In this paper the author is exposing the concept of natural persons (individuals) and legal persons (entities) in Serbian mediaeval law. The terms glava (head, caput, κεφαλή), or sometimes kapa (cap, hood) are used in Serbian legal sources to designate natural persons (individuals). In Serbian mediaeval law, it was mostly churches and monasteries that had the trait of legal persons (entities). Beside them, towns, villages, counties and districts, had some characteristics of legal persons.

In modern jurisprudence the term individual denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation or association.

Serbian legal sources used the terms glava (head, caput, κεφαλή), or sometimes kapa (cap, hood) to designate natural persons (individuals). The term glava could be found in two treaties concluded by Tsar Dušan (September 20, 1349) and his son and successor Tsar Uroš with Dubrovnik (April 25, 1357). In both of the treaties we find the same formula da gredu svoimi glavami,1 that means that Ragusan merchants could freely circulate within Serbia as individuals. In the article 31 of the Law Code of Stefan Dušan, on parish priests, it is used the expression and the priest’s cap is free (i da jest popovska kapa svobodna).2 It means that parish priests, as natural persons (individuals), were exempted of feudal services that commoners normally had.

1 S. Novaković, Zakonski spomenici srpskih država srednjega veka (further on Zakonski spomenici), Beograd 1912, 169 and 179;
2 S. Novaković, Zakonik Stefana Dušana cara srpskog 1349 i 1354 (further on Zakonik), Beograd 1898 (reprint 2004), 29 and 164; English translation by M. Burr, The Code of Stephan Dušan, Tsar and Autocrat of the Serbs and Greeks (further on Burr), The Slavonic (and East European) Review, vol. 28 (1949), 204.
Only individuals who were free had full legal capacity. Slaves (otroci) were owned by their masters and therefore had neither private nor public rights. However, in mediaeval Serbia there were several exemptions from that general rule.3

According to the Serbian legal sources it is not clear enough at what age full legal capacity was assumed. The Charter presented by King Milutin to the monastery of Saint Stephen in Banjska (1313–1318) says that a widow, who has a little boy, should hold the whole village until her son is grown-up (a sirota koja ima mala sina da si drži vse selo dogde joj sin podraste).4 It is clear that persons under age could not enter into formal transactions, but what was the age when natural persons (individuals) assumed full legal capacity? So-called “Justinian’s Law” in Article 1 provides that full legal age was assumed at the age of 25.
In Serbian medieval law it was mostly churches and monasteries that had the trait of legal person (entity — an organization entitled to acquire and enjoy rights and duties, particularly considering their property). Beside them, towns, villages, counties and districts also had some characteristics of legal persons.

Serbian monarchs were giving land and estates to churches and monasteries and that way they became the subjects of property rights. To designate the ecclesiastical entities Serbian legal documents use different terms. For example, in the Chrysobull from 1308 King Milutin says that he gave everything to the church of the Holy Virgin of Hilandar (i sija vsa jaže pridaa kraljevstvo mi crkvi Svetije Bogorodice Hilandarskije).9 The same term — church (crkva) we found in the Chrysobull of Tsar Stefan Dušan from 1346: Let that all have the church of Saint Stephen (da ima crkva Svetogu Stefanu).10

In some legal documents the term hram = temple, shrine (the Holy Shrine of Saint Nicolas in Vranjina, the Shrine of Holy Virgin in Hilandar, the Shrine of the Saint Protomartyr Stephen in Banjska) is used instead of the word church (crkva).11 But, most frequently we found the term monastery (manastir). Already the Great Župan Stefan Nemanjić, in his Charter to Hilandar (1199–1206) says that he gave the villages to the monastery (dah sela manastiru).12 The monastery of Saint Stephen in Banjska, the monastery of Saint George near Skopje, the monastery of Saint Nicolas Mrački, the monastery of Holy Virgin in Htetovo, the monastery Treskavac, and many others,13 are mentioned in the same fashion (as legal persons). However, one could note that the name monastery is often replaced with the term church. In Serbian legal documents Hilandar, for example, is equally called a church and a monastery.

To designate the legal persons Serbian monarchs sometimes used figurative expressions, saying that they have given the estates to the eponymous saint of the monastery, so the saint has a feature of a legal entity. We shall quote a few examples: King Stefan Vladislav writes between 1234 and 1237 that he gave the village of Branike to the Most Pure Virgin (Ja Stefan Vladislav, sa pomostiju božijemu kralj... pridah to selo Branike Prečistoj Bogorodici).14

9 Zakonski spomenici, 478, XV.
10 Ibid. 631, V.
11 Ibid. 579, V; 448, VI; 622, I.
12 Ibid. 325, I.
13 Ibid. 631, I; 608, I; 644, X; 657, II; 664, I.
14 Ibid. 386.
that he gave a small gift to the Most Pure Mother of God from Hilandar (Temže i az va Hrista Boga verni Stefan IV po milosti Božijej kralj vseh srpskih i pomorskih zemalj i čestnik Grkom... prinesoh mali si dar... prečistoj Materi Božijej Hilandarskoj).\textsuperscript{15} Tsar Dušan writes that he gave the estates to the Saint Nicolas (...i sije priloži carstvo mi svetomu Nikole).\textsuperscript{16}

In some legal documents the entity of church or monastery was expressed as the home of a certain saint. For example the home of the Holy Virgin from Hilandar (dom svetije Bogorodice Hilandarskije),\textsuperscript{17} the home of Saint Stephen in Banjska (dom Svetago Stefana u Banjskoj),\textsuperscript{18} the home of Our Almighty (Pantokrator) Lord (dom Gospodnevi Bogu pandokratoru),\textsuperscript{19} the home of the Savior (Dom Spasov) in Žiča,\textsuperscript{20} the home of the Holy Virgin in Ston (dom Svetije Bogorodice u Stone),\textsuperscript{21} etc. It is evident that the figure of the saint expresses the concept of churches and monasteries as the institutions, i.e. legal persons (entities).

According to the opinion of some authors towns had the feature of legal persons as well.\textsuperscript{22} The arguments of those historians are based on two articles of the Law Code of Stefan Dušan and two charters. First, article 124 being as follows: Greek towns which the Lord Tsar hath taken, whatsoever charters and decrees have been granted to them, whatsoever they have and hold up to the time of this Council, let them hold, and it is confirmed to them and let no man take aught from them (Gradove grčci, kojeh jest prijel gospodin car, što im jest učinil hrisovulje i pro-stagme, što si imaju gde i drže do sijega-zi sabora to-to da si drže i da im jest tvrdo, i da im se ne uzme ništo).\textsuperscript{23} This means that towns conquered from Byzantium (Greek towns) possessed real or immovable property. Likewise in article 137 we find general confirmation of all chrysobulls granted to the towns.\textsuperscript{24} One can conclude that the towns were treated as legal persons (entities) enjoying the absolute ownership on their lands. To support such a statement we shall quote two charters of Serbian monarchs: in the first charter King Stefan Radoslav (1230, July 15) confirms to the maritime town of Kotor all its property rights on lands and vineyards (confirmò tutti li orti et le vigne loro);\textsuperscript{25} in the second charter Tsar Dušan 1351 confirms property rights of the same Kotor town on the county (župa) of Grbalj.\textsuperscript{26}

\textsuperscript{15} Ibid. 413, I. King Dušan confirms the gift of his father Stefan Dečanski (1334–1346).
\textsuperscript{16} Ibid. 435, IV.
\textsuperscript{17} Ibid. 480, V.
\textsuperscript{18} Ibid. 630.
\textsuperscript{19} Ibid. 646, II.
\textsuperscript{20} Ibid. 471, VIII.
\textsuperscript{21} Ibid. 600, I.
\textsuperscript{22} For more details see Taranovski, op. cit. 25–26.
\textsuperscript{23} S. Novaković, Zakonik, 95 and 221; Burr, 521.
\textsuperscript{24} Article 137: My charters which I have granted to the towns of my Empire, that which is written in them may not be changed, even by the Lord Tsar himself, nor by any other man. The charters are firm (Hrisovolji carstva mi što su učinjeni gradovom carstva mi, što im piše, da im nest voljan potvoriti ni gospodin car ni in kto. Da su hrisovolji tvrdi). Burr, 524; S. Novaković, Zakonik, 104 and 227.
\textsuperscript{25} Zakonski spomenici, 24.
\textsuperscript{26} Ibid. 31–32.
The above mentioned documents refer only to Byzantine (Greek) and maritime towns as legal persons. What was the situation regarding towns in the interior of Serbia? The Law Code of Stefan Dušan (article 126) mentions urban land around a town (gradska zemlja što je okolo grada),27 but we do not have any proof that the land was absolute ownership of the town. Anyway, it is very hard to say whether the towns in Serbia were considered as legal persons, because we dispose only scarce information in the sources.

We have much more data regarding villages as legal persons (entities) and subjects of property rights. Article 74 of the Law Code of Stefan Dušan provides that villages have the right to pastures.28 But, it is not clear whether the villages had ownership of the pastures or had only a servitude. Article 79 provides: But if villages dispute between themselves touching land or boundaries, let them sue by the law of the Sainted King29 from the time of his death... (A za međe i za zemlju što se potvoraju sela među sobom, da ište sudom ot svetago kralja, kadi se je prestatil...).30 So, the villages could be either plaintiff or defendant in a lawsuit, which proves that they were considered legal persons in the civil law cases. Had they no property rights to their land, villages could not have had any judicial claim.

According to the article 75 of the Law Code of Stefan Dušan we can conclude that counties or districts (župa) had some rights to pastures, as well.31 But, this is not sufficient to assert that counties and districts in mediaeval Serbia had features of legal persons (entities).

III

Legal persons (entities) administered their affairs and effected their rights through their legal agents. Serbian legal sources give us information only on churches and monasteries as legal persons. Legal agents of monasteries were their superiors (hegoumenos, ἡγουμενος) who could enter into formal transactions in the name of a monastery or a church. However, monastery superior could perform important legal acts only with the consent of elder monastery brothers. This was clearly written in the Tsar Dušan’s Charter to the monastery of Saint Archangels Michael and Gabriel (1348): And the monastery superior can do or give nothing...
without agreement with oikonomos and bašta [father] and ekklesiarches and docheiarios (I da ne voljan iguman ništa otdati ni učiniti bez zgovora ikonoma i bašte i eklišarha i dohijara).\(^{32}\) The sale of monastery land could be performed with the agreement of the whole monastery community.\(^{33}\)

Article 35 of the Law Code of Stefan Dušan explicitly states that the superior is the legal agent of the monastery: *And my majesty has granted to the hegoumenes their churches, that they be rulers of their goods, both mares and horses and sheep and everything else and that they may do with them whatsoever is deemed suitable and appropriate and lawful, and as is written in the chrysoeulbs of the holy founders (I predade carstvo mi igumenom crkvi; da obladaju vsom kućom, kobilami i konjmi, i ovčami, i inem vsem, i o vsem da su voljni što jest prilično po pute i po pravde i kako piše hrisovulj svetih ktitor).*\(^{34}\) A superior had to be appointed with the consent of the monastery community and the superiors must be honest persons: *Hegoumenes may not be appointed without the consent of the Church; as hegoumenes in monasteries good men shall be appointed, who will enrich the Church, the House of God (Igumni da se ne postavljaju bez dela ot crkve; igumni po manastireh da se stave dobri človeči, koji će crkov stožiti, Dom Božji).*\(^{35}\) Finally, the Law Code orders that superiors perform legal acts with the consent of the community: *Hegoumenes shall live in the monasteries according to the law and the elders shall confer (Igumni da živu u kinovijah po zakonu, zgovaraje se sa starcǐ).*\(^{36}\)

Dušan’s Law Code did not however issue the rule that a monastery’s land could be sold only with the common agreement of the whole monastery community. This gap in the law could be explained by the fact that the sale of monastery lands in practice was very rare. In a case when a monastery wanted to sell its land, it should have obtained a special confirmation of a monarch, that was to be written in the separate charter.

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\(^{33}\) Ibid. 485, II.

\(^{34}\) Burr, 205; S. Novaković, Zakonik, 33 and 169.

\(^{35}\) Burr, 201; S. Novaković, Zakonik, 19 and 156.

\(^{36}\) Burr, 201; S. Novaković, Zakonik, 19 and 157.
Срђан Шаркић

ФИЗИЧКА И ПРАВНА ЛИЦА У СРЕДЊОВЕКОВНОМ СРПСКОМ ПРАВУ

У средњовековном српском праву физичка лица означавају се терминима глава и кайа. Ти изрази срећу се у два уговора са Дубровником (глава) и у члану 31 Душановог законика (кайа). Није, међутим, сасвим јасно у ком узрасту су физичка лица стицала пуну пословну способност.

Српски правни споменици најчешће спомињу цркве и манастире као правна лица. Понекад се користе и фигуративни изрази, тако што се каже да имовином манастира располаже епонимни светац или „дом свете Богородице“, „дом Господневи Богу пандократору“, „дом Спасов“, „дом Светаго Стефана“ и слично. Нека својства правних лица имали су и градови, села и жупе.

Правна лица остваривала су своја права преко својих правних заступника. Српски правни споменици дају нам само податке о правним заступницима цркава и манастира. Правне послове у име манастира склапали су њихови игумани уз сагласност манастирске заједнице. Немамо података ко је иступао у име градова, села и жупе.