VENETIAN JUDGES AND THEIR JURISDICTION IN CONSTANTINOPLE IN THE 12TH CENTURY

Some observations based on information drawn from the chrysobull of Alexios III Angelos to Venice in 1198[1]

§ 1. Introduction

In 1198 the Byzantine emperor Alexios III Angelos issued a privilege act, a so-called chrysobull, in favour of the maritime city-republic of Venice.[2] As is the case with all Byzantine imperial acts bestowing privileges upon Venice, the original chrysobull in Greek has been lost. Fortunately, however, a copy of a Latin translation of it has been preserved in two manuscripts that are today kept in the State Archives of Venice.[3] The Venetians are granted the privilege to trade freely within the entire empire, on sea or on land.[4] The last part of the chrysobull includes detailed provisions concerning many legal issues, including the competence of judges in civil law and in 'criminal law', as well as law of succession. Venetian judges are granted the right to judge mixed cases, namely cases between Venetians and Byzantines. However, does this jurisdiction of Venetians cover both civil and criminal cases or not? And under which particular conditions are the Venetian judges allowed to judge such cases? I shall try in this paper to answer briefly these questions.

1 This paper is based on a lecture delivered in June 2007 in Groningen, at a symposium organised by the department of Legal History of the University of Groningen on the occasion of Bernard Stolte's departure for Rome to take up his new position as director of the Royal Netherlands Institute. It is the draft version of a chapter of my doctoral thesis on legal issues arising from the Byzantine imperial acts directed at Venice, Pisa and Genoa in the 10th, 11th and 12th centuries (University of Groningen; supervisor Professor B.H. Stolte). I would like to thank Roos Meijering for her suggestions regarding the translation of the passages examined in this paper, Frits Brandsma for his observations and my supervisor for his guidance, as well as Alexandra Doumas for editing my English text.

2 No. 1647 based on the registration by F. Dölger, *Regesten der Kaiserurkunden des Oströmischen Reiches,* 2. Teil, (rev. by Wirth P.), München 1995; a number of this registration will be henceforth abbreviated as Reg.

3 See Dölger, *Regesten*, p. 327. See also C. Neumann, 'Über die urkundlichen Quellen zur Geschichte der byzantinisch-venezianischen Beziehungen, vornehmlich im Zeitalter der Komnenen', *BZ* 1 (1892), pp. 366-378 and W. Heinemeyer, 'Studien zur Diplomatik mittelalterlicher Verträge vornehmlich des 13. Jahrhunderts', *Archiv für Urkundenforschung* 14 (1936), pp. 321-413.

4 M. Pozza/G. Ravegnani, *I trattati con Bisanzio, 992-1118*, Venezia 1993 p. 129, lines 21f.; henceforth abbreviated as Pozza/Ravegnani. For a summary of the chrysobull see Dölger, *Regesten*, pp. 326-328 and for the commercial and political issues see R.-J. Lilie, *Handel und Politik zwischen dem byzantinischen Reich und den italienischen Kommunen Venedig, Pisa und Genua in der Epoche der Komnenen und der Angeloi (1081-1204*), Amsterdam 1984, pp. 41-49.

§ 2. Civil law provisions

i. Byzantine versus Venetian: jurisdiction of a Venetian judge in Constantinople

The legal part of the chrysobull begins with a request of the two Venetian envoys, who complain to the emperor because, according to them, the following occurs:

.....iam dicti prudentissimi legati Venetie, Petrus Michael et Octavianus Quirinus, retulerunt imperio meo, quia ex non scripto usque et nunc causis inductis ab aliquo Grecorum contra aliquem Veneticum, a legato Venetie per tempora in magna urbe existente iudicatis et solutis, interdum quidem Grecorum quibusdam civilium iudicum vel in palatio imperii mei custodientium accedentes, adtractationes gravissimas fidelissimis imperio meo Veneticis superinducunt, et in carcerem recrudi eos faciunt, et omnibus aliis dedecorinus subici.....[5]	.....the aforesaid most prudent envoys of Venice, Petrus Michael and Octavianus Quirinus, have told my majesty, that until the present day it sometimes happens that in cases brought by a Byzantine against a Venetian, which, in accordance with an unwritten rule, have already been judged and solved by the Venetian who at that time is serving as representative in the great city (= Constantinople), (they = the Byzantines), after approaching some of the Byzantine civil authorities or the guards in my imperial palace, lay very serious accusations against the Venetians, who are most loyal to my majesty, and thus effect that they are put in prison and are treated with all other kinds of dishonour.....

In other words, in cases between a Byzantine plaintiff and a Venetian defendant that have been judged by the Venetian representative in the Byzantine capital, sometimes the Byzantine plaintiff brings the same suit again, but this time before a Byzantine authority. So, the Venetian representatives complain because the Venetians are judged twice in the same case, which is against the principle of *ne bis in idem.* What is interesting in this abstract is the information that the Venetian representatives judged cases between Venetians and Byzantines.

Two particular questions arise from this excerpt. The first question concerns the introduction of this practice. When exactly did the Venetian representatives in Constantinople begin to judge cases involving their citizens there, as well as cases between the latter and Byzantine citizens? This is the first time that reference is made in a Byzantine imperial act to such a *legatus*, namely a Venetian representative sent to Constantinople to regulate the affairs of Venetians resident there and to judge cases

[5] Pozza/Ravegnani, p. 132, lines 15-23.

concerning them.[6] At this point, it is worth mentioning an important testimony among the published Venetian documents, namely a text issued in Constantinople in March 1150, which I am convinced was issued by such a *legatus*, based on his jurisdiction, and deals with a case between Venetian citizens probably resident in the Byzantine capital.[7] It is signed by Sebastiano Ziani, mentioned there as *legatus* of doge Domenico Morosini, and by some other Venetians, who apparently acted as judges, and it is ratified by a notary, who happens to be also a priest. The act begins with an invocation of Jesus Christ, followed by the date and the place of issue.[8] Also at the beginning of the text, the persons who sign it state that they preside over public affairs and are obliged to provide equity and justice by law.[9] The document mentions that a merchant presented his request to dissolve his contract of *compagnia* before the Venetian *legatus* in Constantinople. This Venetian document proves that, from 1150 at least, the Venetians had a representative (*legatus*) in the Byzantine capital, who was competent – amongst other things – to judge cases between Venetians; however, we do not know with certainty when this Venetian representative began to judge also mixed cases, namely cases between Byzantines and Venetians.

The second question concerning the passage in the aforementioned chrysobull is, whether the practice by which Venetian representatives in Constantinople could judge cases concerning Venetians, was allowed officially by the emperor. There is nothing remarkable in the fact that the Venetians in Constantinople had their own judge for their own cases; it is self-evident that the Venetians trusted their countrymen more than the Byzantine officials.[10] What is interesting is that – according to this chrysobull – the Venetian judge must also have judged mixed cases. The fact that Byzantines who had lost their case against a Venetian before a Venetian judge brought their case again before a Byzantine official is an indication that the jurisdiction of the Venetian judge had not yet been regulated by an imperial order. I assume that the jurisdiction of the Venetian judge in Constantinople for these cases was customary rather than statutory. After all, the text of the chrysobull states that the Venetian representative judged cases brought by a Byzantine against a Venetian according to *an unwritten rule*.[11] This explains why the envoys ask the

6 The term *legatus* is used in earlier acts but it is always used to describe the envoys that were sent to Constantinople to negotiate and reach an agreement with the emperor (see for example reg. 1304, reg. 1509). The *legatus* mentioned in this act was the forerunner of the later *bailus*; for this latter official of the Venetian Republic see Χρ. Μαλτέζου, *Ὁ θεσμὸς τοῦ ἐν Κωνσταντινουπόλει Βενετοῦ βαΐλου*, (PhD), Ἀθῆναι 1970.

7 R. Morozzo Della Rocca/A. Lombardo, *Documenti del commercio Veneziano nei secoli XI-XIII*, published in *Regesta Chartarum Italiae*, Roma 1940, vol. I, pp. 96-98; henceforth abbreviated as *Documenti del commercio Veneziano*.

8 *Documenti del commercio Veneziano*, p. 96, line 1f.

9 *Cum rebus publicis presidemus omnium equitati et iustitiae legaliter providere debemus* in *Documenti del commercio Veneziano* (…), p. 97, lines 1-2.

10 See A. Laiou, 'Institutional Mechanisms of Integration' in: H. Ahrweiler/A. Laiou [eds.], *Studies on the Internal Diaspora of the Byzantine Empire*, Washington D.C. 1998, pp. 161-181, especially p. 173.

11 (…) *ex non scripto* (…), in: Pozza /Ravegnani, p. 132, line 17.

emperor to allow jurisdiction officially to the Venetian judge in Constantinople. In particular, they ask the emperor to allow the Venetian authority in Constantinople to judge civil cases brought by a Byzantine against a Venetian, and to allow the *logothetes tou dromou* to judge civil cases brought by a Venetian against a Byzantine citizen; and if the latter official is not present in the Byzantine capital, the *megas logariastes* could judge these cases.[12] Indeed, the emperor allows this request of the Venetian envoys and orders the following:

.....precipit per presens chrysobolum verbum, quod Greco quidem contra Veneticum in pecuniaria causa agente, legatus, qui per tempora in magna urbe erit, tale iudicium perscrutetur; et scripto quidem demonstrato a greco tavulario composito, certificato etiam ab aliquo iudicum veli et epi tu yppodromi vel symiomate alicuius predictorum iudicum, aut et ab aliquo pontificum vel ab aliquo tavulario vel iudice, per quem apud Veneticos dignum fide habeatur, secundum huiusmodi scripti comprehensionem decisionem cause superinduci.[13]	.....it is ordered by the present chrysobull that, when a Byzantine sues a Venetian in a civil case, the person who is at that time the legate in the great city (= Constantinople) will investigate this case; and when a written document has been shown, composed by a Byzantine notary, certified also by one of the judges 'of the velon and the hippodromos' or by a decision of one of these judges or by one of the priests or by a notary or a judge whom the Venetians trust, according to the contents of this writing a decision of the case will be taken.

According to this chrysobull, the Byzantine emperor allows the Venetian judge jurisdiction over civil cases when the defendant is a Venetian. When a document by a Byzantine notary exists, it has to be ratified by some other authorities and the decision will then be based on this document, but what exactly this document consisted of is not yet clear from the text.[14] The ratification of documents by the so-called 'judges of the velon and of the hippodromos' was common in the 11th and 12th centuries.[15] A fundamental question

12 (…) *deprecati sunt igitur imperium meum, ut et tale capitulum per presens chrysobulum verbum imperii mei solvatur, et concedatur eis, quod Greco quidem contra Veneticum agente in peccuniali causa, a legato Venetie, qui tunc in magna erit urbe, iudicium fieri debeat; Venetico vero contra Grecum similiter agente, si quidem, qui tunc fuerit cancellarius vie, in magna urbe inerit, apud eum causa moverit et iudicari debeat; si vero forte ipse in magna urbe non fuerit, apud tunc magnum logariastam cause iudicentur* (…), in: Pozza/Ravegnani, p. 132, lines 23ff.

13 Pozza/Ravegnani, p. 133, lines 13-21.

14 Further on in the act, after the formalities pertaining to the Venetian judges in Constantinople are described, reference is made to a procedure of oaths, which is connected to lack of evidence in a trial. See Pozza/Ravegnani, p. 134, lines 11-15. However, in this paper I shall not examine this procedure.

15 See Α. Γκουτζιουκώστας, *Η απονομή δικαιοσύνης στο Βυζάντιο (9ος -12ος αιώνες), τα δικαιοδοτικά όργανα και τα δικαστήρια της πρωτεύουσας*, (PhD), Θεσσαλονίκη 2004, pp. 128-131.

concerns the applicable law. Which law did the Venetian judge apply in cases between Venetians and Byzantines? Did he apply the Venetian or the Byzantine law and, furthermore, did he have an option to choose between the two laws? There is no reference to appeals and to whom they should be submitted. What is important is that jurisdiction is granted to a foreign judge in the Byzantine capital. This is limited jurisdiction but the fact is that a foreign judge is allowed to judge not only cases exclusively of his countrymen, but also certain cases between the latter and Byzantines. Since this provision was promulgated by the emperor at the request of the Venetians, it proves that the latter were not only good merchants but also good negotiators, who had realised that legal certainty is a precondition for good business. They wanted speed and certainty in their work. What better way to achieve this than a judge of their own in Constantinople, whom they can trust?[16]

ii. Venetian versus Byzantine: jurisdiction to Byzantine judges

Furthermore, the chrysobull lays down what happens in cases between a Venetian plaintiff and a Byzantine defendant:

Si vero Veneticus contra Grecum egerit, apud tunc cancellarium vie, vel eo a magna urbe absente, apud magnum logariastam querelam debeat proponere, et scripto quidem fide digno existente actori Venetico, quamvis a greco tavulario aut iudice veli et epi tu yppodromi, aut a pontifice vel Venetico tabulario vel iudice sit compositum, secundum hoc utique causa decidetur.[17]

When, however, a Venetian sues a Byzantine, the first has to raise his complaint before the current *logothetes tou dromou*, or, if he is absent from the great city (= Constantinople), before the *megas logariastes,* and when a document exists, which is trustworthy to the Venetian plaintiff, even if it is composed by a Byzantine notary or a judge 'of the velon and of the hippodromos', or a priest or a Venetian notary or judge, the case will certainly be settled on the basis of this document.

It seems that the procedure in this situation, namely when the defendant is a Byzantine and the plaintiff is Venetian, is not as complicated as in the situation when the defendant is a Venetian and the plaintiff is Byzantine, when a document is used, since there is no

[16] Similar provisions allowing jurisdiction to the Italians are included in privilege charters granted by the Crusader Kings for the Italians in the Crusader states; see, for example, M.-L. Favreau-Lilie, *Die Italiener im heiligen Land*, Amsterdam 1989, pp. 438ff. and D. Jacoby, 'Conrad, Marquis of Montferrat and the Kingdom of Jerusalem (1187-1192)' in: *Trade, Commodities and Shipping in the Medieval Mediterranean*, Aldershot 1997, No. IV, pp. 195ff. However, comparison of these provisions falls beyond the scope of this paper. For the comparison of these provisions see the forthcoming doctoral thesis.

[17] Pozza/Ravegnani, p. 134, lines 16-24.

mention of ratification of the document by an authority. The reason why the procedure here is less complicated is that the judge in this case is a Byzantine official and therefore there is no need –from the Byzantine point of view – for extra formalities, such as ratification of documents by other authorities. The difference between the passage referring to the jurisdiction of the Venetian judge and that referring to the jurisdiction of the Byzantine judge is that in the first the notarial document has to be ratified by some other authority. In the first passage the participle *certificato* is used, which is not included in the second. It is added that, if a document does not exist, the procedure of swearing oaths will take place.[18] The emperor concludes that all civil cases between Venetians and Byzantines will henceforth be settled according to the provisions in this chrysobull:

> *Et secundum presentem formam presentis scripti huius chrysobuli imperii mei, ex nunc et deinceps iudicia peccuniaria inter Veneticos et Grecos decidantur*.[19]

So, when the defendant is a Byzantine subject, the competent judge is always a Byzantine official. The logical explanation for this is that when the Byzantine is a defendant, this is more 'crucial' for the Byzantines because one of their subjects is being sued and the emperor wants to make sure that justice will be meted to the Byzantine subject by a Byzantine official. Moreover, these provisions also remind us in a way of the principle of the competent court and the residence of the defendant.[20] If the defendant is Byzantine, the judge is Byzantine; if the defendant is Venetian, the judge is Venetian; here of course the term residence is used in an 'extensive' and 'broad' sense.

Regarding the Byzantine officials mentioned as judges here, I note that this is not the first time that the *logothetes tou dromou* is referred to as a competent judge for cases between Venetians and Byzantines. In the first chrysobull in favour of Venice, issued in 992 by Basil II and Constantine VIII, it is stipulated *inter alia* that the Venetians are subject to the exclusive jurisdiction of the *logothetes tou dromou*; he is the only competent authority entrusted to search their ships and to judge cases arising between them or also with other citizens.[21] However, in the act of 992 it is not prescribed in detail for which

[18] The procedure of oaths (*sacramentum calumniae – sacramentum decisionis*) was introduced in a trial if there was not suffice evidence for one party to prove his case. However, as I have mentioned in an earlier footnote, this procedure is beyond the scope of the present paper.

[19] Pozza/Ravegnani, p. 134, lines 26f.

[20] See R. Macrides, 'The competent court', in: A.E. Laiou/D. Simon [eds.], *Law and Society in Byzantium: Ninth-Twelfth Centuries*. Proceedings of the Symposium on Law and Society in Byzantium, 9th – 12th Centuries, Dumbarton Oaks, May 1-3, 1992, Washington D.C. 1994, pp. 117-129, especially 125.

[21] Reg. 781: *Insuper et hoc iubemus, ut per solum logothetam, qui tempore illo erit, de dromo, ista navigia de istis Veneticis et ipsi Venetici scrutentur et pensentur et iudicentur, secundum quod ab antiquo fuit consuetudo; et quibus iudicium forsitan inter illos aut cum aliis crescetur, scrutare et iudicare pro ipso solo logotheta et non pro alio iudice qualecumque unquam*, in: A. Pertusi, 'Venezia

cases the Venetians have the right to address the *logothetes tou dromou*. To my knowledge, this is the first time, in these imperial privilege acts to Venice,[22] that the *logothetes tou dromou* functions as a judge.[23] From the 8th century, the *logothetes tou dromou* began gradually to deal with matters of foreign diplomacy, and by the end of the 9th or the beginning of the 10th century he intervened in many issues of foreign and diplomatic policy: for example, he was responsible for communication with foreign diplomatic envoys within the empire and he was involved in matters pertaining to ambassadors, particularly their selection and instruction.[24] In other words, the *logothetes tou dromou* acted much like the Minister of Foreign Affairs does today.[25] Thus, it is not surprising that the emperors order the *logothetes tou dromou* to judge cases involving Venetians, since this task falls undoubtedly within his general remit covering foreign affairs. The *megas logariastes* is mentioned for the first time in our acts as a competent judge for the Venetians.[26]

§ *3. Provisions about 'criminal law'*[27]

e Bisanzio nel secolo XI', in: *La Venezia del Mille,* Firenze 1965, pp. 117-160 (repr. in: A. Pertusi, *Saggi Veneto-Bizantini*, (a cura di G.B. Parente), Firenze 1990, pp. 67-107, p. 104, lines 31-35.

22 Reg. 781 and reg. 1647.

23 For the office of the *logothetes tou dromou* see D.A. Miller, 'The Logothete of the Drome in the Middle Byzantine Period', *Byzantion* 36 (1966), p. 439; see also R. Guilland, 'Les Logothètes', *Revue des Études Byzantines* 29 (1971), pp. 31-70. See also A. Kazhdan, *ODB*, s.v. Logothetes tou dromou.

24 See Miller, 'The Logothete of the Drome', p. 439.

25 Guilland, 'Les Logothètes', p. 33.

26 For the office of the *megas logariastes*, see A. Kazhdan, *ODB*, s.v. Logariastes. There are however, two acts of 1196 in which the *dikaiodotes* and *megas logariastes* Nicholas Tripsychos acts as president of a high court; see Kazhdan, *ibid*.

27 The term 'criminal law' here could be misleading. Criminal law, as it is understood today, is when the State prosecutes a person because of an offence and that is clearly different from private action against the wrongdoer. However, in Roman and Byzantine law the distinction between civil and criminal law was rather blurred. The question here is, if we are indeed dealing with issues that fall within the field of criminal law. In the Institutes of Theophilos it is described that a person injured can bring the *iniuriarum actio* criminally, or for damages, that is to say civilly (ἐγκληματικῶς κινεῖν τὴν INIURIAM ἢ χρηματικῶς ἤτοι πολιτικῶς); see forthcoming Groningen edition of Theophilos, *Paraphrasis Institutionum*, 4,4,10. In the *Ecloga Basilicorum*, the commentator explains that public crimes (δημόσια ἐγκλήματα) are the ones in which any person can raise actions, such as homicide, for example; private, that is civil crimes (πριβάτα δὲ ἤτοι ἰδιωτικὰ) on the other hand, are the ones in which only the damaged person can raise actions, such as, for example, theft and insult. See *Ecloga Basilicorum* 7,2,32,6 (ed. L. Burgmann, *Ecloga Basilicorum*, [Forschungen zur byzantinischen Rechtsgeschichte, Band 15], Frankfurt/M. 1988, p. 244 lines 25-29). In the following excerpt from the chrysobull, reference is made to homicide, which is considered a public crime, but also to insult, which is considered a private one. Note also in this abstract that when the crime of homicide or severe injuries are described, it is mentioned that the competent judge will investigate the case, but when a mild injury or an insult is involved, it is mentioned that it is the victim who will bring the case before a judge. So, whereas homicide falls within the field of criminal law, mild injuries and insult may give rise to civil actions; in that case they are usually called 'delicts.' This explains why I use the term 'criminal law' but with quotation marks.

The emperor orders in the following that:

.....si de seditione vel repugnatione inter Grecum et Veneticum existente moveatur causa, magna quidem existente seditione et ad multitudinem deventa et ad homicidium forte perveniente aut magnas plagas, tunc cancellarius vie, vel eo a magna urbe absente, tunc praeses in palatio Vlachernarum primiceriorum et stractiotarum huiusmodi perscrutabitur causam, et, ut ab eo cognoscetur solvet et ulciscetur; parva vero et ad unum vel duos deducta, si quidem vulneratus plagam mediocrem sustinens aut iniuriam Veneticus fuerit, apud tunc cancellarium vie, vel eo a magna urbe absente, apud tunc magnum logariastam querelam proponat, et secundum leges vindictam habebit.[28]	.....if there is a case between a Byzantine and a Venetian due to a fight or an opposition / a disagreement, if it is a big fight that escalates and ends perhaps in homicide or severe wounds, in that case the *logothetes tou dromou* will examine the case or, if he is absent from the great city (= Constantinople), then the head (praeses?) of the primicerii and stratiotari in the Blachernai palace will investigate a case of this kind and will resolve it and punish according to his findings; if it is a minor disturbance involving just one or two people and if a Venetian has suffered a mild injury, he will bring the complaint before the *logothetes tou dromou* then in office, or if he is not present in the great city (= Constantinople), before the *megas logariastes* and he (= the accuser) will receive satisfaction according to the laws.

The distinction made here is based on the gravity of the crime. It is provided that if a severe crime occurs between a Byzantine and a Venetian, the competent judge is the *logothetes tou dromou* and, if he is absent, the official 'of the primicerioi and stratiotarioi' present at the palace of Blachernai.[29] Since no distinction is made here as to whether the victim is Byzantine or Venetian, I assume that the said provisions are valid for both eventualities. In the case of a mild offence, if the Venetian is the victim he will file his complaint before the *logothetes tou dromou* and, if he is absent before the *megas logariastes*. The emperor adds that:

Si vero Grecus fuerit idiota quidem, et non ex senatus consulto[30] *aut de*	If however, it is a Byzantine person of a lower class, who does not belong to the senate nor to

[28] Pozza/Ravegnani, p. 135, lines 3-9.

[29] The palace of Blachernai had become from the Komnenian time the residence of the emperor; see C. Mango, *ODB*, s.v. Blachernai, Church and Palace of.

[30] The term *ex senatus consulto* is certainly an error of the translator and the correct form must have been *ex senatu*. This error is an example of how 'mechanical' sometimes the translation was being made in these documents. Probably the translator used the word from a list that he had at his disposal for

clarioribus hominibus curie imperii mei consistens, apud legatum Veneticorum et sub eo iudices de iniuria et dedecore movebit[31] *causam, et ab istis suscipiet vindictam*.[32]

the splendid men who form the imperial court, he will bring the case for injury and dishonour before the representative of the Venetians and his judges, and he will receive satisfaction by them.

There is only one circumstance in which the Venetian representative in Constantinople is allowed jurisdiction here: when a Byzantine victim who does not belong to the high class brings accusations against a Venetian in a case of insult. So, the criterion here – besides the gravity of the crime – is the class to which the Byzantine victim belongs. This abstract of the chrysobull raises another question: when a Byzantine not belonging to a higher class is accused by a Venetian, will the Byzantine in that case be judged by the Venetian judge or not? In the abstract of the present document, the terminology used is (…) *Grecus … de iniuria et dedecore movebit causam*, which means that it is only about the Byzantine who will raise charges in case of insult. I hence conclude that only Byzantines who do not belong to a higher class, and only when they accuse a Venetian, have to bring their case before the Venetian judge in Constantinople.[33] The emperor concludes in regard to these cases with the belief that the Venetian judges will award justice in a sensible way and that they will keep their oaths.

Diligenter enim imperium meum confidit, quod super huiusmodi capitulis sacramenta pro iusticia intervenientia Venetici, quibus iudicium est comissum, non despicient, immo similiter et in huiusmodi causis iusticiam custodient, quemadmodum et in peccuniariis, et non tantum honorem vel dedecus sive proficuum vel dampnum Veneticorum curabunt, quantum eorum sacramenta, que ab eis pro iusticia fient, in omnibus bene custodire et observare.[34]

With due consideration my majesty is confident that the Venetians, to whom judgment is entrusted will not disregard the oaths in such cases that are taken in the interest of justice; on the contrary, they will similarly safeguard justice in cases of this kind, just as they do also in civil cases, and they will not so much pay attention to honour or disgrace or advantage or loss of the Venetians, as to keeping and observing their oaths, which they take in the interest of justice,

translating official documents and filled in automatically the *senatus consulto* instead of the correct form *ex senatu*.

31 I accept the reading *movebit* of the other manuscript because the plural *movebunt* does not make sense; see Pozza/Ravegnani, p. 137, footnote bz.

32 Pozza/Ravegnani, p. 135, lines 13-16.

33 This interpretation is also more logical, since it would have been rather strange to accept that when a Byzantine is accused (even if he does not belong to a higher class) he would have been judged by the Venetian judge, given that in civil cases the Venetian judge is allowed jurisdiction only when the defendant is Venetian, as we saw earlier.

34 Pozza/Ravegnani, p. 135, lines 16-23.

in every respect well.

For a better overview of who were the competent judges in civil and 'criminal cases' between Byzantines and Venetians, I have drawn up the following table:

	Plaintiff	**Defendant**	**Competent judge**
CIVIL CASES	Byzantine	Venetian	Venetian representative in Constantinople
	Venetian	Byzantine	The *logothetes tou dromou* and, if he is absent, the *megas logariastes*
'CRIMINAL CASES'	**Victim**	**Description of crime/delict**	**Competent judge**
	No reference to who the victim is (whether he is Byzantine or Venetian)	Homicide or severe wounds	The *logothetes tou dromou* and, if he is absent, the official at the Blachernai palace
	The victim is Venetian	Mild injuries	The *logothetes tou dromou* and, if he is absent, the *megas logariastes*
	The victim is a Byzantine who does not belong to the high class	Insult	The Venetian representative in Constantinople

§ 4. Formalities pertaining to the Venetian judges in Constantinople

As we saw in the last paragraph, the emperor refers to certain oaths that the Venetian legates had to take. These oaths, as well as the formalities that the Venetian judges in Constantinople had to observe in order to be competent to judge cases, are described in another part of the chrysobull; here is the corresponding passage:[35]

Sic etiam quod per qualecumque tempus a nobilissimo et imperio meo fidelissimo protosevasto et duce

Also that, if at any time a legate is sent to the great city (= Constantinople) by the most noble and loyal to my majesty protosevastos

Venetie ad magnam urbem mittetur legatus, et qui sub eo iudices, statim post in magnam urbem eorum introitum ostendi debeant ei, qui tunc erit vie cancellarius, aut si ipse tunc cancellarius tunc in Constantinopoli non fuerit, ei, qui tunc erit magnus logariasta; et ab eo debeat mitti ad ecclesiam Veneticorum per magnum intepretem, vel si ipse non fuerit, per aliquem curie aliorum interpretem, et per unum eorum, qui cancellarie scriptis deserviunt, aut per unum secreticorum magni logariaste, si talis gramaticus tunc presens non fuerit; et in medio ipsius Veneticorum ecclesie in audientiam totius plenitudinis Veneticorum tunc in Constantinopoli existentium debeant iurare, quod recte et iuste et sine susceptione personarum vel alicuius doni dati vel promissi iudicia, que inter Grecos actores et Veneticos reos erunt, facient, nec aliquod adiutorium Veneticis tribuent, sed equa lance utriusque causam tam Greci quam et Venetici discernent et iudicabunt.[36]

and doge of Venice, he and the judges who serve under him, immediately after their entry to Constantinople have to present themselves to the person who at that time is the cancellarius vie (= *logothetes tou dromou*), or, if this cancellarius is not then present in Constantinople, to the person who at that time is the *magnus logariastes*; and they have to be sent by him to the church of the Venetians, through the intervention of the high interpreter, or, if he himself was not there, by some other court interpreter and by one of those who serve in the office of the cancellarius or by some of the secretaries of the *magnus logariastes*, if such a gramaticus was not present; and in the middle of that church of the Venetians, in the hearing of the whole majority of the Venetians who are then present in Constantinople, they have to promise that they will give justice correctly and justly and without personal preference or any gift or promise in cases between Byzantine plaintiffs and Venetian defendants, and that they will not give any help to the Venetians, but that they will settle and decide 'equitably' the case of both the Byzantine and the Venetian.

Hence, in order to comply with the formalities of their tasks in Constantinople, the Venetian representatives have to perform two actions. First they have to present themselves before the Byzantine authorities and second they have to appear in the Venetian church in Constantinople, where they swear an oath with the mediation of an interpreter.[37] The first action informs the Byzantine authorities of who are the competent

[35] In the chrysobull, the provisions about the formalities pertaining to the Venetian judges in the Byzantine capital are actually included after the emperor orders what happens when a Byzantine sues a Venetian. To facilitate the structure of the present paper, I have included them after the examination of the civil and 'criminal law' provisions.

[36] Pozza/Ravegnani, p. 133, lines 22ff.

[37] The duties of the office of the *interpretes* consisted of participating in embassies, translating documents and serving as translator in negotiations in the Byzantine capital; see A. Kazhdan, *ODB*, s.v. Interpreter. The epithet *megas* was added in the 12th century to charactarise the chief interpreter;

Venetian authorities in the Byzantine capital, while the second action is connected with the correct performance of their duty. The Venetian representatives have to swear an oath before their fellow countrymen in their own church, that they will perform their duties justly. In other words, a simple oath before the Byzantine officials would not have sufficed. The oath in their own church is more severe in character, since it corresponds to their legal order and binds the representatives in a stronger way to the correct and fair execution of their duties as judges, since it is made in public. The emperor ends this part by ordering that all these provisions are valid when a Byzantine sues a Venetian: *Et hec quidem, Greco contra Veneticum agente*.

§ 5. Conclusions

By the Byzantine imperial chrysobull of 1198, Venetian judges in Constantinople are allowed to judge civil cases when the plaintiff is Byzantine and the defendant is Venetian. This imperial order came probably as a ratification of an unwritten practice of Venetian judges judging certain cases between Byzantines and Venetians; yet, it is difficult to determine when this practice actually began. When the defendant is a Byzantine subject and the plaintiff is Venetian, it is ordered that the case will be judged exclusively by a Byzantine judge; that is the *logothetes tou dromou* and, if he is absent, the *megas logariastes*. In cases of 'criminal law', the criterion for the appointment of a judge is mainly the gravity of the crime. If it is a matter of homicide or severe wounds, competent to judge are Byzantine judges, namely the *logothetes tou dromou* and, if he is absent, officers at the Blachernai palace. If it is a matter of mild injuries and the accuser/plaintiff is Venetian, the competent judge is the *logothetes tou dromou* and, if he is absent, the *megas logariastes*. Only in one circumstance is the Venetian judge allowed to judge: when it is a case of insult and the accuser/plaintiff is a Byzantine who does not belong to the high class. In any case, what is important in the examined provisions is that the Byzantine emperor allows jurisdiction to a foreign judge, a Venetian within the Byzantine capital, for cases arising between Venetians and Byzantines under some conditions. To my knowledge, this is the first time that the Byzantine emperor allows such jurisdiction to a foreign judge and this proves that the Venetians, in the 12th century at least, enjoyed not only important commercial but also legal privileges.

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Kazhdan, *ibid*. See also C. Gastgeber, *Die Lateinische 'Übersetzungsabteilung' der Byzantinischen Kaiserkanzlei unter den Komnenen und Angeloi*, (PhD), Wien 2001, pp. I-XII.