theses defended at the University of Belgrade in 1973 and 1978. These have never been published, so their results are not at all easily accessible.⁷⁴ Nevertheless, a pair of customary institutions carefully examined in those two dissertations are particularly interesting for assessment of the trial scene on Achilles' shield.

⁷¹ M. Hasluck, *The Unwritten Law in Albania*, Cambridge 1954, 210 – 260.

⁷² The Code was allegedly formed in the 15th century by Leka Dukagjini, most probably in oral form. The rules were collected and written down only in the 19th century by Catholic priest Shtjefën Gjeçovi. The full version was first published in Albanian as *Kanuni i Lekë Dukagjinit*, Shkodër 1933 after Gjeçovi's death in 1926. The translation in (then official) Serbo-Croat language appeared as *Kanon Leke Dukagjinija*, Zagreb 1986. An English version was published as *The Code of Lekë Dukagjini, Arranged by Gjeçov Shtjefën*, translated with an introduction by L. Fox, New York 1989. See also G. Trnavci, "The Albanian Customary Law and the Canon of Lekë Dukagjini: a Clash or Synergy with Modern Law", available at: <http://www.design.kyushu-u.ac.jp/~hoken/Kazuhiko/2008Customarylaw.pdf>.

⁷³ Let us just mention N. G. L. Hammond, *A History of Greece to 322 B.C.*, Oxford 1986.

⁷⁴ M. Djuričić, *Lično jemstvo u običajnom pravu Arbanasa u severnoj Metohiji - dorzonija* [*Personal Warranty in Customary Law of Albanians in Northern Metohia – dorzon*], Belgrade 1973 (unpublished PhD thesis); H. Ismaili, *Plečnija u običajnom pravu Albanaca* [*Plechnija in Customary Law of Albanians*], Belgrade 1978 (unpublished PhD thesis). Moreover, these two intriguing PhD theses were never translated into a more accessible language.

The first is *plechnija*, a court of elders that was already mentioned by Leaf as *pljech*.⁷⁵ To some extent this can clarify the role of *gerontes* as judges. In important cases, particularly when blood-feud was at stake, a specific court of elders (*plechnija*) made the decision case after case. Although it usually consisted of twelve men, the number of members was not strictly fixed. Furthermore, these elders (*plechniars*) were not necessarily the same persons, although they often came from the same social group within the greater community.⁷⁶ They would sit in a semi-circle with their legs crossed, facing one another, leaving in the middle enough space for the parties and other persons called upon to speak during the trial.⁷⁷ Members of the *plechnija* received a certain sum of money, but only when and if the case was solved. The judicial reward was typically called “compensation for the shoes”.⁷⁸ The most frequent cases that appeared before this *plechnija* were murder ones, but also cases dealing with wounding, debts, theft, property rights, family, marriage, etc.⁷⁹

The second specific institution in the procedure before *plechnija* leads us closer to the *istor*. It was called *dorzon*, *dorzanët* (literally: guarantor, guarantors). The role of *dorzon* is closely connected with the “judgement” of *plechnija*, as *plechnar* or *plechnars* do not basically rule like judges. They do not give a verdict; rather they only expound their opinion on what is right and how to determine the amount of damage. However, without the *dorzon* their decision would be only a non-enforceable legal opinion, and this is why the *plechnar* has

⁷⁵ W. Leaf, *op. cit.* (fn. 17), 126 fn. 1 says wrongly “*pljech* or village council (literally – *gerousia*)”. However, sometimes there could be only one *plechnar*, M. Djuričić, *op. cit.* (fn. 74), 349.

⁷⁶ Best analysis of *plechnia* in depth, as a result not only of closely examining the *Code of Leke Dukagjini*, but also based upon field investigation and interviews with the people still involved in the old usages, is by H. Ismaili, *op. cit.* (fn. 74), 20. See also in Serbian R. Halili, “Plečnija u zakoniku Leke Dukadjinija” [Plechnija in the Code of Leke Dukagjini], *Anali Pravnog fakulteta u Beogradu [Annals of the Faculty of Law in Belgrade]* 5 (1970), 531 – 543. See further M. Djuričić, “Veća staraca kod Albanaca na Kosovu” [Council of elders at Kosovo], *Anali Pravnog fakulteta u Beogradu [Annals of the Faculty of Law in Belgrade]* 5 (1984), 708 – 726; M. Djuričić, “Činioci krvne osvete kod Albanaca” [Factors of Blood-Feud among Albanians], *Anali Pravnog fakulteta u Beogradu [Annals of the Faculty of Law in Belgrade]*, 6 (1993), 687 – 692.

⁷⁷ H. Ismaili, *op. cit.* (fn. 74), 62.

⁷⁸ H. Ismaili, *ibid.*, 53; Code of Leke Dukagjini, art. 1021. Parties give the same amount for the elders’ “shoes”. The term is doubtless used figuratively, indicating that the amount is merely to reimburse costs of their arrival. However, in practice the amount was considerably higher, H. Ismaili, *ibid.*, 54.

⁷⁹ H. Ismaili, *ibid.*, 36.

the *dorzon* in order to execute the decision.⁸⁰ The *dorzon* is a guarantee that the opinion of the *plechnar* will be respected.

The *dorzon* was a person elected by the parties to see that the decision between them would be properly fulfilled.⁸¹ Each party acquired his own *dorzon*, but there are specific provisions for a blood-feud *dorzon*. He had to make sure that the decision of *plechnija* would be accomplished in good time and as it was specified. If the killer tried to escape or to delay due payment, the *dorzon* called him before the gathered people to warn him.⁸² Blood-money was always given to a *dorzon* by the murderer and the *dorzon* passed it to the family of the victim – it was not permitted for the murderer to pay the blood-money to the victim's family directly.⁸³

In short, the *dorzon* had multiple functions as a person of public trust.⁸⁴ He was there to remember what the decree of the *plechnija* was, to take care that it would be fulfilled: he was “one-who-knows” the case, who was a guarantor of the blood-feud contract and who was responsible for proper fulfillment of the compromise (that is, the finding of the *plechnia*). And he was supposed to remember, and to attest if necessary, the outcome of the case in the coming decades, until the end of his life. The *dorzon* was a warranty in many legal matters (inheritance, diverse contracts), but his role is particularly important in blood-feud cases. Blood-feud procedure was performed through two contracts.⁸⁵ The first was an agreement about the blood-feud when one party permanently waived his right to demand the blood-price, while the other party assumed an obligation to pay a certain amount as a compensation for the unavenged death. The second was a contract about enforcement of the agreement by the *dorzon* who took care that the contract would be fully honored.

Although there are distinct parallels that may connect *plechnija* and *dorzon* with the Homeric *gerontes* and *istor* in some respects, there were likely significant differences between those Balkan offices, on the one hand, and the ones referred to in the *Iliad* passage, on the other. Nevertheless it seems that both

⁸⁰ M. Djuričić, *op. cit.* (fn. 74), 351.

⁸¹ H. Ismaili, *op. cit.* (fn. 74), 178. This example from comparative legal history might generally support an idea by E. Cantarella, *op. cit.* (fn. 25) (2002), 160 (= (2012), 186) that *istor* was a person who guaranteed that the blood-money would be correctly paid in accordance with the word given.

⁸² Code of Leke Dukagjini, art. 980.

⁸³ Code of Leke Dukagjini, art. 981.

⁸⁴ M. Djuričić, *op. cit.* (fn. 74), 175 – 214.

⁸⁵ M. Djuričić, *ibid.*, 349.

pairs served similar complementary purposes – to have someone who would take care as a warranty of the contracts or of decisions of the court of elders (to be fulfilled precisely as handed down), and to keep all important details of the case in trusted memory, exactly as the *mnāmōn* was charged to do at ancient Gortyn or the *pristav* among Slav people in the Middle Ages).

4. CONCLUSION

Notwithstanding that most English translators take for granted that the *istor* is a judge or an arbiter, it seems that *istor* was not authorized to decide cases, especially those involving murder or blood-money. Those issues were probably not judged by a single person, particularly in early societies. Moreover it is quite doubtful whether a primitive democratic body consisting of people gathered by chance was empowered to reach a satisfactory decision in complicated cases like this, what MacDowell and Lanni suggest. Homeric society was fundamentally aristocratic, so that some formal confirmation of elder's decision *by the crowd* to make it effective was quite improbable. The crowd could of course express their feelings and attitudes during the public judicial process, and possibly influence the actual judge(s), but without any formal legal significance. As in many other primitive societies the court of elders, the *gerontes*, were authorized to give a final verdict. But what, then, was the role of the *istor*?

The hypothesis that the *istor* was either the one of the elders who gave the best judgement or was the chairman of the *gerontes* has many deficiencies: it is contradicted by the very sequence of Homeric verses, by comparative early law experience, by the social-political conditions, by linguistic considerations, *inter alia*. Therefore the question remains: What was responsibility of the *istor*? If the *istor* was one who decided the case (as many translators suggest), why were *gerontes* needed at all? Or were there two types of judges involved, one to declare the law, the other to decide cases? From primarily philological and comparative arguments, it seems that *istor* was only a figure who helped the *gerontes* to reach the best possible verdict. He was a person of public trust who knew what he had seen (*oida* as the root of *istor*) and his role was to report to the crowd and the elders what relevant elements he knew and remembered. His stated recollection was very important, particularly in the context of an oral judicial procedure, which was not strictly fixed by writing and could vary in many features.

However, even if this much is granted, there are two possibilities before us. The *istor* was present either to help in solving a legal matter (whether blood-money was acceptable or not) or a matter of fact (whether the blood-money had been paid in the proper way).

Although any suggestion that the issue was about a question of law seems to be quite vulnerable, let us examine a possible role of the *istor* upon that hypothesis. If the issue was controversy over a difficult legal question relevant to blood-feud, why was presence of an *istor* so necessary? If his opinion was so decisive, what role was left to the *gerontes*? There is only a slight possibility that the *istor* was at hand to remember and remind the audience if the blood-money was accepted before in comparable cases.⁸⁶ He might have reported how and that violent blood-feud was replaced by blood-money (*poinē*) in one or more concrete situations or perhaps to adduce his remembrance and offer his information on some other important issue at stake. Blood-price seems most unlikely to have replaced blood-feud as standard usage all at once, always and in all situations in the same way. How it did so, almost certainly depended on particular characteristics of a concrete case of homicide. Only in that sense could an *istor* “end” (*peirar*) the preliminary dilemma of whether blood-money was previously acceptable in comparable circumstances. In any case he did *not* decide between parties. Such a presumption about the role of the *istor* is quite unsustainable as the whole hypothesis that a legal matter was subject of the Homeric trial scene is not very probable. The very presence of the *istor* when and where he is mentioned and unconvincing explanation of his role vitiate that theory.

If the issue was the one of facts, namely whether blood-money was correctly disbursed or, what sounds more plausible, if it was paid at all, makes the case more open for dispute and the role of *istor* could be more easily explained. The responsibility of the *istor* would have been quite similar to that of the *pristav* in the customs of early medieval Slavs or to the function of the *dorzon* among Albanians from Kosovo and Metohija. The *istor* did not rule on liability, since the case had already been solved by a compromise during his presence. He only informed the *gerontes* about what he knew (as a person of public trust),

⁸⁶ M. Gagarin, *op. cit.* (fn. 60), 68 is right that there is no evidence that *mnāmones* in Gortyn remembered the outcomes of earlier cases as precedents or rules for new cases. But *argumentum ex silentio* does not mean that something similar did not take place, particularly if one takes into consideration the role of *pristav* in Medieval Slavic law.

about something that he was supposed to supervise and as a guarantee/guarantor of the fulfillment of an agreed obligation. He was present in the Homeric trial scene to report what could have been a defect in executing the blood-feud compromise, as he was one-who-knows. This is why the *gerontes* speak in turn about different possibilities *after* his statement. The sequence of verses clearly points to this.

In any event the function of the *istor* was not to decide the case but to report about some relevant issues. His declaration could be related to the history of the actual clash (about the content of the decision, about the details and manner of its enforcement, or something else pertinent). However, it is not impossible that the *istor* was also invited to mention other cases that he had observed before.⁸⁷ The *istor*'s statement could affect the final verdict and this is why the parties and the audience were so excited to hear what he was going to say. However, the final decision on how to solve the concrete dispute, depending on specific elements of the case, was in the hands of the *gerontes* only.

Many societies without written judicial procedure have used persons of public trust in a similar role of "rememberer", of him "who knows" facts relevant to the process. This may well be a point of the phrase *epi istori* – to stand before him to learn or to be reminded of facts. What he had seen and remembered was basically a non-written archive of the case. Therefore, the *istor* was an important person who was present during the process, a man of public trust whose knowledge could be decisive, but he himself was not a decision maker.

Consequently MacDowell's translation sounds quite tolerable, albeit only in its first part: "both wished to obtain trial at the hands of *istor*". MacDowell is among the rare English-speaking authors who have avoided asserting that parties wanted to obtain from the *istor* decision, verdict, judgement or something else very binding. The only problem with MacDowell's approach is that he translated *istor* as a judge, merging the role of *gerontes* and *istor* (as many other scholars have done as well). However, Homer clearly says that the elders' action was *dikazein*, while to *istor* is only ascribed *peirar helesthai*. It was they who gave the judgement based upon the facts of each specific case, taking the *istor*'s statement into careful consideration. His role in a preliterate society was surely very important. He was a "walking archive of judiciary", whose report could strongly affect the final decision by the elders, but he himself was not a person authorized to come to a decision.

⁸⁷ Previous decisions were taken into account when the *plechnija* were ruling, H, Ismaili, *op. cit.* (fn. 74), 152.

Let us end with a suggestion for future English translators. The best solution for translating *istor* in the *Iliad*'s trial scene at the shield of Achilles should be to avoid either "judge" or "arbiter" or "witness". Having in mind comparative data surveyed in this paper, particularly the role of *dorzon* among Albanians, I maintain that a rather more accurate term would be "warranty", or "guarantee," like *pristav* in old Slavic law, or "guarantor," like Agamemnon upon his comrades' argument during the chariot race in *Iliad* Book 23 (in Thür's convincing interpretation). Of course, the easiest solution for translators would be to keep the original Greek word *istor*, just as *mnāmōn* in the Code of Gortyn is never translated by any modern-language alternative. "One-who-knows", as suggested by Hammond (although probably with different connotations in his view), and "Wissender" in Thür's German, might be also a good choice to translate Homeric *istor*, since it would better fit his probable role in the judicial process. Modern legal terminology cannot offer a better single-word-for-single-word translation for Homeric *istor*. In any case, it would be wrong to make *istor* anachronistically into a technical term, designating a kind of officer of the community, instead of a person of public trust who was present at some important occasions as a warranty and gives his statement on what he knows when and if it is necessary.

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Sažetak

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**KRVNINA KOD HOMERA – ULOGA ISTORA U SCENI SUĐENJA
NA AHILOVOM ŠTITU (II. 18, 497-508)**

Autor analizira čuvene kontroverzne stihove iz Homerove Ilijade (18, 497-508) u kojima se opisuje scena suđenja u vezi sa ubistvom. Ukazuje na mnoga sporna mesta i različita tumačenja nekoliko pitanja. Prvo je šta je predmet spora – je li po sredi faktičko pitanje (da li je krvnina za ubistvo plaćena ili ne) ili pravno (da li se krvnina može zameniti kompenzacijom). Drugo se odnosi na dilemu da li su stranke dragovoljno iznele svoj spor pred arbitra da bi se izbegla samopomoć ili postupak vodi društvo u cilju suzbijanja samopomoći. Treće nejasno pitanje je ko donosi odluku u sporu – okupljeni narod svojim nadvikivanjem, skupina geronata ili pojedinac - istor? U vezi sa time je i pitanje kome se po završetku spora dodeljuje 12 talenata u zlatu koje pominje Homer. Autor sugerira da istor nije ni sudija niti arbitar, već osoba javne vere i poredi ga sa mnamonom u Gortinskom zakoniku iz V veka pre n.e. sa Krita, koji je tamo neka vrsta sudskog pomoćnika čiji je zadatak da, u vreme kada pismenost još nije dovoljno razvijena, pamti sadržinu sudskih odluka (etimološki: onaj koji se seća). Uporedo sa tim, autor ukazuje i na moguću sličnost sa funkcijom pristava u starom srednjevekovnom južnoslovenskom pravu, koji je bio pomoćnik sudijama, prisustvovao raznim pravnim poslovima za čije je izvršenje garantovao i čijim se izjavama poklanjala javna vera (osobe javne vere). Osim toga, autor traži pravno-antropološku paralelu pomenute homerske scene sa običajnim sudom staraca - plećnije koja se dugo zadržala kod Albanaca na Kosovu i Metohiji i sa ulogom koju je imao dorzon, kao osoba koja je garantovala da će se stranke pridržavati mišljenja plećnara. Na osnovu svega toga zaključuje da homerski istor nije bio ni sudija niti arbitar, već osoba javne vere, koja je bila prisutna i koja zna važne činjenice u vezi sa spornom krvninom.

Ključne reči: ubistvo, krvnina, samopomoć, arbitraža, Gortinski zakonik

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