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PULLING THE WITNESS BY THE EAR: A RIDDLE FROM THE MEDIEVAL RAGUSAN SOURCES

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ABSTRACT: Analysing the Ragusan medieval practice of designating a potential witness by pulling his ear, the author traces the same custom in the legal codes from South East Adriatic (from the islands of Mljet and Lastovo to Shkodër). Finding striking similarities with the *antestatio* rite in the Twelve Tables code of Roman law, and in a number of testimonies from the Roman literature, the author follows the emergence of a ritual of similar features in the early Germanic law collections (5th-8th c.), in the documents of the Austro-Bavarian region (8th-12th c.), and in the Old Slavic legal terminology. According to the author, the link between the existence of a virtually identical legal ritual in different areas and periods might be accounted by the Roman law tradition, yet basically nourished by the shared understanding of the ear as the seat of memory.

Key words: Dubrovnik, Shkodër, Lastovo, Mljet, Roman law, Germanic law, *antestatio*, ear, witness, legal ritual

A historian immersed in the documentary sources is aware that they record merely a portion of reality. Medievalists are particularly haunted by the question of whether the records mirror what was typical, or, contrarily, the very fact that something was not typical or commonplace guided the recorders

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to write it down. The realms of oral culture, non-institutional legal behaviour and ritual forms tend to remain beyond the vantage point of historiography. A historian should, of course, write only about the topics that are solidly grounded. This, however, does not exempt him from trying to tackle and interpret the phenomena that are but marginally discernible in the extant sources.

Similarly, a researcher into the medieval Ragusan sources will, through fleeting glimpses, learn about the ritualised behaviour and practice which evidently had complex and far-reaching legal effects without being officially drawn, and more curiously, in a community marked by an advanced written legal tradition, statutory collections and notarial office. For instance, thirteenth-century Ragusan notary records mention the ritual of 'falling flat on the ground' (*iactare/deiactare/proicere se in terram, iactatio in terram, data in terram*) [1] through which a debtor symbolically declared his insolvency, which signalled the beginning of a special seizure procedure, regulated by the 1272 Statute.[2] In a case of dispute between the co-owners of a ship in the Dubrovnik port in 1461, as a sign of confirmation of his oath, one of the owners took some seawater with his hand and drank it (*et in fidem sacramenti accepit aquam marinam manu et eam bibit*).[3] Based on the analysis of the criminal cases, additionally supported by the evidence in other sources, one may assume the significant role of the settlement ritual that was sealed with a kiss, exchange of gifts or fraternisation which took place out of court and virtually managed to submerge the judiciary.[4] A host of examples may be provided to illustrate this practice.

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[1] For instance, *Spisi dubrovačke kancelarije,* vol. I [1278-1282], ed. Gregor Čremošnik. [Monumenta historica Ragusina, 1]. Zagreb: JAZU, 1951: doc. 161, p. 42; doc. 251, p. 67; doc. 279, p. 74; doc. 295, p. 79; *Spisi dubrovačke kancelarije,* vol. II [1282-1284], ed. Josip Lučić. [Monumenta historica Ragusina, 2]. Zagreb: JAZU, 1984: doc. 784, p. 180; *Spisi dubrovačke kancelarije,* vol. III [1284-1286, 1295-1297], ed. Josip Lučić. [Monumenta historica Ragusina, 3]. Zagreb: JAZU, 1988: doc. 117, p. 47; doc. 261, p. 86; doc. 301, p. 95; doc. 326, p. 102; doc. 348, p. 109-110; doc. 572, p. 232; doc. 703, p. 250; doc. 747, p. 256; doc. 901, p. 300; doc. 911, p. 301; doc. 1050, p. 329; doc. 1110, p. 339.

[2] The Statute of Dubrovnik, III, 12 (*Liber statutorum civitatis Ragusii compositus anno 1272*, ed. V. Bogišić and C. Jireček. [Monumenta historico-juridica Slavorum Meridionalium, 9]. Zagreb: JAZU, 1904: pp. 57-58).

[3] *Diversa cancellariae*, ser. 25, vol. 70, f. 132r, State Archives of Dubrovnik (hereafter cited as: SAD).

[4] For out-of-court settlement see Nella Lonza, »L'accusatoire et l'infrajudiciaire: la "formule mixte" à Raguse (Dubrovnik) au Moyen Âge«, in: *Pratiques sociales et politiques judiciaires dans les villes de l'Occident européen à la fin du Moyen Âge*, ed. Jacques Chiffoleau, Claude Gauvard and Andrea Zorzi. Roma: École française de Rome, 2007: pp. 647-648, 655-658.

The medieval Ragusan sources mention sporadically – to my knowledge – a curious practice of designating a potential witness by pulling his ear.

The record of 26 November 1296 contains a witness testimony according to which a certain Radovec assumed responsibility for the debts of his son, threatened to be collected by Marcus de Bobalio. Witness Marinus testified that Marcus designated him as witness by touching his ear: *Et de hoc fui testis asignatus per dictum Marcum et tactus per auriculam*.[5] Despite damage and partial illegibility, an earlier record from 1284 most probably describes the same practice. A row between Marinus de Longrino, and a certain Draginja resulted in the verbal insult of Stancius de Porada. The latter called for another Stancius, an accidental eye-witness, to testify in his favour: *Et Stancius cepit me per [auricula]m et dixit: 'Sit mihi testis'*.[6]

Designating the witness by giving his auricle a tug is mentioned in the authentication of a Ragusan will from the fifteenth century. A Ragusan Pjerko de Basso had his will drafted in 1427 in Novo Brdo (today's Kosovo) and carried it with him to Drežnica. Once his health deteriorated, he called three witnesses whom he acquainted with the contents of the will, named his successor, and entrusted one of the witnesses with the document's safe keeping. During the hearing before the Ragusan consul to Priština, the witnesses mentioned that they had been designated as witnesses by being touched on the ear: *El qual ne disse: '...per tanto voglo che voi mi siate guarenti assegnati' e cosi mi tocho l'orechia...'; '...et tochio mi la orechia, assegnandomi per guarente*.'[7]

As we have been able to grasp from all these examples, a person pulled by his ear was designated as witness or *testis assignatus* (*guarente assegnado* in Venetian). This expression and its synonyms (*testis clamatus, testis rogatus)* are fairly often found in the sources pertaining to the Dubrovnik legal practice. One might say that a witness is being followed through a number of social situations and stages: when he witnesses the facts that are potentially legally

[5] *Spisi dubrovačke kancelarije* III: doc. 959, p. 311. This document is also mentioned by Gregor Čremošnik, »Notarijat Lastova u srednjem veku«. *Jugoslovenski istoriski časopis* 3 (1939): pp. 93-94.

[6] *Spisi dubrovačke kancelarije* III: doc. 391, p. 123. Lučić's suggestion of restitution was "[per] uim", but in the original "per" is quite legible, as well as the final "-m" in the next word.

[7] *Testamenta notariae*, ser. 10.1, vol. 111, ff. 183r-184r (SAD). Konstantin Jireček called attention to those parts of the will that were the subject of my interest, in *Istorija Srba*, vol. II. Beograd: Izdavačko poduzeće NR Srbije, 1952: pp. 128-129, n. 56.

relevant (e.g. a wrongdoing, signing of contract or drafting of a will), he is merely a ''witness'' (*testis)*; from the moment when one of the parties, through explicit actions (words or the ritual ear tug), expresses his will and intention to call upon his knowledge with the purpose of resolving a legal dispute, he then becomes 'designated witness' (*testis assignatus* etc.); in a situation when he is called upon to testify before the court, he assumes the role of an 'introduced witness' (*testis introductus, testis productus*).[8]

In the thirteenth century Ragusan law laid great stress on 'designated witnesses', moreover, in civil suits only their testimonies were considered credible and legally valid. Exceptionally, during the hearings concerning property ownership – a state of permanent nature and of common knowledge— the witness did not have to be designated.[9] In an interesting action involving debt repayment from 1297, the court insisted on asking each witness whether the parties had designated him as witness, obviously because that condition was essential for the credibility of his testimony.[10] However, since an overly rigid law of proof could interfere with the outcome of the legal process, the Statute allowed the court to decide freely on the status of a witness who was unable to remember if he had been designated or not: *Sed si testis se dicat non recordari si fuit assignatus in testem vel non, sit in providencia domini comitis et sue curie si valeat eius testimonium aut non*.[11]

The question raised here is whether pulling the witness by the ear was the only method of designating witnesses in Dubrovnik's legal practice of the thirteenth century. A document from 1285, however, testifies differently, as the witness retells debtor's statement: *...et dictus Leonardus dicebat ei: 'Si debeo tibi facere aliquam rationem, sum paratus facere, sed ex quo non vis dare mihi zoiam? Ego assigno istos testes', et assignavit me et alios per testes*.[12] The likelihood is that two rituals of designating witnesses existed at the time—

[8] Here I bring selected examples only, among which are the ones contributing to the semantic illumination of the topic: *Spisi dubrovačke kancelarije* I: doc. 187, p. 51; doc. 219, p. 59; doc. 305, p. 81-82; doc. 336, p. 90; *Spisi dubrovačke kancelarije* III: doc. 853, p. 292; The Statute of Dubrovnik, III, 29 and summarium by Frano Gundulić (*Liber statutorum civitatis Ragusii*: pp. 67 and 397).

[9] The Statute of Dubrovnik, III, 29. For the court evaluation of the testimonies, cf. III, 36.

[10] *Kancelariski i notarski spisi 1278-1301*, ed. Gregor Čremošnik. [Zbornik za istoriju, jezik i književnost srpskog naroda, 3. Istoriski spomenici Dubrovačkog arhiva, III.1]: doc. 422, pp. 170-171.

[11] The Statute of Dubrovnik, III, 34.

[12] *Kancelariski i notarski spisi 1278-1301*: doc. 395, p. 155.

verbal and by gesture—leading us to assume that not every *testis assignatus* recorded in the Ragusan sources had earned that status by having his auricle pulled.

Owing to the Ragusan lawyer Frano Gondola and his commentary on the Statute (*apostillae)* from the sixteenth century, one is able to reconstruct the transformation and disappearance of this ritual designation of witnesses. According to the examples cited by Gondola, as early as the fifteenth century it was customary to identify the witnesses with an established formula, saying: *Estote testes assignati de verbis quae intellexistis*. Although, by that time, the verbal formula tended to prevail in practice, the ritual of pulling the ear had not yet been abandoned, as witnessed in the will of Pjerko de Bassio. By the time Gondola embarked upon writing his commentaries in the latter half of the sixteenth century, the practice of the formal designation of witnesses died out, and the court no longer considered it a matter of importance.[13] The custom of pulling a witness by the ear in the Ragusan legal practice can thus be traced in the period between the thirteenth and the fifteenth centuries.

That is not all, however. The fourteenth-century Statute of Lastovo, an island under Ragusan domination, prescribes a fine for anyone attacking another person in his house if the evidence on the misdeed has been provided by two reliable witnesses who have been summoned to testify by having had their ears touched: *...veramente se lo ditto patron della casa mostrasse doi idonei testimonii, che siano tocadi per la orechia a testimoniar.*[14] The chapter containing this provision does not stem from the oldest Statute core drawn in 1310, and is probably of a somewhat later date, possibly from the second quarter of the fourteenth century.[15] The same provision, though written in somewhat different idiom, was brought by the Statute of Mljet in 1345:

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[13] *Liber statutorum civitatis Ragusii*: p. 410.

[14] The Statute of Lastovo, c. 43 (*Knjiga o uredbama i običajima skupštine i općine otoka Lastova*, ed. Frano Radić. [Monumenta historico-juridica Slavorum Meridionalium, 8]. Zagreb: JAZU, 1901; reprinted in: *Lastovski statut*, ed. Antun Cvitanić. Split: Književni krug, 1994). Oddly enough, this provision seems to have slipped the scrutiny of Gregor Čremošnik who examines the issue of the designation of witnesses on the island of Lastovo, wherein he mentions the Ragusan practice of pulling by the ear (G. Čremošnik, »Notarijat Lastova u srednjem veku«: p. 93. Antun Cvitanić shows reluctance in correlating this information (»Lastovsko statutarno pravo.«, in: *Lastovski statut*: pp. 200 and 202).

[15] For more details on the date see A. Cvitanić, »Lastovsko statutarno pravo«: pp. 126-127; Nella Lonza, »Na marginama rukopisa Lastovskog statuta iz XIV. stoljeća«. *Anali Zavoda za povijesne znanosti u Dubrovniku* 36 (1998): pp. 8-12.

...veramente se lo ditto patron de casa mostrasi dui idonei testimonii, che siano tochati per la auariçia testimoniar.[16] This is understandable, since the Statute of Mljet patterned after that of Lastovo, the entire sets of provisions being borrowed either without any changes or with minor variants. As both the collections were drawn after these two local communities had been subjected to the rule of the Dubrovnik commune, it is hard to say whether this ritual was 'imported from the centre' or had an 'autochthonous' background. Whatever the case, Lastovo and Mljet have been charted on the map of the distribution of the legal ritual under study.

A recently discovered and published Statute of Shkodër from the first half of the fourteenth century bears witness to an identical procedure of the designation of witnesses in that community. The chapter 133 explicitly states that, with certain exceptions, credibility should be given to the witness designated 'by the auricle': *Ordinemo che chadauna persona guarente fosse dato voy che fosse asignato per la aurecula volemo che sia creduto, e se non fosse asignato per la aurecola non sia creduto, salvo se fosse dato guarente de furto chi fosse facto di nocte, voy fora de la tera, et de robaria chi fosse fora de la terra, voy ne la terra de nocte*.[17] The regulations governing the role of witnesses in the Statute of Budva resemble those of Shkodër, although there is no explicit mention of the pulling by the ear.[18] A continuity in the existence of this legal custom across a concentrated area of Dubrovnik, Lastovo, Mljet and Shkodër would be a logical assumption, of which, however, the sources have failed to offer proof as yet.

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[16] The Statute of Mljet, c. 33 (*Mljetski statut*, ed. Ante Marinović and Ivo Veselić. Split-Dubrovnik: Književni krug i Zavičajni kljub 'Mljet', 2002: p. 78).

[17] *Statuti di Scutari della prima metà del secolo XIV con le addizioni fino al 1469*, ed. Lucia Nadin. [Corpus statutario delle Venezie, 15]. Roma: Viella, 2002: p. 124.

[18] »Statuto di Budua.«, in: *Statuta et leges civitatis Buduae, civitatis Scardonae, et civitatis et insulae Lesinae*, ed. Šime Ljubić. [Monumenta historico-juridica Slavorum Meridionalium, 3]. Zagreb: JAZU, 1882-1883. There is an apparent similarity between the chapters 113, 116, 117, 118, 119 of the Statute of Budva and the chapters 130, 134, 135, 136, 137 of the Shkodër Statute. In the opinion of Gherardo Ortalli and Oliver Jens Schmitt, the very fact that certain chapters of the Statute of Budva are virtually identical to the older Shkodër Statute is likely to reshape the views of the genesis of the Statute of Budva, and equally so of Dušan's law code (Gherardo Ortalli, »Gli statuti, tra Scutari e Venezia«, in: *Statuti di Scutari*: pp. 11-13; Oliver Jens Schmitt, »Un monumento dell'Albania medievale: gli Statuti di Scutari«, ibidem: pp. 27-35). Following in their footsteps it can be observed that certain chapters of the Shkodër Statute are very similar or almost identical to the provisions of the older Dubrovnik Statute, e.g. cc. 159, 160, 161, 169, 172 of the Shkodër Statute with cc. 12, 50, 13, 16, 24 of book IV of the Dubrovnik Statute. (The first ?) Dubrovnik ring most certainly extends the "chain [of the south-Adriatic] communes that participated in similar legal principles" discussed by Schmitt (ibidem: p. 31).

Could this be an indigenous custom of the south Adriatic area? An expert in the Roman law would not hesitate to refute this.[19] In the action at law existing in the early days of the Roman legal system (*legis actio*), the ritual question *'licet antestari*?' and the response '*licet*' established that a person was willing to testify to the failure to summon a certain person before the court (*in ius vocatio*); the assumption that the same formula was used to designate the witnesses in other cases seems plausible.[20] The law code known as the Twelve Tables (fifth century BC) along with other legal sources fail to reveal any details of this ritual, but many literary sources—from the comedies of Plautus to Horace's *Satires* and Virgil's *Eclogues*—describe that these utterances were accompanied by pulling the witness by the ear.[21] Although the *legis actiones* procedure had been replaced by the formulary process in the first century BC, the institute of *antestari* remained in use, leading us to assume that the accompanying ritual of pulling the ear had also survived.[22]

Over the ensuing centuries, the ritual of pulling the witness by the ear disappears from our horizon. Like many other forms of ritual behaviour, this custom, by virtue of its nature, rarely finds its place in the records. ''The silence of the sources'' need not necessarily imply that this ritual had died out in the Roman state. Yet we have no proof of its continuity either.

A ritual of similar features resurrected in the early Germanic law collections redacted between the end of the fifth and eighth centuries: *Lex Burgundionum, Lex Ribuaria, Lex Baiuvariorum, Lex Alamannorum*.[23] Viewed geographically,

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[19] I am indebted to Dr. Marko Petrak for having drawn my attention to the Roman *antestatio*.

[20] Luca Loschiavo, *Figure di testimoni e modelli processuali tra Antichità e primo Medioevo*. Milano: Dott. Giuffrè Editore, 2004: p. 15.

[21] For the citations from the Roman legal sources and literary works see Heribert Aigner, »Testes per aures tracti und Plinius, n.h. XI 45, 251.« *Zeitschrift des Historischen Vereines für Steiermark* 67 (1976): p. 222; Reinhard Selinger, »Das Ohrläppchenziehen als Rechtsgeste: *Licet antestari?* im römischen Recht und *testes per aures tracti* in den germanischen Rechten.« *Forschungen zur Rechtsarchäologie und Rechtlichen Volkskunde* 18 (2000): pp. 202-206; L. Loschiavo, *Figure di testimoni*: p. 15, n. 29.

[22] Franz Wieacker, *Römische Rechtsgeschichte*, vol. I. München: C.H. Beck'sche Verlagsbuchhandlung, 1988: p. 448, n. 8.

[23] *Leges Burgundionum*, ed. Ludovicus Rudolfus de Salis. [Monumenta Germaniae Historica, Leges nationum germanicarum (hereafter cired as: MGH, Leg. nat. germ.) II. 1]. Hannover: Hann, 1892: c. 60 (MS B 6), p. 93; *Lex Ribuaria*, ed. Franz Beyerle and Rudolf Bouchner. [MGH, Leg. nat. germ., III.2]. Hannover: Hann, 1965^2, c. 63 [60, 1], p. 116; *Lex Baiwariorum*, ed. Ernst von Schwind. [MGH, Leg. nat. germ., V, 2]. Hannover: Hann, 1997: cc. 16.2, 17.3, 17.6, pp. 432, 449-451; *Lex Alamannorum*, ed. Karolus Lehmann. [MGH, Leg. nat. germ. V.1]. Hannover, 1966^2, c. 91, p.153.

these laws governed the upper regions of the rivers Rhône, Rhine, and Danube, as far as Lyon to the west and Vienna to the east.[24] The ritual of pulling the witness by the ear may frequently be traced in the documents of the Austro-Bavarian region between the mid-eighth and end of the twelfth century, too. On occasion, it is referred to as a typical Bavarian custom (*mos Baioariorum, usus Baioariorum*).[25] Apparently, a verbal form of designating witnesses also existed in the same period.[26] The ritual of pulling the witness by the ear has not as yet been confirmed in other Germanic sources from the regions further north and west. It is not quite by accident that this custom was recorded in 'the third zone', between the northern zone dominated by Germanic law and the southern zone marked by increasing Romanisation—that is, in an area where, between the seventh and the tenth century, two distinctive legal traditions met.[27] This reminds us that the examples from Dubrovnik and Shkodër also stem from a region with a marked Roman law component, although on its fringes.

Reihnard Selinger rightly argues that gestures have no universal meaning, but may be interpreted merely on the basis of a specifically determined context in terms of time, space, archeological or rather material frame. However, his conclusion that behind the gesture of pulling the witness by the ear in the Roman and Germanic laws stand different legal institutes[28] rests upon an overly restrictive interpretation of the sources available. Legal norms in the ancient and medieval times were, by contrast, most frequently shaped casuistically: they exemplified a situation, but by analogy were implemented on another; they generally defined what in practice may have given rise to

[24] This, however, is but a rough attempt to visualise the area of distribution, the principle of the personal and not territorial effect of law further adding to its fluidity.

[25] Eugène de Rozière, »Formules inédites publiées d'après deux manuscrits des bibliothèques royales de Munich et de Copenhague.« *Revue historique de droit français et étranger* 5 (1859): doc. 58 and 59, pp. 37-38; Jacob Grimm, *Deutsche Rechtsalterthümer*, vol. I. Leipzig: Dieterich'sche Verlagsbuchhanlung Theodor Weicher, 1899[4]: pp. 200-201; Antonio Pertile, *Storia del diritto italiano*, vol. IV. Torino: Unione tipografico-editrice, 1893[2]: p. 468, n. 34; H. Aigner, »Testes per aures tracti und Plinius, n.h. XI 45, 251«: p. 221.

[26] An eighth-century document from Freising mentions *testes... aut per aurem aut per verba ad testimonium conducti* (Maurizio Lupoi, *The Origins of the European Legal Order* [original title: *Alle radici del mondo giuridico Europeo*]. Cambridge: Cambridge University Press, 2000: p. 450, n. 37).

[27] John Gilissen, *Introduction historique au droit*. Bruxelles: Bruylant, 1979: p. 157; for a similar comment on the prevalence of the custom see R. Selinger, »Das Ohrläppchenziehen als Rechtsgeste«: pp. 208-209.

[28] R. Selinger, »Das Ohrläppchenziehen als Rechtsgeste«: p. 201.

perplexity, and ignored everything that in legal life operated smoothly. The picture that legal provisions afford on a certain legal institute is always narrower than reality in scope, focused only on a selection of elements that had once existed in the legal practice. The Roman *antestatio* and the Germanic pulling the witness by the ear are not only correlated by the gesture, but equally so by its meaning: a witness is being designated (*assignatus*) as the one who knows what happened and has to remember it, for he may be called to court to confirm it. The designated person is thus accorded a specific formal preliminary legal status, different from that of the other potential witnesses. Whether he was going to testify to a criminal offence, property dispute or a will was of little relevance to his status.

The fact that a witness was designated by the very gesture of pulling his ear continues to puzzle the minds of legal historians. The answer offered by the classical authors was that ear is the centre of memory and remembrance. In his work *Naturalis historia*, Pliny the Elder directly explains the ritual of calling the witness: *Est in aure ima memoriae locus, quem tangentes antestamur.*[29] In addition, some fifty antique gems originating between the second century BC and fifth century AD, found on the sites in both the Latin West and Greek East, depict the gesture of pulling by the ear beside the word *memento* (Lat.) or *mnemóneue* (Gk.). Some of them were clearly intended to remind of a dear person.[30] Based on this archeological finding, it is clear that the symbolism of auricle as a locus of memory prevailed throughout the vast antique world, and survived until its sunset.[31] This meaning may also be traced in numerous sources pertaining to the legal customs of the Germanic peoples, from the early Middle Ages to its close. A good illustration is a Burgundian document from 1112, in which a child is slapped behind the ear in order to remember what he saw.[32] The Slavic world, however, had a distinctive *terminus iuris* for

[29] *Naturalis Historia* XI. 251 (Pliny, *Natural History*, vol. III, ed. H. Rackham. [The Leob Classical Library, 353]. Cambridge Ms.-London: Harvard University Press and William Heinemann Ltd., [5]1967: p. 590). See also H. Aigner, »Testes per aures tracti und Plinius, n.h. XI 45, 251«: pp. 222-223.

[30] A most detailed survey with catalogue and reproductions see in: R. Selinger, »Das Ohrläppchenziehen als Rechtsgeste«: pp. 212-219 and 222-226.

[31] For more details see R. Selinger, »Das Ohrläppchenziehen als Rechtsgeste«: pp. 209-211.

[32] Du Cange cited by Grimm, *Deutsche Rechtsalterthümer* I: p. 199. Selinger affords an exhaustive analysis of the custom of slapping behind the ear, in Roman times related to the act of manumission (*manumissio*), which in medieval Germanic area replaced a ritual of pulling by the ear by persons of incomplete legal capacity (see R. Selinger, »Das Ohrläppchenziehen als Rechtsgeste«: pp. 210-211).

a witness—*posluh*, linguistically related to the word for hearing—not because he would testify to what he heard,[33] but because his remembrance of the events was credible.[34]

Our considerations of the parallels and causes have drifted us apart from the Ragusan examples of pulling the witness by the ear in both time and space. We have seen that various people of the antiquity and the Middle Ages envisaged ear as something which transmitted man's memory into his innerself, as well as something which could, upon call, be recovered from memory and be presented to the court.

What conclusion can we draw on a practice sporadically detected in the sources of ancient Rome over a period of four centuries (from the fifth to first century BC), among Germanic peoples of Central Europe between the fifth and twelfth century, and in the Adriatic south-east from the thirteenth to the fifteenth century? Are the similarities between these separately developed legal customs purely coincidental?[35] Can it be proof that legal relics of the common Indo-European heritage still thrived in the Middle Ages?[36] Or has a typically Roman procedure ritual taken such deep root in the furthest corners

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[33] An apposite semantic background is best illustrated by the words from *Codex Suprasliensis* in Old Church Slavonic (11th c.): "the eyes ar not the best *posluh*" (cited in: Vladimir Procházka, »Posluchъ et vidokъ dans le droit slave«. *Byzantinoslavica* 20 (1959): p. 251.

[34] To my knowledge, this complex theme has been approached from two angles, yet neither of the approaches seems to have completely departed from the hearing organ. Vladimir Procházka, Czech historian of law, has analysed the terms *posluh* and *vidok* in old Slavic law and concluded that *posluh* first described a person who would answer to hue and cry, then denoted a person called to witness a legal act (*testis rogatus*), later a witness who swore concordantly, and finally a witness in the modern sense of the word (V. Procházka, »Posluchъ et vidokъ dans le droit slave«: pp. 231-251). In my opinion, guided by an urge to reconstruct with exactitude the development stages of the witness's role in the court procedure, the author tried to infill, though with difficulty, the semantic and chronological grid with the examples found in the sources; the reader of these sources, however, is under an overall effect of multiple meanings and increasing synchrony. On the other hand,the linguist and philosopher Anto Knežević, who was not familiar with Procházka's work, has overlooked the process context of the legal texts he was examining, making a wrong assumption that *posluh* was a hearsay witness (Anto Knežević, *Filozofija i slavenski jezici*. Zagreb: Hrvatsko filozofsko društvo, 1988: pp. 128 and 143).

[35] On this perspective of Grimm and Savigny – who, of course, had no knowledge of the Ragusan-Albanian examples – see R. Selinger, »Das Ohrläppchenziehen als Rechtsgeste«: p. 208-209. Aigner and Selinger hold that the conclusion on the Roman origin should be left open (H. Aigner, »Testes per aures tracti und Plinius, n.h. XI 45, 251«: p. 224; R. Selinger, »Das Ohrläppchenziehen als Rechtsgeste«: p. 221).

[36] This interpretation of the ritual of pulling a witness by the ear according to Lupoi, *The Origins of the European Legal Order*: p. 23.

of the state, sprouting well after the Empire's decay across the legal fields no longer cultured by the same population? A more adequate comparison would be that with a river flowing beneath the vast plains of the central and southern Europe over the two millennia, and only intermittently springing out to the surface. The power of this ritual has been nourished by a common understanding of the ear as the seat of memory; as long as it had survived, the ritual of pulling the witness by the ear conveyed a clear meaning. That is why we have traced it on the farthest locations and in different times, in the communities in which verbal formulas have not suppressed legal gestures, and in which legal rituals have not (yet) yielded to more modern legal instruments.