

Sadržaj

Vyacheslav Vladimirovich Adamovich

TRAPPED IN A DEAD END: ABOUT WOMEN WHO CHOSE TERROR AS A FORM OF IMPROVEMENT OF THE STATE-LEGAL SYSTEM OF THE RUSSIAN EMPIRE IN THE LATE XIX – EARLY XX CENTURY 3

Larisa Vladimirovna Aleksandrova

LEGAL STATUS OF A WOMAN IN RUSSIA IN THE XI – XV CENTURIES 5

Štěpán Burda

MATERNAL AND PATERNAL POWER IN THE INTERWAR CZECHOSLOVAK CIVIL CODE PROPOSALS 6

Mariana Díaz Chalela

LAWYERING GENDER: CITIZENSHIP, RIGHTS, AND LEGAL PRACTICE IN COLOMBIA (1930-1945) 8

Katarina Čekić

ČERKA NASLEDNICA U GORTINSKOM ZAKONIKU 9

Dita Čoláková

WOMEN AND TESTAMENTS IN THE CLASSICAL PERIOD OF ROMAN LAW 10

Dmitry Dolgikh

HISTORY AND DEVELOPMENT OF WOMEN'S RIGHTS IN THE 19TH CENTURY IN EUROPE ON THE EXAMPLE THE SERBIAN CIVIL CODE OF 1844 AS ONE OF ADVANCED LEGISLATIONS..... 12

Vladimir Džomić

PRAVNI POLOŽAJ ŽENA U KNJAŽEVINI I KRALJEVINI CRNOJ GORI 14

Carolina Fabara

THE EFFECT OF GENDER EQUALITY ON ECONOMIC DEVELOPMENT IN CHINA 16

Isidora Fürst

POLOŽAJ ŽENE ANTIČKE GRČKE U BRAČNOM I PORODIČNOM PRAVU 17

Amna Hassan

WOMEN AND CONTRACTS IN PAKISTAN - A COMPARATIVE ANALYSIS OF WOMEN'S CONTRACTUAL RIGHTS ON THE BASIS OF ANGLO-SAXON AND MUSLIM LEGAL TRADITIONS 19

Simo Ilić

POLOŽAJ ŽENE U PREDOSNOVI GRAĐANSKOG ZAKONIKA ZA KRALJEVINU JUGOSLAVIJU 21

Aleksei Kapustin

RUSSIAN LAW CODES IN XIX-XX AND WOMEN: FROM GAPS AND INEQUALITIES TO LEGAL RECOGNITION AND LEGAL EQUALITY 23

Anastasia Alexandrovna Lapina

THE NORMATIVE BASIS FOR THE EVOLUTION OF THE STATUS OF WOMEN AS A SUBJECT OF FAMILY-MARRIAGE RELATIONS IN SOVIET RUSSIA IN THE FIRST HALF OF THE 20TH CENTURY 25

Milica Marinković

POLOŽAJ ŽENE U FRANCUSKOM KRIVIČNOM ZAKONIKU OD 1810. GODINE

Francesca Martello

APPARENT BENEFITS FOR WOMEN IN THE FIRST ITALIAN CIVIL CODE (1865) 28

Diana Matchutadze

WORKING WOMEN AND BUSINESSWOMEN IN FRENCH LAW CODES IN THE XIX CENTURY 32

Lucie Mrázková

WOMEN AND THE CIVIL SERVICE IN 1938-1945 34

Mundspurger Marie Therese

WOMEN'S SUFFRAGE IN THE AUSTRIAN MONARCHY FROM 1848 TO 1918 36

Uroš Nikolić

ŽENA U BRAKU NA PRIMERIMA FRANCUSKOG I AUSTRIJSKOG GRAĐANSKOG ZAKONIKA 38

Jakub Novák

WOMEN OF THE LEGION – UNRECOGNIZED MEMBERS OF THE FIRST CZECHOSLOVAK ARMY 39

Veronika Ondrášková

THE ROLE OF WOMEN IN CODIFICATIONS OF THE LANDS OF THE BOHEMIAN CROWN IN 17TH CENTURY..... 41

Nikola Paunović

KRIVIČNOPRAVNI STATUS ŽENA U SRPSKOM ODNOSNO JUGOSLOVENSKOM ZAKONODAVSTVU U PERIODU OD 1860. DO 1929. GODINE..... 43

Igor Petković

THE POSSIBLE EXISTENCE OF MATRIARCHY IN EGYPT IN THE DAYS OF HERODOTUS AND ITS POTENTIAL ROOTS IN THE CULTURE OF THE NEW KINGDOM 45

Evgeniy Evgenievich Polezhaev

MEDICAL AND POLICE COMMITTEES OF THE MINISTRY OF INTERNAL AFFAIRS OF THE RUSSIAN EMPIRE IN THE FIGHT AGAINST SEXUAL COMMERCE IN THE SECOND HALF OF THE XIX – EARLY XX CENTURY 46

Marko Romić

POLOŽAJ ŽENE U PORODIČNOPRAVNIM ODREDBAMA ZAKONOPRAVILA SVETOGA SAVE 48

Strahinja Sarić	
Andrej Confalonieri	
POREĐENJE PRAVNOG POLOŽAJA ŽENA U SRPSKOM GRAĐANSKOM ZAKONIKU IZ 1844. I ITALIJANSKOM GRAĐANSKOM ZAKONIKU IZ 1865.....	49
Anna Andreyevna Solovieva	
Diana Andreyevna Chuh	
FEATURES OF THE CRIMINOLOGICAL CHARACTERISTICS OF WOMEN CRIMINALS ON BELARUSIAN LANDS.....	51
Ratomir Spasojević	
BRAČNI PROPISI U ŠERIJATSKOM PRAVU	53
Đorđe Stepić	
PRAVNI POLOŽAJ ŽENE U DUŠANOVOM ZAKONIKU, SA POSEBNIM OSVRTOM NA VLASTELINKE	54
Sarah Stutzenstein	
THE LONG WAY TO THE CUSTODY OF THE MOTHER OF HER CHILDREN IN THE AUSTRIAN CIVIL LAW.....	55
Đorđe Timotijević	
LEGAL STANDING OF WOMEN IN ANCIENT ATHENS	57
Jan Tranžik	
LEVIRATE MARRIAGE THROUGHOUT THE AGES	59
Vojtěch Vrba	
LEGAL POSITION OF WOMEN IN CZECHOSLOVAK ARMY CORPS DURING AND AFTER THE SECOND WORLD WAR	61
Ivana Vrkatić	
PRAVNI POLOŽAJ KONKUBINA U ATIČKOM PRAVU	63
Tamara Zagorac	
ISTORIJSKO-PRAVNI ASPEKT ZAŠTITE ŽENA KAO ŽRTAVA TRGOVINE LJUDIMA: SRBIJA POD OSMANSKOM VLAŠĆU	65

TRAPPED IN A DEAD END: ABOUT WOMEN WHO CHOSE TERROR AS A FORM OF IMPROVEMENT OF THE STATE-LEGAL SYSTEM OF THE RUSSIAN EMPIRE IN THE LATE XIX – EARLY XX CENTURY

The XIX century in the history of Russia was a time of important transformations and reform of the state and legal system of the country. Despite the implemented reforms, by the end of the XIX century, the tension in social and political relations was growing too, and the revolutionary activity of the population was growing. Secret revolutionary circles became more active, trying to influence the government in various ways and promote new changes in the state structure of Russia.

One of the ways to influence the authority the revolutionary-minded activists chose terror – intimidation of their political opponents, expressed in physical violence, and even killing. Terror was actively used by the revolutionary Narodnik organization «Narodnaya Volya» operated in the Russian Empire at the end of the XIX century. After the collapse of «Narodnaya Volya», its successor, the SR party, widely used this method to fight the Imperial power. A combat organization of social revolutionaries was created, within the party itself and was directly involved in the development and implementation of terrorist attacks. Women were active members of these organizations: of the 78 members of the Combat organization in 1902–1910, were 25 women. They participated in the preparation of terrorist attacks and their execution. Terrorist attacks committed by women are known in Russian history.

On January 24, 1878, the daughter of the staff captain Vera Zasluch shot at the St. Petersburg mayor F. F. Trepov and seriously wounded him. The reason for her action was an event that was considered by the revolutionaries as the arbitrariness of a high-ranking official – a political prisoner was flogged, which was a violation of the law. V. Zasluch was tried for the crime, but on March 31, 1878, she was justified by the jury. The jury reflected the public mood absolutely accurately in the situation of increasing revolutionary activity of the population. Zasluch's shot marked the beginning of the "terrorist five-year period" (1878–1882) in the history of the Russian Empire. Vera Zasluch was the first "woman with a revolver" in the Russian revolutionary movement.

Sophia Perovskaya took part in the terrorist attack against the Emperor: she directly supervised the preparation and implementation of the regicide on March 1, 1881. It was at her signal that the bomb was thrown into the carriage of the Emperor Alexander II. The explosion of this bomb caused fatal injuries to Alexander II. Twenty-eight-year-old S. Perovskaya was sentenced to death and was publicly hanged on April 3, 1881. Sofia Perovskaya became the first woman in Russia to be executed for a political crime.

Vera Figner was a participant in repeated attempts on the Emperor: She participated in the preparation of terrorist attacks on Alexander II in Odessa (1880) and St. Petersburg (1881). When the Emperor received news of the arrest of V. Figner, he exclaimed: «At last this terrible woman is arrested!» Vera Figner was sentenced to death, after confirmation her sentence was replaced by eternal hard labor.

At the beginning of the twentieth century, women's participation in the preparation and execution of terrorist acts seriously increased. The leader of the party of left socialist-revolutionaries Maria Spiridonova was one of them. On January 16, 1906, at the station in the city of Borisoglebsk, she shot five times and fatally wounded an adviser to the Tambov Governor, G. N. Luzhenovsky. On March 12, 1906, a visiting session of the Moscow military district court sentenced M. Spiridonov to death by hanging. On March 28,

she was informed about the replacement of the death penalty with eternal hard labor. At The Nerchinsk penal servitude, she learned about the fall of the monarchy in Russia. After the overthrow of the Emperor and the Provisional government, M. Spiridonova was one of the key figures who led the left-socialist revolt on July 6, 1918. After an unsuccessful attempt to seize power, she was arrested by the Extraordinary Commission for combating counter-revolution and sabotage and spent her later life in numerous exiles.

What were the common features of women, who committed anti-state crimes? Perhaps the relatively high social status and educational level pushed women who chose the path of the revolutionary struggle to fulfill one of the precepts of P. L. Lavrov – «return the debt to the people», reaching their purposes (liberation) through the most dangerous sphere – terrorism. Participation in the revolutionary struggle for equality and justice meant sacrificing personal happiness and personal interests. The motive for their participation in revolutionary activities, according to their own explanation, often was sacrifice. For example, Maria Benevskaya, a member of the SR party's Militant organization, a Christian believer who made bombs but was injured in an accidental explosion, found justification for her activities in the Bible rather than in party programs; Evstoliya Rogozhinnikova, who had shot the head of the Main prison Department, A. M. Maksimovsky, wrote before her execution that she had chosen the path of terrorism out of a sense of duty and love for people. Women who committed acts of terrorism considered it an act of suicide.

Women's participation in terrorist acts in the Russian Empire in the late XIX – early XX century was usually associated with attempts to change the state and legal system of Russia, to influence the government's choice of a new way of development of Russia. Ready for self-sacrifice, women defended human rights and freedoms using methods that are classified by Russian law as anti-state crimes. However, the attacks, as history has shown, led to a moral impasse: it was impossible to achieve universal happiness through violence.

With the beginning of the First world war, the ability of the government to maintain order in the society dramatically decreased. By the beginning of 1917, a single image of the enemy got a shape in the public mind – it was the Supreme power and the police order that represented it. In February 1917, the tsarist government was arrested; the police stations, the barracks of the gendarmes' companies, and the city's prisons were seized, destroyed, and burned. The Imperial regime, against which the revolutionaries were so active, fell. The changes were received as if they had been eagerly anticipated by the public. Women turned to other forms of participation in the transformation of the Russian state.

LEGAL STATUS OF A WOMAN IN RUSSIA IN THE XI – XV CENTURIES

The article is devoted to the legal status of a woman in Russia in the XI-XV centuries. It considers legal capacity of a woman as a subject of civil-law relations, and a comparative analysis with legal capacity of a man is carried out.

Secular and ecclesiastical sources of law of the period contained legal norms governing the position of a woman, her participation in various social relations. Within the framework of the article, a comparative analysis of sources of ancient Russian law of secular origin (Russkaya Pravda, church statutes, international treaties) and sources of law of church origin (canonical responses of church hierarchs) was carried out. It is shown that these groups of sources of law coincided in the legal regulation of the situation of women, and in which issues reflected different approaches to this subject of legal regulation.

The participation of a woman as a subject of law in the conclusion of contracts of gift, purchase and sale and other transactions was considered, and the analysis of law enforcement acts was carried out. The article also considers the impact on the legal status of a woman of her marital status. The influence that the Christian Church has had on the legal status of a woman in Russia has been revealed.

MATERNAL AND PATERNAL POWER IN THE INTERWAR CZECHOSLOVAK CIVIL CODE PROPOSALS

The end of the First World War brought tremendous political, economic and social changes to Europe, including the downfall of a number of states and the birth of new ones in their place. A prime example of this phenomenon was the dissolution of the Austro-Hungarian Empire and the creation of its successor states, one of which was Czechoslovakia.

The young republic in many ways resembled the empire it had replaced, being a multiethnic state composed of a number of diverse territories ranging from the industrial Czech lands in the west to the predominantly agricultural Slovakia and Carpathian Ruthenia in the east. This rift was quite apparent in the legal sphere as well. Bohemia, Moravia and Silesia had been part of Cisleithania and thus were governed by Austrian law, while Slovakia and Carpathian Ruthenia had belonged to the Kingdom of Hungary and functioned under the substantially different system of Hungarian law.

One of the first concerns of the newly established state was to ensure legal stability and continuity, which was why the first Czechoslovak law (published as Nr. 11/1918, often called „the reception law“), besides proclaiming the birth of Czechoslovakia, also declared that the respective legal systems would continue to operate for the time being, the long-term intention being the gradual introduction of new, joint legislation to bring the two parts of the republic together.

Within the area of civil law, Czechoslovakia's legal dualism was represented by the reception of the Austrian General Civil Code (ABGB) in the Czech part of the republic, while Slovakia and Carpathian Ruthenia continued to rely on Hungarian statutes, customary law and precedent. Work on a new joint civil code started soon after independence, however, no civil code was adopted in the interwar period and legal dualism persisted until after the Second World War. Nonetheless, several proposals for the new civil code were created, most notably the 1931 and 1937 drafts, later even serving as one of the inspirational sources for the current Czech Civil Code.

In my paper, I would like to explore how a particular issue of family law – the authority of a mother over her children – was approached in these interwar proposals, particularly in comparison to the 1811 Austrian Civil Code. Since the proposals were written at a time of substantial social change and a push for equality between men and women, I will focus on how the authors sought to incorporate these changes into the new civil code and how they understood the concepts of family and gender equality in the first place.

The 1811 Austrian Civil Code distinguished two types of authority over legitimate children, parental power and paternal power. Parental power was jointly held by the father and the mother and included the responsibility for the children's upbringing, their sustenance, care for their health and well-being and religious instruction. Children were legally bound to obey both parents and could be punished by them. The choice of the children's vocation, the administration of their property and consent to the contracts they entered into was solely in the hands of the father in the form of paternal power. Both powers normally ended with majority, which was initially 24 years of age, reduced to 21 in 1919.

Illegitimate children, on the other hand, were not subject to parental or paternal power. Instead, a legal guardian was appointed by a court. A legal guardian was also appointed if a child's legitimate father had died, was absent or otherwise incapable of fulfilling his duties. The guardian could be designated by testament, failing that, the law established a succession of relatives to be appointed (with the legitimate

mother first in line), but ultimately gave the court wide discretion to decide. A child's legitimate or illegitimate mother therefore could become the legal guardian, although it was not in any way a requirement. In addition, until 1919, every female guardian had to have a male co-guardian. This requirement was somewhat relaxed in 1919 by adding specific conditions for the appointment of a co-guardian.

The 1931 draft (the 1937 draft ultimately omitted family law and thus is not considered in my paper) drew heavily from the Austrian Civil Code, yet introduced certain changes. The basic structure of parental power and paternal power was retained, along with most of their contents. A new concept of explicit maternal power was introduced, although only as a subsidiary measure. If a legitimate child lacked a father and the mother was deemed competent, a court could grant her maternal power, which had the same effect and content as paternal power. Otherwise, a legal guardian was appointed with the mother retaining her parental power. Mothers were also given strong precedence to be appointed guardians ahead of guardians designated in a last will. Co-guardianship was no longer dependent on the sex of the guardian.

The 1931 draft continued the general trend of removing or mitigating many of the distinctions previously made between fathers and mothers. Nonetheless, as is evident from the reasoning of the draft's authors themselves, they were unwilling to remove the distinctions entirely, since they believed the roles of fathers and mothers to be complementary, yet non-interchangeable. Instead, they opted to retain the stronger influence of the father while removing ideas they did consider outdated, such as co-guardianship strictly for females or certain limitations placed on mothers of illegitimate children.

To summarize, my paper focuses on the legal relationship between children and their parents in interwar Czechoslovakia with special attention paid to the legal status of a mother. It uses the comparison of the 1811 Austrian Civil Code with the interwar civil code proposals and drafts to illustrate how social attitudes towards family and the role of women had changed by the 1920's and 30's and how they were embedded into contemporary legislative proposals.

LAWYERING GENDER: CITIZENSHIP, RIGHTS, AND LEGAL PRACTICE IN COLOMBIA (1930-1945)

In 1963, Ofelia Uribe de Acosta, a self-identified feminist and leader of the Colombian suffragist movement, published her memoirs *An insurgent voice* ('Una voz insurgente'). She gave an account of her role in the country's suffragist movement and the challenges that Colombian women faced during the fight for civil and political rights. Ofelia was the director of *Agitación Femenina (1944-1946)*, one of the first women's periodicals that advocated for women's role in public spaces and that was pivotal in the organization of the first Colombian feminist movement. She is only one of the several women that, during the 1930s and 1940s, brought forward claims for formal citizenship for Colombian women.

This work seeks to understand their struggle through Colombian women's encounters with law and the legal field. It argues that during the 1940s –before the constitutional recognition of their right to vote - the first wave of feminist movements in Colombia used a certain language of rights and of gender in order to further their claims over citizenship. At the same time, it contends that legal practice was deeply struck by a new construction of citizenship which involved women being able to enter the legal field. This work will show how the legal discourses around the first women lawyers, the language of rights in feminist media, and the appropriation of legal jargon by feminist movements can illustrate how gender was disputed both inside and outside of the law. It challenges the idea that legal concepts such as gender are defined or understood exclusively either from outside or from within the law. Instead, it poses that the social language of rights contested the legal discourse regarding women and ultimately shaped it.

This work seeks to contribute to that discussion by analyzing the discourse around citizenship during the 1940s beyond the idea of a 'suffragist woman'. Although suffrage is central in understanding citizenship in the 1940s, citizenship for Colombian women at the time was much more than the right to vote. In other words, they framed their claims under a particular idea of what rights meant - which included the right to vote but went beyond it.

I analyze how women in the 1940s understood citizenship as a concept connected to law from two different but connected spheres: legal practice and the use of legal discourse. In the first part, I explore a way in which citizenship was articulated beyond the right to vote: the connection between citizenship and legal practice. In that section, I show how studying and practicing law was a way in which women occupied public and gendered spaces, and subverted citizenship ideals entrenched in legal discourse. Practicing law was a way for women to practice citizenship while challenging the prescribed legal notions of what a citizen was. On the second part, I turn to legal discourse coming from women advocating for their rights. 'Suffragist' women began to publish their own periodicals, which focused on citizenship and rights, around 1943. These periodicals are a particular sphere to study how the women advocating for citizenship had a particular idea of rights and how legal discourse was an important part of their claims. Understanding how women framed their concerns in terms of rights and how that frame was connected to a particular idea of what women's role in society was, ultimately shaped what citizenship meant for white, educated and middle-class women involved in the suffragist movement.

ĆERKA NASLEDNICA U GORTINSKOM ZAKONIKU

Gortina se po mnogo čemu može predstaviti kao jedan specifičan polis. Sredinom petog veka, Gortinjani stvaraju svoj Zakonik u kome se bave raznim porodičnim pitanjima i na taj način veoma detaljno regulišu imovinska prava žena. Stefan Link u svom članku navodi da zakonik ženi dodeljuje različite uloge. Ona se pojavljuje kao ćerka, siročica, staratelj, kao majka i žena bez dece, razvedena žena, udovica, kao zakonski naslednik i na kraju, kao naslednica u strogo definiranom smislu. U Gortini se žena može okarakterisati i kao aktivni i kao pasivni subjekt naslednog prava. Imovinu je mogla da nasleđuje, ali i da je ostavlja.

Majkl Gagarin, jedan od glavnih istraživača gortinskog prava, ističe da su žene imale pravo da poseduju svoju imovinu i da sa njom raspoložu, za razliku od drugih antičkih polisa. Zatim, veća prava žena u Gortini donela su im i veću zaštitu. I na kraju treba istaći da iako su imale veća prava, većina žena je odlučila da nastavi da živi tradicionalnim životom, pritom omogućavajući muškarcima da upravljaju njihovom imovinom. Svrha ovog rada je, pored proučavanja položaja ćerke kao naslednice, obaveza koje su je sa tim pratile i odbrana ovih stavova.

Zakonik je veliki deo posvetio nasleđivanju, kao primarni način za sticanje veće imovine. Pravo nasleđa u Gortini je bilo priznato i ženama. U nedostatku testamenta, zakonsko nasleđivanje čini pet naslednih redova. U prvom redu se nalaze descendenti ostavioca, a ukoliko njih nije bilo, ćerka –naslednica, epiklera. Ćerkama je pravo nasleđa ograničeno samo na pokretne stvari i dobijale su dva puta manji deo od sinova. Drugim naslednim redom obuhvaćena su braća ostavioca i njihovi potomci, a trećim sestre ostavioca sa svojim potomcima.

Pored nasleđivanja, zakonodavac je i ustanovi epiklere posvetio dosta prostora. Pritom, definišući je na veoma moderan način. Opisuje je kao ćerku koja nema oca, ali ni brata od istog oca. Naslednica je u obavezi da se uda za najstarijeg strica. Ako ih nema, udaće se za najstarijeg sina od strica. Ukoliko rođak odbije brak, naslednica se udaje za sledećeg najbližeg srodnika. Ćerka –naslednica u Gortini, u određenoj meri, ima slobodu izbora supruga. U slučaju da se ne želi udati za određenog rođaka, može mu platiti određenu novčanu naknadu od nasleđenog dela imovine. U slučaju da je već udata i pritom ima dece, sama je odlučivala da li će se razvesti od muža, kako bi se udala za rođaka. Ukoliko nema dece, obavezna je da se razvede i uda u skladu sa Zakonikom.

Njena glavna obaveza je da nastavi očevu lozu tako što će dobiti dete i na taj način očuvati imovinu unutar očeve porodice. Ćerka –naslednica je imala ograničeno pravo raspolaganja imovinom, na taj način što nije mogla da je po slobodnoj volji otuđuje, ali je mogla da je založi ili proda do visine duga, kako bi na taj način namirila očeve poverioce.

U okviru ovog istraživanja bih se u najvećoj meri držala samog Gortinskog zakonika, ali neminovno je u nekim trenucima i zatražiti pomoć od ostalih antičkih polisa. Kako bi se što bolje izrazio njen položaj treba ga uprediti sa položajem ćerkama -naslednicama u Atini i Sparti. Jer, naposljetku njen položaj u Gortini možemo smestiti upravo između ova dva polisa.

Tek na osnovu svega toga, možemo izneti zaključak o njenom pravnom položaju u Gortini odnosno da li je on bilo povoljan za to vreme ili nije.

WOMEN AND TESTAMENTS IN THE CLASSICAL PERIOD OF ROMAN LAW

Roman law underwent a major development throughout the centuries. The results of work of some Roman lawyers on certain legal institutes were so close to perfection that these institutes create the roots of current private law. Of course, many Roman law methods went out of practice and are far away from applicability in modern day, one of which being the different legal position of men and women. In this contribution, I would like to focus on some aspects of this distinction in the law of succession.

Testamenti factio activa, the legal capacity to draw up a valid will, was limited to Roman citizens of full age (with further exceptions). Testamentary capacity of women itself was not limited, nevertheless, they could only have drawn up a will *tutore auctore* (with a consent of their tutor). Moreover, only a person with a capacity to own a property could have made legal transactions concerning said property. Of course, in general, in Roman agnate families, the only one capable of being an owner was *pater familias*. In order for a woman to handle the property and draw up a will, she must have been a person *sui iuris*.

The legal duty to have a tutor's consent to certain legal transactions such as making a will went out of practice around two hundred years before Justinian. *Tutela mulierum* was therefore not included in the Digest. Last mention of this institute is said to be in 294 AD. Even before, Vestal virgins and women who gave birth to three children were free of the tutor's consent whilst making legal transactions.

Testamenti factio pasiva of women, the capacity to become an heiress, was at first unlimited. Later there have been some restrictions; according to *lex Voconia* (169 BC) women could not have been appointed as heir by persons from the highest class. Furthermore, *incapaces* (people unable to obtain inheritance) were among others *mulieres probrosae*, women, who performed immoral activities. *Incapacitas* went out of use during the rule of the Christian emperors.

One of the many fragments dealing with the law of succession in the Digest is Paulus' fragment from Hadrian's times (D. 5. 2. 28). It says that if a mother appoints heirs whilst mistakenly believing that her son, a soldier, was dead and consequentially does not mention him in the will, the son should become the heir but he should also fulfil the wishes of the mother concerning the grants of freedom and bequests. So was decreed by the emperor Hadrian.

Had the mother in this fragment not left a will, her son would have inherited her estate according to the praetor's third inheritance order (*unde cognati*) in case there would not have been persons with stronger inheritance claims. In 178, around 50 years after the case in the fragment occurred, *senatus consultum Orphitianum* was issued. In accordance with it, legitimate as well as illegitimate children were prioritised even above agnate heirs.

Nevertheless, with a formally valid will, the son did not have much other options how to become an heir but to turn to the emperor. This fragment contains a rather rare case of inducement having an importance in legal transactions. The reason of the invalidity of the will did not lie in the omission of a compulsory heir; the mother technically did not omit him. Her entire will was claimed to have been based

on the presumption of the son's death.¹ Another case of this phenomena is for instance when the testator appoints as his heir a son who turns out not to be his son.²

The question whether the son could have already been considered a compulsory heir at this time is also worth further examination. For years, only *heredes sui* (heirs directly subordinated to the paternal power who became *sui iuris* after the death of the testator) must have been mentioned in a testament and naturally, women did not have such heirs because there was no such thing as *matria potestas*.

Since we do not know who the other appointed heirs in said fragment were, it is only to be presumed that they were not her sons. If they were, it would not have been safe to assume that the mother would have wanted to appoint only the one son as heir. Therefore, the emperor could have decided that they will share the inheritance. The position of the son in the fragment might also have been improved simply by being male or by being a soldier. This particular rule concerning the inducement found its application also with regard to *testamentum militis*. The general rule that if someone was omitted in the military testament, he was automatically disinherited, did not apply in the situation when the testator-soldier omitted someone who he incorrectly presumed was dead³.

In another Paulus's fragment⁴, another similar situation is to be found. Male testator appointed as heiress a woman. Later however, he mistakenly came to believe she was dead and changed his will. To the new will he added a note stating that the reasoning of the change was that his previous will could not have been fulfilled anymore. In this case, the inducement was expressly mentioned and therefore it is without doubt why the estate was given to the woman. This fragment is also a sign that women were not disadvantaged when it came to interpretation of the express statement of testators. We can only guess whether she would also obtain the inheritance even without said note, like the soldier in the previous fragment.

¹ Cf. D. 5. 2. 27. 4

² C. 6. 24. 4 and C. 6. 23. 5

³C. 6. 21. 10

⁴D. 28. 5. 93

HISTORY AND DEVELOPMENT OF WOMEN'S RIGHTS IN THE 19TH CENTURY IN EUROPE ON THE EXAMPLE THE SERBIAN CIVIL CODE OF 1844 AS ONE OF ADVANCED LEGISLATIONS

The Serbian Civil Code of 1844 incorporated much of the Austrian Civil Code of 1811. At that time Serbs and Austrians were not at the same level of economic or cultural development, nor did their “national spirit” resemble each other. Nevertheless, the Serbian Civil Code was accepted and applied and to some extent has survived in Serbia’s positive law even today. How was this possible? It is possible to borrow law, even as in this case when it is taken from developed systems and “transplanted” into less developed ones, provided that enough attention is paid to the modification of borrowed legal norms. They need to be adapted and adjusted according to the level of development and the needs of the societies that are adopting them. Only then is “copying and pasting” successful. Jovan Hadzic succeeded in doing this. He adopted most of the Austrian Civil Code, with the exception of the chapters on family law and the law of succession. In these fields, he had to give preference to the significantly more conservative Serbian customary law. At that time in Serbia the position of men in society was better than that of women, and male children had advantages over female children in matters of succession. Jovan Hadzic, a highly educated jurist of liberal bent, had to accept the realities of Serbian life and adjust the Code to correspond to Serbia’s levels of commercial and cultural development as well as the structure of its society. Naturally, certain dissatisfied social circles disapproved.

Even at that time, the individual type of family had become dominant in urban areas, and the idea that male and female children should have equal rights of succession had gained wide acceptance. However, the city areas were still underdeveloped, and the critics did not manage to obtain equal treatment of children. The loudest criticism came from women in Belgrade; mothers who could not bear the thought that their daughters would be deprived of their inheritance. They cursed and damned Hadzic “wherever they found themselves”. The provision was also condemned by the first commentator on the Code, Dimitrije Matic, who claimed that an “obvious injustice” had been done to female children. Serious and vehement criticism continued, so that two years after ratification of the Code, the Council established a commission to revise the law of succession. However, all its efforts to change the position of female children never went beyond dialogue and good intentions. Hadzic also preserved Serbian customary law within family law. A married woman was considered to be equal to an older minor in terms of working ability. This was the same view found in the Code civil. The Austrian Civil Code was more liberal, but Hadzic had had to make concessions to the customs and public opinion prevalent at the time in Serbia. These legal rules made up the more conservative part of the Code, according to which customary norms had to be respected. This discrimination against women, together with its negative consequences, continued for a long time.

The Serbian Civil Code introduced Serbia to current legal trends. Although Serbia’s economic development was insignificant, it had a modern legal system. Since it was modeled on the Austrian Civil Code, Serbia initially followed the Germanic legal tradition, although French law subsequently had a far greater influence on it. Serbian law nevertheless continued to form part of the Germanic legal tradition, and occupied an enviable position in the European legal family.

We have seen that Serbia was among the first European countries to have a codification of civil law. There was a special bond between countries that had legal codifications, because they were all based on the

idea of positive law, the traditions of Roman and Byzantine law, and many common cultural phenomena. The early civil codification in Serbia allowed it to have stronger ties with European countries

Serbia undertook civil codification much earlier than many more developed countries. In the conflict between customs and more progressive ideas in the domain of family law and the law of succession, customary law prevailed. Nevertheless, with the introduction of private property, all traces of feudalism disappeared from Serbia, which cannot be said of many other states at that time. The codification paved the way for the more rapid development of finance and trade relations and consequently also influenced other spheres of life. Serbia built its relations with other countries quickly and successfully.

PRAVNI POLOŽAJ ŽENA U KNJAŽEVINI I KRALJEVINI CRNOJ GORI

Iako malo pominjane, žene u crnogorskom zakonodavstvu nisu bile potpuno isključene iz pravnog života. Norme kojima se uređivao pravni položaj žena u većini su bile norme bračnog, porodičnog, naslednog, krivičnog prava i pravila sudskog postupka. Važno je napomenuti da su bračno i porodično pravo u potpunosti uređivani pravilima Crkve i da su akti donošeni od strane države samo upućivali na pravila Crkve. Iako tipične za patrijarhalno društvo, u kojem je žena potčinjena muškarcu, te norme pokazuju da su žene bile učesnici pravnog života Crne Gore u dijelu koji se ticao njihovih prava, obaveza i odgovornosti. Tako na primjer, u „Zakoniku opštem crnogorskom i brdskom“ žena se pominje samo u normi koja sankcioniše počiniooca njene otmice radi braka i sveštenika koji bi takav brak vjenčao. Pozadina ove norme je ne samo sprečavanje djela suprotnog običajima i moralu, već i garantovanje prava mladim djevojkama da u saglasju sa svojim roditeljima odluče sa kim će se vjenčati.

Evolucija crnogorskog prava se konkretno ogleda u „Zakoniku Knjaza Danila“ iz 1855. u kome nailazimo na devetnaest pravila (normi) koja uređuju položaj žene u odnosu na porodicu, zaključenje braka, brak, moguća lakša i teža krivična djela. Sedamdeseto pravilo propisuje da ukoliko djevojka sama „dobre volje“ odluči za koga će poći, tu niko nema vlast ništa činiti, i kako se dalje poetično naglašava, „jer i je sama ljubav vezala“. Ovdje se može primijetiti zakonski zagarantovana autonomija volje djevojaka prilikom izbora bračnog partnera pod uslovom „dobre volje“, naravno koliko se često pribjegavalo ovom metodu u strogo patrijarhalnom društvu je druga tema, ali ovo pravilo je veoma dobar pokazatelj evolucije crnogorskog prava kroz garantovanje slobodnog izbora partnera od strane žene. U drugim pravilima Zakonikom se garantuje nepovredivost tjelesnog i moralnog integriteta žene od strane drugih, i za pomenuta djela je određivana tjelesna i novčana kazna.

Krivičnopravni delikti žena regulisani su kroz svega nekoliko pravila, krivica se odnosila na povredu bračne zajednice, života muža i života djeteta. Tako se za preljubu određuje da muškarac koji uhvati ženu sa preljubnikom na djelu ima vlast da ih oboje ubije, ali ukoliko bi žena pobjegla ta zakonska mogućnost prestaje i nastaje nova sankcija koja zabranjuje toj ženi da živi u na području Crne Gore. Za ubistvo i pokušaj ubistva muža zaprijećena je smrtna kazna od strane države nakon sprovedenog postupka, i to je jedno od dva pravila gdje se žena izjednačava se muškarcem u pogledu odgovornosti. Zakonikom se reguliše i ubistvo djeteta po rođenju od strane majke koje za pozadinu ima neželjenu trudnoću bez obzira na bračni status. I poslednja norma koja pominje ženu, izjednačava je sa muškarcem i sankcioniše djelo je „pravilo o zabrani grebanja nad mrcem i odsijecanju perčina“. Ovo djelo ima karakter lakšeg krivičnog djela i za njega je propisana novčana kazna, pozadina ovog djela je duboka ukorijenjenost običaja kojim se pokojnik žali na veoma ceremonijalan način i kojim se pokazuje lično poštovanje i ožalošćenost za njim, interesantno je da se elementi tog običaja primjenjuju i danas.

Kroz „Opšti imovinski Zakonik za Knjaževinu Crnu Goru“ može se prikazati kako evolucija crnogorskog prava tako i sklad običajnog prava i kodifikovanog prava Crne Gore. Pošto „Opšti imovinski Zakonik za Knjaževinu Crnu Goru“ predstavlja malo obimniju materiju za izlaganje u ovom apstraktu, dovoljno je naglasiti da Zakonik već pomenute pravne norme unapređuje i stilizuje i naravno dodaje nove koje su tekovine tadašnjeg evropskog prava od kojih su najvažnije one o priznavanju pravnog subjektiviteta ženama u pogledu imovinskopravnih odnosa. „Ustav za Knjaževinu Crnu Goru“ predstavlja vrhunac crnogorskog zakonodavstva za vrijeme vladavine dinastije Petrović Njegoš u pogledu garantovanog obima prava svojim

građanima i postavljanju, za to vrijeme, savremenih pravnih standarda. Ustav iz 1905. biće posmatran kao završna tačka razvitka crnogorskog prava.

Teze koje su dokazivane u radu tiču se evolucije prava na području Crne Gore, pravne zaštićenost tjelesnog i moralnog integriteta žene u sferi javnog života, isključujući međusobne odnose supružnika u braku, i izjednačavanje žene sa muškarcem tokom vremena u pogledu građanskog i krivičnog prava.

Rad obuhvata period od kraja 18. vijeka do prve decenije 20. vijeka. Da se obrađuje neka druga tema koja je bila aktuelna u zakonodavstvu tog perioda sigurno da bi vremenski raspon od preko sto godina predstavljao preveliku oblast za jedan konferencijski naučni rad. Ipak, usled malobrojnih normi koje su uređivale položaj žena u Crnoj Gori otvorio se prostor da se prikaže i evolucija prava Crne Gore u periodu od preko jednog vijeka i ukaže na sklad običajnog prava i kodifikovanog prava na području Crne Gore.

Kao izvori za pisanje rada korišćeni su „Zakonik opšti crnogorski i brdski“ iz 1798., „Zakonik Knjaza Danila Petrovića Njegoša“ iz 1855. , „Opšti imovinski Zakonik za Knjaževinu Crnu Goru“ iz 1888., „Ustav za Knjaževinu Crnu Goru“ iz 1905. kao i drugi opšti pravne akti tog vremena.

THE EFFECT OF GENDER EQUALITY ON ECONOMIC DEVELOPMENT IN CHINA

The contribution of women is fundamental for the progress of economy. An entrepreneurship is one of the forms of economic empowerment for women, because it helps to generate gender equality, development, and employment. Different aspects such as legal, cultural, and economic factors play an important role at the moment to understand the human behavior. The purpose of this paper is to analyze the gender equality and empowerment of women in China throughout history and laws to observe how law shapes the society and how society affects laws.

Under what conditions does economic development improve gender equality? Promoting equal employment for women and giving the same opportunities as men in social and economic activities is the way to improve social productivity and economic vitality. Therefore, gender equality is a basic national policy in China. The interest in female entrepreneurship in developing countries has increased because females have been assigned a special role in the society (Eastin & Prakash, 2013). Moreover, the government attach great importance to this issue, and laws such as the Labor Law, the Employment Promotion Law and the Law on the Protection of Women's Rights. Each of these laws stipulate that women's equal employment rights shall be protected and gender discrimination in employment is prohibited.

Gender equality has been a constant fight over the years. So, the business environment for women reflects the complex interplay of different factors such as physiological, social, cultural, religious, economic and educational factors (Tambunan,2009). In order to understand Confucius philosophy and how it influences the role of gender equality in the economy it is important to examine the reasons for these laws in these modern society.

In China, the relatively low representation of women can be attributed to many factors such as the low level of education and lack of training opportunities that women had in the economy and society. Confucius values support male superiority, male domination and female subordination and have a great influence in Chinese society. Therefore, understanding the history of a country is an important step in understanding female entrepreneurship.

The promotion of gender equality and the empowerment of women is necessary to achieve a sustainable world and to eradicate poverty. It is vital to promote the growth of female run companies, as well as to improve access to different sectors. Despite the progress that women have made in the economy, it is necessary to continue working on the promotion of gender equality.

POLOŽAJ ŽENE ANTIČKE GRČKE U BRAČNOM I PORODIČNOM PRAVU

Položaj žene na prostoru Grčke u helenskom dobu razlikovao se zbog neujednačenosti državnog i društvenog uređenja gradova-država. U okvirima patrijarhalne društvene organizacije Starog veka, položaj žene u društvu i porodici kretao se od njene potpune obespravljenosti do delimične ravnopravnosti sa muškarcem. Predmet rada su pitanja koja se odnose na karakteristike pravnog statusa žene u porodici i braku, uz analizu uslova koji su uticali na stvaranje i održavanje takve specifične pravno-socijalne tvorevine.

Unutar *oikos*-a, žena je bila poštovana i donosila je odluke bitne za domaćinstvo. Ostala je zabeležena Demostenova misao da žena treba da „bude verni čuvar našeg doma“. Međutim, prva i osnovna osobenost položaja žene ogleda se u njenoj podređenosti muškarcu, prvo ocu, a kasnije mužu. Nejednakost između žene i muškarca upadljiva je ne samo u običajnom pravu, već i u pisanim pravnim izvorima. Autor će u radu opisati sličnosti i razlike porodičnih i bračnih instituta u polisima antičke Grčke tokom ahajskog, homerskog, arhajskog i klasičnog doba.

Homerovi epovi prikazuju ženu ahajske Grčke kao odanu mužu i posvećenu porodici i domaćim poslovima. Brak u mikenskoj Grčkoj bio je monogaman, postojao je institut kupovine mlade, a žena je imala svoj miraz koji je donosila u muževljevu kuću. U atinskom pravu, prema Solonovim zakonima, postojao je zakonski princip neposredne odmazde koji se odnosio na to da je muškarac imao pravo da ubije ljubavnika svoje supruge. Takvo ubistvo smatrano je pravednim, a u skladu sa običajnim normama, na mužu je bilo da odluči o kazni koja će se primeniti. Iako je žena u Atini bila strogo obavezana na vernost, Drakonovi zakoni iz VII veka pre n.e. muškarcu dozvoljavaju konkubinatu, a nakon Sicilijanske ekspedicije i bigamiju. Međutim, zakoniti potomci su samo potomci prve žene, tako da se prepoznaje težnja zakonodavca za očuvanjem tradicionalnih instituta braka i porodice, u kojima su uočljivi tragovi matrijarhata i primitivne organizacije.

Institucija razvoda postojala je u drevnoj Grčkoj a samo muškarac je imao pravo da se slobodno i u svakom trenutku razvede, bez obaveze navođenja brakorazvodnog razloga. U slučajevima posebne svireposti supruga, ženi u Atini bilo je dozvoljeno da od arhonta zatraži razvod, o čemu je on donosio odluku.

U pravnoj istoriji starovekovne Grčke, Sparta se ističe kao polis u kojem je žena imala neobično širok obim prava. Iako je bila u znatno boljem pravnom položaju u odnosu na savremenice iz drugih polisa, postavlja se pitanje da li je žena u Sparti bila suštinski superiorna, imajući u vidu kolektivistički duh i uređenje spartanske zajednice. Naime, celokupan život pojedinca u Sparti bio je podređen interesima kolektiva. Spartankisu, kako bi doprinela zajednici, omogućena prava koja Atinjanka ili žena u drugim grčkim polisima nije uživala. Sa druge strane, žena u Sparti nije odgajala sopstvenu decu (od sedme godine života dete je pripadalo kolektivu i za njegovo vaspitanje bili su zaduženi učitelji), dete koje je rodila je moralo da bude snažno, bez fizičkih mana (u suprotnom je od nje odnošeno i ostavljano da umre), brak je zaključivala isključivo radi dobijanja potomstva i iz istog razloga imala je pravo i na nekažnjenu preljubu. Polna sloboda žene predstavlja avangardu antičkog konzervativnog doba i može se tumačiti kao civilizacijski iskorak društvenog položaja žene uopšte. Međutim, Spartanka nije imala slobodu radi razvoja individualnosti i radi ostavarivanja jednakih prava u društvu, već isključivo u cilju ispunjavanja svoje dužnosti kao majke uspešnog ratnika.

Za razliku od žene u Sparti, žena u Atini nije imala pravnu i poslovnu sposobnost. Dok je život Spartanke bio posvećen doprinosu zajednici ratu, Atinjanka je bila u punoj meri podređena porodici i mužu.

Nameće se pitanje koliko je zaista bio povoljan položaj žene u Sparti, odnosno, koliko je zaista bio nepovoljan položaj žene u Atini.

Uporednim metodom, u radu se pravi paralela između pravnih instituta koji se tiču položaja žene u Atini i položaja žene u Sparti.

Uz dva prethodno spomenuta polisa, u nastavku se navodi kritska Gortina. Jedina sačuvana pisana kodifikacija iz antičke Grčke jeste Gortinski zakonik, značajan po odredbama koje se tiču položaja žene u porodičnom pravu. Žena u Gortini, uživala je skoro jednaka prava kao muškarac, te je bila u znatno pogodnijem položaju od Atinjanke. Imala je pravo na posebnu imovinu tokom trajanja braka i učestvovala je u sticanju zajedničke imovine koju je ravnopravno delila sa supružnikom prilikom razvoda braka. Takođe, imala je i pravo da od bivšeg muža zahteva priznanje očinstva detetu koje je rođeno nakon razvoda. Ističe se druga kolumna kodifikacije koja reguliše delikte silovanja i preljube, za koje je propisana novčana kazna čija visina je zavisila od društvenog statusa žrtve. Odredbe ovog zakonika, zasebno analizirane, izuzetno su značajne za razumevanje pravnog položaja žene u materiji porodičnog i bračnog prava antičke Grčke.

Autor pruža komparativni prikaz instituta braka (sklapanja i razvoda braka, prava i obaveza u braku) u tri polisa: Atini, Sparti i Gortini. Poseban osvrt biće dat na posledice i efekte zakonodavnih rešenja u pravnim spomenicima, kroz razdoblja Grčke istorije. Takođe, postavlja se pitanje da li formalno bolji pravni položaj nužno upućuje na jednako povoljan društveni status.

U zaključku rada daje se ocena pravnog statusa žene u Staroj Grčkoj, posmatranog iz perspektive patrijarhalnog i klasnog uređenja toga doba. Sa stanovišta savremenog prava i razvijenih društvenih vrednosti, položaj žene u bračnom i porodičnom pravu antičke Grčke nesumnjivo je nepovoljan i neprihvatljiv. Međutim, pojedine zakonske odredbe, kao i neka običajna pravila, mogu se smatrati prosvetljenim za jedan pravni sistem Starog veka.

WOMEN AND CONTRACTS IN PAKISTAN - A COMPARATIVE ANALYSIS OF WOMEN'S CONTRACTUAL RIGHTS ON THE BASIS OF ANGLO-SAXON AND MUSLIM LEGAL TRADITIONS

In this paper, I would like to draw attention towards the legal status of women regarding contractual rights in the Anglo-Saxon and Muslim legal traditions of the Islamic Republic of Pakistan. In pre-historic days, women were nothing but a sex-tool for the men who would use them for pleasure seeking alone. They had no real rights, or one can say, they were not even considered as human beings. They were just regarded as any other good or item a man had or used. It was not until the 1960's that the women got recognition as dignified human beings through the right to vote and the campaigns to treat women equally with the men in every sphere, be it social, economic, cultural or political etc. The history remains true to the fact in the context of the UK and entire Europe as the evolution of the women happens to be in concurrence with their evolution. In the modern times, it has been witnessed that the women in these regions enjoy high legal status in every aspect in contrast with the women in other parts of the world. They exercise equal and independent status with men in contractual rights and obligations. They can enter into contract with anyone they so desire and seek remedy in case of breach of contract through the courts, like the men do. This reflects the autonomy of women and the struggle of their respective governments in coming through with the process of gender equality in the society, unlike some Asian countries including Pakistan.

On the contrary, Pakistan is an Islamic Republic where the legal system is based on common law (Anglo-Saxon) in consonance with the Islamic law (Sharia law). Under this Sharia law, the rights of women fall in a different scenario as opposed to the common law, where the women enjoy all aspects of equality. Although Sharia law treats women equal to men, yet there are certain matters in which women are treated unequally. They are allowed to enter into contractual relation with others but do not enjoy the same kind of autonomy in the contractual matters as the European women do. For instance, marriage is a contract required to be signed with the due consent of the Muslim female and under Islamic law this condition is already upheld. But the Sharia law does not grant her the right to revoke such marriage by way of divorce like the male does. In case she wants to divorce her husband, she will have to file for the cancellation of marriage or 'Khula' in the court after seeking the consent of her husband and give up her dowry or 'Haq-Mehr' (gift from husband upon marriage)¹. In contrast, a male just has to pronounce 'I divorce thee' thrice and the divorce takes place. Moreover, Muslim males are provided the opportunity of contracting four marriages in their life with all wives co-habiting, commonly known as polygamy. While Muslim female is only allowed to marry one man and only after his death, she can re-marry.

There are also certain other unequal treatments rendered with Muslim females in cases of re-marrying the same person after undergoing through the process of 'Halala' and prohibition of marrying a non-Muslim. Apart from this, Muslim females are also treated unequally as witnesses in business transactions and in their share of inheritance. Their status as a witness is secondary to the Muslim male that is in case of a debtor-creditor transaction, the testimony of a Muslim female stands half in contrast to a Muslim male. It can be witnessed from the verse of the Holy Quran itself, 'Whenever you give or take credit

¹ Mohammad, Imani Jaafar / Lehmann, Charlie: Women's Rights in Islam Regarding Marriage and Divorce. In: The Journal of Law and Practice 4/ 3 (2011) 2-10.

for a stated term, set it down in writing...And call upon two of your men to act as witnesses; and if two men are not available, then a man and two women from among such as are acceptable to you as witnesses, so that if one of them should make a mistake, the other could remind her.’² The same is true for her share of inheritance in comparison to the Muslim male.³

In short, a comprehensive analysis of the contractual rights of women in Pakistan under both the Common and Sharia law shall be examined with a double comparison reflecting the history of Common law in Pakistan with that of the UK’s in the 21st century.

² The Holy Quran. Surah 2: Verse 282.

³ The Holy Quran. Surah 4: Verse 7 (*Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind*).

POLOŽAJ ŽENE U PREDOSNOVI GRAĐANSKOG ZAKONIKA ZA KRALJEVINU JUGOSLAVIJU

Posle Prvog svetskog rata i stvaranja Kraljevine SHS, na njenom prostoru postojao je pravni partikularizam, na njenim delovima primenjivala su se različita prava. Zbog toga je pri prvim vladama postojalo jedno ministarstvo za ujednačenje zakona, i ubrzo je donet niz zakona za celu državu. Ujednačenje građanskog prava bio je zadatak koji je preuzet odma po ujedinjenju, a predosnova građanskog zakonika izdata je 1934. godine. Predosnova je rađena po Austrijskom građanskom zakoniku zbog njegovog velikog uticaja na ovim prostorima (AGZ je važio pre toga u austrijskom delu Hrvatske i Sloveniji, a Srpski građanski zakonik je rađen po AGZ-u i imao je veliki broj istih odredbi).

Predosnova je dobila dosta kritike, a najviše su kritikovani jezik i stil, kao i uzimanje za osnovu AGZa i preuzimanje njegove sistematike. Što se tiče položaja žene, primedba o jeziku i stilu je značajna. Zakonik je pisan u prilično patrijarhalnom tonu. Takav ton može se može razumeti socijalnom situacijom tog vremena gde je žena zaista bila odsutna iz privrednih aktivnosti, kao i potčinjena muškarcu. Ali pored samog stila koji je patrijarhalan, odredbe zakonika nisu toliko patrijarhalne, čak su i česti slučajevi u kojima veoma patrijarhalno formulisane norme zapravo imaju rodno neutralno dejstvo.

Žene su izjednačene sa muškarcima u statusnom pravu, dobile su punu pravnu i poslovnu sposobnost, a naglašeno je da pol ne utiče na građanska prava. To je bio napredak u odnosu na SGZ u kom žene nisu imale punu poslovnu sposobnost. Uređenje porodičnih zadruga nije uređeno predlogom zakonika, tako da bi položaj žene u zadruzi bio određen posebnim zakonom. Žena može da bude tutor ili staratelj, ali za to mora da dobije odobrenje muža, izuzev za njenu decu kad to odobrenje nije potrebno.

U bračnom pravu, žena uzima prezime svog muža, dužna je da živi sa njim u njegovom prebivalištu, da mu pomaže u gazdinstvu i da ukoliko to zahteva domaći red, izvršava njegove naredbe i stara se da ih drugi izvršavaju. Ukoliko muž nema imovine i nije sposoban za privređivanje, dužna je da ga izdržava prema svom imovinskom stanju. Ona takođe zastupa muža u tekućim potrebama gazdinstva. Sa druge strane muž je glava porodice i upravlja domaćinstvom i životom u porodici. On je dužan da ženu izdržava srazmerno svom imovinskom stanju i da je zastupa u svim prilikama. Ovakve odredbe oslikavaju stvarnost još uvek patrijarhalnog i seljačkog društva, u kome se žene bave kućnim poslovima, a muškarci privređivanjem i javnim stvarima, ipak ovako formulisane norme iako obavezuju žene na kućne obaveze, ne ograničavaju njihovu aktivnost na njih.

U odnosu prema deci, uticaj oca je mnogo veći. Otac je dužan da izdržava decu, a majka da se stara o nezi tela i zdravlju. Roditelji sporazumno rukovode postupcima svoje dece, ali ipak postoji očinska vlast – otac zastupa decu i stara se o njihovoj imovini, uz to on odlučuje za koje će zanimanje vaspitavati decu. Deca dobijaju očevo porodično ime.

U naslednom pravu konačno je predloženo da žene dobiju pravo nasleđivanja i da u njemu budu izjednačene sa muškarcima. Uz to ustanovljeno je i zakonsko nasledno pravo nadživelog bračnog druga sa udelom od $\frac{1}{4}$ ako ostavilac ima dece, od $\frac{1}{2}$ ili više u drugim naslednim redovima ili bi mu pripalo celo nasledstvo ako nema drugih naslednika, što bi značajno popravilo položaj udovica. Po pitanju nužnog dela muška i ženska deca su isto izjednačena, a bračni drug nema pravo na nužni deo, već samo na pristojno izdržavanje. Nasleđivanje između supružnika može biti regulisano i ugovorom o nasleđivanju, a posebnim bračnim ugovorom se može odrediti udovičko izdržavanje u slučaju muževljeve smrti.

Prednacr je predložio odvojene imovine supružnika. Ako bi hteli da uspostave režim zajedničke imovine, supružnici bi o tome morali da sklope poseban ugovor. Ako se na nekoj stvari ne može odrediti vlasništvo, pretpostavlja se da je u vlasništvu oba bračna druga u jednakim delovima. Ustanova miraza detaljno je uređena i postavljena je obaveza roditeljima da svojoj ženskoj deci obezbede miraz prema svojim mogućnostima. Uz miraz može se pridodati i uzmirazje, imovina muža kojom on upravlja, a koja bi za slučaj njegove smrti pripala sa mirazom ženi. Žena može da traži i obezbeđenje miraza, uzmirazja i udovičkog izdržavanja.

Posebno je teško i dvosmisleno pitanje upravljanja muža ženinom imovinom. Predlaže se da muž zastupa ženu i da može da raspolaže njenom imovinom dok se žena ne usprotivi. Supruga uz to može i posebnim ugovorom ostaviti upravu nad svojom imovinom mužu. U hitnim slučajevima, na predlog supruge, sud može oduzeti mužu upravljanje, čak i kad mu je dato ugovorom. Ovo se može tumačiti na dva načina, prvi da muž može uvek raspolagati ženinom imovinom i drugi da mu je za to potrebno punomoćje. Muž za upravljanje ženinom imovinom odgovara kao zastupnik i to samo za osnovno dobro ili za glavnica.

Pored dosta patrijarhalne retorike, suštinski nepovoljne za položaj žene su one norme koje se tiču tutorstva i starateljstva, odvojene imovine, većih ovlašćenja oca prema deci i mogućnosti muža da zastupa ženu i raspolaže njenom imovinom. Od ovih najnepovoljnija je poslednja, ali njena dvosmislenost je ublažava. Muž jeste ovlašćen da raspolaže ženinom imovinom, ali se u normi traži da se ona ne protivi i daje se mogućnost sudskog odužimanja tog zastupništva. Pretpostavka je da bi se tumačenje ove norme vremenom menjalo, i da bi se posle određenog vremena uvek tražilo ovlašćenje žene. Na kraju se može reći da je zakonik značajno približio pravni položaj muškaraca i žena, iako pisan za patrijarhalnu sredinu, nije postavio velike prepreke poboljšanju položaja žene u tadašnjem društvu, te bi u njegovim okvirima moglo da funkcioniše društvo sa mnogo boljim položajem žene.

RUSSIAN LAW CODES IN XIX-XX AND WOMEN: FROM GAPS AND INEQUALITIES TO LEGAL RECOGNITION AND LEGAL EQUALITY

Research topic of Russian Law Codes and Woman is relevance due to the problem of the woman legal status in XIX-XX in both theoretical and practical terms. The chronological frameworks of the study is determined by the evolution of the legal status of women in Russia in this period. The XIX century is the period of forming the legal status of women in the Russian Law Codes, especially due to the Russian lawmaking in the 1860s. The equality of women and men was legalized in XX century in the Law Codes of USSR.

A radical change in the evolution of women's rights in Russia occurred in the XIX century. In 1812, the first Russian women's organization appeared - "Women's Patriotic society". In the 1860s, serious legislative and judicial reforms were carried out in Russia. These reforms have affected the legal status of women. The code of laws of the Russian Empire was supplemented by volume XVI. It included the Judicial Statutes of 1864, as well as the Law of 1882, prohibiting work in factories, factories and manufactories for children under 12 years, noted the importance of legislative protection of labor not only children but also women, advocating the prohibition of night work for women and the introduction of special benefits for pregnant women.

The legislative acts of European States, such as the Civil Code of Napoleon, 1804, The General Civil Code of the Austrian Empire, 1811, the Saxon Civil Code, 1863, the Civil Code of the German Empire, 1896, had the particular importance for evolution of the Russian civil status of women in the XIX-early XX century. Some scholars have noted the significant influence of French legislation on the legal status of women in Russia.

Did women have the right to receive secondary and higher education in the nineteenth century? In 1863, a new University Charter was adopted. It extended to five Russian universities: Moscow University, St. Petersburg University, Kazan University, Kharkiv University and Kiev University. According to a new University, women did not get the right to enter universities, but the beginning of higher women's education was laid at this time. There were opened a number of higher women's courses in Russia. The Higher women's courses of Professor V.I.Gere in Moscow and the Bestuzhev courses in St. Petersburg were the most famous ones. The Professor K.N.Bestuzhev-Ryumin of St. Petersburg University was an initiator of these courses.

No less difficult was the case with the average women's education. In 1860, the "Regulation" on women's schools was adopted, according to which General education institutions of an open type were created for incoming students. Women's schools could be opened in all provincial cities, where financial opportunities, both public and private, would be found for this purpose. "Financial opportunities", as always, were difficult.

The issue of equality between women and men was discussed in the State Duma and the State Council of the Russian Empire at the beginning of the XX century. In particular, the legal status of married women has significantly improved. In 1914, some personal and property rights of married women were legalized: the right to reject the husband's demands for a joint life, if it "seems unbearable", the right to be freely bound by bills, to receive a separate residence permit without the consent of the husband. Married women who live apart from their husbands are no longer required to accept private, public or public employment, or to enroll in educational institutions.

The Russian laws of the 1960s overcoming gaps in legal regulation of the position of women. The woman's freedom to divorce was legally enshrined. The rights of women with children, pregnant women and women in childbirth have been greatly expanded. However, the laws of the 1960s did not solve the female problems of household inequality, career opportunities and low wages.

The Russian Federation Constitution of 1993 guarantees the legal equality of women and men. Today there are some so-called positive discriminations in Russian law codes.

All these legal transformations led to the fact that the Russian law codes enshrined the legal equality of women and men

The study concludes the evolution of women's rights in Russia in XIX-XX is a process of overcoming gaps in law codes and ensuring legal equality.

THE NORMATIVE BASIS FOR THE EVOLUTION OF THE STATUS OF WOMEN AS A SUBJECT OF FAMILY-MARRIAGE RELATIONS IN SOVIET RUSSIA IN THE FIRST HALF OF THE 20TH CENTURY

In the first half of the 20th century, the legal status of women in Russia underwent significant transformations. The revolutions of 1917 fundamentally changed the entire political and legal system of the Russian state, including the sphere of regulating family and marriage relations. Important changes in the legal status of women were introduced by the norms of Soviet family law.

The institution of marriage, which in the Russian Empire was under the jurisdiction of the church, was transferred to the secular authorities. The state began to legally recognize the significance of only civil – secular and regulated by legal norms – marriages. The decree «On the Separation of the Church from the State and the School from the Church», adopted on January 20, 1918, finally established the provision that acts of civil status are carried out exclusively by the civil authorities, specially created for this purpose by the civil registry authorities.

The new rules of regulating family-marriage relations were enshrined in the Code of laws on acts of civil status, marriage, family and guardianship law (1918). Now, those who entered into marriage did not need the consent of their parents, the estate of the bride and groom, their religion and nationality did not matter. A monogamous form of marriage was established. Children born in wedlock and illegitimate children were equalized in rights and among themselves, and in relations with parents. In court, paternity was allowed. At the request of one or both spouses, free divorce was established.

In 1926, a new «Code of laws on marriage, family and guardianship» was published in Russia. It established the marriageable age of a man and woman at 18, introduced norms that protect actual marriage relations and reinforce the possibility of establishing paternity by a unilateral application of the mother.

Regulatory acts aimed at eliminating child homelessness and neglect, which were actively fought in the 1920s and 1930s, were important in consolidating the legal status of women in Soviet Russia. The norms aimed at improving the upbringing of the child in the family were enshrined. For mischief and street hooliganism of children, an administrative fine was imposed on parents in the amount of up to 200 rubles; liability for the damage caused by children was assigned to parents and guardians. If the parents and guardians did not provide proper childcare, their children could be taken away.

An important part in determining the eligibility of women was played by the Decree adopted in 1936 «On the prohibition of abortion, increasing material assistance to women in childbirth, establishing state aid for multi-family women, expanding the network of maternity hospitals, day nurseries and kindergartens, strengthening criminal penalties for non-payment of alimony and some changes in legislation about divorce». The decision was based on the recognition of «the importance of the great and responsible obligation of a woman as a mother and citizen to give birth and raise children». Under this regulation, abortion, except when required by medical considerations, was prohibited. The law established special state benefits for multi-family mothers, secured the expansion of the network of maternity hospitals and nurseries and kindergartens, determined the amount of alimony, increased the responsibility for evading payment and complicated the divorce procedure.

The complication of the demographic situation during the Second World War, the destruction of many families during the years of hostilities, the adoption of families of children left without parental care during the war, became objective determinants of the innovations of the 1940s. In 1944, de facto marriage, legalized by the «Code of Laws on Marriage, Family, and Custody» of 1926, lost its legal significance. Only registered marriages were now recognized as legal: only marriages that were registered with the civil registry authorities gave rise to the rights and obligations of spouses. The abolition of the optional nature of marriage registration has become one of the most significant events in the field of regulation of legal relations in the sphere of family and marriage.

The restructuring of public opinion loyal to an actual marriage, which took shape during a rather long period of official recognition of an unregistered marriage, proved extremely difficult. The contradictions between the specific legal norm of the Decree of 1944 and the stereotypes of behavior accepted in society, moral assessments of actual marriage, survived with great difficulty even with the application of various sanctions and prohibitions.

At the same time, the Decree of 1944 itself provoked an increase in the popularity of actual marriage relations due to the tightening of the divorce procedure. The divorce was put under the control of the court. It turned into a lengthy, bureaucratically formalized procedure, the confidentiality of which was not even provided for. Undoubtedly, all these circumstances led to a sharp reduction in the number of divorces. But the refusal to divorce in most cases led only to the formal preservation of the family. The tightening of the divorce procedure did not contribute to solving the problems of stabilization of the family.

And although it was not possible to solve the problem of strengthening marriage through peremptory norms of law, Soviet legislation in the following years recorded the strengthening of state measures to influence family and marriage relations.

The desire of the state to give family-marriage relations a formal legal character was accompanied by the strengthening of discriminatory measures directed against unlawful marriages and related relations. The state policy in the sphere of family and marriage relations, conducted in the USSR, reflected the political and legal essence of the Soviet state, in which all the affairs and thoughts of citizens had to be subordinated to a single goal – the achievement of the state good. In this context, the family was the primary unit of society created to solve the two-fold task – to create the conditions necessary for highly efficient work for the good of the state, as well as for the birth and upbringing of the builders of the new world.

POLOŽAJ ŽENE U FRANCUSKOM KRIVIČNOM ZAKONIKU OD 1810. GODINE

Autor u radu analizira pravni položaj žene u Krivičnom zakoniku od 1810. godine (Code pénal de 1810). Ovaj Krivični zakonik bio je od velikog značaja za krivično pravo čitave Evrope XIX veka i ostao je na snazi pune 184 godine. Iako su za utvrđivanje pravnog položaja žene u Francuskom pravu XIX veka ključne odredbe Građanskog zakonika od 1804. godine, ne može se zanemariti uticaj krivičnog zakonodavstva na pravni položaj žene.

Pojedina rešenja Krivičnog zakonika od 1810. godine po pitanju položaja žena nalikovala su na ona iz prvog francuskog Krivičnog zakonika od 1791. godine. Jedno takvo rešenje bilo je o različitom načinu izdržavanja kazne prinudnog rada u zavisnosti od pola osuđenika. Krivični zakonik od 1810. godine ipak nije prosto preuzimao, već i pravno-tehnički usavršavao odredbe prvog Krivičnog zakonika. Pored toga, Napoleonov Krivični zakonik, iako po opštem mišljenju stroži od svog prethodnika, sadržao je humanu odredbu o odlaganju izvršenja smrtne kazne nad trudnicom. Da li zbog želje da se u potpunosti ispoštuje načelo pravne jednakosti u kažnjavanju ili iz nekog drugog razloga, prvi francuski Krivični zakonik nije izričito zabranjivao izvršenje smrtne kazne nad trudnicom. Kao i u većini krivičnih zakonika tog doba, u Krivičnom zakoniku od 1810. godine strogo je bio zabranjen nasilni prekid trudnoće (abortus). Zakonodavac je ovo krivično delo detaljno razradio i predvideo širok krug izvršilaca i veliki broj načina izvršenja, a sama žena je mogla biti i žrtva i izvršilac ovog krivičnog dela. Stroga zabrana nasilnog prekida trudnoće nije iznenađujuća u društvima XIX veka, naročito kada se uzme u obzir veliki uticaj tradicionalno vaspitanog Napoleona Bonaparte na zakonodavnu komisiju.

Nejednakost žene u odnosu na muškarca u Krivičnom zakoniku od 1810. godine najjasnije se vidi u različitom tretmanu supružničkog ubistva. Dok ženi osuđenoj za ubistvo muža zbog njegove preljube nije bilo moguće da dobije oprost, mužu je u istom slučaju dobijanje oprosta bilo omogućeno. Sama preljuba je takođe bila krivično delo i, kao i u francuskom Građanskom zakoniku, različito je pogađala supružnike u zavisnosti od pola. Žena preljubnica mogla je da računa na stroži tretman i kvalifikaciju svoje preljube nego muž preljubnik. Simultana bigamija oba pola bila je strogo zabranjena i kažnjavala se istom kaznom, ali pored toga je, u slučaju razvoda, ženama i sukcesivna bigamija bila ograničena, za šta je Krivični zakonik od 1810. godine kažnjavao matičara, a ne samu ženu koja zaključi novi brak. U slučaju sukcesivne bigamije muškaraca nikakvo ograničenje nije postojalo. Interesantno je i pomalo neočekivano da Krivični zakonik od 1810. nije kažnjavao prostituciju niti podvođenje kao krivično delo. Jedino u slučaju da je podvođeno lice bilo mlađe od 21 godine bili bi kažnjavani organizatori, ali ne i samo lice.

Analizom pravnih izvora, ali i literature, što onovremene, što savremene, autor daje pregled pravnog položaja žene kao žrtve, krivca i saučesnika u francuskom Krivičnom zakoniku od 1810. godine. Ovaj Zakonik pisan je u izrazito patrijarhalnom tonu, što se manifestuje u brojnim zakonskim odredbama koje danas deluju zastarelo i izuzetno nepravedno. Ipak, Krivični zakonik od 1810. godine imao je veliki odjek u pravnim sistemima devetnaestovekovne Evrope, što govori o tome da je odgovarao duhu vremena.

APPARENT BENEFITS FOR WOMEN IN THE FIRST ITALIAN CIVIL CODE (1865)

The Italian Civil Code of 1865¹ and the Commercial Code of 1882², are full of rules that differentiate the legal status of men from that of women, especially if they are married³. Most of these are clearly based on the principle of "*speciale sua [woman's] costituzione fisiologica, e delle speciali sue attitudini*"⁴ towards the family. In drawing up the Italian codes of the late nineteenth century, the legislator declined this precept in various ways⁵.

However, there are some points in which the Civil Code of 1865 seems to discriminate against the male figure, resulting in an advantage for the woman: the latter could marry at the age of fifteen or, subject to royal dispensation, at twelve, while men would have had to wait respectively for the eighteen or fourteen years (Art. 55 and 68 of the Civil Code); dowry enjoyed special protection with respect to normal personal property (Chapter II and Chapter III of Title V, Book III of the Civil Code) and, finally, personal arrest against women was prohibited (Art. 2097 n.1). It might seem that these rules are underpinned by a degree of favouritism on the part of the legislature towards women, who are earlier than men and who are the recipients of greater protection of both their property and their personal freedom.

¹ *Codice Civile del Regno d'Italia*, in CAPIELLO A.A., MARINUCCI E., REMIDDI L. (a cura di), *Donne e diritto. Due secoli di legislazione 1796-1986*, Roma, Istituto Poligrafico e Zecca dello Stato, Libreria dello Stato, 1988, Volume primo, pp.965-1019;

² *Codice di Commercio*, in *Ibidem*, pp.1026-1030.

³ On the distinction between the legal situation of the "woman" and the "wife": FRUGONI P., *Capacità giuridica della donna secondo la legislazione italiana*, in «Archivio Giuridico», Vol. IV, 1869, p.472. Also MANCINI P.S., *Seduta del 2 maggio*, in *Raccolta dei lavori preparatori del Codice Civile del Regno d'Italia*, Palermo, Giuseppe Pedone Lauriel, Vol. II, pp.133-134.

⁴ MAZZOLENI A., *La famiglia nei rapporti coll'individuo e colla società*, Milano, s.e., 1870, p.52.

⁵ Articles 134,136 e 1743 of Italian civil code of 1865. On historiography among others: SEVERINI M., *In favore delle italiane. La legge sulla capacità giuridica della donna* (1919), Venezia, Marsilio Editori, 2019; PASSANITI P. (a cura di), *Lavoro e cittadinanza femminile. Anna Kuliscioff e la prima legge sul lavoro delle donne*, Milano, FrancoAngeli, 2016; SBANO N. (a cura di), *Donne e diritti. Dalla sentenza Mortara del 1906 alla prima avvocata italiana*, Bologna, Il Mulino, 2004; BELLOMO M., *La condizione giuridica della donna in Italia*, Roma, Il cigno Galileo Galilei, 1996; SCHWARZENBERG C., *Condizione della donna e lavoro femminile in Italia*, Varese, Giuffrè editore, 1982. Per la questione metodologica: PELIZZARI M.R. (a cura di), *Le donne e la storia. Problemi di metodo e confronti storiografici*, Napoli, Edizioni Scientifiche Italiane, 1995.

At a closer look⁶, which takes into account the long process of elaboration of the first Italian Civil Code⁷, the codicistic commentaries⁸ and the doctrine⁹, these female benefits turn out to be illusory and merely apparent, since they conceal, in reality, the same preconception about the exclusive destination of the female figure to the domestic sphere.

In this regard, the difference in age between man and woman, prescribed for the purposes of marriage, is precisely one of the grounds on which the first attempts to align the legal condition of the two sexes were grafted. Already in the *Code Napoléon* and later in the *Codice civile albertino*, the woman was required a lower age to be able to marry. The Pisanelli¹⁰ project¹¹, presented in 1863, tried to change this state of affairs and, with a view to "*perfetta eguaglianza*"¹² between males and females in family and succession relations, smoothed out any differences in this regard.

This sparked a debate within the institutions and doctrine, from which emerged the real reasons underlying the early marriage maturity of women, later confirmed in the final version of the first Italian Civil Code. Far from constituting an advantage or being based on the, although plausible, difference in natural development between the sexes¹³, the question revolved entirely around the "placement" ("*collocamento*")

⁶ As intuited by: SCHWARZENBERG C., *Condizione della donna* cit., p.34.

⁷ GROSSI P., *Scienza giuridica italiana. Un profilo storico (1860-1950)*, Milano, Giuffrè, 2000; BIROCCHI I., *Alla ricerca dell'ordine: fonti e cultura giuridica nell'età moderna*, Torino, Giappichelli, 2002; CARONI P., *Saggi sulla storia della codificazione*, Milano, Giuffrè, 1998; CAZZETTA G., *Codice civile e identità giuridica nazionale. Percorsi e appunti per una storia delle codificazioni moderne*, Torino, Giappichelli, 2012; MECCARELLI M., *Le Corti di Cassazione nell'Italia unita. Profili sistematici e costituzionali della giurisdizione in una prospettiva comparata (1865-1923)*, Milano, Giuffrè, 2005; SOLIMANO S., *'Il letto di Procuste'. Diritto e politica nella formazione del Codice civile unitario. I progetti Cassinis (1860-1861)*, Milano, Giuffrè, 2003; Ibidem, *L'edificazione del diritto privato italiano. Dalla Restaurazione all'Unità*, in «*Il bicentenario del Codice napoleonico. Atti dei convegni lincei*», Roma, Bardi, 2004, pp.77-88. For a bibliographic survey: Biblioteca Centrale Giuridica, *I lavori preparatori dei codici italiani. Una bibliografia*, Roma, Ministero della Giustizia, Dipartimento per gli affari di Giustizia, 2013.

⁸ Among the most relevant:: BIANCHI F.S., *Corso di Codice Civile Italiano dell'avvocato Francesco Saverio Bianchi, Professore emerito di diritto civile, Consigliere di Stato*, Torino, Unione Tipografico Torinese, 1893; BORSARI L., *Commentario del Codice Civile Italiano*, Torino, Unione Tipografico Torinese, 1878; PACIFICI-MAZZONI E., *Istituzioni di Diritto Civile*, Firenze, Eugenio e Filippo Cammelli, 1873. Ma anche: VOLTOLINA F., *Commento al Codice civile del Regno d'Italia 25 giugno 1865*, Venezia, Tipografia Municipale di Gaetano Longo, 1873; FERRAROTTI T., *Commentario teorico pratico comparato al Codice civile italiano*, Torino, Tipografia V. Vercellino, 1872-1874; CATTANEO V., BORDA C., *Il codice civile italiano*, Torino, Tip. Lit. Camilla e Bertolero, 1873.

⁹ BARINETTI P., *Il diritto di famiglia studiato alle fonti del diritto romano*, Pavia, F.lli Fusi, 1869; BURRI A., *Dei diritti delle donne secondo il Codice civile del Regno d'Italia*, Firenze, Tip. Salani, 1869; CASTELLARI G., *Della condizione giuridica della donna secondo il codice civile italiano*, Torino, Vincenzo Bona, 1877; FRUGONI P., *Capacità giuridica della donna secondo la legislazione italiana*, in «*Archivio Giuridico*», Vol. IV, 1869, pp.471-511; SAREDO G., *Trattato di diritto civile italiano*, Firenze, Tipografia Editrice dell'Associazione, 1869, pp.348-351; SCOTTI A., *Dell'Autorizzazione maritale e giudiziale secondo il Codice civile italiano*, in «*Archivio Giuridico*», Vol. IV, 1869, p.387-435.

¹⁰ TABACCHI S., Pisanelli, Giuseppe, in «*Dizionario Biografico degli Italiani*», Vol. 84, 2015, <http://www.treccani.it/enciclopedia/giuseppe-pisanelli_%28Dizionario-Biografico%29/>; SPINOSA A., Pisanelli, Giuseppe, in «*Il Contributo italiano alla storia del Pensiero- Diritto*», 2012, <http://www.treccani.it/enciclopedia/giuseppe-pisanelli_%28Il-Contributo-italiano-alla-storia-del-Pensiero:-Diritto%29/>.

¹¹ PISANELLI G., *Relazione sul Progetto del primo libro del Codice Civile presentato in iniziativa al Senato dal Ministro Guardasigilli (Pisanelli) nella tornata del 15 novembre 1863*, in *Raccolta dei lavori preparatori del Codice Civile del Regno d'Italia*, Vol. I, p. 23, Palermo, Napoli, Pedone Lauriel, 1866.

¹² PISANELLI G., *Relazione sul Progetto del primo libro del Codice Civile* cit., p.24.

¹³ So instead FRUGONI P., *Capacità giuridica della donna secondo la legislazione italiana*, in «*Archivio Giuridico*», Vol. IV, 1869, pp.493-495.

¹⁴) of women. In fact, anticipating her marital age meant giving her more time and therefore more opportunities to settle down before the dreaded and irremediable being unmarried¹⁵. This reality, sometimes concealed behind generic expressions such as "*conforme ai costumi, al buon ordine e alla quiete*"¹⁶, was candidly reflected in the preparatory work for the Code¹⁷, in some of the most important codicist commentaries¹⁸ and in the doctrine¹⁹.

Even the discipline of dowry, apparently, seems to reserve a special protection for women's property. For dowry property, the code provided for the possibility of applying appropriate precautions (ex Articles 1400 and 1418), the general nullity and revocability of acts of disposition (ex Art. 1405 and 1407), as well as the power of the wife to obtain its restitution (ex Art. 1409) or separation from her husband's estate (ex Art. 1418). In reality, these protective rules must be read in the light of the nature of the dowry institution. On the one hand, this was functional to support the burdens of marriage and the family²⁰, so that the goods, once constituted as a dowry, could no longer be considered inherent to the woman's property, so much so that their administration was the responsibility of the man and that sometimes they could also become his property. On the other hand, as stated in the preparatory work for the Code²¹, the constitution and preservation of the dowry during the marriage, at first, guaranteed the maiden very good chances of marriage and then, gave the wife the possibility to get married again, in case of dissolution of the marriage²².

Finally, the prohibition of the woman's personal arrest for debt ex art. 2097, dated back to a long tradition from Justinian law, that was borrowed in most of the pre-unification codes. The silence of the preparatory work on the point explains the doctrine's effort to analyze this supposed privilege. As pointed out by some jurists²³, the prohibition of arrest against women could no longer be justified either by the danger that they might be "*circa castitatem iniuriatae*", or by the assumed physical and mental weakness of the woman, so much so that the merchantess could be arrested. The functional connection with the care

¹⁴ VACCA G., *Seduta del 20 Aprile 1865*, in *Raccolta dei lavori preparatori del Codice Civile del Regno d'Italia*, cit., Vol. II, p.46.

¹⁵ ARNULFO G., in *Raccolta dei lavori preparatori del Codice Civile del Regno d'Italia*, cit., Vol. terzo, p.342

¹⁶ VIGLIANI P.O., *Relazione della commissione del Senato (a) sul progetto del codice civile pel Regno d'Italia, presentato dal Ministro Guardasigilli (Pisanelli) nelle tornate del 15 luglio e 26 novembre 1863*, Ivi, Vol. primo, p.207.

¹⁷ ARNULFO G., in *Raccolta dei lavori preparatori del Codice Civile del Regno d'Italia*, cit., Vol. terzo, p.342; VACCA G., *Seduta del 20 Aprile 1865*, cit., p.46.

¹⁸ BIANCHI F.S., *Corso di Codice Civile Italiano dell'avvocato Francesco Saverio Bianchi* cit., pp.287-293; SAREDO G., *Trattato di diritto civile italiano*, Firenze, Tipografia Editrice dell'Associazione, 1869, pp.348-351.

¹⁹ BURRI A., *Dei diritti delle donne secondo il Codice civile del Regno d'Italia*, Firenze, Tip. Salani, 1869, pp.48-49, p.103; FRUGONI P., *Capacità giuridica della donna secondo la legislazione italiana*, cit., pp. pp.502-503.

²⁰ PISANELLI G., *Relazione del Ministro sul terzo libro del Progetto*, in *Raccolta dei lavori preparatori del Codice Civile del Regno d'Italia*, cit., Vol. I, p.117. GALLUPPI E., *La dote secondo il diritto civile italiano*, Torino, Fratelli Bocca, 1876, pp.30-37. Among the commentaries: BORSARI L., *Commentario del Codice Civile Italiano*, Torino, Unione Tipografico Torinese, 1878, Vol. 4, Parte prima, pp. 40-44 ma anche PACIFICI-MAZZONI E., *Istituzioni di Diritto Civile*, Firenze, Eugenio e Filippo Cammelli, 1873, Libro III, Parte Seconda, pp. 380-388.

²¹ ARNULFO G., in *Raccolta dei lavori preparatori del Codice Civile del Regno d'Italia*, cit., Vol. terzo, p.342; VACCA G., *Relazione della Commissione del Senato*, in *Raccolta dei lavori preparatori del Codice Civile del Regno d'Italia*, cit., Vol. I, p. 340 e p. 341.

²² *Ibidem*, p.340. Per la dottrina: GALLUPPI E., *La dote*, cit.,pp.243-270. See also DEVILLA G.M., *La dote: studio storico-giuridico*, Cagliari, tip. Del Corriere, 1883; DALLARI G., *Istituto giuridico della dote*, Milano, Società Editrice Libreria, 1918; LEVI U., *La restituzione della dote secondo il diritto, la dottrina e la giurisprudenza*, Roma, Società editrice laziale, 1905.

²³ CASTELLARI G., *Della condizione giuridica della donna secondo il codice civile italiano*, cit., pp.224-229.

of the family or with the imperfect negotiating skills of the married woman should also be excluded, since Article 2097 also extended to single women and widows.

In the light of this, the doctrine was divided into two currents of thought: one which considered the exemption of women from coercive measures as an effective privilege introduced to abolish, albeit partially, an immoral and absurd institution²⁴; the other which, on the other hand, undertook in Art. 2097 the deep-rooted tradition which considered women to be weak, inferior and therefore devoid of the capacity for promissory notes²⁵.

Ultimately, the codicistic institutions taken into consideration actually hide a representation of women that is strongly traditional and ineluctably linked to the family sphere. What is most interesting is that the first Italian Civil Code not only conformed to a pre-existing social situation of clear separation of man-woman roles, but with some of its rules actively intervened to promote and maintain this state of affairs, favouring as much as possible the placement of the woman in the family as mother and wife.

²⁴ CASTELLARI G., *Della condizione giuridica della donna secondo il codice civile italiano*, cit., pp.224-227; MATTIROLO L., *Trattato di diritto giudiziario civile italiano*, Torino, Fratelli Bocca, 1887, Vol. IV, pp.881-882.

²⁵ FRUGONI P., *Capacità giuridica della donna secondo la legislazione italiana*, cit., p.474; GALLUPPI E., *Istituzioni di diritto commerciale*, Roma, Torino, Firenze, Fratelli Bocca, 1874, Vol. I, pp.384-386; DANIELI G., *Sulla capacità cambiaria dei minori e delle donne: la donna maritata non commerciante può obbligarsi cambiariamente senza l'autorizzazione del marito?*, Modena, A. Rossi, 1884.

WORKING WOMEN AND BUSINESSWOMEN IN FRENCH LAW CODES IN THE XIX CENTURY

As the Industrial Revolution reaches France in the beginning of the XIX century, a new era of economic progress opens up. The XIX century is particularly interesting because it corresponds to Napoleon's reign, and the drafting of the French Civil Code (1804), and the French Commercial Code (1807).

The idea of a French Civil Code and a French Commercial Code came about in 1791, when France was a parliamentary monarchy. Yet, it took five different projects before the introduction of Napoleon's Code.

The Commercial Code was extremely criticized compared to the Civil Code. Legislative drafters were by far, more inventive in the Civil Code than in the Commercial Code. The Commercial Code was drafted by merchants, hence the very bad writing style, and it became very quickly outdated, as it did not take the Industrial Revolution into consideration.

For that reason, subsequent amendments were made to both of the Codes, among which the 1893 and the 1898 laws, concerning women.

From the early 1800s, to the end of the century, the role of women in society changed with the emergence of the working class. Women, who usually worked as nannies, as housemaids, began to be a part of the work force, and some became merchants, very slowly gaining their financial independence.

Under the Ancien Régime, the only restriction to a commercial activity was nobility. Noblemen could not be businessmen because of their social status.

After the French Revolution, men could have a commercial activity, unless they held an office which was incompatible with business (lawyers, magistrates, notaries).

Regarding women, Commercial and Civil Codes were quite restrictive. At first glance, gender did not determine capacity. Girls, divorcees, and widows were commercially and civilly capable. Nonetheless, marriage altered capacity insofar as married women became dependent on their husbands and needed to get their consent or a judicial authorization to sign different legal documents.

How did French law Codes adapt to the role of women in business and society during the XIX century? How women influenced this adaptation?

1 Conditions for women to work as merchants ("marchande publique")

A merchant is a person who buys and sells goods. It is a commercial activity, and therefore, it is framed by laws. In order, for a woman, to be a merchant in the XIX century, certain preconditions must be met. These preconditions vary depending on whether or not the woman is married.

If an adult woman is not married, she does not require an authorization. However, if she is married, and wants to have a commercial activity, her husband must give his consent.

1.1 Consent

A woman can merchandise goods without the explicit consent of her husband according to article 220 of the Civil Code. It is only necessary if the woman is underaged (articles 2 and 4 of the Commercial Code). In the French pre-Revolutionary legal system, consent could be given tacitly, and this common usage has been incorporated into Napoleon's Code. The main reason was that the wife exercises her commercial activity publicly, and her husband is inevitably aware of the situation.

1.2 Lack of consent

Article 4 of the Commercial Code states that “a woman cannot be a public merchant without her husband’s consent”.

The consequences of a commercial activity pursued by a married woman, without her husband’s consent depend on their matrimonial regime. For example, if they are married under the regime of community of property, the husband who did not give his consent to his wife’s activities, cannot be bound by her contracts. This raises the question of why, would a wife need her husband’s consent, if her commercial activity cannot have any consequences on him.

Sometimes, when couples split, husbands refused to consent for arbitrary reasons. Women could seek an authorization from a judge, to be able to work and have an income.

Lastly, consent could be taken back, which made access to commercial professions harder for women.

2 Progressive evolution of women’s legal capacity to do business

The last decade of the XIX century is filled with significant reforms of the Civil Code. The law of the 6th February 1893 introduced a new article 311 in the Civil Code, which provided for married women, legally separated to have full civil capacity. This law is an adjustment to social realities of the time. The idea of feminism started to sprout in society and women became vocal about their issues. In 1837, Louise Dauriat, a woman of letters and journalist for the Globe and the Women’s Forum (Tribune des Femmes), sent letters to members of the representative’s chamber, asking them for a revision of the Civil Code’s article conflicting with women’s rights. Even if all her efforts did not directly lead to a revision of the Code, her determination probably inspired others.

Pursuant to the January 23rd 1898 law, Women in business were admitted to vote, in order to elect commercial judges. This little step is an example of how, slowly, but steadily, women gained more and more credibility in business in the XIXth century.

To conclude, French Codes of the XIXth century, inspired by a patriarchal system, differentiated men from women, especially in business. Studying how laws evolved during this period of time, can give an insight not only of the legislative situation in France, but also of how the society progressed.

WOMEN AND THE CIVIL SERVICE IN 1938-1945

The year 1938 was in many ways turbulent in Czechoslovakia. The national tensions mainly between Czech and German population and the rising threat of Nazi Germany, both being more and more in public view throughout the 1930s, culminated in the Munich Dictate at the end of September 1938. Under this agreement, a result of the appeasement towards Hitler, Czechoslovakia lost its border territories (Sudety), mainly occupied by people identifying as those of German nation. This marks one of the most historically influential events in the history of Czechoslovakia and of course a lot has been written on the subject from the point of view of politology, international law, history or sociology.

Since the period between Munich Dictate and establishing a Protectorate under a Nazi rule in March 1939 was quite short for Czechoslovakia, not much has been written on the impacts of migration, resulting in occupation of the border territories and subsequent expulsion of Czechs living in these territories. Tens of thousands of people were coming to the “inland”, still Czech territories, and they had to find a job and housing. Particularly difficult situation arose in the civil service – civil servants coming from the occupied territories were entitled to be assigned to the same-level position as they held at their previous posting. With the territory of the state being considerably smaller and the number of civil servants remaining the same, there were simply no vacant position that could be assigned.

The government decided to resolve this situation by issuing a government decree No. 379/1938 Sb., which regulated some of the personal issues in the civil service. In my paper I would like to focus on articles no. 6-20 of this decree, regulating the position of women in the civil service.

As a rule, it was stated that married women can no longer hold a position in the civil service, even if they previously received a tenure. The main reason, of course, was to create vacancies for civil servants coming from the occupied territories, but the official reasoning was quite different. Despite the rising movement for women’s rights during the preceding years, the justification for the new rule has put married women only to the position of mothers, not those who are supposed to secure the financial stability of the family. It was said that “the purpose” of a married woman is to raise children, and that it is impossible to fully devote to this purpose if the woman would be working. However the government was quite aware that this approach is not in concordance with public opinion, so it stated in the aforementioned regulation that women who give up their position willingly would receive higher pensions and other bonuses than those who would not, with the intention to force women to leave rather than to protest. My paper would be explaining these differences in more detail, focusing on how much more it would be beneficial for the woman to leave her position willingly, and also how this promised pension and bonuses compare to those of men, leaving the civil service in “usual” ways.

Since the official line of reasoning was relying on the fact that men were providing for the household, the governmental decree had to emphasize this approach by stating that a woman can continue her work as a civil servant if her husband is not capable of securing the financial stability of the family. Quite a detailed regulation is devoted to this situation, and I would like to examine how the position of a woman was considered in comparison with the position of a man and what were the preferred solutions.

Also I would like to focus on the general arguments made by those supporting the regulation including the official reasoning, those emphasizing the real reasons behind this regulation, and those opposing it. Another set of questions I would like to focus on is then related to revoking of this regulation in

1945, stating that women who were forced to leave their position have 6 months to apply to be reinstated in that position, with basically no other conditions applying. This complete change of the legislation, given of course by the substantially different political situation, also raises questions about how the position of women was changing and how the initial prohibition of working as civil servants affected them.

WOMEN'S SUFFRAGE IN THE AUSTRIAN MONARCHY FROM 1848 TO 1918

Almost 100 years ago, in 1919, Austrian women were able to vote for the first time, equal to men. However, women's suffrage was already known in the monarchy. In my lecture, I would like to give an overview of the different types of women's suffrage. The municipal electoral law, the regional electoral law in the Austrian Provinces and the "Reichsrat"-electoral law should be taken into account.

After the failed bourgeois revolution of 1848, the right of political participation was defined by the principle of representing property. The right to vote in the municipalities, granted to both genders in 1849, was "census" based on a corresponding tax payment. At first glance, this might appear to be an acceptance of the political equality of women. A closer look shows, however, that women were not given the opportunity to participate in political life on an equal footing with men, but rather the idea that women should not become visible as political actors was taken into account. This was achieved because women were not allowed to vote personally.

The later enforced municipal electoral regulations of the Austrian states consistently followed the guidelines drawn up in 1849. In more important cities, such as Vienna or Prague, women were not entitled to vote at all. If women were entitled to vote, they were always in the minority, but they could definitely make up a quarter of the electorate.

Also controversial was the question of whether female teachers and academics were included in the so-called "intelligentsia voting law". This meant the right to vote without tax payment, which members of certain professions such as priests, officers, civil servants, academics and teachers had. This question came up at the community and provincial level in the late 19th century. However, it was not a matter of course that women could also fall into the class of intelligentsia voters. This question was left to the Austrian Supreme Courts: the Administrative High Court and the Imperial Court, which answered in different ways.

It was only through the financial crisis and the impending state bankruptcy at the beginning of the 1860s that Emperor Franz Joseph was forced to introduce a constitution and thus to admit civil rights. This included the establishment of provincial diets, that should be elected by the population. These provincial diets or "Landtage" should then send deputies to the "Reichsrat" (or Imperial Council), the state parliament. The electoral regulations, which were almost uniformly regulated in the February patent of 1861, were primarily intended to preserve the interests of the predominantly aristocratic large estates and the wealthier urban population. This was achieved through a so-called "Curia-suffrage", which divided the electorate into various classes of voters (large landowners, chambers of commerce and commerce, cities, rural communities). Within the curiae, the right to vote was partly tied to the municipal electoral law. In principle, the right to vote remained gender-neutral, i.e. women were also entitled to vote.

Surprisingly, the principle that women had to be represented when voting was broken at the provincial level, since it was determined that each vote was "generally only to be given personally". In legal practice, this provision about personal voting, which contradicted municipal electoral law, inevitably created great confusion.

Direct elections to the House of Representatives of the Reichsrat, the state parliament, were not possible until 1873. The same curia and census suffrage now applied as at the state parliament level. Due to the greater political importance of parliamentary voting rights and due to the exemplary effect of other countries such as Germany or Great Britain, the exclusion of women from political participation prevailed

here. Only in the curia of large estates should women continue to have the right to vote. In the further development of the electoral law, the gender-specific provisions of the parliamentary electoral law of 1873 served as role models for the provincial election regulations.

In parallel with this development, the right to vote was extended to ever larger groups of the male population, first by lowering tax requirements, then by introducing a general electoral class that only granted men the right to vote without any tax payment. The increasing democratization of the right to vote thus took place at the expense of women's voting rights. In 1907 universal and equal voting rights were finally introduced for all men; at the same time, however, was the high point of the exclusion of women from political participation. The curia system was abolished and the right to vote was withdrawn from the few female large landowners

With the fall of the monarchy in 1918, the way to the introduction of women's voting rights in Austria was finally paved. The granting of women's voting rights to all representative bodies was finally linked to the proclamation of the republic in Austria. The "Gesetz über die Staats- und Regierungsform" of November 12, 1918 already stipulated that the right to vote should be based on the general, equal, direct and secret right to vote of all citizens regardless of gender.

ŽENA U BRAKU NA PRIMERIMA FRANCUSKOG I AUSTRIJSKOG GRAĐANSKOG ZAKONIKA

Rad ima za cilj da prestavi položaj žena u braku u nekim od najvećih evropskih zakonika kroz njihovu istoriju pa sve do danas. Drugim rečima u radu će se obraditi, u kratkim crtama, odredbe Francuskog i Austrijskog porodičnog zakonika, tj. samo odredbe vezane za veridbu, zaključenje braka, bračnim smetnjama, uslovima za zaključenje braka, odnosu između supružnika u vršenju roditeljskog prava kao i o samom raskidu braka. Autor će analizirati navedene elemente: veridbu – uslove za njenu punovažnost (uzrast i drugo), formu za punovažnost kao i njen raskid (tj. pravno dejstvo odustanka od veridbe); zaključenje braka - pravila o zaključenju braka, uslovi za zaključenje braka, formalnosti u vezi sa zaključenjem braka, prigovor protiv zaključenja braka, zahteva za poništenje braka, obaveze koje iz njega nastaju, forma zaključenja braka, postupak kako brak postaje punovažan; bračne smetnje – sve što predstavlja bračne prepreke (nedostatak pristanka, nemogućnosti davanja pristanka, moralnog vladanja, bračne veze, posvećenje ili zavet; odnos između supružnika – prava i dužnosti kako muža tako i žene, poreklo pravnih odnosa između bračnih roditelja i dece, zakonskog određivanje bračnog rođenja, prava i dužnosti roditelja, očinska prava kao i majčinska prava; raskid braka – raskidanje bračne zajednice (prividno i pravo raskidanje bračne zajednice) kao i načini ponovnog sjedinjenja.

Biće takođe reči i o razvoju tih zakonika, tj. kako je izgledala evolucija tih zakonika od njihovog donošenja pa sve do današnjeg dana.

Autor će isto tako dati sud o genezi odredba unutar jedne zemlje (u sve tri pojedinačno). Tim sudom ćemo videti da li dolazi do kulturoloških promena i napraviće se poređenje dobijenih rezultata za svaku od tih zemalja zasebno. Takođe, autor, će izvršiti i poređenje karaktera zakonodavstva ovih zemalja. Kako se zakonodavstvo menjalo tokom godina i kako je to uticalo na same zakone i same države. Autor će suditi o tome da li izmene u zakonodavstvu su odraz društvenih promena u nekoj zemlji. Drugim rečima da li se ide u konzervativnom ili liberalnom smeru.

WOMEN OF THE LEGION – UNRECOGNIZED MEMBERS OF THE FIRST CZECHOSLOVAK ARMY

In my paper, I will speak about the legislation which prevented female members of Czechoslovak legions to be granted with benefits awarded to legionaries, as well as general rise and fall of the women in the Czechoslovak army, who were later not allowed to serve again up to the World War II.

Czechoslovak legions, as an armed body of Czech and Slovak resistance movement in the World War I consisting entirely of volunteers, fought as a part of the Entente armies in the fields of France, mountains of Italy, plains of Serbia and even in the frozen forests of Russian Siberia. When they returned home to the newly established country, their numbers were reaching over one hundred thousand men, not counting Czech and Slovak exiles fighting in British and American army, who were not part of the independent Czechoslovak force. I will shortly introduce the history of the Legion to familiarize the audience with this topic.

When the last members of the legion arrived to Europe in 1920 after taking part in the Russian civil war and sailing around the globe, they were hailed as national heroes, rewarded with wide benefits and used to form a core for the newly established army of a young country.

The legislative that granted them privileges was in some points deemed controversial for all the legionaries, however it specifically excluded female members of the corps. Even though not explicitly excluded from the benefits, women were not able to reach most of them (e. g. privileged positions in the army or gendarmerie where women were not allowed to serve in the first place). Moreover, they were facing difficulties claiming the status of the legionary in general.

The roots of this problem are easy to find – the legion in Russia was cut from the rest of the world for almost a year, fighting the incomparably larger Red army and with enemies on all sides the seventy thousand strong force had to use all available resources, including women willing to serve on the frontlines (usually as field medics, spies, etc.). Some of them won respect of the men they served alongside to (e. g. Božena Seidlová, one of the only two *de facto* recognised female legionaries) and those returning from Siberia regarded them as equals, but the society and authorities in Czechoslovakia were not willing to accept that at the time.

In both pre-war Austro-Hungarian and recent Czechoslovak army females serving in the army (even as non-combatants) were considered something unthinkable. On the other hand, these women were supported by many legionaries who were held in high regard by the public and so the solution was not as simple as just disregarding them “because they are just women”.

In the end, this issue was (probably unintentionally) solved by the controversial governmental regulation no. 151/1920 Sb., which determined the conditions for being recognised as a legionary *de iure* thus dividing legionaries into two groups – legionaries *de facto* (those who joined the legion as an independent Czechoslovak army in exile) and legionaries *de iure* (based on many conditions, but most exposed of which was the one, which awarded the status only to those citizens of Czechoslovakia who joined the legion or other army of the Entente until 28th October 1918, the day, when independent Czechoslovakia was established). This caused major outrage amongst the legionaries as many of them joined the army after the specified date and (especially in Russia) still fought for more than a year.

In this situation, everyone overlooked the fact that for women it was practically impossible to receive the legionary status because of one other condition almost irrelevant for male legionaries – that only people who first of all enlisted for fighting were fit to be awarded with the status (no matter if they really fought in the end or served e.g. as members of political branch of the resistance). Of course, it was impossible for women to officially enlist for fighting regardless of the fact if they fought eventually or not. This combined with the fact that these women did not protest in larger numbers led to the situation where there were only two *de facto* recognised female legionaries only one of which is also considered legionary *de iure*.

I will analyse this regulation and its impact on the legal position of the female resistance veterans. I will demonstrate the whole situation on the cause of the only two officially recognised female members of the Legion – Božena Seidlová and private Věra Gatti.

THE ROLE OF WOMEN IN CODIFICATIONS OF THE LANDS OF THE BOHEMIAN CROWN IN 17TH CENTURY

One of the key codifications of Land Law in Bohemia throughout 16th and 17th century was *Constitutiones Terrae (Vladislavské zřízení zemské)*, which was in effect from 1500 until the mid-Thirty-Year War and bound the Bohemian nobility. The text of the submission focuses on the role of women in *Constitutiones*, as well as in other selected Books of Law, which shaped the Early Modern Period of the Lands of the Bohemian Crown (*Corona Regni Bohemiae*), specifically Viktorin Kornel's Books of Law called *Knihy Devatery*, and codifications relevant for the territory of Moravia such as Codification of Land Law (*Moravské zřízení zemské*) and others. The submission will focus on provisions concerning the question of women's rights to receive a dowry and inheritance, with the underlining of possible conditions leading to the loss of this right and a demonstration of such merits on a real-life story.

As expected, the early modern era codifications were not very eloquent in regards of the position of women. Those parts of the *Constitutiones Terrae* that in fact do speak of women, widows or virgins mostly consist of provisions regarding property and inheritance in case of the death of all male relatives. Despite the abrupt mentions, the Bohemian *Constitutiones* include implicit, yet undeniable high expectation on women, in regards of entering a marriage. *Constitutiones* incorporate a very specific article regarding the importance of virginity on women's side, because as it is stated in *Article 515* of the *Constitutiones Terrae*, if a woman entering a marriage would not be a virgin, she automatically loses her right to inherit any property, no matter the origin (not speaking of the public condemnation). This specification was included only in the Bohemian codification and is neither seen in its Moravian sister nor any other Book of Law applicable in the Lands of the Bohemian Crown.

The provision of *article 515* of the *Constitutiones*, along with the role of women in regards of their right to receive a dowry, or the possibility of loss of this right in accordance of the conditions stated in above mentioned regulations, will be demonstrated by this presentation on a story of a very young noblewoman, coming from a famous and a very rich noble house of Bohemia – the family of Von Smiritz, who had been one of the main influential families at the time.

A story that has left an imprint in the Czech culture, and has been a subject to many interpretations, speaks of a life of the youngest daughter of Sigmund von Smiritz and Hedwig von Hasenburg – named Katherine Elizabeth and born around the year 1590. By the birth in the Von Smiritz family, she was entitled to inherit not only an admirable dowry, but also a very unpleasant features, such as a long nose and a long skull and rather limping walk. As a consequence, Katherine Elizabeth wasn't a first choice for noblemen around her, and as a matter of fact not even a second one, so naturally she tried elsewhere. Henceforth the submission focuses on the breach of *article 515* of the *Constitutiones Terrae* and brings in context the actions leading to the loss of Katherine Elizabeth's claim to the inheritance. Eventually the story evolves around the moment where she was brought in front of the *Iudicium Terre* (Land Law Court) by her sister Margaret Salome, who wanted to strip Katherine Elizabeth of her estate after the death of all the Von Smiritz male relatives. The presentation would translate certain parts of the hearing and especially focus on the interrogation of Georgie Wagner, who was brought in front of the court as a key witness to testify how he and Katherine Elizabeth had repeatedly breached the *article 515* of *Constitutiones*. The submission concludes the story by portraying the fruitless attempts of Katherine Elizabeth to persuade the court in her favour and lastly adds a rather dramatic end to a rather dramatic story for Katherine Elizabeth.

KRIVIČNOPRAVNI STATUS ŽENA U SRPSKOM ODNOSNO JUGOSLOVENSKOM ZAKONODAVSTVU U PERIODU OD 1860. DO 1929. GODINE

Od davnina položaj žena u zakonskim izvorima prava bio je neravnopravan statusu muškaraca. U tom smislu, treba istaći da je istorijski posmatrano to naročito primetno u krivičnom zakonodavstvu. Izmene koje su u krivičnom pravu preduzimate u srednjevekovnom i novovekovnom zakonodavstvu putem usvajanja niza izvora prava bile su minimalne, bez suštinskog i temeljnog pristupa u reformisanju krivičnog položaja žena kao posebnih subjekata prava koji uživaju samostalnu pravnu zaštitu. Normativni zaokret u smislu prepoznavanja i priznavanja izvesnih prava žena u srpskom krivičnom pravu nastaje tokom XIX veka od kada su prisutni pravni akti u kojima se pridaje poseban status ženama, što se naročito ispoljavalo u oblasti krivičnih sankcija. Ipak, krivičnopravni akti usvojeni na početku tog XIX veka imali su ograničavajući karakter, budući da je poseban status žena bio regulisan na fragmentaran način, praćen uvažavanjem njihovog statusa samo u pojedinim normativnim situacijama, bez suštinske ravnopravnosti sa položajem muškaraca. Prilika za normativnu nadogradnju krivičnog položaja žena bila je druga polovina XIX veka kada se započelo sa pripremama za usvajanje Kaznitelnog zakonika za Knjaževstvo Srbiju. Ipak, uprkos tome što je ovaj zakonik 1860. godine donet, uočava se da je propuštena prilika da se položaj žena poboljša u odnosu na započete i dostignute standarde u oblasti krivičnog prava sa početka XIX veka. Navedeni zakonik i pored odsustva ravnopravnosti krivičnog položaja među polovima, ostao je u primeni sve do donošenja Krivičnog zakonika Kraljevine Jugoslavije 1929. godine. Usvajanjem navedenog zakonika načinjen je značajan normativni iskorak u cilju izjednačavanja položaja između polova i to kroz prihvatanje načela ravnopravnosti krivičnog statusa između muškaraca i žena. U tom smislu, osnovni cilj rada je da ukaže na razlike u krivičnom položaju žena prema Kaznitelnom zakoniku za Knjaževstvo Srbiju iz 1860. godine i Krivičnom zakoniku Kraljevine Jugoslavije iz 1929. godine. U ostvarenju tog cilja predmet rada obuhvata krivičnopravnu analizu odredbi iz analiziranih zakonika u pogledu krivičnih dela protiv života i tela, javnog morala, braka i porodice. U vezi s tim, u radu će posebna pažnja biti usmerena ka razmatranju položaja žene u odnosu na krivično delo nedozvoljeni prekid trudnoće odnosno ubistvo deteta pri porođaju, na krivično delo silovanja i s njim grupnim zaštitnim objektom povezanim inkriminacijama, kao i na krivično delo otmice radi zaključenja braka. Pri tome, u predmetnom analiziranju akcenat će biti stavljen na uočavanje normativnih mesta u kojima se žene pojavljuju kao učinioci krivičnih dela sa ciljem prepoznavanja razlika u odnosu na situacije kada se one nalaze u položaju pasivnih subjekata (žrtvi) krivičnih dela. Dodatno, pristupiće se razmatranju korišćene terminologije koja se tiče obeležja bića analiziranih krivičnih dela, a radi prepoznavanja načina na koji su zakonski uređena pitanja statusa žena kao učinilaca odnosno žrtvi. Imajući u vidu uočene razlike u zakonskom pristupu definisanja položaja žene u analiziranim zakonima, u radu se zaključuje da je krivičnopravni status žena od normativnog pristupa ispoljenog u Kaznitelnom zakoniku za Knjaževstvo Srbiju iz 1860. godine, u kome je njihov položaj ostao podređen položaju muškarca, progresivno unapređen Krivičnim zakonikom Kraljevine Jugoslavije iz 1929. godine kroz princip ravnopravnosti između polova, čime je prepoznata neophodnost krivičnopravne zaštite dobara žena kao samostalnih subjekata prava.

CRIMINAL LAW STATUS OF WOMEN IN SERBIAN AND YUGOSLAV LEGISLATION IN THE PERIOD FROM 1860 TO 1929

Since ancient times, the position of women in legal sources of law has been unequal to the status of men. In this respect, it should be noted that historically, it is particularly noticeable that in the criminal

legislation women did not enjoy the same legal status exercised by men. Changes made in criminal law in medieval and modern legislation through the adoption of a range of sources of law were insignificant, without an essential and fundamental approach to reforming the criminal status of women as special subjects of law, with independent legal protection. The normative turning point in terms of recognizing certain rights of women in Serbian criminal law has emerged during the nineteenth century, since legal acts giving special status to women were present, especially in the area of criminal sanctions. However, criminal law acts adopted at the beginning of the 19th century had a restrictive character since the special status of women has been regulated in a fragmentary way, followed by respect for their status only in certain provisions, without substantive equality with the position of men. The opportunity for normative upgrading of the criminal status of women was present in the second half of the 19th century when preparations for the adoption of the Criminal Code for the Principality of Serbia began. Despite the adoption of this Code, it is noted that the position of women has not been improved from the standards that were agreed upon and reached since the beginning of the 19th century. The aforementioned Code, irrespective of the absence of gender equality, remained in force until the adoption of the Criminal Code of the Kingdom of Yugoslavia in 1929. Adoption of the aforementioned Code made a significant normative step forward through the adoption of the principle of equality concerning the criminal law status between men and women. In this sense, the main aim of the paper is to point out the differences in the criminal law status of women under the Criminal Code of the Principality of Serbia of 1860 and the Criminal Code of the Kingdom of Yugoslavia of 1929. In pursuit of this goal, the subject of the paper includes the analysis of relevant provisions of the listed codes in relation to criminal offenses against life and body, public morality, marriage and family. In this connection, special attention will be paid to the consideration of the position of a woman in relation to the criminal offense of illicit termination of pregnancy, infanticide, rape and other related crimes against public morality, as well as to the criminal offense of bride abduction. In this case, the focus will be placed on identifying provisions in which women appear as perpetrators of criminal offenses, with the aim of recognizing differences with respect to situations where they are in the position of passive subjects (victims) of offenses. In addition, consideration will be given to the legal terminology of the analyzed crimes, in order to identify the normative approach in which the status of women as perpetrators and victims is regulated by law. Bearing in mind the differences observed in the legal approaches defining the position of women in the analyzed codes, the paper concludes that the criminal status of women, from the normative approach expressed in the Criminal Code for the Principality of Serbia of 1860, in which their position was subordinate to that of men, was progressively advanced by the Criminal Code of the Kingdom of Yugoslavia of 1929 through the prescription of the principle of gender equality, thereby recognizing the need for criminal protection of women as independent subjects of law.

THE POSSIBLE EXISTENCE OF MATRIARCHY IN EGYPT IN THE DAYS OF HERODOTUS AND ITS POTENTIAL ROOTS IN THE CULTURE OF THE NEW KINGDOM

The difficulty of exploring Ancient Egypt of the common populace lies in its prolific historical background on one side and the lack of actual evidence on the other. Not wanting to widen my research beyond a comprehensible scope, I set both the chronological and substantive limitations. The chronological element will encompass the timeline of Egyptian history starting with the 18th dynasty onward. The substantive is set to restrict the aspects of law to those related to the position of women that I find necessary. The article will certainly remain within the field of private law, more specifically family law.

The portion of “Histories” of the Greek author Herodotus is devoted to Ancient Egypt of his day. In one paragraph, Herodotus tells us of the marital roles in Egypt being completely different from those in his homeland. He says: “The Egyptians in agreement with their climate, which is unlike any other, and with the river, which shows a nature different from all other rivers, established for themselves manners and customs in a way opposite to other men in almost all matters: for among them the women frequent the market and carry on trade, while the men remain at home and weave”. We don’t learn much about it as it is expressed solely in a single sentence, but the way he rationalizes the things he saw gives us a suitable material for creating a hypothesis which is: “The social disposition Herodotus encountered is an example of matriarchy and that phenomenon is attributed to the specific climate and relief of Ancient Egypt.”

In the first part, the afore mentioned hypothesis will be addressed using historical documents. The “Duke” database collects a lot of papyri from the Hellenistic Egypt; the database is categorized into different sections, one of which is devoted to the topic “women and children”. I will also be using literature that specializes in presenting the Greco-Roman period of Egyptian history. The first part will, therefore, be consisted of analyzing historical sources and relevant literature and will aim to:

Find any factual proof in the original documents of a pattern that deviates from the well-established patriarchal paradigm

If established at least to some degree, present the possible connection of that occurrence with the factors Herodotus mentions (climate, relief)

The second part will deal with the alternatives. If we reject Herodotus’ hypothesis or even if we accept it with some reservations, the question of potential alternatives will arise. Once concluded that natural factors are either not the cause at all or not the only cause of the social disposition discussed here, we need to turn towards the social ones and come to understand the same institutions mentioned in the subject section but existing in the era of classical Egyptian history, the New Kingdom. This segment will remain true to the substantive limitations presented in the subject part and will only broaden the chronological scope of the research. The method will also remain the same, I will use some actual historical documents, this time from the book “Ancient Egyptian literature” that contains original Egyptian tales of the ways they conducted their day-to-day affairs. The analysis of the New Kingdom Egypt will not be as systematic. Our goal isn’t to demonstrate the overall position of the woman in that period but simply to understand it so well in order find any evidence that position laid foundations for the future ascent of what Herodotus viewed as “matriarchy”.

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MEDICAL AND POLICE COMMITTEES OF THE MINISTRY OF INTERNAL AFFAIRS OF THE RUSSIAN EMPIRE IN THE FIGHT AGAINST SEXUAL COMMERCE IN THE SECOND HALF OF THE XIX – EARLY XX CENTURY

Among the legal problems that have a gender dimension is the regulation of women's sexual commerce, which has taken various forms in different countries at different times, from the complete prohibition of prostitution to its legalization.

Historical sources indicate that "indecent" in Russia existed in the middle ages - in pubs, taverns and baths. The state authorities tried to counter this by introducing various punishments: people engaged in prostitution were whipped in public places both in the Moscow state and during the years of Imperial Russia. In Russia, the laws of Solon were not forgotten, according to which public women in Athens wore a special costume and necessarily dyed their hair yellow. In the XVIII century, during the reign of Emperor Paul, Russian prostitutes were also required to dress in yellow dresses. Those "harlots" who did not obey the established rules were sent from the towns to work in the mines.

The Russian legislation of the Russian Empire regarding prostitution strictly adhered to the prohibitive system. The law forbade "all kinds of obscene and seductive gatherings, under whatever form and name they existed." The autocrats of the Russian Empire experienced the punitive policy of antiquity in relation to prostitutes. However, despite the seemingly harsh repressive measures, fornication flourished.

In the XVIII century, in the Russian Empire, the police were created, the main task of which was determined to participate in the management of internal Affairs of the state. Issues related to combating prostitution have become the subject of the Ministry of the interior in General and the police in particular.

In 1843, the Minister of internal Affairs of the Russian Empire, L. A. Perovsky, presented a report to Emperor Nicholas I, in which he reported that venereal diseases were spreading among the population, and that they were "transmitted from one generation to another and threatened future generations with the destruction of their physical well-being." Venereal diseases were most common in towns where syphilis was most often spread by prostitutes. L. A. Perovsky proposed to organize the supervision of prostitution by creating a medical and police committee in the capital of the Russian Empire, St. Petersburg, which would have an impact on the spread of prostitution and, consequently, on the spread of venereal diseases. To stop the spread of "lustful" diseases, girls of easy virtue were supposed to be concentrated in special institutions and organized for their activities supervision. The Minister of Internal Affairs proposed opening a special hospital in St. Petersburg to treat women who were engaged in selling their bodies and were already infected with syphilis.

The Emperor supported the proposals of the Minister of Internal Affairs and approved the Regulations "on the establishment of a special women's hospital and a medical and police Committee in St. Petersburg". In 1843, the first Special medical and police Committee in the Russian Empire was established under the Medical Department of the Ministry of Internal Affairs. In 1844, such a Committee began to operate in Moscow, and later in a number of other major cities. The medical and police committees were charged with controlling brothels and "secret women".

The fact that the medical and police committees were created was important: it meant the transition to a new era of development of the institution of selling love in Russia – the era of control and regulation.

This was the official recognition of prostitution and its permission. Therefore, the 40s of the XIX century should be considered as the starting point of the history of legal prostitution in Russia.

In 1843, the first official houses of tolerance were opened in St. Petersburg, and in 1844, special rules were approved by the Minister of Internal Affairs for brothel keepers and inmates – "Rules for public women" and "rules for brothel keepers". These rules recognized the tolerance of prostitution, provided that the priestess of love was subject to police regulations and subject to supervision by the medical and police Committee.

The process of creating and functioning medical and police committees was not easy. Of the 960 cities that existed according to official data on the territory of the Russian Empire, by 1909, special bodies for the supervision of prostitution were established in 200 towns, in 258 towns these duties were performed by town police officials, and in 502 towns the regulation of prostitution was not actually carried out.

The duties of the medical and police committees included:

- search and prosecution of secret prostitutes, owners of secret brothels of debauchery, pimps and persons who promote secret debauchery;
- subordination of prostitutes to medical and police supervision and release from it with the return in cases subject to bail;
- issuing permits for the opening of brothels and supervised dens, supervision of them, and closing them;
- organization of medical examinations and outpatient treatment at observation points of prostitutes suffering from syphilis and venereal diseases; sending to medical institutions of prostitutes who are subject to inpatient treatment;
- monitoring the implementation of the rules established for prostitutes, brothels and brothels under supervision and attracting those responsible for their violation;
- care for pregnant women, patients, underage prostitutes and those returning to an honest lifestyle;
- promoting societies and institutions that seek to reduce prostitution.

The results of the medical and police committees became apparent in the short time after their formation. Prostitutes registered by the medical and police Committee turned into supervised prostitutes. This meant the legalization of their employment. Instead of a passport, these girls were given a special form-called a yellow ticket. Medical and police committees compiled lists of women engaged in body trafficking, concentrated prostitutes in officially registered brothels, and required them to undergo regular medical examinations.

By the February revolution of 1917, under pressure of the public to abolish the existence of legal prostitution, the activities of medical and police committees were curtailed. The period of legal existence of prostitution in Russia has ended. The activity of medical and police committees received a mixed assessment of contemporaries. But it should be noted that in the conditions of the spread of venereal diseases, with the localization of which medicine could not cope, medical and police committees made a certain contribution to the preservation of the health of the nation.

POLOŽAJ ŽENE U PORODIČNOPRAVNIM ODREDBAMA ZAKONOPRAVILA SVETOGA SAVE

Zakonopravilo Svetoga Save u svojoj 55. glavi poznatijoj kao Zakon gradski sadrži prevashodno rješenja iz privatnopravne oblasti, na koja se više puta pozivao i sam car Dušan u svojim poveljama (i to nakon izdavanja znamenitog Zakonika). Pretpostavlja se da je ova kompilacija vizantijskog prava služila popunjavanju pravnih praznika u domaćem običajnom *ius privatum*-u. Zakon gradski preuzima gotove pravne formulacije iz osmobjekovnog romejskog Prohirona, nekima dajući pečat vremena u kom su je kompilatori sastavljali, dok pojedine odredbe zapanjuju proučavaoce srednjovjekovlja svojom autentičnošću i nesaglasju sa izvornikom. Protograf Zakonopravila nije sačuvan, stoga će autor u radu ovom primarnom istorijskom izvoru pristupiti crpeći saznanja Ilovačkog prepisa iz 1262. godine, dajući srpskoslovenskom tekstu vlastiti prevod i hermeneutiku. Srednjovjekovno srpsko društvo ne praveći veći otklon od evropskog diferencira se na staleže od kojih se po izrazitoj neravnopravnosti ističu vlastela, zavisno i gradsko stanovništvo, te stranci. U radu će se obraditi nekoliko odredbi o položaju žene u porodičnopravnim odredbama Zakona gradskog koji pokazuju koliko sličnosti, toliko i razlike sa vizantijskim uzorom. Srednjovjekovni pravni spomenik obiluje sa normama u kojima se reguliše status žene u brak i izvan braka, uloga prilikom obručenja, učestvovanje u bračnim obavezama i pravima. Posebnu pažnju privlači normativni tekst koji tretira sklapanje braka sa ženom koja nije punoljetna, sa naložnicom, pitanje zaručničkih, predbračnih i bračnih darova, roditeljsko pravo žene u slučaju smrti muža ili razvoda braka, o nadoknadi miraza, te mnogo neobičnih situacija zabranjenih brakova. Gradski zakon sadrži mnogo kazuistike, postavljajući konkretne životne situacije i propisujući njihovo razrješenje. Pravnoistorijska perspektiva najstarijeg srpskog pravnog spomenika umnogome demantuje stereotipe koji su svojstveni široj, a nerijetko i akademskoj javnosti kada je u pitanju svakodnevni život srpskog srednjovjekovnog čovjeka. Smatramo da se u cijeloj 55. glavi Zakonopravilapravnim položajem žene izdvajaju odredbe o porodičnom, tačnijem bračnom pravu u odnosu na ostale iz nasljednog, stvarnog, obligacionog, krivičnog i sudskog prava. Nezaobilazno je spomenuti da je kod pojave Zakonopravila u amfornoj feudalnoj strukturi srpskog srednjovjekovnog društva došlo do raskoraka između normativnog i stvarnog zato što je nomokanonski tretman, po ugledu na vizantijske uzore, jednako tretirao sve slobodne ljude, ne praveći razliku po staleškoj pripadnosti. O tome svjedoči prepiska između ohridskog arhiepiskopa Dimitrija Homatijana, koji je pozivajući se na odredbe Prohirona i Vasilika presuđivao u privatnopravnim sporovima, pogotovo u pitanjima braka, testamentima pa čak i u krivičnim stvarima. Činjenica da je Prohiron djelovao u srpskoj sredini mnogo blaže od običajnih normi, inspirisan Justininijanovim pravom proklamovao je vrhunske zahtjeve prava – jednakost i pravičnost. Nikola Radojčić pišući o staležim i njihovom položaju zabilježio je težnje Zakona gradskog da zaštiti slabijeg i siromašnijeg. Nalazeći se u dužem periodu na margini naučnog diskursa istorijskopravne nauke – Zakonopravilo Svetoga Save danas postavlja pitanja i zahtjeva sistemsko proučavanje. Ovaj rad je skromni doprinos pomenutog cilja ali i poimanju statusa koji je žena uživala u određenom periodu srednjovjekovne srpske države.

POREĐENJE PRAVNOG POLOŽAJA ŽENA U SRPSKOM GRAĐANSKOM ZAKONIKU IZ 1844. I ITALIJANSKOM GRAĐANSKOM ZAKONIKU IZ 1865.

Pravni položaj žene je drevna tema o kojoj se nesumnjivo mnogo raspravljalo, a takođe isto tako sa nepromenjenim šarmom shvaćena je i na prvim stranicama studije koju je Gaba (Carlo Francesco Gabba) sproveo o „pravnom stanju žene“. Codice civile iz 1865. godine je ženama dao revolucionarna prava za ta vremena: pravo zakonskog nasleđivanja ili patria potestas nad decom u slučaju udovstva. Ipak, žena je i dalje bila pod pravilima zakona i njenog supruga i porodice iz koje je dolazila, pa čak je postojalo i uverenje države o ograničenoj sposobnosti upravljanja sopstvenim životom, izuzev nesporne uloge čuvara kućnog ognjišta. Dovodio se u pitanje i njen moral. Gaba je govorio: "Danas se pričaju dve stvari o moralnosti žene: kaže se da one žrtvuju za luksuz i modu, pa tako gube ljubav prema kući i kućnim poslovima. Obe optužbe su veoma tačne“.

Pravni status žene je, prema Codice civile-u iz 1865. godine, iako on predstavlja svojevrsan napredak po pitanju njenog položaja u društvu, i dalje bio veoma diskriminisan. U braku, žena je bila podređena mužu koji se smatrao "glavom porodice", morala je da ga prati i da ima isto prebivalište, preuzela bi njegovo prezime po stupanju u brak (čl. 131); nije mogla sama da obavlja pravne poslove poput kupovine ili prodaje robe ili stvari, čak iako bi ta stvar bila njena; nije mogla da se bavi trgovinom bez izričitog pristanka muža. Muž je imao zadatak da štiti svoju ženu, da je drži blizu, da odlučuje o troškovima, da održava porodicu u skladu sa bogatstvom koje je imao. I žena je, međutim, morala da doprinese održavanju svog muža, ako on nije imao dovoljno sredstava, i morala je da doprinese troškovima porodice mirazom.

Tokom pripremnog rada Italijanskog građanskog zakonika, neki važni pravници (Oreste Regnoli, Giuseppe Pisanelli, Francesco Restelli itd) hteli su da usvoje austrijska pravila koja se odnose na prava žena, ali na kraju je prevladao franko-pijemontski model, koji je bio rašireniji i poznatiji u italijanskim državama pre ujedinjenja, tako da je tekst iz 1865. godine u velikoj meri bio inspirisan patrijarhalnim i autoritarnim principima. Preuzeta su Napoleonska pravila o bračnom odobrenju (članci 134, 135, 136), državljanstvu i prebivalištu (čl. 9: „strana žena koja se uda za državljanina stiče državljanstvo, a takođe zadržava udovicu“; čl. 4: „državljanin je onaj čiji je otac državljanin“; čl. 7: „tek ukoliko je on nepoznat, biće državljanin ukoliko je majka građanin; čl. 14: „žena državljanin koja se uda za stranca postaje stranac, pod uslovom da činjenicom braka stekne državljanstvo supruga“ itd), o različitom postupanju sa preljubom (član 150), o patria potestas (čl. 220: „bez obzira na godine, dete mora da poštuje i poštuje roditelje; podložan je roditeljskom autoritetu do punoletstva ili emancipacije; za vreme braka ovu moć vrši otac, a ako to ne može majka“), o zabrani traženja očinstva (čl. 189, 190), o nemogućnosti svedočenja (čl. 268, 351, 788), o nemogućnosti raspolaganja imovinom (čl. 1399: „Jedino muž raspolaže imovinom tokom braka, samo on odgovara poveriocima, može da pribira plodove i kamate i da zahteva povraćaj novca“; čl. 1438: „muž može samostalno da upravlja stvarima iz zajedničke imovine, ali ne može da raspolaže samostalno“). Ovim ozbiljnim ograničenjima dodata je zabrana obavljanja funkcija sudije i tužioca (čl. 10 i 156 italijanskog Građanskog zakonika) i nemogućnost učešća u političkom i administrativnom životu s obzirom da građani nisu imali pravo glasa niti pristupa na javnu funkciju.

Za razliku od Italijanskog građanskog zakonika koji je, naravno i dalje ostavši u okvirima patrijarhalnog društvenog uređenja, ženama nesumnjivo dao revolucionarna prava, Srpski građanski zakonik je u trenutku

donošenja može se reći ne previše uspešno regulisao položaj žena tadašnjeg vremena, zbog čega se kasnije i smatralo da je na određen način i izvenerio očekivanja koja su u njega položena.

Kada sagledamo aspekt položaja svih žena u društvu, jasno se vidi da su udate žene imale najgori položaj. Svakako za nijansu bolji položaj imale su neudate žene i udovice, za razliku od kojih udata žena nije bila subjekt priznanja poslovne sposobnosti, a upravo to se i spominje u članu 920. SGZ-a : „Mladoletnima udobljavanju se i svi oni, koji ne mogu, ili im je zabranjeno sopstvenim imanjem rukovati; takvi su svi uma lišeni, raspikuće sudom proglašene, propalice, prezaduženici, kojih je imanje pod stecište potpalo, udate žene za života muževlja.” Muž je smatran glavom porodice i imao apsolutnu vlast u porodici. U odnosu na njega žena je imala potčinjenu ulogu, a to je podrazumevalo da je morala da sluša i izvršava sve muževljeve naredbe. Takođe žena nije samostalno mogla da preuzima pravne poslove bez muževe saglasnosti. U pogledu nasleđivanja je vladala jasna nejednakost između muškaraca i žena gde ženama uopšte nije dato pravo nasleđivanja u zadruzi, da bi to pravilo jednim delom bilo korigovano dopunom SGZ-a iz 1859. godine kada je ćerkama dato pravo da naslede svoje očeve ukoliko oni nisu imali muških potomaka.

Iz svega navedenog da se zaključiti da je položaj žene u 19. veku u velikoj većini društava bio i dalje potčinjen, ali ostaje činjenica da upravo pitanje u kojoj meri je to bilo u svim društvima i dalje manje ili više ukorenjeno, zavisi od svakog društva odnosno države ponaosob. Upravo to je možda najbolje vidljivo na primeru poređenja italijanskog i srpskog društva toga vremena.

Smatramo da je bitno uporediti ova dva zakonika jer se u srpskoj literaturi niko nije bavio analizom položaja žena u Italijanskom građanskom zakoniku iz 1865, jer se najveći broj pisaca bavi analizom Francuskog građanskog zakonika iz 1804. i Austrijskog građanskog zakonika iz 1811. Osim toga, SGZ iz 1844. i IGZ iz 1865. su napisani u približno istom periodu, u razmaku od dve decenije (dok su FGZ i AGZ napisani 4, odnosno preko 3 decenije pre SGZ-a), što čini korisno poređenje njihovih odredaba po predmetom pitanju. Konačno, SGZ je napisan po uzoru na AGZ jer je Hadžić bio austrijski učenik i bio mu je poznat AGZ, a IGZ iz 1865. je napisan po uzoru na FGZ jer je upravo ovaj zakonik bio poznatiji u italijanskim državama pre ujedinjenja, što čini poređenje relevantno i sa istorijskog aspekta njihovog donošenja.

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FEATURES OF THE CRIMINOLOGICAL CHARACTERISTICS OF WOMEN CRIMINALS ON BELARUSIAN LANDS

Our country is a legal state, and each person has a legal status that determines the position of man in the state and society. The structure of the legal status includes rights and legal obligations, legal interests of an individual, legal personality, citizenship, legal responsibility. The only normative legal act and source of criminal law of the Republic of Belarus establishing criminality and punishment of an act on the territory of the country is the Criminal Code of the Republic of Belarus. The Criminal Code of the Republic of Belarus promotes both the prevention of criminal attacks and the education of citizens in the spirit of compliance with the legislation of the Republic of Belarus, regardless of race, gender, social status.

Criminality of women differs from criminality of men the scales, character of crimes and their consequences, that sphere in that they take place, role women execute here that, choice of victim of criminal trespass, influence on their offences of domestically-domestic and concomitant to them circumstances. These features are related to the historically conditioned place of woman in the system of public relation, by her social roles and functions, her biological and psychological specific.

A woman, as the subject of a criminal act, appears in the sources of law at least as the object of the crime. Representatives of all estates of feudal Russia, except slaves, were capable persons, subjects of the right, and therefore independently bore responsibility for crimes. Church regulations represent a large group of offenses for which a woman was obliged to bear punishment (regardless of social class affiliation - fines are not differentiated). One of them was adultery for which the church ordered a divorce; moreover, the husband had the right to divorce his wife for a number of other reasons amounting to adultery.

In addition to adultery, committed by both married and unmarried "wives", there were also other offences of moral order. The punishment was especially strict for women who committed childish "mental abuse", "distortion" of the child, using different "potions" for this purpose. The church allowed such "wives" to be "executed" by their husbands, i.e. punished.

As women in Russia frequently participated and in various scuffles, the Charter of Prince Yaroslav not only has allocated in special article "fight on female" (bites, "clothes"), but also has entered special punishments for the beatings put to the own husband, and also other woman. In the latter case, the fine was twice as high: 3 hryvnia for beating her husband, against 6 hryvnia for beating a woman by a woman.

Since the beginning of the XIX century, the attitude to women in society is changing, women claim social, political and material rights. Recognition of the fullness of a woman's personality, freedom of her love, femininity occurred all over the world, women are no longer considered "things".

Women more often begin their criminal activities at a more mature age under the influence of family conflicts, an unfavorable situation. Of the identified women who committed the crime, more than half are people over thirty years of age. Among women of thirty and especially forty years, the proportion of single people is high, due to the breakdown of their marital relations and the loss of parents. At the same time, it is at this age that women are most active in social production, their social contacts are expanding. In these years, women are appointed to leadership positions.

By educational level, various groups of women criminals are not much different from each other. The largest share among criminals is occupied by those who have completed secondary education (over 40%). There are many people with secondary specialized education - almost one in three. As a rule, the educational and cultural level of the perpetrators is lower than that of law-abiding citizens.

Among juvenile delinquents, the proportion of those who do not work and do not study is high. Today the situation for women who have been released from places of deprivation of liberty is unfavorable. They are not taken to work, and if they are taken, then to the dirtiest, hardest and least paid jobs. As a result of these factors, the ranks of female offenders without a fixed place of residence and occupation are growing, which in some cases pushes a woman to commit a new crime.

By the time the crimes were committed, more than half of the women were married. Those who had not been imprisoned subsequently tended to have preserved their families. Family matters are much worse for those serving their sentences in prison. According to many observations, a man actually or legally starts a new family quite quickly, sometimes even immediately after his wife's conviction.

As for the health condition of criminals, 25-30 % of women sentenced to imprisonment had various mental anomalies. There are slightly more abnormal offenders among minors. Moreover among them there are many who have been diagnosed with venereal diseases. Thus, about two out of every 100 convicted girls were diagnosed with syphilis and another two or three with gonorrhoea.

In connection with the crime committed, women feel guilty, concerned about their continued existence. While serving their sentence in a corrective labour institution, they tend to change the existing situation for the better. A high level of anxiety and emotional vulnerability among women offenders is noted is observed. In the study of violent criminals, it should be noted that they are more active and excitable compared to women who have committed self-serving crimes.

Women's criminal behavior is characterized by impulsivity, they are more sensitive and less logical than men. Psychological studies of convicted women showed that among them there are those who have neurotic disorders. Anxiety-depressive states are also common among them, the future is drawn by them in a gloomy light. It must be remembered that women are more suggestible than men.

So, the identity of the perpetrators has a number of distinctive features:

1. demographic,
2. moral,
3. criminal law,
4. psychological.

These distinctive features and personality traits of criminals determine the specificity of their criminal behavior, which is largely different from the same behavior of men and, of course, depends on what kind of criminal acts are committed.

As a result of changes in the social status of women and their increased social activity, women offenders have been given more opportunities to prepare thoroughly for crimes, such as embezzlement of state property, hiding traces of criminal acts, selling the stolen property, hiding from the investigation and court, etc.

BRAČNI PROPISI U ŠERIJATSKOM PRAVU

Šerijatsko pravo temelji se na verskim propisima koji se izvode iz Kur'ana. Kur'an je Muhamedu, kao poslednjem božijem poslaniku, preneo anđeo Džibril. Pošto Kur'an sadrži božiju poruku ljudi se moraju ponašati u skladu sa onim što ona sadrži kako bi živeli posle smrti. Dakle božja volja odlučuje šta je halal, dobro i šta je haram, zabranjeno. Odatle proizilazi činjenica da vrhovno pravo pripada Alahu koji je stvorio svet i preneo svoja ovlašćenja na čoveka koji sprovodi zakonu ime Boga.

Muhamed nije pravio separaciju na verske i svetovne odnosno sekularne zakone. Opis ovakvog stanja dao je profesor Fikret Karčić sa Fakulteta islamskih nauka u Sarajevu: „Smatra se da je u Islamu pravo isto što i teologija u Hrišćanstvu to je najtipičnija manifestacija verskog učenja. Pravo nije samo element ukupnog islamskog učenja već i njegov funkcionalni izraz“. Kako bi se Islam ostvario potrebno je pravo koje će vas kažnjavati ako ga ne poštuju a samog prava nema bez države.

Na šerijatsko pravo uticaj su imali predislamski i strani običaji koji su postojali mnogo pre islama. U bračnom pravu приметni su uticaji prethodnih kultura koje su postojale. Ovaj uticaj se dogodio nakon što su nomadski narodi osvojili ili prostore na kojima je živelo sedelačko stanovništvo koje je već imalo razvijene zakone koji su nastali pod uticajem pravnih transplanata. Po ovoj teoriji većina kanonskih hadisa nije proistekla od Muhameda već je nastala kasnije i samo je ubačena pravnim transplantima. Islamski naučnici odbacuju ovakav istorijski razvoj.

Sklapanje braka bi se odvijalo tako što bi muškarac dao mladincima oca venčani dar „mehr“ koji se davao pre sklapanja braka kao vid garancije da će brak biti sklopljen. Suprug bi ženi dao na početku deo iznosa mehra a ukoliko bi došlo do razvoda muž bi morao da ga isplati u celini. Slična pojava postojala je u Mesopotamiji, gde je na početku braka muž davao „tirhatu“. Muškarac je po šerijatskom pravu mogao živeti u ograničenoj poligamiji sa do 4 žene.

Brak između slobodnih ljudi i robova je bio moguć. Sam rob mogao je imati samo dve žene. U ovom slučaju važno je pravilo da bračni partner ne sme biti njegov gospodar a deca iz ovakvog braka su se smatrala slobodnom ako ih otac prizna. Gospodar je mogao da zasnuje i zajednicu sa svojom neudatom robinjom, koja se zvala konkubinatom. Drugi vid braka sa robinjom bi nastajao otmicom u kakvom ratnom pohodu. Dugo je važno pravilo da se nakon ratne pobede otimaju žene i devojčice i da se one posle toga venčavaju, kao u narodnoj pesmi „Banović Strahinja“. Smatralo se da zarobljavanje razrešava bračnu vezu.

Pored toga postojala je još jedna vrsta privremenog braka koji se zove „mut`a“. On bi se sklapao tako da traje na određeno vreme a završavao bi se istekom predviđenog perioda. Na kraju bi žena dobila naknadu za provedeno vreme. Potomstvo rođeno u ovoj vezi smatralo se zakonitom.

Da bi se razveo muškarac je trebalo da tri puta izgovori određenu formulu „talak“.

Deca bi bila smatrana zakonitom pod uslovom da su rođena u braku ili u određenom vremenskom periodu posle braka. Ovaj vremenski period bi trajao i do dve godine i smatrao se za tzv. nenormalnu trudnoću.

U ovom članku analiziraću šerijatsko pravo i njegov uticaj na pravnu politiku sa naglaskom na bračno zakonodavstvo koje je veoma specifično u odnosu na pravno-političke sisteme drugih država srednjeg veka. Objasniću razlike i sličnosti sa drugim pravnim sistemima iz kojih su uzimani pravni transplantati i iz kojih su dolazili uticaji.

PRAVNI POLOŽAJ ŽENE U DUŠANOVOM ZAKONIKU, SA POSEBNIM OSVRTOM NA VLASTELINKE

Dušanov zakonik predstavlja jedan od najvrednijih pravnih spomenika srpskog poznog srednjeg veka. Kao kodifikacija, on sadrži najvažnije odredbe iz više pravnih grana i uređuje neka pitanja kojima je, do tada, bila posvećena relativno slaba pažnja. Istovremeno, on pokazuje domete tadašnje nomotehnike, pošto uklapa odredbe proistekle iz srpskog pisanog prava u toku prethodnih nekoliko vekova i običajnog prava iz ranijeg perioda, kao i uticaje iz romejskog (vizantijskog) prava koji su se ispoljili na direktan (kroz pravne transplante) ili indirektan način (recimo kroz strožu kaznenu politiku). Ovaj Zakonik nastavlja ranije uređenje pravnih odnosa na tragu domaće pravne tradicije, posvećujući dosta pažnje legalizovanju društvene stratifikacije: utvrđujući pravni položaj različitih kategorija stanovništva na različite načine, sledeći tako načelo formalne pravde. Pored njihovog društvenog statusa, veliki uticaj na njihov položaj imao je i njihov pol: kroz uređenje generalnog položaja „sirote prelje“ (čl. 64 ¹) i procesnog „sirote“ (čl. 71), kao i kroz druge odredbe o pravnom položaju žene.

Na potpunom drugom delu socijalnog spektra nalaze se pripadnice vladajućeg staleža – vlastelinke. O njima govore norme sa manjim stepenom distingviranja: dok kod vlastele podela na veliku, „običnu“ i „sitnu“ – vlasteličice, ima veliki značaj, kod vlastelinki je ona potpuno zaobiđena. Na njih se nailazi osobito u materiji naslednog („o umrloj vlasteli“), manje u krivičnom („o nasilju“) i drugim granama prava. Bilo da se vlastelinka sreće kao titular određenog prava (primerice, na oslobođenje otroka) ili kao žrtva ili učinilac krivičnog dela, zakonodavac je smatrao da se posledice njenog pojavljivanja u tim ulogama moraju posebno urediti. Njen pravni položaj je time posebno ojačan u odnosu na žene iz drugih društvenih grupa, premda je i dalje lošiji od vlasteoskog. Pored temeljne analize svih pomenutih regula, u radu će biti obrađene i specifičnosti primene ostalih, „neutralnih“ pravila na žene u Dušanovom carstvu.

Posebni delovi Zakonik tiču se „gospođe carice“, za koju se vezuju i određena pitanja iz javnog prava. Njen položaj je interesantan zbog toga što lebdi između zvanja vlasteline (sa svim posebnim svojstvima koje ono nosi) i činjenice da se često javlja u pojmovnom paru sa „gospodinom carem, po čemu se zaključuje njen značaj. Ovo osobito zbog činjenice da je pomenuta na više mesta u Zakoniku nego kralj, odnosno prestolonaslednik.

Najposle, valja se dotaći i činjenice da Zakonik ne govori na jedinstven način o subjektima prava, s obzirom na njihov pol. Na nekim mestima se koriste generični termini „ko“, „čovek“, „ljudi“, što otvara mogućnost jednake primene prava, nevezano za pol; na drugim, pak, naglašava se da određene norme važe i za muškarce i za žene: „I kaluđeri i kaluđerice...“ (čl. 18.); dok se na trećim govori o pravilima koja važe, naizgled, samo za muškarce. Kod ovih poslednjih se, podrobnom analizom, može uvideti da nije postojala nikakva prepreka za njihovu shodnu primenu i na suprotni pol, u pojedinim slučajevima, što je u drugima bilo potpuno isključeno.

Na samom kraju, biće izvedeni zaključci o pravnom statusu žene/vlastelinke u Srpskom carstvu, kao i njihovo stavljanje u kontekst prava nemanjičke Srbije, koristeći se dostupnim saznanjima.

¹ Svi članovi navođeni su prema Bistričkom prepisu Dušanovog zakonika.

THE LONG WAY TO THE CUSTODY OF THE MOTHER OF HER CHILDREN IN THE AUSTRIAN CIVIL LAW

The first Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch = ABGB) from 1811 gave a woman almost no possibility to gain custody of her children. Instead it stipulated a “fatherly authority”(patria potestas), which granted the father the sole guardianship of his legitimate children. If the father died or for some other reasons, was unable to exercise his “fatherly authority”, the court had to appoint another guardian, who had to legally represent the children, look after their finances, and make important decisions for them. With regard to choosing a guardian for the children, the wishes of the children’s father were primarily considered. He was able to choose a guardian for his children through testamentary disposition. Otherwise, the paternal grandfather became the guardian of the children. Women were completely excluded from the guardianship. The exclusion of women was based on the assumption that women did not have the necessary mental and intellectual abilities to exercise the guardianship of the children.

An exception only existed for married mothers and paternal grandmothers of legitimate children. On the one hand, the drafters of the Austrian Civil code considered females to be incapable of being a custodian of children, however, on the other hand, they believed that the limited intellectual abilities of married mothers and paternal grandmothers were compensated by their deep love for the children. Based on this assumption, the guardianship of the mother or the grandmother seemed to be in the best interest of the children, if the father had not made any other testamentary order and the guardianship of the paternal grandfather was also impossible. Nevertheless, if a woman (married mother or grandmother) became the guardian of a child, the court always had to appoint another male guardian to her support.

The father possessed no “fatherly authority” over illegitimate children. According to the Austrian Civil Code, illegitimate children had no legal guardian. Therefore, the courts always had to appoint a guardian for them. Neither the paternal nor the maternal family had a legal claim to such an appointment because according to the Austrian Civil Code, the illegitimate child had no legal relatives apart from the mother. In spite of that, the unmarried mother could not gain the custody of her illegitimate children, whereas the father could be appointed as guardian.

The regulation of the guardianship of women in the first Austrian civil law codification(ABGB 1811) was even more restrictive than the rules in other Civil Codes of this period, like the Prussian, the French, and the Bavarian Code. In Austria it was a major step backwards because the preceding rules in the regional laws for certain areas had not excluded women from guardianship. According to the regional laws, primarily the widow received the guardianship of her children especially if her husband died.

The statutory provisions of guardianship in the Austrian Civil Code were based on the traditional concept of extended families. The drafters of the ABGB considered the guardianship of fatherless orphans as the general case. Especially the legal regulations concerning the custody of illegitimate children could therefore not be taken into account realistically. With regard to the changing family structures, the ABGB's rules concerning guardianship soon proved to be completely inadequate.

However, the first improvement in the legal status of women concerning custody only took place about hundred years after the Austrian Civil Code had come into effect with the first legislative amendment to the ABGB in 1914 (1. Teilnovelle 1914). The law change made it easier for the widow to demand custody

of her own legitimate children. From this moment on, guardianship had to be offered to her before the paternal grandfather. The remarriage of the mother had no effect on her status as a custodian.

The absolute exclusion of other women, apart from the married mother and the paternal grandmother, was also abolished. Unmarried mothers were now at least able to apply for custody of their children. Unlike married mothers, however, they had no legal entitlement to the custody. In reality, custody was rarely transferred to the unmarried mother by the courts, which was probably connected to the prejudice that unmarried mothers lacked moral qualities.

Nevertheless, it still took a long time until the discrimination of women in the custody law finally ended. As part of the great family law reform in the 1970s, the custody law of the Austrian Civil Code (ABGB) was changed. The parents of the marital child were entitled to joint custody by law. The sole custody over illegitimate children was granted to the mother.

In my paper, I would like to discuss the position of women concerning custody in the first Austrian Civil Code from 1811. Firstly, the legal provisions of the ABGB and the causes for the large exclusion of women from guardianship will be presented. Then the slow but continuous expansions of the legal possibilities of women to gain the guardianship of their children will be analysed in relation to family structures and social rules. Austrian legal history research has so far lacked an analysis of the causes for the improvements of women concerning custody due to the first legislative amendment to the ABGB in 1914. This gap will be closed with the planned essay by using legislative materials and contemporary literature.

LEGAL STANDING OF WOMEN IN ANCIENT ATHENS

Legal standing of women in ancient Athens is not well documented as there aren't many historical resources on which the research can be based. Nonetheless, from what is known, mainly about the family standing of Athenian women and their household position we can derive knowledge about their capacity to have legal rights and obligations in that epoch, especially their right to marry, right to property and inheritance, as well as petty trading. In reality very little is known about the legal or social position of Athenian women until the time of Drakon, the first lawmaker of Athens. In this paper I would like to discuss the Athenian laws governing marriage, adoption, inheritance, property transfers, the treatment of orphans, and generally the protection of women who were legally unable to aid themselves. Therefore, this paper will cover the laws of most important Athenian lawgivers, Drakon, Solon, Pericles law on citizenship, woman as *oikos*, contraception and abortion, property, and other careers they could have undertaken.

Athenian authors of the classical period imagined a mythical past where women were subject to similar restrictions in their legal standing and social roles as in their own time. Greek Drama often portrays female characters in the settings of Mycenae, prehistoric Thebes, or Athens at the time of the kings. Those women resemble Athenian wives, concubines, mothers, sisters, or daughters in their roles and, despite a wide variation of temperament and degrees of conformity with established rules, obey or disobey the same social conventions as 5th or 4th century Athenian women.

First, the law of Drakon probably enshrined into the letter of the law the existing concept of what is a family. By naming the female members of a man's household this law defined the family as a wider unit encompassing all free females and went as far as to include even slave-concubines. This widely defined entity, consisting of all the persons that lived in a household and all its assets was called *oikos*. Aristotle saw the city-state (polis) as a constellation of *oikoi*, and his remark certainly underlines the importance of the family-unit in Greek public as well as private life.

The second major implication of Drakon's homicide law was the recognition of the sanctity of the family and family life. No matter how powerful or influential a person was, he still did not have the right to enter someone's house and seduce or force the women under this man's authority, for the law provided the most efficient deterrent: self-help. The main reason behind it probably was the fact that the state had interests in the continuation of the population and the upholding of traditional values, and saw the family as the custodian of these important matters. Women in ancient Athens had no legal personhood and were assumed to be part of the *oikos* (household) headed by the male *kyrios* (master). In Athenian Society the legal term of a wife was known as a *damar*, a word that is derived from the root meaning of "to subdue" or "to tame".

The legislation of Drakon was largely replaced by that of Solon a generation later. Solon considered carefully the role of the family in the institutions of the state, and was the first to introduce extensive social legislation. He probably introduced laws governing marriage, adoption, inheritance, property transfers and the treatment of orphans. Moreover he introduced laws on the orderly conduct of women some of which were seemingly not enforced in the classical period.

Until marriage, women were under the guardianship of their fathers or other male relatives; once married, the husband became a woman's *kyrios*. While the average age to get married for men was around 30, the average age for women was 14. As women were barred from conducting legal proceedings, the *kyrios*

would do so on their behalf. Athenian women had limited right to property and therefore were not considered full citizens, as citizenship and the entitlement to civil and political rights was defined in relation to property and the living means. If there was a death of the head of a household with no male heir to inherit, then a daughter may become the provisional inheritor of the property, known as epikleros. Later, it was common for most of the women to marry a close relative of her father if she became connected to that property. However, women could acquire rights over property through gifts, dowry and inheritance, though her kyrios had the right to dispose of a woman's property. Athenian women could enter into a contract worthless than the value of a "medimnos of barley" (a measure of grain), allowing women to engage in petty trading. Slaves, like women, were not eligible for full citizenship in ancient Athens, though in rare circumstances they could become citizens if freed. The only permanent barrier to citizenship, and hence full political and civil rights, in ancient Athens was gender. No women ever acquired citizenship in ancient Athens, and therefore women were excluded in principle and practice from ancient Athenian democracy.

The first major change in the definition of the family under the democratic constitution came in 451, when a law introduced by Pericles stated that only the offspring of two Athenian citizens could be citizens. The Periclean law formally recognized Athenian-born women as citizens in their own right, and sanctioned their role in the continuation of the citizen body. Women until then were participants of the polis only in the sphere of religion, where they could hold priestly offices and perform ceremonial duties in public gatherings. After the Periclean citizenship law Athenian women are recognized as participants in the state, even if not fully, and this comes with certain obligations.

LEVIRATE MARRIAGE THROUGHOUT THE AGES

A levirate marriage can be defined as a union between a widow and a brother of her husband. The name itself is derived from Latin word “levir” meaning a brother-in-law. Whilst nowadays such a kind of union is not very common in the Western world (although as well not prohibited), in many other times and places it was usual or even obligatory for a widowed woman to marry a brother of her deceased husband, sometimes even if he was already married to a different woman.

The societies which practiced (or which still practice) levirate were usually traditional, agricultural cultures in which it was important to hold land (and other family’s properties) in the hands of a family for the next generations. It can be observed that presence of levirate marriage correlates with presence of incest marriage, e. g. marrying one’s cousins to preserve the property in the hold of the family. Nevertheless, there are exceptions from this rule – in the Hittite Empire (existing ca 15th to 13th century BC in the territory of Turkey), there was enacted that all kinds of incest, including marrying a cousin, are forbidden and punishable by death; it was also prohibited to have intercourse with wife’s sister or mother (although adultery itself was not legally prohibited and in fact, it was considered to be normal in Hittite society). The Hittites are one of the first nations known to practice levirate marriage and probably the first one to have precise legislation for it.

One of best-known sources of knowledge about levirate is certainly the Holy Bible. In Genesis, we can read the story of Judah’s sons: the elder of them, named Er, married a woman named Tamar and then died. His brother Onan was told by Judah to give Tamar offspring. If he had a child with Tamar, he or she would be considered to be child of Er. Onan did not want to engender “somebody else’s” child, so he was interrupting coitus – “spilling his seed on the ground”. It is said he was “doing evil” and was slayed by God. From this paragraph, we can learn that levirate was practiced in ancient Jewish society and that a child fathered by a brother of a dead husband would still be considered to be the deceased’s offspring.

In some periods, including Hittite empire, levirate marriage was probably mandatory even if both a widow and a brother-in-law did not really want it. It is connected with a view of a wife as a property of her husband – the levirate was form of inheriting a widow, who was therefore considered to be an object of inheritance, not a subject of marriage (as a contract between two free people, as we see it now). Nevertheless, in Jewish culture, woman’s opinion was slightly more important and there was established an option of avoiding levirate. This is enacted in Deuteronomium – there was a special ritual called chalitzah (also transcribed as halizah) which allowed a widow to refuse marriage with her brother-in-law. It may be interesting that even if the deceased man had a younger brother who was a baby at the time of his death, the widow had to wait until his adulthood and then either marry him or make chalitzah; when he was a child, she was not allowed to marry any other man.

In pre-Islamic Arabic society, levirate unions were present; Qur’an did not prohibit levirate, but explicitly prohibited inheritance of a widow, as it clearly expressed that marriage can be entered into only voluntarily – so if the widow or a brother of a dead man do not want to marry each other, they cannot be forced. Nowadays, many of the societies who still practice levirate are Muslim. One of the largest nations in which old customs including levirate and sororate (a similar institute – a widower marries his deceased wife’s sister) is Kurdish nation, especially Turkish Kurds, but we can find tribes where levirate is common also in

Somalia, Nigeria or Kenya. In modern State of Israel, the practice was explicitly forbidden by halakhic authorities.

LEGAL POSITION OF WOMEN IN CZECHOSLOVAK ARMY CORPS DURING AND AFTER THE SECOND WORLD WAR

One of the most notable differences between armies of the Great War and the Second World War was certainly the proportion of involvement of women. And it is despite the tendency to assign them some more or less crucial duties regarding organisation of armed forces can be traced way back to the Great War itself. For it was then, when the very first female units came into existence. But the aforementioned tendency peaked definitely during war-driven early 40's.

On the Western front, women were even incorporated into autonomous auxiliary corps – e. g. British Women Royal Navy Service, Women Auxiliary Air Forces or American Women Army Corps. These were the previously mentioned units, which saw the light of the day during final stages of the Great War - or at least their core. During the Second World War their organisation was either somehow revived or simply observed accordingly to the earlier formulated legal framework.

On the Eastern front, however, the situation was considerably different. The Red Army did not separate men and women as for their combat involvement. There were no auxiliary female forces in charge of only certain tasks. Women were in fact counted as regular soldiers and included in standard combat units.

That brings us to the main subject of the presentation and subsequent paper. Czechoslovakia had its – more or less autonomous – political representation on both fronts. The aim of this work is to examine position of women enlisted in Czechoslovak units, created under this representation. The main focus has to be drawn to the situation on the Eastern front because of Soviet attitude towards female-soldiers – they were given the ultimate authorization to serve. However, it must be emphasized that it was not the Soviet leadership that gave it.

At first, it is crucial to present the legal framework under which operated the 1st Czechoslovak Army Corps in the USSR, also known as “Svoboda’s Army”. Since it was established with its specific autonomy, its framework was specifically autonomous, too. And these regulations, deeply rooted in the legislation of pre-war Czechoslovakia, did not enable women to enlist. Yet, they were coming. Amongst them later very popular people such as Malvína Friedmanová (later Fantová), Marie Ljalková-Lastovecká or Helena Ackermannová (later Petránková). When there was any hope to escape the gulag work camps and help the occupied country as well as suffering fellow countrymen, “the girls” (as they called themselves) were determined to help. And since the factual conditions were utmost dire, they were enabled to do so.

To accomplish that, the army leadership had to come with a solution as how to determine women position in the corps – and it did. Therefore from 1943 onwards starts a period during which arises a significant contradiction between both legislation and practice, and various levels of legislation. Army regulations started to contradict the legislation concerning army itself. The government was opposed to change that, and tried to hold existing legal *status quo*, yet the fighting conditions could not be quarrelled with words. The necessity to act gave rise to excellent female-soldiers on the Eastern front. There were medics – such as Malvína Friedmanová, apothecaries – Helena Ackermannová, and even snipers - Marie Ljalková-Lastovecká, as well as laundresses, cooks and others.

The paradox is, that this was not such a problem up until the end of the war. Many of these women wanted to stay in the army even after the war was finally over. And there was also the question of their pensions – since they literally gave up their health (if not their lives) for the country. The post-war

Czechoslovakia therefore had to harmonize on account of these women the chaos that arose in legislation during the war and finally had to define the positions of women in the army. And definition of this position, as well as the circumstances that surround it from the legal perspective, is the main goal of the paper.

Sources used are aside from the legislation itself also contemporary documents from army provenience as well as written and otherwise noted testimonies of some of the involved women.

PRAVNI POLOŽAJ KONKUBINA U ATIČKOM PRAVU

Konkubina se u grčkom pravu označavala terminom pallake, dok se za konkubinat koristila reč pallakai. Ovi termini se mogu pronaći i u Homerovim epovima i odnose se na ženu koja nije supruga, ali postoji određeni emotivni odnos sa njom. Takođe, ovaj termin je zastupljen i u mnogobrojnim grčkim izvorima o Persiji na osnovu čega se stiče utisak da je konkubinat bio vrlo rasprostranjen u persijskom društvu, pa se postavlja pitanje koliko je kontakt sa Persijom uticao na razvoj konkubinata u celoj Grčkoj, a pre svega u Atini.

U atičkom pravu konkubinat je predstavljao dugotrajnu zajednicu života između atinskog građanina i pallake, koja je najčešće bila stranog porekla. Postoje pretpostavke da su i neke atinske građanke postajale konkubine usled siromaštva i nemogućnosti obezbeđivanja miraza za njihovo sklapanje braka. Miraz nije bio neophodan uslov za sklapanje braka, ali je bio poželjan i zbog toga je siromašnim atinskim građankama bilo otežano da stupe u bračni odnos. Moguće je da su i neke atinske građanke zbog svog slobodnijeg seksualnog ponašanja postajale konkubine, jer je njihova čast dovođena u pitanje. Konkubinat između atinskog građanina i strankinje nije mogao da preraste u bračni odnos, jer se brak mogao sklopiti samo između atinskih građana, dok se može pretpostaviti da je vanbračna zajednica dvoje atinskih građana, mogla u jednom momentu prerasti u bračni odnos.

Jedan deo konkubina stranog porekla je u ovaj odnos ulazio ne svojom voljom, pošto su bile robinje. Postojale su, međutim, i slobodne konkubine stranog porekla, koje su do tog statusa mogle doći iz redova hetera, pa čak i prostitutki. Pojedini viđeniji atinski građani, a među njima je i Perikle, su ulazili u konkubinat sa ženama stranog porekla opčinjeni njihovim obrazovanjem, lepotom i životnim iskustvom. Na to upućuju i pojedini izvori koji konkubine opisuju ne samo kao lepe, već i kao mudre. S druge strane Atinjankama je bilo onemogućeno obrazovanje i učestvovanje u javnom životu polisa, sem u sferi religijskih svečanosti, zbog čega su one pojedinim atinskim građanima bile manje privlačne. Takođe, prednost konkubinata je bila u tome što se mogao lako raskinuti za razliku od razvoda braka koji je za sobom povlačio vraćanje miraza. Miraz nije pripadao supruhu, već mu je davan na korišćenje, ali je ponekad bio izuzetno vredan, pa muškarcima nije odgovaralo da se njega liše.

Za razliku od hetera i prostitutki za koje nije predviđena kazna u slučaju silovanja (Plutarh, Solon 23.1), konkubine su imale krivičnopravnu zaštitu u slučaju seksualnog napada. O tome svedoči Drakonov zakon o dozvoljenom ubistvu (Demosten 23.53), u kojem se, između ostalog, navodi da se neće prognati u egzil, zbog ubistva, muškarac koji ubije drugog muškarca uhvaćenog „na njegovoj ženi, majci, sestri, ili na konkubini koja je neophodna za rađanje zakonite (slobodne) dece“. Pošto u tekstu Zakona nije eksplicitno navedeno na koji oblik seksualnog odnosa se ova odredba odnosi, može se pretpostaviti da je ona obuhvatala i silovanje i preljubu. Konkubine, iako su uglavnom bile stranog porekla, Drakonovim zakonom dobijaju isti stepen krivičnopravne zaštite, kao i atinske građanke. Ovaj privilegovan položaj konkubine je proisticao iz činjenice da je njeno potomstvo moglo dobiti status atinskog građanina, ukoliko ga otac – atinski građanin prizna. Usled toga se kažnjavao bilo koji seksualni odnos konkubine i muškarca koji nije njen vanbračni partner, da se ne bi dovelo u sumnju poreklo deteta.

Položaj potomstva iz konkubinata se drastično menja donošenjem Periklovog zakona o građanstvu 451/450. god. pre n. e. kojim se atinsko građanstvo dodeljuje samo osobama koje potiču iz zakonitog braka dvoje atinskih građana. Nakon donošenja ovog zakona, deca koja su poticala iz konkubinata su se smatrala

nothoi (nezakonitim) licima i bila su im uskraćena građanska prava. Njihov pravni položaj se možda može uporediti s pravnim položajem meteka u atinskom polisu. Vanbračna deca u atičkom pravu nisu imala nasledna prava prema očevoj imovini, niti su mogla da naslede porodični kult. Takođe, nisu mogla da učestvuju u javnom i političkom životu polisa. Međutim, mogla su da snose kaznu zbog nedela svojih otaca, kao što se spominje u presudi Arheptolemusa i Antifona zbog izdaje, u kojoj su kaznom atimije (u smislu stavljanja van zakona) kažnjena i zakonita i nezakonita deca. Periklov zakon o građanstvu je najverovatnije označavao i kraj krivičnopravne zaštite konkubine od seksualnih napada. Uskraćivanjem građanskih prava potomcima iz konkubinata prestala je i potreba za šticećenjem njihovog porekla koje je, u stvari, i proizvelo krivičnopravnu zaštitu konkubine.

ISTORIJSKO-PRAVNI ASPEKT ZAŠTITE ŽENA KAO ŽRTAVA TRGOVINE LJUDIMA: SRBIJA POD OSMANSKOM VLAŠĆU

Trgovinu ljudima kao negativni društveni fenomen koji se razvijao kroz vekove, moramo posmatrati kroz različite aspekte razvoja društva i ljudskih prava. Pre samo dva veka se promenila percepcija ropstva, koja je postavila pravne temelje i podstakla zakonodavce da izvrše reformu postojećeg pravnog sistema. Brojnim migracijama, okupacijom i mešanjem različitih kultura tokom XV veka kada je Osmansko carstvo zavladao Srbijom, stvorili su se pogodni temelji za ekspanziju ropstva. Brojna pitanja koja se nameću, ukazuju nam na složenu problematiku iz koje možemo izvući zaključak da rodno zasnovano nasilje oblikuje sociološke, političke, bezbednosne i kulturološke sisteme. Da li običaji mogu biti iznad zakona? Da li je bunt kao socijalni odgovor na određenu pojavu potreban za progresivni razvoj pravnog uređenja društva? Rezultati usmerenog istraživanja prikazani su u radu kroz istorijski aspekt razvoja normativno-pravnih okvira, preobražaja pravne norme „ropskog položaja žene“, kao i izazova pred kojim su stajali politički moćnici srednjevekovne Srbije.

Karakterističnost koja povezuje razvojni proces ovog negativnog društvenog fenomena jeste upravo izdvajanje žene kao primarne žrtve u skoro svim oblicima ovog krivičnog dela. Međutim, ono što je danas obuhvaćeno normativnim okvirima, u dalekoj istoriji opstajalo je u formi društveno prihvatljivog ponašanja.

Srbija se oduvek nalazila na raskrsnici Evropskih puteva, a kao takva postala je zemlja porekla, tranzita i eksploatacije. U periodu Osmanske vladavine trgovina robljem bila je posao koji donosi veliki profit. Žene su odvajane od svojih muževa, dece i roditelja i prinudno odvođene ka trgovima gde su obnažene prolazile strogu kontrolu kupaca. Uz brutalno fizičko i psihičko nasilje, žena je postala senka koja hoda beogradskim tržnicama robljem i mogla se kupiti za simbolične novčane naknade. Osnov za ropstvo bilo je i samo rođenje od majke robinje, pa su kao takva, ženska deca najčešće prodavana na tržnicama u cilju seksualne eksploatacije. O tome svedoči i zapis Ašik paše Zade (Tevārīḡ-i Āl-i ‘Osmān): „Za jedne čizme su prodavali jednu robinju. I ja ubogi sam za 100 aspri uzeo jednog divnog mladića. „Nasuprot tome, politički moćnici vodili su pregovore o prinudnim brakovima srpskih devojčica i turskih diplomata, za velike svote novca. Time se posvedočava politička slabost onovremenih hrišćanskih država na Balkanskom poluostrvu. Sredstvo ženidbe i udaje služili su da se odlaže i ublaži kriza, delujući kao kopča i zaloga interesima. Sam despot Đurađ Branković vodio je ovakvu politiku, koju karakteriše ništa bolje nego udaja njegovih dveju ćerki na dve sasvim protivne strane. Na to nas podsećaju zapisi Konstantina Filozofa: „valjalo je mati da ponudi svoju kćer onome koji je izdao zapovest da se njen muž pogubi; valjalo je dobra i odana hrišćanka da ponudi kćer neprijatelju i neverniku; valjalo je da srpkinja od najplemenitijeg roda da ponudi kćer caru, koji je na svoje zastave istakao da misli razoriti i pada se potčniti srpsku državu“. Godine 1454-te je zabeleženo da je iz Srbije u Carigrad odvedeno oko 50.000 žena i dece, kada su ćerke srpskih velmoža smeštene u harem Sultana Mehmeta II, dok tačan broj porobljenog srpskog stanovništva za period vladavine Osmanske imperije u Srbiji nije moguće utvrditi. U toku celog XVI i XVII veka, pripadnici Osmanske vojske dovodili su na desetine hiljada robova sa teritorije Evrope kao ratni plen. Srpski trgovci i hrišćansko stanovništvo zajedničkim snagama pokrenuli su akciju otkupljivanja robova i osnovali Fond za otkup robova od Turaka. Kako se kroz decenije učvršćivala srpska vlast u Srbiji i Beogradu, trgovina robljem je iščezavala. Nakon što su Turci napustili Beograd, smatralo se da je u potpunosti iskorenjeno.

Nije li od koristi da se danas s posebnom pažnjom prouče one istorijske pojave koje su sličan položaj XV veka odvele u konačno ropstvo? Sudbina je htela da hrišćanima Balkanskog poluostrva ukaže jednu priliku, u kojoj se njihova moralna vrednost stavlja na iskušenje. „Da bi se Hristom nazvano stado spaslo od

vuka koji ga pogubljavaju“ žrtvovano je hiljade mladih žena. Na kraju, postavlja se pitanje, da li su u tome uspeli? Kada sagledamo problem sa vremenske distance, dolazimo do zaključka da je ropstvo i danas društvena anomalija koju smo samo definisali drugačije sa pojavom i razvojem ljudskih prava. U nasleđe su nam ostavljeni tragovi običajnog prava koji prinudni brak definišu kao jedini izlaz ekonomski, politički ili kulturološki oslabljenih porodica. Daleko u prošlosti, žene nisu imale pravo na obrazovanje, na igru, na mišljenje, na izbor. Paradoksalno, žena je bila toliko moćna da spasi državu, ali ne i sebe samu.