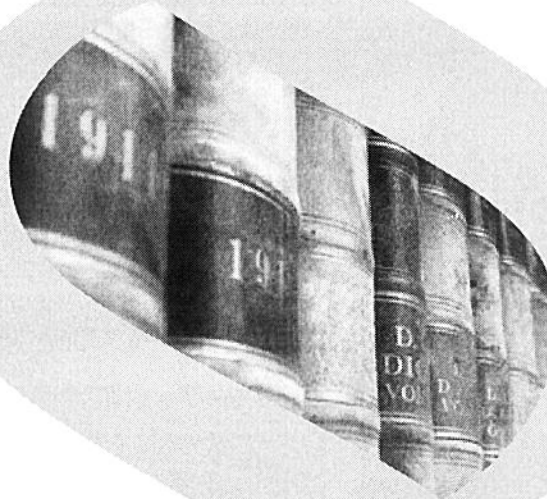


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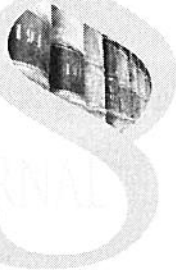
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Entitlement of Female Descendants to Property of Croatian Communal Household*

Mirela Krešić**

Abstract

The paper analyses provisions of the three legal acts on communal households which had regulated the entitlement of female descendants to communal household property. Those are the rights which the female descendants practiced in the course of division of a communal household and inheritance, as well as the right to trousseau or dowry. Furthermore, the social and economic frameworks are explained for the passing and validity of communal household laws, which had marked the second half of the 19th century, and the beginning of the 20th century in the Kingdom of Croatia and Slavonia. Of particular concern is the status of communal household legislation within Croatian legal system, which was based on the General Civil Code after the abolition of feudalism in 1848.

Key words: communal household; female descendants; household division; inheritance; trousseau or dowry; the General Civil Code; the Kingdom of Croatia and Slavonia.

1. Introduction

The communal household was an institution common on the entire territory of today's Croatia.¹ However, this paper exclusively deals with the communal households on the territory historically known as the Kingdom of Croatia and Slavonia² and in the period covered (second half of the 19th and the beginning of the 20th century) was included in the Hungarian part of the Austro-Hungarian Monarchy, to which the territory of the Military Border was annexed in 1882.³ The reason for the territorial (and temporal) limitation of the topic lies in the fact that only on this Croatian territory was the communal household legally regulated.

Although this paper focuses on Croatian communal households, the households were not common on the Croatian terri-

tory only. Croatian households, or similar institutes also existed on other Slavic territories.⁴ However, this form of a household economic community is found among other nations, and on all continents as a customary concept, typical for a specific level of development, or under specific economic and social conditions.⁵ However, the first published study on communal households referred specifically to the communal households on the South-Slavic territory, more specifically Croatian territory. Thus, in 1859 a book by Ognjeslav Utješenović Ostrožinski was published in Vienna titled „Die Hauskommunionen der Südslaven. Ein Denkschrift zur Beleuchtung der Volksthümlichen Acker- und Familienverfassung des serbischen und des kroatischen Volkes.“ Ostrožinski was a Croatian writer, lawyer and a high state

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¹ English translation of the term „*kućna zadruga*“ – communal household (Germ. Hauskommunion) is used in the paper, not the translation of the term „*obiteljska/porodična zadruga*“ (family cooperative). As synonym, instead of „communal household“ in various literature is also used english term „house cooperative“.

² Hereafter, instead of the correct administrative term „Croatia and Slavonia“ and the derived adjectives, the term „Croatia“ will be used, except where due to specific reasons it is necessary to emphasize that the Kingdom of Croatia and Slavonia as a Croatian territory with its own autonomy is exclusively concerned. On the issue of administrative names, Croatian identity and terminology, see ČEPULO, Dalibor. *Building of the modern legal system in Croatia 1848–1918 in the centre-periphery perspective*, in: Giaro, Tomasz (Hg). *Modernisierung durch transfer im 19. und frühen 20. Jahrhundert*, Frankfurt am Main, 2006, p. 50.

³ In the period between the 15th century and 1882, the Military Border encompassed the border territories of today's Croatia towards Bosnia and Herzegovina, that is towards the border with the Ottoman Empire, set up for the defense against the Ottoman attacks. Until 1850, the Military Border was organized as a separate military and administrative system, independent of the authority of the Croatian Diet and the Banus. After 1850, the Military Border was organized as one of the regions of the Austrian Monarchy. The process of demilitarization and unification with Croatia started with Emperor's manifesto of 1871, while the strategic significance of the Military Border was lost in 1878 through Austro-Hungarian occupation of Bosnia and Herzegovina. The final unification with Croatia and Slavonia was only viable upon the Hungarian – Croatian negotiations, which ended with a revised Croatian-Hungarian Settlement in 1881.

⁴ In the 19th and 20th centuries the existence of households or similar institutes were recorded in some Slavic countries, such as Bulgaria, Serbia, Montenegro and Slovakia, while in other Slavic areas, eg. the Czech Republic, they had ceased to exist. SICARD, Emile. *Raznišljanja o postojanju i konceptu kućnih ekonomskih zajednica*, in: *Socijologija sela*, Year XII, 43, 1974, no. 1, p. 28–52.

⁵ More on the study of communal households in non-Slavic nations see in PAVLIČEVIĆ, Dragutin. *Hrvatske kućne zadruge I (do 1881)*, Zagreb, 1989a, p. 46–54.

official in Vienna, born, as he had said himself, “in a communal household of the Croatian Military Border”⁶ and considered himself a good, objective observer of the communal household and the household lifestyle. Significantly earlier than Ostrožinski, the communal household was described by Hungarian scholars Mattias Piller and Ludwig Mitterpacher during their travel through Slavonia at the end of the 18th century,⁷ while the author of the first written record on the communal household was Croatian linguist Bartol Kašić. Kašić was a Jesuit and head of two Papal missions which had passed through Slavonia, among other parts. In 1612 he left a record on the communal household, i.e. on the so called “*patrijalski život*” [patriarchal life] as the communal household had been called for centuries.⁸ Still, the largest number of papers on the communal households comes from the 19th and the beginning of the 20th century, or the time of intense dealing with the communal household issues. Historian Dragutin Pavličević has dealt with the Croatian communal household most in the recent decades, and he considers it a “socio-economic, traditional phenomenon of sorts of our (Croatian auth. note) territory and society...”⁹

Multiple levels of operation can be observed in a communal household (e.g. division and distribution of work, decision making within the household, external relations, economic status). Proving particularly interesting to establish was the economic and legal position of women within the communal household. Or more precisely, which property rights to the communal household property were granted to female descendants born into the household. Namely, within households, particularly those with a large number of members, there existed the so called female subculture, comprising all the female members of a single communal household. Those women, in relation to other members of the household, held a special status, which had been a reflection of a general attitude to women in the society, so their unfavourable position within the society and weak influence can be stressed. On the other hand, the position of women in the communal household was also marked by the fact that they had had a certain economic independence, which was the result of their ability to dispose of their own

property.¹⁰ Therefore, in reality, indirectly (e.g. through the husband or son, or within their women’s circle, based on their real economic power) women could still accomplish a certain social position, and gain influence in the communal household. As the women also mutually differed within their circle, the female descendants born within the communal household and their entitlement to communal property will be discussed here exclusively, as their (economic) power in the families into which they would marry was partially based on the entitlements they had had in their native communal households.

2. Croatian Communal Households Prior to the Implementation of Special Communal Household Legislation

When, during the revolutionary 1848, feudal rule was abolished in Austro-Hungarian Monarchy, the best part of the population were peasants. In the subsequent period the peasants were forced to adjust to the newly formed economic and legal circumstances. The economic environment in some of the areas of the Monarchy at the time of the abolition of the feudal rule was not uniform. In the western part of the Monarchy the feudal relations were based on the cash tribute, while the labour tribute barely existed, or was implemented on a very small scale.¹¹ Therefore, the changes enforced, regardless of the rise in the cash tribute, did not cause too great disturbances in the life of the peasant population. At the same time, in the eastern parts of the Monarchy, including Croatia, the labour tribute prevailed for the peasant population as a consequence of the refeudalization in the 17th century. The changes, therefore, forced the peasants to a speedy adjustment to market economy, in order to make money through sufficient production to pay their obligation to former landlords and the state.¹² Apart from the economic order, legal order in the Monarchy also changed, under the influence of the General Civil Code, gradually introduced in the states of the Monarchy since 1812. The GCC was introduced in Croatia by the Imperial Patent during the Bach absolutism in 1852, entering into force in May in 1853.¹³ The

⁶ UTJEŠENOVIC OSTROŽINSKI, Ognjeslav. *Kućne zadruge – Vojna krajina*, Zagreb, 1988, p. 71.

⁷ PILLER, Mattias, MITTERPACHER, Ludwig. *Iter per Posaganam Slavoniae provinciam mensibus junio et julio anno MDCCCLXXII*. Budae, 1783.

⁸ VANINO, Miroslav. *Autobiografija Bartola Kašića*, in: Grada za povijest književnosti hrvatske, book XV, JAZU, Zagreb, 1940.

⁹ PAVLIČEVIĆ, 1989a, p. 15.

¹⁰ More on the existence of a female subculture in communal households see in RIHTMAN-AUGUŠTIN, Dunja. *Struktura tradicijskog mišljenja*, Zagreb, 1984, p. 169–172.

¹¹ GRANDITS, Hannes. *Inheritance and Social Change in the Decades of Emancipation in the Late Habsburg Empire: Some General Trends*; in Grandits, Hannes, Heady, Patrick (eds.). *Distinct Inheritances. Property, Family and Community in a Changing Europe*, Münster, 2003, p. 209.

¹² In the 17th century in the best part of Croatia the so called refeudalization took place. It was a process of return from the initial, humble capitalist forms of enterprise to feudal ones. Thus, the so called *second serfdom* was marked by an increase in labour tribute and its transformation into the main feudal tribute. The peasants became tied to the land by way of migration limitation, the opportunity for the change of their social status was narrowed down, and all the income other than from farming was cancelled. The serfs became *coloni perpetuae obligationis*. ADAMČEK, Josip. *Agrarni odnosi u Hrvatskoj od sredine XV do kraja XVII stoljeća*, Zagreb, 1980, p. 768; Comp. BEREND, Ivan, T. RÁNKI, György. *Evropska periferija i industrijalizacija 1780–1914*, Zagreb, 1996, p. 38–41.

¹³ The General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) constituted a codification of civil law, decreed by the Imperial Patent in 1811 in the Austrian hereditary lands of the Habsburg Monarchy. It was gradually introduced in other parts of the Monarchy, and in the period between 1812–1820 enforced on the Croatian territory of the Military Border, Istria and Dalmatia. In 1852, the GCC entered into force in the Kingdom of Hungary, Croatia and Slavonia, in the Serb Vojvodina, and Tamiš Banat. With the abolition of the Bach absolutism (1859) and the introduction of the October Diploma (1860) the enforcement of the GCC continued, evolving into a Croatian Civil Code in its own right, independent of the Austrian model. Following the secession of Croatia from the Monarchy in 1918, the GCC remained in the force, and the attempts to replace it with the Preliminary Principles of the Yugoslav Civil Code (1934) and the Principles of the Civil Code for the Independent State of Croatia (1943) were not successful. The GCC remained part of the Croatian legal system until the passing of the Law on Invalidity of Legal Acts Passed Prior to 6 April 1941 and During the Occupation (1946), whereupon single legal rules could be applied subject to legally prescribed provisions.

GCC was adopted with a certain amount of reserve, due to the circumstances under which it was introduced, as well as due to the liberal and individually based provisions of the Code, contrary to the interests of the ruling classes at the time.¹⁴ Although in the course of time it had proved its valour and remained in force as part of Croatian legal system even after the abolition of absolutism, the property law and inheritance law provisions of the GCC caused some problems for part of Croatian population living in communal households.¹⁵

In the period prior to 1848 and the abolition of feudalism, a significant percentage of Croatian population lived in communal households, notwithstanding their class. Using class as a criterion for the classification of the communal households, Pavličević distinguishes three types of households: 1. peasant-communal households, with the serf households until 1848, communal households of free peasants after 1848, households of colonates, leasees and fishermen in Croatian coastal areas, and households of the Military Border peasants until the accession of the Military Border in 1881. These communal households included all those who farmed the land, cattle and lived in the country; 2. noble-communal households were common among Croatian nobility, living in such communities from the antiquity, regardless whether members were high, middle or lower nobility, although they were for the best part households of the so called *nobiles unius sessionis*. Judging by the style of work, life and internal structure, the noble households had not differed from the peasant-communal households; 3. city-communal households could be found in the city and trade centres, where craftsmen, salesmen, inn owners and fishermen lived, continuing with the same activity for centuries, passing on the tradition from generation to generation. Still, Pavličević

points out that noble and city communal households were not typical.¹⁶

The communal household was prevalent among the peasant population working exclusively in agriculture, farming the serf land on manors as part of the feudal economic order. The existence of household serfs, and thus the households, is not recorded in the Tripartite, the backbone of (Hungarian-)Croatian law prior to the introduction of the GCC.¹⁷ However, the fact that the concept of ownership comprised in the Tripartite was not built upon the closed circle of property rights allowed the co-existence of the communal household and its customary law based legal order with the institutes specifically stipulated and regulated in the Tripartite.¹⁸ Thus in the feudal system a communal household was considered a subject obliged to pay feudal tribute, therefore, as the sum of all those who lived in a household on the given serf land. The property of a communal household was under joint ownership of all the members of the household, who were not necessarily family related, without established individual shares. As a rule, communal households were not divided, and there was no inheritance after decease of a household member. If necessary, a share could be established, *per capita*, whereby male members of a household would be considered, and in exceptional cases also the female members of the household.¹⁹ Apart from joint property, individually owned property of single members of the household also existed, although on a small scale, which allowed inheritance.²⁰ The turning point for the well established communal household lifestyle which came with the introduction of the GCC was the result of the fact that the GCC did not recognize the institute of joint ownership, only co-ownership as a form of ownership with a group of participating individuals, each with a strictly de-

¹⁴ MAUROVIĆ, Ivan. *Das österreichische Allgemeine Bürgerliche Gesetzbuch in Kroatien*, in: Festschrift zur Jahrhundertfeier des Allgemeinen Bürgerlichen Gesetzbuches, Wien, 1911, p. 689.

¹⁵ GAVELLA, Nikola. *Gradanskoopravno uređenje u Hrvatskoj i pripadnost pravnog poretka kontinentalnoeuropskom pravnom krugu*, in: Gavella et. al (eds.) *Hrvatsko pravno uređenje i kontinentalnoeuropski pravni krug*, Zagreb, 1994, p. 13.

¹⁶ For details see PAVLIČEVIĆ, Dragutin. *Pokušaj tipizacije kućnih zadruga*, in: *Naše teme* 33, 1989b, no. 10, p. 2653–2659.

¹⁷ The Tripartitum (*Tripartitum opus iuris consuetudinarii incluti regni Hungariae*, 1517) by Stephen Werbőczy, is the most important source for the study of the Hungarian-Croatian law, depicting vividly the laws and legal customs at the beginning of the 16th century. The Croatian translation of The tripartitum was edited by Ivan Pergošić in 1574, and was in force until the implementation of the GCC. However, it should be noted that certain differences existed between the legal systems of Hungary and the Croatian territories, which is also underlined by Werbőczy: „Because we see that the long-established laws and customs of the aforesaid kingdoms of Dalmatia, Croatia, Slavonia and (of) Transylvania vary in certain terms and articles from the laws of our country, namely this kingdom of Hungary...” (Tripart. III, 2). BAK, János M., BANYÓ, Péter, RADY, Martyn (eds.). *Stephen Werbőczy: The Customary law of the Renowned Kingdom of Hungary: A work in Three Parts Rendered by Stephen Werbőczy (The Tripartitum)*, Idyllwild CA-Budapest, 2005, p. 377.

¹⁸ Hungarian historian Jenő Szűcs calls attention to the mismatch between the Tripartite and the real position of the peasant population when he says that the legal position of nine tenths of the population of the Hungarian-Croatian kingdom is not confirmed by the provisions of the Tripartite. Although he does not, understandably, explicitly mention the customary communal household life in Croatian areas, his statement is also applicable to Croatian communal households. SZÜCS, Jenő. *Orisi triju porijesnih regija Evrope*, in: BIBÓ, István, HUSZÁR, Tibor, SZÜCS, Jenő. *Regije evropske povijesti*, Zagreb, 1995, p. 213.

¹⁹ Authors who were attempting to create a geographic map of Europe regarding the rules of inheritance in force prior to the implementation of civil codes, precisely due to the existence of communal households and the relations within, classed the territory of Croatia as the area of “the system of equally partible male inheritance” where men held the monopoly over the entitlement to ownership and inheritance. Furthermore, all the men stayed on the land, among other reasons, because the demand for the labour force was met using family members, not from outside. In the western European countries the so called “system of male impartible inheritance” existed, whereby a male member of the family would also inherit, but only one of several potential heirs – the youngest or the oldest son – since property was not divided. KASER, Karl. *Power and inheritance. Male domination, property and family in eastern Europe, 1500–1900*, in: *The history of the Family*, vol. 7, 2002, 3, p. 375–395.

²⁰ Individual property could be acquired in various ways, therefore, it could be the property which was in fact the dowry of a woman married into the household (e.g. land (although rarely) money or cattle) or money earned by a household member through employment outside the communal household (as a rule, subject to the household leader’s approval). GAVAZZI, Milovan. *Iz tradicijske kulture južnih Slavena i jugoistočne Evrope*, in: *Vrela i sudbine narodnih tradicija*, Zagreb, 1978, p. 86.

terminated share in co-ownership. Furthermore, the GCC rules of inheritance introduced the principles of inheritance stipulating inheritance equal for all types of property, and for all persons, regardless of their class and gender.²¹

The discrepancy between the new legal order and the customary law household order was the reason for the 1857 order of the Austrian justice minister Krauss for the abolition of the GCC inheritance law provisions and the related provisions of Non-Contentious Proceedings Act (1854) regarding communal households and their property. In 1858 the Ministry of Interior in Vienna invited the Croatian Locumtenential Council to draft and submit an act on the regulation of communal households. Based on the draft, the Parliament committee outlined a proposal of the act, adopted by the Croatian Diet as the Act CXII:1861. Although adopted by Croatian Diet, the act was not confirmed by the king, and the legislative work on the regulation of the communal households was postponed until the period after the signing of the Croatian-Hungarian Settlement (1868). Namely, based on the Austrian-Hungarian Settlement (1867) the Kingdom of Croatia and Slavonia was acceded to the Hungarian part of the Monarchy where it held a special status, regulated by the Croatian-Hungarian Settlement. This status guaranteed its autonomy regarding the internal administration, education, religion and justice, in charge of the Croatian parliament and the State Government headed by a Banus. After the regulation of the state issues, Croatia finally embarked on a serious quest to resolve other extremely important issues, with the issue of the communal households standing out, or the issue of keeping or removing the communal households from Croatian legal order.

3. Croatian Communal Household Legislation

Legally unregulated position of the communal household in the period after 1848, and particularly after 1853 and the implementation of the GCC proved a source of numerous problems. Long-term deferment of the regulation of the position of the communal household in the circumstances of a changed social, economic and legal frame brought to the situation where the households started dividing secretly through the agreement of the members of a household, but without participation of

a state body. In this way, without any sort of legal or social control, a large number of dwarf estates started forming, which were to prove economically inadequate to generate any kind of economic prosperity in the years to come.²² One of the reasons for a protracted resolution of the position of the communal households certainly lay in the fact that those who were in charge of dealing with this issue could not reach a consensus on what to do about the household. Eventually, three positions had formed after all on the fate of the communal household. One group was in favour of preservation of the communal household and its special legal regulation, others supported their gradual removal from the legal system, whereas the third option favoured immediate abolition of the households.²³

When legal regulation of the households finally commenced in Croatia, the idea of a liberal agricultural policy was adopted. This policy, among other, advocated exemption of a tenement or a peasant from feudal tribute, individual ownership and freedom of land exploitation for personal economic needs, or the regulation of land matters according to the provisions of the private law according to which the land was a matter of a legal transaction.²⁴ The legislative work of the Croatian Diet and the passing of two acts on communal households in 1870²⁵ and in 1874²⁶ were based on these positions. These acts were directed against the survival of the communal household as an institute which, as a relic of the past, had to be removed from the legal system and thus allow a speedier economic development. It was only the adoption of the last act on the communal household in 1889²⁷ that represented a deviation from the policy of a complete abolition of communal households. This act was passed after it had become obvious in everyday life how, due to a simplified process of division of the households by former laws, intensive demise of Croatian peasants began. In order to reduce the impoverishment of peasants, that is peasant migration from the land (this was a time of intensive internal and external migrations)²⁸ and preserve the peasant population from economic decline, it was possible not only to keep the existing communal households, but to establish new ones after the division of the old ones.

However, not everyone was seeking the culprit for the peasants' demise in liberal communal household legislation.

²¹ Prior to the implementation of the GCC, various rules of succession existed within the Croatian-Slavonian territory regarding the type of property inherited. Also, different rules of succession existed for the individuals of different estates of realm. Such state of affairs was the consequence of the estate differentiation existing in the society, of the differentiation of the object of succession regarding the means of its acquisition, as well as the distribution of such assets according to a range of various criteria. It was relevant for the process of succession whether the property inherited was hereditary property (*bona hereditaria*) or acquired property (*bona acquisita*); whether it was immovable, or movable property; and finally, whether the nobility, citizens or tenant peasants were concerned. The rules of succession for the nobility and the tenant peasants were mostly comprised in the Tripartitum, while the rules of succession for the citizens were regulated by royal charters granted to the royal free cities of Kingdom of Croatia and Slavonia.

²² According to 1895 records, 44.23% of the tenements on the territory of Croatia and Slavonia had less than 5 ha of land (cca. 3 acres) while forty years later this percentage was as high as 75.9%. More on the structure of land estates in Croatia see: ŠIMONČIĆ-BOBETKO, Zdenka. *Mijena struktura podiobne zemljišnih gospodarstava u Hrvatskoj 1895–1931*. in: *Povijesni prilozi* 12, 1993, p. 229–279.

²³ PAVLIČEVIĆ, 1989a, p. 213.

²⁴ KRIŠKOVIĆ, Vinko. *Hrvatsko pravo kućnih zadruga*, Zagreb, 1925, p. 28.

²⁵ Act IV: 1870 on communal household (*Zakon ob uredjenju zadrugah*), in: *Sbornik zakonah i naredabah valjanih za kraljevine Hrvatsku i Slavoniju* (hereafter cited as *Sbornik*), Year 1870, part XVI, no. 50, p. 295–307.

²⁶ Act of 3 March 1874 on communal household (*Zakon o zadrugah*), in: *Sbornik*, Year 1874, part IX, no. 18, p. 161–168.

²⁷ Act of 9 May 1889. (*Zakon o zadrugah*) in: *Sbornik*, Year 1889, part VIII, no. 32, p. 365–382.

²⁸ Analyzing the state of the communal household at the end of the 19th and the beginning of the 20th century in certain Croatian counties, Pavličević concludes how in some of them, the number of passport issued and the number of households dissolved in certain years was almost identical. PAVLIČEVIĆ, Dragutin. *Kućne zadruge ili struktura tradicijskog življenja*, in: *Naše teme*, Year XXIX, 1985, no. 4, p. 395.

R. Bičanić, for example, thought that “the acts on division were only an expression of the actual economic processes and did not have the crucial meaning attributed to them. Therefore, against the legalist theory of the division of the communal household we pose the economic, or the crisis theory... the legal acts were not the cause of the division of the households. They had been passed at the same time for the entire legal territory of Croatia and Slavonia since the demilitarization of the Military Border. And their effect was different in individual areas... It is naive to think that a different style of the legal paragraphs could have prevented the division of the households at the time of the agricultural crisis.”²⁹ Apart from Bičanić, similar opinion was held by V. Vernić who thought that “...the dissolution of the communal households yesterday was not caused by the Roman law, liberal legislation etc., but by the cause of this legislation: the advent of capitalism, and subjecting of the farming economy to it... through the market, loans, taxes, through banks and credit unions, scissors between the prices of industrial and agricultural products, etc. etc.”³⁰ It is true that the course of disintegration of the communal households was not uniform in all the parts of Croatia and that it depended to a large extent on the ability of a single household and its members to adjust to the new economic circumstances. Agricultural crises which gripped Europe in the 19th century presented another aggravating circumstance in the process of adjustment, with impact on the Croatian territory as well. Particularly significant was the crisis which began in 1873 and lasted until around 1895, right at the time when intensive activities were underway on the legal regulation of the communal households. Apart from great efforts required for the general improvement of Croatian economy in the sense of strengthening of commerce and industry, it was equally necessary to overhaul the entire agricultural sector and transform it from autarchic agricultural production to market oriented production. It was no easy task even for the peasant estates not organized as communal households. The situation on the land only started improving after 1895, due to a rise in agricultural protectionism of the Austria-Hungary, better prices of agricultural products and the end of the agricultural crisis. However, World War I and unfavourable post-war circumstances accompanied by famine, and the new economic crisis of the 1930s posed a new blow to the communal households. Even the most fervent supporters of their preservation became aware that the process of division of the households and their slow elimination could not be stopped. Notwithstanding all this, the 1889

Act stayed in force until after World War II, when the legal status of Croatia within (the former) Yugoslavia was changed, i.e. included in the legal system of the socialist states. The process of extinction of the communal households, which started in the mid-19th century, lasted as long as the second half of the 20th century, when communal households were removed from the Croatian legal system by the decision of the Croatian Supreme Court in 1956.³¹ Despite this, and regardless of the attempts of the communist authorities to nationalize the land above a specified maximum [size] during the implementation of the agricultural reform, nevertheless, in some areas communal households persisted, or rather, the people carried on living the household lifestyle until the 1980s.³²

Let us point out at the closing of this overview how the regulation of the legal position of the communal household intertwined with the efforts to regulate the position of the entire peasant population. Particularly considering inheritance, regardless whether a peasant estate was concerned, where a household family, or an isolated nuclear family lived. Difficulties in reaching this goal were partially a consequence of some nuclear families, as the reports from that time suggest, also lived according to the principles of the communal household.³³ It is, therefore, likely that they also had difficulties in adjusting to the hereditary, as well as the family and property right principles of the GCC. This was precisely the reason why the idea of the extension of the implementation of the GCC to include the entire peasant population collapsed. However, the attempt at a unique regulation of the position of the peasant population contrary to the GCC provisions did not succeed either, although the GCC itself provided that particular option (§761).³⁴ Croatian peasants continued living by a dual system, subject to the GCC based on the private law, and the communal household based legislation.

4. The Notion and the Legal Nature of the Croatian Communal Household

In the course of legal regulation of the communal household, the issue arose of the definition of the notion of the communal household and its legal nature. Difficulties came already with the first, and as it would later transpire, the only attempt to legally define the communal household. According to the Act of 1870, the communal household comprised more families or individuals living in communal households presided over by the household leader and with undivided immovable property used

²⁹ BIČANIĆ, Rudolf. *Agrarna kriza u Hrvatskoj 1873–1895*, Zagreb, 1937, p. 27–29.

³⁰ VERNIĆ, Vuk. *Zaštita seljačkog posjeda*, in: *Mjesečnik*, 1939, no.3, p. 128.

³¹ Supreme Court decision of the People's Republic of Croatia of 18 December 1956, see in: Milan PAVIĆ, Đuro. *Komentar Zakona o nasljeđivanju (sa sudskom praksom)*, Zagreb, 1964, p. 535–539.

³² PAVLIČEVIĆ, Dragutin. *Hrvatske kućne/obiteljske zadruge II (nakon 1881)*, Zagreb, 2010, p. 252–258.

³³ GALJER, Josip. *Osvr tna hrvatsku seosku obitelj*, in: *Mjesečnik*, 1885, p. 290–294.

³⁴ Prior to the implementation of the GCC, the hereditary systems of the western parts of the Monarchy were mostly characterized by impartible inheritance based on which a peasant's estate would be left to one heir, the male one as a rule—the oldest, or the youngest son. As article 761. of the GCC allowed the option for the peasant population to regulate the hereditary rules differently from those stipulated in the GCC, in the Austrian part of the Monarchy the existing rules did not alter until as late as 1868. Then, by the Act of 27 June, equality of inheritance was introduced regardless of the gender (in accordance with the GCC). However, the procedure customary by that time for the inheritance could not be easily removed, or ignored. In 1889 it was made possible for the countries represented in the Imperial Committee to independently regulate the issue of inheritance for medium size farms, which some of them had done. STUBENRAUCH, Moriz von. *Commentar zum österreichischen Allgemeinen bürgerlichen Gesetzbuche*, Wien, 8th ed., 1902, p. 929.

jointly (§1). No subsequent law attempted to define this term.³⁵ Nevertheless, the later acts comprised the basic characteristics of the communal household life, after all, which distinguished this type of lifestyle differed from others, and which were recorded in this first and the only legal definition of the communal household. Thus the following was common for a communal household: a) a community of several persons (predominantly) family related or (less) not family related,³⁶ b) (their) union of life and work, c) communal property (communal ownership of the household property) although individually owned property also existed, d) the authority of the household leader – who would manage the household and oversee the work in the household, as well as represent the household against third party. The powers of the household leader were mainly economic and are not to be compared to the rights the *pater familias* or the patriarch had had, although communal households prevailed in the areas for which it could be said had been typically patriarchal.³⁷ It can therefore be said that the communal household was comprised of members, both related and non-related, which had constituted the living and production union based on solidarity and the collective spirit. Movable and immovable property was under joint ownership of the household members. Besides, each household member was entitled to individually owned property called *osebunjak* or *osebina*. Freedom of disposal of joint property did not exist, unlike individually owned property which could be included in legal transactions. The household had a legal entitlement to obtain immovable and movable property, which served as acknowledgment of its legal capacity.

Numerous prominent Croatian legal experts have discussed the legal nature of the communal household. Franjo Josip Spevec in his thoughts on the household started from the viewpoint that in order to explain the legal nature of the household it was not necessary to construct an „artificial subject“, opposing in that manner the understanding of the communal household as a legal person. In his opinion, the household, comprised of several household members with equal rights and obligations indeed manifested outwardly as one subject, but a subject which does not differ from its component parts.³⁸

Unlike Spevec, Ivan Strohal saw the household as a legal person, as the actual household was considered the owner of the peasant property or the communal household property, and not the father of the family as an individual owner, or all the members of the family as co-owners. Namely, by revoking the authority to some members of the household to freely dispose

of the household property, or their share of the said property, as well as single items of the property, this household had gained “a certain property law character and had outwardly started projecting an individual personality and as a special bearer of rights and obligations, i.e. it had started presenting itself as a separate legal person...”.³⁹ Strohal, therefore, thought that the household was a legal person separate from individual members, and this separation and the existence of a separate legal person was necessary, because without that all the constituents of the communal household would not be known.

Vinko Krišković saw the communal household as an indigenous historical institute which had developed on the principles of domestic law, accepting that a special pecuniary union, the *communio*, existed among the household members. In the pecuniary relations of the household members he saw co-owner relations, granted, with significant modifications, such as non-existence of shares in co-ownership. Krišković, therefore, terms the communal household a “collective co-ownership” where each member has nominal entitlement to the entire household property, but the said property belongs as a whole to all the household members combined. Finally, Krišković considers the communal household a type of community comprised of “a multitude of individual persons, which combined constitute a subject with equal rights and obligations. On the outside it possesses singularity, and plurality inside.”⁴⁰

Ivo Krbek considered a communal household a separate legal person under Croatian law, to which the terms from the Roman law *societas* and *universitas* could not be applied. Namely, members of the household could not (until division) freely dispose of their household share, but on the other hand, in strictly specified cases, they could all together dispose of the household property. He thought that in legal relations which occurred within the communal household its legal construction as a legal person was necessary considering the existence of this duality: the household and single members as holders of the entitlement. Therefore, Krbek considers the household close to the German legal notion of *Genossenschaft*, theoretically developed by Gierke, according to which the main trait of this institute is that the legal person is a community and its many members at the same time. In accordance with this, the ownership over property is also joint, and belongs to the community, as well as individuals at the same time. Apart from that, Krbek recognizes another duality within the household, and that is the household as a pecuniary and concurrently a family union.⁴¹

³⁵ An explanation of the communal household was however comprised in the orders for the implementation of the law from 1874 and 1889, passed by the Croatian-Slavonian-Dalmatian government. See: *Decree of Implementation* (Naredba bana kraljevine Hrvatske, Slavonije i Dalmacije kojom je izdan napatuk za provedbu zakona od 3. ožujka 1874. o zadrugah), in: *Sbornik*, Year 1874, part XI, no. 21, p. 199–21, and *Decree of Implementation* (Naredba bana kraljevine Hrvatske, Slavonije i Dalmacije kojom se izdaje provedbeni napatuk k zakonu od 9. svibnja 1889. o zadrugah), in: *Sbornik*, Year 1889, part XV, no. 72, p. 620–638.

³⁶ Non-family communal households were the product of the merging of two or more households (or nuclear families) by free will, or forced. Forced non-family merging was common on the territory of the Military Border, and was conducted in order to create as large a number as possible of men available for military service. GAVAZZI, 1978, p. 83.

³⁷ A woman could be a household leader. Thus articles 6 of the Act of 1870, article 5 of the Act of 1874 and article 8 of the Act of 1889 stipulate that in the household without a male member capable of becoming the household leader a capable woman can be elected the household leader.

³⁸ SPEVEC, Franjo Josip. *O juridičkoj naravi zadruga*, in: *Mjesečnik*, 1884, no. 1, p. 6–7s.

³⁹ STROHAL, Ivan. *Razvitak zadrugnog prava u Hrvatskoj i Slavoniji*, Zagreb, 1907, p. 1–2.

⁴⁰ KRIŠKOVIĆ, 1925, p. 64–65.

⁴¹ KRBEK, Ivo. *Pravna konstrukcija hrvatske kućne zadruga*, in: *Arhiv za pravne i društvene nauke*, vol. XXXVI (LIII) Beograd, 1938, no. 1–2, p. 5–6.

The majority of discussions, as is evident from the previously presented ones, a certain legal personality of the communal household was recognized. However, non-recognition of the communal household as a "pure legal person" is evident in the communal household legislation which does not record this term anywhere,⁴² but indirectly such viewpoint stems from individual provisions of the household acts, particularly those based on which the households were entitled to obtain movable and immovable property.

5. Property of the Croatian Communal Household

One of the basic, if not the most significant traits of the communal household was the existence of the typical household property, that is the property jointly owned by all the members of the household. The household property comprised movable and immovable property, and the entitlements whose use and disposition was regulated by the communal household legislation. It was the existence of the communal household property that was the key reason for the introduction of the communal household laws, since the GCC in its system of property rights did not recognize the institute of joint ownership. The encounter of individual ownership comprised in the GCC with the joint (communal household) ownership from customary law proved an encounter of two different legal traditions leading to the existence of pluralism in Croatian private law: the GCC legal order based on individual ownership and the communal household order based on household ownership.⁴³

The Act of 1870 defined the entire movable and immovable property, as well as the households's entitlements as "the union of all its members" which had been entered into land register in the name of the communal household and "in all matters to be considered as one entity" (§4). The right to obtain immovable and movable property, as well as the entitlement to disposal thereof belonged to the communal household, in accordance with the communal household law (§5). Since within the communal household there was also individual ownership, the right to obtain movable and immovable property was also granted to individual members of the household. This property was called *osebunjak* or *osebina* and individuals were entitled to dispose of such property according to the provisions of the GCC (§19). The Act of 1874 also allowed the communal household to obtain movable and immovable property (§4) whereby for the existence of the communal households against third parties immovable property had to be entered into the land register as communal household immovable property (§3). Subject to the order from the leader of the household, each member of the communal household was obliged to work for the benefit of the household. But, subject to permission from the leader, they were allowed to work for themselves, whereby everything

they would gain or earn in this way was considered individual property of the household member which they were allowed to dispose of freely (§11). In the same manner the household property, as well as the property of individual household members was regulated by the Act of 1889 (§§3, 4, 20, 21).

6. Entitlement to the Property of a Communal Household

For the duration of the existence of a communal household, members of the household could exercise their entitlement to the property through division of the household, or through inheritance. A special way, that is to say a way of exercising the right to household property specific for the female descendants was by way of trousseau or dowry. Obtaining the entitlement to the communal household property was linked to the membership in the household whereby any (male and) female person could be a member of a communal household, provided they met certain, legally prescribed requirements.

According to the Act of 1870, a woman was member of a household if: a) she had been born into the household, or b) had married into a household, or if she had been accepted into the household: c) via special contract, d) subject to permission of the former landlord, or e) with the unspoken consent of the household in the manner that she would live and work in the household, and was not hired as a servant, for ten years, without objection from the household. Where a female child was concerned, adopted into the household for bringing up, the ten year term started running only after the female child had turned sixteen (§2). Provided these requirements had been met, it was further necessary that in the meantime the person didn't lose their membership in the household for any reason, or that they hadn't been dismissed from the household, or that they hadn't left the household of their own will. According to the Act of 1874, a woman was member of the communal household if: on 1 April 1848⁴⁴ she was a co-tenant on a household land, b) if she had been born into the household after 1 April 1848 to parents household members, or c) she had married into the household, or d) if she had been accepted into the household via special contract. According to the Act of 1889, a woman was a member of the household if: a) she held the status of a co-tenant on a household land on 1 April 1848 (the Kingdom of Croatia and Slavonia), or 7 May 1850⁴⁵ (former Military Border), b) if, after the above stated dates, was born into a household to parents-members of the household in a valid marriage, or c) she had married into the household, or d) if she had been accepted into the household via special contract. The position of a female member of a communal household based on birth into the household was subject to birth out of a valid marriage

⁴² An exception was the 1879 law introducing to the territory of the Military Border a temporary cadaster order from 1855, with subsequent changes and amendments, which specifically stated that the ownership of the communal household was entered into the land register as the ownership which belongs to a legal person "*jurističnoj osobi (družbi)*" (§ 1, art. VII., C). Act of 28 April 1879 (Zakon od 28. Travnja 1879. Valjan za hrvatsko-slavonsku vojnu krajinu) in: List zemaljske uprave za hrvatsko-slavonsku vojnu Krajinu od 18. svibnja 1879., Year VIII, no. V, p. 3.

⁴³ ČEPULO, Dalibor. *Tradicija i modernizacija: "Iritantnost" Općeg građanskog zakonika u hrvatskom pravnom sustavu*, in: Liber amicorum Nikola Gavella, Zagreb, 2008, p. 41.

⁴⁴ 1 April 1848 was the day when serfdom was abolished in the Habsburg Monarchy via the imperial order.

⁴⁵ 7 May 1850 was the day when the Basic Act on the Military Border Area (Temeljni krajiški zakon) was passed, abolishing the military vassal relations.

of her parents, both of whom had to be members of the household. This means that the child with only one parent-member of the household was not granted the status of a member of the household.⁴⁶ The validity of marriage was judged subject to the GCC provisions.⁴⁷ Furthermore, according to the GCC provisions, the communal household legislation allowed illegitimate children to obtain the status of household members based on the institute of legitimation. As the membership in a household was subject to birth to member parents, legitimation was possible only as legitimation *ex lege* (§160) or *legitimatio per subsequens matrimonium* (§161). If the child had retained the status of an illegitimate child, it could not gain the status of a member of a household (at least not based on birth into the household), but the household of the child's mother was obliged to care for the child, i.e. be in charge of its upkeep if a person obliged by the GCC to do so, i.e. the father, was prevented from doing so.

Of these, above mentioned female members of a communal household, only daughters suit our topic, meaning the female members of a communal household born into the household to parents members of the household.

6.1 Division of the Household

Division of the household was one of the ways to obtain entitlement to a share of the household property. In the feudal period division of a household was not frequent, as a rule due to reasons of economy, as the duties due to the landowners by the household members (as serfs) would be harder to fulfill. Besides, the division was subject to the landowner's permission which he, again for reasons of economy was reluctant to grant. Still, if and when division would occur, a share in the household was determined *per capita*. Such manner of division, among other things, pointed to the notion of the household as an economic unit, which could be linked through relations, but it could also be a non-relation union. When, during the regulation of the position of the peasant population of the Hungarian-Croatian kingdom, the Hungarian-Croatian Diet passed the Act VIII.:1840, it had comprised the principle of division of serf land, therefore, of a communal household serf land *per linea*. With such division the family relations within the household were emphasized, not the economic unity of all its members. Although this Act was not in force in Croatia, its passing had a significant influence in the period after 1848. Namely, due to a lack of legal regulation during the division of households the *per linea* principle was applied comprised in the said Act. Such manner of division was viewed as an unscrupulous violation of customs, as it had been considered unfounded and incompatible with the institute of the communal household.⁴⁸

Until the introduction of the communal household laws a conflict existed between the advocates of the division *per cap-*

ita and *per linea* respectively. This conflict continued even after the passing of the law. Namely, all three communal household acts endorsed the division of the household immovable property *per linea*, but at the same time the endorsed manner of division was considered their largest drawback. What had been the problem? The communal household, if its internal organization is observed, was an example of a complex form of a household where more nuclear families (parents and children) could live ordered vertically or horizontally.⁴⁹ When a communal household family was observed within the GCC framework, under the term family greatparents were considered with all their descendants (§40) while one nuclear family as its constituent part corresponded to the concept of line according to the GCC (§41). In accordance with such understanding of the image of a complex communal household family, communal household property was to be divided among individual nuclear families i.e. *per linea*. The basis for such division was the family relationship, or the transfer of rights and obligations from ancestor to descendant, i.e. intestate succession. Division according to the *per linea* principle equalled the right to request the division of the household, and the right to household property. Granting an active right of division to the representatives of a line, it had transpired that only they were entitled to household property, while all the other members of that line derived their entitlement to the household property from the entitlement of a representative of the line. This actually meant that to exercise the rights from the household the representation in the household had become the merit, not the membership as before. How many problems, as well as illogical circumstances in the course of the division of a household was brought by the implementation of the *per linea* principle is evidenced in the case of a Bedeković household from the village of Mićevac near Zagreb. This household comprised two lines. One line consisted of the representative, also the household leader, and his wife. Other line was comprised of five families numbering 36 members. In case of a division of a household, the first line (the household leader and his wife) would gain 1/2 of the household immovable property, and the second line (36 individuals) the second half of the immovable property. Although this particular household did not seek division, its example illustrates why there were objections to the division *per linea*. A potential division could provide a substantial pecuniary advantage for one line, although it was questionable how much that line had actually contributed to the household fortune.⁵⁰ The extent of the dilemma over the acceptability of the *per capita* or *per linea* principles is evidenced in the decisions of the Table of Seven, the supreme court of Croatia, as an example of inconsistency on the highest judicial instance. The Table of Seven concluded, on the occasion of the discussion of the change of the Act of 1870, that in the mat-

⁴⁶ TONČIĆ, Dragutin. *Vrhovne upravne i sudske rješidbe k Zakonu od 9.V.1889 o zadrugama i zadrružnoj noveli od 30. IV. 1902*, Zagreb, 1925, decision no. 7, p. 15.

⁴⁷ For the validity of marriage a permission of the household leader was required, and without his permission no household member was allowed to marry, and in-marrying with a female household member was not permitted. KRIŠKOVIĆ, 1925, p. 115.

⁴⁸ PAVLIČEVIĆ, 1989a, p. 189, 280.

⁴⁹ It should be noted that the household eventually lost the markings of a complex household. While in the times past the households were so large that their members could inter-marry due to the distance in relations, according to the records from 1910, of the still existing 112 065 households, 33 280 had a complex structure, while 77 234 were comprised of only one family. TONČIĆ, 1925, p. 242.

⁵⁰ TONČIĆ, 1925, p. 254–255.

ters of judging the authority of individual household members over household property, and considering general inheritance law principles comprised in the Act of 1840 and the GCC, it was just that the household property should be divided *per linea*. However, there is also a decision of the same court in which it is stated that "the only manner of division, appropriate for the nature of the communal household, and the core of the traditional customs, was that the household should be divided by heads" i.e. *per capita*.⁵¹

This system of division of communal households also reflected on the rights obtained by daughters during the division.

6.1.1 The right of a daughter to request household division and the entitlement to associated share in the course of the division

According to the Act of 1870, a communal household division had to be carried out as soon as one of the household members requested it. It was strictly prescribed who had been entitled to request the division, so, when it came to daughters, they had been entitled to it if their parents (i.e. father) had died, and they were of age. Daughters were considered of age at the age of 24, or they were considered of age, even if under 24, if they had been married. Therefore it transpires that the married daughters could request division (of their native) household, although they were married outside the household, and that was because the membership in the native household was not lost upon marriage. An exception existed for the daughters married prior to 1 April 1848. They were not entitled to request the division of the household and thus obtain any entitlement to the household property, except if "that right was kept for them by their parents staying in the household". Daughters who married after 1 April 1848, but before the enforcement of this law, could request the division of the household and the entitlement to a share of the household property only if their father had died (§45). During the division, regardless whether requested by married or unmarried daughters (or some other household member) a difference existed regarding the manner of division, depending on whether movable, or immovable property of the household was concerned. Movable property of the household was divided *per capita* among all the male and female members of the household who had turned 16 years of age. The law specifically states food, livestock feed, drink, pigs, cows, calves, foals and poultry as movable property of the household. Immovable property of a household was divided *per linea* based on the family relations and the GCC principles. Thus, a daughter, could be the representative of her line, but only provided her parents had not been alive, and obtain the entitlement to the household immovable property. In the course of the division,

for the married daughters, everything they had received from their household as dowry upon marriage was deducted from their share (§32).

According to the Act of 1874 division of the household could be requested by an unmarried daughter of age whose parent had died, or ceased to be a member of the household (§ 12). This meant that, compared to the Act of 1870, a married daughter lost the entitlement to request the division of a household. The new act stipulated that by marrying outside the household membership in the household was lost, and with it the entitlement to participate in the division of the household property (§27).⁵² In the course of the division, regardless of the requesting household member, immovable property was divided among members of the household *per linea*, among the lines whose representatives were alive on 1 January 1837,⁵³ unless otherwise agreed by the household members (§13). Divided immovable property became individual property of the representative of the line, in accordance with the GCC provisions (§15). Movable property was divided *per capita* among all the members of the household of over 16 years of age, while the household members under 16 were entitled to "of the share received by the members over 16 years of age (§16). Comparing the basic rules of the division of the household property, as a rule, daughters exercised the same rights as their brothers, i.e. the sons of the household members. Diversity of their legally granted entitlement to property comes from the fact that to daughters, regardless of their will, the relevant share of the movable property could be paid not only in kind, as to other household members, but also in cash (§14). Cash payment was subject to discretion of the household, but only after a survey of the household property had been executed by two surveyors, whereby one was appointed by the communal household, and the other by the daughter.

According to the Act of 1889, the division of the communal household could also be requested by an unmarried daughter of age, whose parent had died, or ceased to be a member of the household (§ 29). A daughter married outside the household would lose her membership in a household upon marriage, and thus the entitlement to request the division (§ 50). However, it was possible that these daughters should regain the membership in the household, and thus the entitlement to the household property. As it transpires from one administrative act, if a daughter who had married outside the household returned to the native household e.g. following a divorce and lived and worked in the household, and there were no objections to her return, tacitly she would regain membership in the household and even the entitlement to the household property.⁵⁴ This law was the first communal household law applied on the territory of the Kingdom of

⁵¹ STROHAL, 1907, p. 81.

⁵² Unlike with the communal household legislation, according to the GCC, there was no distinction between unmarried and married women, and a woman's marital status did not influence her legal position, that is, it did not result in the limitation of her contractual capacity.

⁵³ According to the Act IV:1836, serfs obtained the entitlement to a serf land which they could dispose of *inter vivos* and *mortis causa*. That right could only be obtained by the serfs who were alive at the time of the enforcement of this act, and not those who died prior to 1836. It was therefore decided that for the creation of a genealogy of a family 1 January 1837 was meritorious as the date when the creation of individual families started. SMREKAR, Milan, *Zakon o zadružjah od 9. svibnja 1889. sa zadružnom novelom of 30. travnja 1902., te sa provedbenim i svima ostalima na nj odnosećima se naredbama i propisima*, Zagreb, 1903, p. 33.

⁵⁴ TONČIĆ, 1925, p. 11.

Croatia and Slavonia, including the territory of the former Military Border.⁵⁵ Considering the difference between the solutions contained in the regulations formerly in force on these territories, this diversity was further retained. Thus the Act of 1889 regulated the division of the household property differently on the territory of the Kingdom of Croatia and Slavonia (the so called civilian Croatia) and the area of the former Military Border. In the former civilian area the household property was divided *per linea*, more specifically, the lines whose representatives were alive on 1 January 1837, unless otherwise agreed. If a woman had been the representative of a line, but had married into her native household, she would lose all the entitlement to immovable property that she had possessed as the representative of the line (§30). But, she would obtain all the entitlement of a representative of a line, even though she had a father or a brother who were alive, if her husband came to live with her.⁵⁶ At the same time, in the former Military Border area the immovable property was divided *per capita* among the male and female members of the household who were of age (§32). On both territories the movable property of the household was divided *per capita*, i.e. among all the members of the household in equal parts, whereby "of the share of movable property that was received by the household members over 16 would be received by the members under 16 (§33). This act also stipulated that the communal household was entitled to pay to its female member a relevant share in money, not in kind, based on the estimate, and regardless of the will of the female member of the household (§34).

Many had seen the right of a daughter to request the division of a household, and to participate in the division of household property as the reason for the demise of the communal households. Therefore, this right was quoted in favour of the so called woman's theory on the disintegration of the households. Based on this theory women (wives, daughters, daughters in law) with their (argumentative) nature would cause discord among the male members of the household (fathers, brothers, husbands) and cause its disintegration. This theory was successfully rebutted after all and characterized as naive and superficial.⁵⁷

6.2 Inheritance within the Communal Household

By its legal status, the property of a communal household was under joint ownership of the communal household, that is all its members. Furthermore, individual shares of the household members were not determined, although they were deter-

minable, which meant that, considering the household property, there was no inheritance in the communal household.⁵⁸ However, there were two occasions for inheritance within a household. During the existence of a household, independent of the household property, if single members of the household had *osebunjak*, property in their individual ownership, which was, therefore, distinct from the household property. Or, upon the division of a household, when individual shares of the household members were determined, i.e. individualized.

In the feudal period, the absence of inheritance within a communal household, but also within the families not living in a household can be seen in the efforts to shape the serf land into allotments of the same size, and thus of a similar economic strength. Consequently, a permanent and unchangeable size of a serf land was established by the Croatian (1780) and Slavonian (1756) Terriers of Maria Theresa, aimed at the prevention of its division below a certain minimum.⁵⁹ The Act IV of the Hungarian Diet from 1836 also underlines the difficulties with potential inheritance and particularly already quoted the Act VIII of 1840.⁶⁰ These regulations showed how the principles of inheritance law comprised therein, such as the equality of the descendants in inheritance regardless of the gender and the division of property *per linea*, not *per capita*, were not applicable to serf families living in households. Therefore, the provisions of these legal acts were not enforced on the territory of Croatia. Following the abolition of feudalism and the implementation of the GCC, which, as has been previously stated, did not provide for joint ownership with undetermined individual shares of the household members, the communal household found itself in the state of legal deregulation. Notwithstanding, within a very short period of time an avalanche of probate hearings ensued following the decease of individual members of the household, in accordance with the principles of inheritance stipulated in the Act of 1840, and subsequently also in the GCC. Thus, with inheritance the communal households were actually being divided, and regardless of the will of their members too, according to unclear rules on whether in such cases the property should be divided *per capita* or *per linea*. The intertwining of the inadequately clear rules of division of the households with inheritance can be seen in the case of the Golub household from Brest, near Petrinja. Zagreb County issued in 1860 a permit for division of a household to two brothers, who, due to a dispute within the household, left the household and took up residence with a married daughter of one

⁵⁵ At the time of the accession of the Military Border to the Kingdom of Croatia and Slavonia, the Border area communal households were regulated by the Basic Act on the Military Border Area of 7 May 1850, with changes and amendments in 1871 and 1876, as well as the Act of 14 April 1880 on communal household in Military Border (*Zakon o zadrugah u hrvatsko-slavonskoj krajini*). The content of these regulations see in: VEŽIĆ, Milivoj. *Pomoćnik za javnu upravu – sbirka najvažnijih zakona i naredbah*, Zagreb, 1884, p. 724–736, 746–763.

⁵⁶ TONČIĆ, 1925, Decision no. 7, p. 41.

⁵⁷ BIČANIĆ, 1937, p. 25.

⁵⁸ How significant the non-existence of inheritance within a communal household was is evident in the fact that during the reconstruction of the development of the communal households in the Military Border area Karl Kaser, lacking written sources, used what he called two auxiliary aides. One was the average size of the family, while the second aide were the rules of inheritance. Thus Kaser states how in a household there could be no inheritance from father to son, but the land would always remain in the joint ownership of all (male) members of the family. He also poses the question whether in the areas of the Military Border where regulations applied which had stipulated individual order of inheritance communal household existed at all. Or, he thinks that in the areas where along with the provisions on individual order of inheritance also found were provisions on communal land estate, individual families and communal households existed simultaneously. KASER, Karl. *Slobodan seljak i vojnik – povojačeno društvo (1754–1881) II*, Zagreb, 1997, p. 133.

⁵⁹ STROHAL, 1907, p. 17, 30; Text of the Croatian and Slavonian Terriers see in: VEŽIĆ, Milivoj *Urbar hrvatsko-slavonski*, Zagreb, 1882.

⁶⁰ VEŽIĆ, 1882, p.

of them. Appeal of the household (or the remaining members) was accepted by the Locumtenential Council and had highlighted in its grounds how the proposal for the division was overruled, among other reasons, also because no law existed regulating the inheritance of a peasant's property, and the Act of 1840 did not apply. According to the Council, a problem existed because the plaintiffs had no male heirs, only daughters who, according to the customary law, were not entitled to the household immovable property. Although subsequently the division of the household was granted, still, it is of importance to note the linking of the entitlement to division with rules of inheritance and the discrepancy and inconsistency in the proceedings of the administrative body due to a lack of legislation regarding this issue.⁶¹

Previously mentioned frequent probate hearings after the decease of a member of a household finally ended in 1857, when the Austrian minister of justice Krauss banned Croatian courts from conducting probate hearings regarding communal household property, except with the consent of all the household members.⁶² The impossibility to apply the succession law principles of the GCC to communal households certainly contributed to the necessity of their regulation through application of special legislation. However, even here indecisiveness was exhibited regarding the issue of what to do about inheritance within the household. Thus, the solutions endorsed by the legal acts introduced were a reflection of the current view of the household and their position within the Croatian legal system which was being intensely built around the GCC.

The first communal household act passed by the Croatian Diet in 1870 was also the only act which comprised the rules of inheritance of the household property. Its basis on a liberal stand on the household as an obsolete institute whose removal from the legal system should be facilitated and sped up resulted in the adoption in the Act of the solutions close to the GCC concept and in some elements significantly opposed to the notion of the communal household. This polarity is evident in the actual acceptance of the possibility of inheritance within a household. In three very brief articles the Act stipulates how each member of the household is authorized to dispose of their share of the household property by will or inheritance contract (§20) and how in the household (upon decease of a member) probate hearings were not permitted (§21). In case the last living member had not disposed of their property, the application of the provisions of the GCC was prescribed. (§22).

Such concise and inadequately clearly regulated process of inheritance within a communal household caused in practice numerous dilemmas and posed numerous questions, such as can the GCC provisions on inheritance be applied subsidiary in cases where the Act does not specifically require their application? Furthermore, the Act permitted disposition by will and disposition by contract of inheritance, while intestate inheritance and right to a compulsory portion were not mentioned. Since the testamentary heir and contractual heir were authorized to request the division of a communal household (§27) it

transpires that a household member could dispose *mortis causa* of their share before the division, not knowing exactly what and how much of the household property belonged to them. Besides, according to the provisions of §20, a household member was turned into a co-owner of the household property allowed to dispose of their share freely and transfer to their heirs, which was contrary to §4 of the same Act, stipulating that the property of a communal household was the joint property of all its members. Furthermore, if the stipulations on the division are analyzed, it is evident that the entitlement to immovable property of the household was only granted to the household members -representatives of the family. Or, the immovable property was divided *per linca*, whereby the line (and a relevant family representative) were determined according to the GCC principles, taking into consideration the family relationships (§32). Considering who had been authorized to request the division and how, the associated share was determined upon division, it is unclear whether all the household members were in fact authorized to dispose of *mortis causa*, in accordance with §20. Could someone who was not a family representative, or did not have the authority to request the division of a household dispose of *mortis causa* at all? At the same time the question arises what would happen to the property which the household member did not dispose of testamentary or through contract of inheritance? The law does not mention intestate succession anywhere, but did such manner of inheritance occur in such cases, and if it did, in which manner were the legal heirs determined? This question is important considering that according to a strict legal order probate hearings were not permitted. This ban also meant that it was not possible to check whether explicitly permitted disposition by will and disposition by contract of inheritance were valid at all. If intestate inheritance had occurred, presuming that the household members' descendants were presumed their legal heirs, a possibility existed that the entitlement to the household property could be granted to a non-member descendant. This possibility was more likely in cases of testamentary or contractual heir, since there had been no limitation regarding the person of the heir. This system of inheritance also meant that the testamentary and contractual heirs had had an advantage over descendants of the household members who would hold the status of forced heirs. Because of these legal imprecisions and dilemmas which had occurred in practice regarding the application of the entire Act, a change of statute was adopted as early as 1872.⁶³ This amendment banned disposition *mortis causa* of the undivided share of the communal property during the course of suspension of household divisions (§2).

The new Act of 1874 did not contain provisions on inheritance. This Act also bore no mention of a possibility of disposition by the household member of their share of the household property (compared to the act previously in force) which in practice again caused certain dilemmas. The consequence of that was the introduction of a supplementary Act of 1877 which specifically stipulated that in the course of existence of a household

⁶¹ PAVLIČEVIĆ, 1989a, p. 186.

⁶² GROSS, Mirjana. *Počeci moderne Hrvatske*, Zagreb, 1986, p. 213.

⁶³ Act of 6 October 1872 (Zakon o pravostaji za diobe zadrudnih dobara na temelju zakonskog članka IV:1870), in: Sbornik, Year 1872, part VII, no. 36, p. 265-266.

community no member was entitled to dispose of *inter vivos* or *mortis causa* the share of the household property which he could be entitled to after division is conducted (§1).⁶⁴ This regulation entirely excludes the possibility of disposition by will of a household member, as well as signing of contracts of inheritance during the existence of a communal household, in the way it was regulated by the Act of 1870. The inability to dispose of household property *mortis causa*, or the inability to inherit within a communal household was retained in the Act of 1889.

Unlike the household property, the property under individual ownership of single household members could be inherited, whereby the GCC rules of inheritance applied. Upon decease of each individual a death certificate was issued in which property of the deceased had to be listed. If it should be established that the deceased had been a household member, and had no individual property, probate proceedings would not be initiated. However, if the deceased household member had had the so called *osebunjak* (individual property) probate proceeding would be initiated, conducted in accordance with the GCC provisions and Non-Contentious Proceedings Act.

Probate proceedings were conducted in all cases where division of a communal household had been conducted. Therefore, the cases should be pointed out here of intestate inheritance by married and unmarried daughter after decease of the father who had been (as a family representative during division *per linea*) registered as an individual owner of property. Considering that it had no longer been a case of household property, the communal household legislation did not apply, but the GCC provisions on inheritance. Daughters of former household members, married and unmarried, were entitled to intestate inheritance. Preserved probate records and reports from that time show how this had caused "a true disbelief" among the married daughters (not among those not yet married) as well as among their brothers who considered it unjust. The injustice stemmed from the fact that the married daughters had exercised their right to former household property upon marriage, and had consequently lost all further property rights upon leaving the household. Therefore it was considered that the change of the legal status of that property should not grant (new) rights to married daughters and subsequently include them in the system of inheritance. It should also be mentioned that upon marriage, daughters were granted entitlements exclusively to the household movable property, while immovable property was out of reach. And it was the former household immovable property that they could count on in the probate proceedings. However, this authority, as a rule, was not practiced since the married

daughters would waive their share of inheritance for the benefit of their brother/s. Such conduct should not be surprising knowing that even in the cases where communal household property was not concerned there were difficulties regarding the inheritance of immovable property by female descendants.⁶⁵

6.3 Entitlement to Trousseau/dowry

In the context of the analysis of women's entitlement to property of a communal household, the entitlement of a daughter to a dowry should not be omitted from mentioning. Dowry is a very old, legally regulated institute, however, doubts still exist regarding the definition of the dowry, the causes which led to its appearance, as well as its related functions. One of the frequently mentioned, and most widely spread functions of the dowry is dowry as the hereditary share of the daughter.⁶⁶ In cases where the dowry was provided by the parents and when the daughter had been excluded from any further property rights in her family upon the receipt of the dowry, it can certainly be viewed as a hereditary share.⁶⁷ In Croatian legal order which was being built after the introduction of the GCC, the dowry, according to the letter of the law, did not have the hereditary function. Daughters had a right to intestate inheritance equal to the inheritance rights of their brothers, whereby the dowry had been included into legal portion of inheritance/hotchpot (§788). In practice, however, very often the payment of dowry was used to avoid subsequent claims of the female descendants to the inheritance of their parents.⁶⁸

In Croatian communal household legislation instead of the term dowry, the term trousseau was used, whereby both terms had been used as synonyms.⁶⁹ Trousseau was paid upon marriage, according to the customs of the bride's place of permanent residence.

The Act of 1870 does not explicitly stipulate trousseau, however, its existence and payment come from the provision which states that during the division of the communal household into the associated share of the married daughters all the items would be calculated that they had received from their household upon marriage (§ 32). According to the Act of 1874, trousseau belonged to the bride who had married outside her native communal household (§30), while the Act of 1889 does not specifically stipulate that this right is granted to a bride marrying outside the communal household, but refers to marriage of a bride in general (§54). However, I believe that non-distinction of the marriage outside and inside the household considering the trousseau, as in the previous act, is irrelevant. I think that it is about the households becoming ever smaller by

⁶⁴ Act of 8 December 1877 (Zakon kojim se dopunjuje zakon od 3. ožujka 1874. o zadržanju u pogledu razredjivanja sa zadržanim delovi za vrijeme nerazdijeljenje zadružne zajednice) in: Sbornik, Year 1877, part XXXIII, no. 72, p. 806.

⁶⁵ KREŠIĆ, Mirela. *Intestate succession of female descendants according to the Austrian General Civil Code in the Croatian-Slavonian legal area 1853–1946*, in: The Annals of the faculty of Law in Belgrade – Belgrade Law Review, Year LVII, 2010, No. 3, p. 129.

⁶⁶ GOODY, Jack. *Introduction*, in: Goody, Jack, Thirsk, Joan, Thompson, E.P., *Family and inheritance, Rural Society in Western Europe 1200–1800*, Cambridge, 1976, p. 2.: It is interesting that the Croatian term "miraz" in the meaning 'dowry' is a Turkish word of Arab origin and comes from the Turkish word "miras" which means inheritance.

⁶⁷ For other functions of the dowry see STANIMIROVIĆ, Vojislav. *Brak i bračna davanja u istoriji*, Beograd, 2006, p. 296–301.

⁶⁸ KREŠIĆ, 2010, p. 131–133.

⁶⁹ According to the GCC, the terms dowry and trousseau were not synonyms. Thus, the trousseau of the bride (*Aussteuer/Ausstattung/instructus mulieris*) comprised female clothes, linens and furniture to which the husband held no title or the right of usufruct. RUŠNOV, Adolf, POSILOVIĆ, Stjepan. *Tumač običnu austrijskomu građanskom zakoniku. II*, Zagreb, [1910] p. 561, 570.; Comp. STUBENRAUCH, 1902, p. 517, 533.

the number of members so that the family relationships among the household members had become too close for a valid marriage, so marriage outside the household was the only option.

Trousseau had to be paid to the bride by the entire communal household, not individual members, specifically the parents, upon the wedding. Part of the bride's trousseau did not include the property considered by the daughter her own, individual property, obtained from personal work with permission from the household leader, not for the household. What would be included into trousseau can be seen from the records comprised in some of the preserved documents. Thus, for example, it was the duty of the communal household to provide a respectable wedding, according to the customs of the bride's place of residence, and provide for her as part of the trousseau one outfit, one box of linens and one cow. The content and value of the trousseau varied from area to area, however, eventually the trousseau became larger and larger. Instead of the principle of the customs of the bride's place of residence, the trousseau became established according to the economic status of the household, which is where the influence of the GCC was evident. Although the GCC does not mention the value of the dowry, or does not specify how the value of the dowry is determined, the term "appropriate dowry" is mentioned, which can be construed as the dowry fit for the class and property status of those obliged to provide it. This is also evident from the task of the court to nominally study the property status of the party obliged to provide the dowry in case of a dispute arising from the establishment of the amount of dowry, and based on that establish appropriate dowry, or relieve the parents from the dowry duty (§ 1218–1221).

If the household should refuse to pay for the trousseau, the maid was entitled to request the payment from the household through administrative bodies, but only prior to the wedding. However, if the household promised to provide trousseau, and subsequently failed to do so, the court would decide on pressing the charges against the household.⁷⁰ In any case, the content of the trousseau was comprised of movable property. Since the daughters, according to the Acts of 1874 and 1889, ceased to be members of a household upon marriage, the only way they could obtain the entitlement to the communal household property was through the institute of trousseau.

7. Conclusion

With the abolition of feudalism, at the outset of the building of a modern civil society in Croatia, the communal households found themselves in a dire position. Their customary law regulation was contrary to the legal system about to be built around the General Civil Code, therefore the issue of legal regulation of the communal household was raised. Full 22 years after the abolition of feudalism, the first act on communal households was adopted (1870), and then shortly afterwards two more acts (in 1874 and 1889). The key problems of the household legislation came from the disputes over the manner of division of the communal household (*per capita* or *per linea*) the issued of joint (household) ownership, (im)possibility to inherit household

property and the so called female entitlement. The female entitlement concerned the entitlement of women, more precisely, the entitlement of female descendants to the communal household property, particularly of the female descendants who had married outside their native household.

Considering the exercise of the right to the household property, a distinction should be made between male and female members of the household, or the male and female descendants born into the household, and among female descendants the daughters who had married and the daughters who still lived in their native household. With household property, a distinction should be made between the movable and immovable property of the household, whereby entitlement to that property could be obtained in the course of division of the household and through inheritance, or upon marriage (of a female member) by way of trousseau/dowry.

As a rule, the descendants, regardless of the gender difference, would obtain the right to movable property – which was in accordance with the principle of gender equality stipulated by the GCC, i.e. in Croatian civil law order. The gender based difference still existed, since the associated share of movable property could be paid in cash to the daughters, regardless of their will. The difference also existed between the female descendants, depending on whether the daughter included in the division of the movable property had been married or not. After daughters would lose their household membership by marrying outside the household, they would also lose the right to participate in the division of the movable property. Regarding the entitlement to immovable property, the position of female descendants was even more unfavourable, as it had been considered that daughters, particularly the married ones, held no title to the immovable property of the household. The limitation of entitlement to the immovable property of the household for the married daughters was the consequence of the customary understanding according to which the daughter marrying outside the household was leaving her native household for the husband's household, that she worked and earned in favour of the new household and that it was unbecoming that she should obtain any further benefit from her former household, apart from the dowry upon marriage. At the same time, the entitlement of an unmarried daughter to the immovable property of the household stemmed from the entitlement of the father or brother as the representatives of the line, considering the endorsed division of the immovable property *per linea*. Considering the stated limitations, it should not be surprising that the female descendants had difficulties exercising their entitlement to property, even after communal household property lost its household character and was included in legal transactions regulated by the GCC. Similar problems were encountered by the female descendants not residing in a communal household. In both cases the attitude to female entitlement to property was the consequence of deeply seeded feudal views according to which the female descendants were not entitled to immovable property, particularly the family, or hereditary immovable property.

⁷⁰ TONČIĆ, 1925, Decision nos. 2 and 6, p. 158–160.