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LEGAL ASPECTS REGARDING DOWRY RIGHT IN LAND LAW IN THE EARLY MODERN ERA

The submission focuses on the role of women in the Early Modern Era with emphasis on their right to dowry and counter-dowry. Different types of dowries are mentioned, as well as specific articles from the Land Ordonnances concerning the gain and loss of the dowry right. The paper focuses on the territory of the Bohemian Crown, which consisted of several conjunct territories, taking into account the main regions and comparing the differences between the provisions from the different Land Ordonnances. This paper also compares different cases taken from the land books examining the outlined frame of laws. We take a closer look at one case from Bohemia which demonstrates how the court proceeded in a case of doubt towards the woman's justification in question of her dowry right.

Key words: *Land Law. – Vladislav's Ordonnance. – Moravian Ordonnance. – Silesian Ordonnances. – Women's dowry.*

1. INTRODUCTION

This paper aims to provide an overview of women's rights in the question of dowry and counter-dowry in the Lands of the Bohemian Crown (*postmodo* „the Crown") in the Early Modern Age (from around the year

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1500 up to the beginning of 17th century) and state the main similarities (influences) and possible critical differences between them in matters of dowry and counter-dowry right. The paper primarily focuses on the legal position of noble women in land law and on the decisive legal sources that bound the nobility in that period. Since the Lands of the Bohemian Crown consisted of several territories that were under the rule of the Bohemian King but with independent administrative structures, the paper tries to provide a systematic analysis of their legal texts and the provisions on dowry they contain.

The submission is divided into three parts. The first concerns the administrative division of the Lands of the Bohemian Crown with an explanation of the fragmented legal development and the list of crucial legal sources of land law in Bohemia: Vladislav's Ordonnance (*Vladislavské zřízení zemské), Knihy Dewatery*[1] of Viktorin Kornel of *Všehrdy*, then the Moravian Ordonnance, (*Moravské zemské zřízení),* Book of Tovačovy *(Kniha Tovačovská)*, and finally the Upper Silesian Ordonnances for Cieszyn and Opole and Ratibórz.

Henceforth the paper centres on a comparative analysis of the aforementioned sources in regard to selected provisions on dowry. It focuses on both the dowry claim from the woman's family and the counter-dowry given to her by her husband, which served to secure her position after his death. Regarding the family given dowry, the submission mentions the possibility of its gain and loss with an emphasis on the position of women and the possible requirements for the acquisition of dowry and its loss. As to the counter-dowry (*widerlage*) that was given to the woman by her husband, the paper focuses on its relation to the family given dowry, the legal procedure to list such a claim into the public registers, as well as on the possibility of transferring that property.

Lastly, the third part illustrates some of the mentioned provisions regarding the loss of dowry right on a real-life history from 17th century Bohemia. The story revolves around a Czech noblewoman, Elizabeth Katherine von Schmiritz, and was chosen for its evident resonance in the Czech culture. It also provides an understanding of the legal position of women in the early modern era. A few remarks on the dowry disputes in the other territories of the Crown are also made, although they were extrapolated from our knowledge of other territories due to the lack of detailed source material.

1 *The „Nine Books" – it deals with Land Law but did not serve as an officially binding document. See chapter 2.2.*

2. CORONA REGNI BOHEMIAE

2.1 An administrative division

Before the main subject of this text is brought up, a few remarks on the background of the organization of the analysed territory must be made. The Lands of the Bohemian Crown (*Corona Regni Bohemiae*)[2] was the conjunct region constituted around Bohemia in the 14th century.[3] Apart from Bohemia, which served as the centre of political power and the residence of the king, the Moravian margraviate, one of the crucial regions, was joined with Bohemia in the 11th century[4] and together with Bohemia it constituted the main part of the Crown's territory.[5] Apart from those, the Crown consisted of Silesia[6] and Upper[7] and Lower Lusatian margraviates.[8] Throughout time more territories such as i.e. *Steiermark,* Kladsko (Glatz), *Chebsko*[9] (Egerland) were joined and their acreage expanded and contracted according to the current political and diplomatic situation.[10] The Crown also held power over external fiefs that

2 Karel Malý, *Dějiny českého státu a práva do roku 1945*, Leges, Praha 2010, 38.

3 Karolina Adamová, Ladislav Soukup, *Vývoj veřejné správy v českých zemích I. do roku 1848*, Západočeská univerzita, Plzeň 1996, 14. For a broader context of the development of Europe see: John H. Elliott, „A Europe of Composite Monarchies", *Past & Present*, 137/1992, 48–71.

4 Petr Sommer, Dušan Třeštík, Josef Žemlička (eds.), *Přemyslovci. Budování českého státu*, Lidové noviny, Praha 2009, 220.

5 K. Malý, 38. Cf.: Zdeňka Hledíková, Jan Janák, Jan Dobeš, *Dějiny správy v českých zemích od počátků státu po současnost,* Lidové noviny, Praha 2005.

6 Silesia consisted of many smaller principalities that were subordinated either directly or indirectly to the rule of the king. Those subjected directly to the king were operated by hetmans. However, more of the principalities were indirect, and governed by their *dux terrae* – until 1526 four out of ten indirect Silesian principalities were managed by some parts of Piastov family. Petr Vorel, *Velké dějiny zemí Koruny české VII. 1526 – 1618*, Paseka, Praha 2015, 55.

Cf.: Marian Ptak, Zemské právo Horního Slezska – stav bádání a badatelské perspektivy, in: Libor Jan, Dalibor Janiš et al. *Ad iustitiam et bonum commune: proměny zemského práva v českých zemích ve středověku a raném novověku,* Brno 2010, 61.

7 The centre of Upper Lusatia was formed around six of the most powerful conurbations. P. Vorel, 59.

8 *Ibid.*, 43.

9 K. Adamová, L. Soukup, 12. Chebsko was primarily acclaimed as a dowry to king Ottocar's mother in 1266, but was later lost and then finally gained back in 1322.

Cf.: Z. Hledíková, J. Janák, J. Dobeš, 17.

Cf.: P. Sommer, D. Třeštík, J. Žemlička (eds.), 492.

10 K. Malý, 37.

consisted mainly of small territories. Those were especially located in *Oberpfalz*, Vogtland (*Vogtlandkreis*) etc.[11]

Even though the regions were united under the rule of the king, they each had their own organizational structure. The Moravian margraviate was usually managed by some of the king's confidentials (who used the title of margraves) and took care of the local administration. This changed from the 13th century onward,[12] when kings ceased to appoint Moravia as a fief to the margraves, and thus claimed the title of margrave for themselves. Henceforth, only hetmans, as the most important land governors in that region, were appointed by the King.[13] The institute of hetmanship was later constituted in Silesia as well, where the official was selected from the local nobility. The only difference was in Upper Lusatia, where the governors (*fojts*) were chosen from the nobility of Bohemia (but that also changed in the late 16th century).[14] In the principalities like Opava, Kladsko or Krnovsko the hetman was at first a representative of the barons,[15] whereas in Moravia and Bohemia they represented the king in his absence.[16]

The most prestigious institutions in these regions were the Land Diets and Land Courts, which, in simplified terms, constituted the „legislative, executive and judicial" power in the territory. Although their structure was similar, the Bohemian Estate held a key position, for within the scope of its competence resided the power to rule over some of the agenda concerning the whole Crown territory[17] (unlike the others that held only regional capacity). The paper focuses on the 16th and 17th century and thus, only one remark remains in regard to the territory of the Crown – its conjunction to the Habsburg Empire in the year 1526, after the coronation of Ferdinand I Habsburg as the king of Bohemia.[18]

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11 P. Vorel, 61–62.

12 As a matter of fact, the first unification of the title of margrave and the king of Bohemia happened in the 13th century through the persona of Ottocar II, which continued with the Přemslid kings; this was later punctuated in the rule of the Luxemburg dynasty, as Jan of Luxemburg named his son Charles (later Charles IV) as the Moravian margrave.

P. Vorel. 48.

13 Z. Hledíková, J. Janák, J. Dobeš, 87.

14 Ibid.

15 Libor Jan, *Česká a moravská šlechta ve 13. a 14. století – otázky zrodu a kontinutity*. In: Tomáš Knoz, Jan Dvořák (eds.) *Šlechta v proměnách věků*. Brno: Časopis Matice moravské. 2011, 56.

16 Ibid.

17 Z. Hledíková, J. Janák, J. Dobeš, 93.

18 K. Malý, 38.

2.2 As to the question of legal particularism

A defining characteristic of Medieval and Early Modern Law lies in its particularism, meaning – fragmentation. This implies that the Crown wasn't firmly united under the rule of a single body of law, but rather consisted of small territories applying their unique law customs.[19] Different forms of legal particularism can be recognised, but since this paper focuses solely on land law, we will deal primarily with regional particularism. This submission examines legal texts from Bohemia, Moravia, and Silesia. These texts, called Land Ordonnances (*Landesordungen*), started to emerge after the year 1500, and were effective only in certain parts of the Crown. The text examines their undeniable similarities (the similar provisions they contain), which may stem from mutual reception.

3. A COMPARATIVE ANALYSIS OF WOMEN IN THE QUESTION OF DOWRY IN SELECTED LAND LAW CODIFICATION

One of the key principles that formed property law in the Middle Ages and even in the Early modern era, was indivisible property – the ownership of immovable property that the family held and that was essential for their functioning (its origin arose from the agricultural organization of medieval lands).[20] Every family member had the same right to the estate, although none of them could dispose of it alone,[21] but only with the approval of the rest.[22] The administration of the indivisible property was managed by the head of the family unit, usually the father, but depending on the family situation it could have also been a brother or an uncle. This institute was originally formed to ensure the protection of the family estate. It was only later established that men could „separate" their rightful part from the estate, and thus renounce any claim to the rest of the property. Only men had the right to ask for the division, which could have been achieved either through the physical division of immovable property

19 *Ottův Slovník naučný: ilustrovaná encyklopedie obecných vědomostí XIX.: P – Pohoř [online]*. J. Otto., Praha 1902, 280. *Available:* http://www.digitalniknihovna.cz/nkp/view/uuid:6e428200-e6e1–11e4-a794–5ef3fc9bb22f?page=uuid:16f04f90–04ce-11e5–91f2–005056825209

20 *J. Kapras, 7.*

21 Karel Kadlec, *Rodinný nedíl: čili zádruha v právu slovanském*, Bursík a Kohout, Prague 1898, 81.

It also has to be stated that although the individual disposition within the estate was forbidden, those of legal age still had the right to sell their part (meaning an equal part they were entitled to). *Ibid.*, 82.

22 *Ibid.*

or through monetary compensation. The division led to a complete separation of the person from the family (in matters of property).[23] If they wanted to secure counter-dowry on the indivisible estate, they needed the permission of the other holders.[24]

Women were a part of the indivisible ownership, but they had no right to separate from the rest of the family as their brothers did[25] (having no right to exclude their share of the family estate) and their position in terms of marriage was valued by their potential dowry claim.[26] In general, a woman had a right to demand a suitable dowry from her father, or, in the case of his death, from her brothers, or possibly uncles. The dowry was given from the family estates, and women in general lost any other claim to the property, unless a proclamation was made when enrolling the dowry.[27] Also, if no other relative could claim the property, they would be entitled to it.[28] In municipal law, however, the dowry itself did not mean a separation from later inheritance, but if the woman wanted to claim the property, her dowry would be deducted from the equal claim.[29] This custom was the same in Italian and western territories as well. A „pay off" was also relevant for the daughters that chose to join the church, because they had the right to be provided for nevertheless.[30]

The family dowry was given to the daughter around the day of her wedding day, through a contract[31] between the father and the husband. The property which the daughter received was later managed by her husband during the marriage.[32] Apart from the dowry received from her family, it was a custom for her to receive a counter-dowry (*obvěnění,*[33] *widerlage, controdote*[34]) from her husband. This institute refers to the estates

23 J. Kapras, 10.

It must be also pointed out that even separated, the person still had pre-purchase rights to the property, if it should be sold one day.

24 K. Kadlec*,* Rodinný nedíl, 81–83.

25 A. Kozáková, Právní postavení ženy, 17.

26 Karolina Adamová, Antonín Sýkora, *Dědické zemské právo,* Key Publishing s. r. o., Ostrava 2013, 107.

27 Vilém Knoll, „Intestátní dědická posloupnost a odúmrť v českém středověkém právu zemském", *Časopis pro právní vědu a praxi,* 20/2012, 237.

28 K. Kadlec, *Rodinný nedíl,* 84.

29 Josef Jireček (ed.), *Codex iuris Bohemici tom. IV. Pars. III*, Fr. Tempsky, Pragae 1876, 107.

30 J.Kapras, 13.

31 A. Kozáková, *24.*

32 J. Kapras *27.*

33 Also referred to in some sources as „odvěnění".

34 Daniela Lombardi, „Marriage in Italy", In: Silvana Seidel Menchi, Emlyn Eisenach, Charles Donahue (ed.), „*Marriage in Europe 1400–1800*", University of Toronto Press, Toronto 2016, 96.

that the husband pledged[35] to his wife in case of his death – it was usually of the same value as the dowry she received from her family, plus more depending on the regarded territory (as will be demonstrated below). She could still not dispose of the property if her husband lived, but those estates were protected from potential misuse by her husband.[36]

Counter-dowry was a common institute on European territories. For example, in Italian regions the enrolment of counter-dowry amongst nobility was performed by notaries, and witnesses would be called for the unwealthy families.[37] In general, the situation in all regarded territories was similar in a sense that those who wanted to secure the dowry had to pay for the enrolment into the public registers (land books), but, as it will be demonstrated later, requirements for such enrolments differed. Dowry contracts were also quite common within Italian regions.[38]

3.1 Bohemia

3.1.1 The Vladislav Ordonnance (Constitutiones terrae)

Although there had been a continuous endeavour to make an official codification of land law in Bohemia from the 13th century onward,[39] it wasn't until the year 1500 that those attempts finally became successful. The reason why the previous attempts had failed was mainly that such ambitions couldn't stand against the power of the noble houses – who naturally saw those intentions as the King´s desire to rein in their power.[40] Despite these inconveniences, some legal texts emerged, and although they were not officially binding legal codifications, they served as a source of

35 Meaning enrolling her right to the estates into the public registers.

36 K. Kadlec, 89.

37 D. Lombardi, 96.

38 *Ibid.*

39 Petr Kreuz, Ivan Martinovský (eds.), *Vladislavské zřízení zemské: a navazující prameny (Svatováclavská smlouva a Zřízení o ručnicích)*, Scriptorium, Praha 2007, 11.

Cf: Marie Bláhová, „Počátky kodifikace zemského práva v Čechách". *Kultura Prawna w Europie Srodkowej,* Katowice 2006, 74–84.

Jiří Kejř, Počátky a upevnění stavovského zřízení v Čechách. *Právněhistorická studie,* Karolinum, Praha 1997.

40 Ibid.

A rather amusing illustration of the political situation can be drawn through Maiestas Carolina, a land law codification set by Charles IV, who after evident hostility from the nobility issued a statement, where he withdrew his proposition, saying that the codification has burnt down and therefore does not bide anyone in Bohemia.

P. Kreuz, I. Martinovský, 18.

law.[41] But despite this persisting resistance, the aversion eventually faded, for the nobility began to demand an official document that would secure their rights against the king. Thus, in the late 15th century a commission for preliminary works – combining knights and noblemen – was established.[42] They collected essential rulings by the Land Court and Land Diet, which were published around 1500 under the name of Vladislav's Ordonnance (*Vladislavské zřízení zemské / Constitutiones terrae).*[43] Naturally, it wasn't within the scope of the Ordonnance to take in all the norms comprehended in the previous rulings and thus, in 1502 a Land Diet has made a resolution prohibiting the use of the court precedents that were contradictory to the legal rules presented by the articles of the Ordonnance.[44]

One of the last remarks that must be made before the comparison itself is to acknowledge that since its first publication in 1500, the Ordonnance has undergone many amendments and many changes. This paper, with regards to the accessibility and reliability, bases its analysis on a modern edition[45] that used a variety of different preserved manuscripts of the Ordonnance,[46] most of them printed decades after the first issue.[47] The first drafts of the Ordonnance did not contain numbering of the articles. That changed later on and because of that this submission uses the numbering of the above-mentioned edition. The paper focuses on approximately forty-two articles concerned with dowry or counter-dowry.

Dowries represented women's part of the family inheritance and once the women received their family dowry, they lost their later claim to the inheritance.[48] There were some exceptions to this rule, as according to Article 518 of the Ordonnance, if the woman was already given dowry and yet there were no male relatives to accept the family inheritance, the woman who was already given her part of the estate could inherit the rest. Women's loss of inheritance right could be avoided by a declaration made during the enrolment of her dowry, although then she would have been regarded as an heir after her brothers.[49] This enrolment of the dowry and

41 To name a few; *Ordo Iudicii terrae or Práva zemská česká (*The Bohemian Land Laws*)* by a Land judge Ondřej z Dubé.

42 P. Kreuz, I. Martinovský, 47.

43 Named after the king Vladislav II Jagellon who ruled the lands at the time.

44 Rudolf Rauscher, *O nálezech zemského soudu českého XVI. stol*, „Typus" Praha Smíchov, Praha 1933, 5. Cf.: Rudolf Rauscher, „O nálezech zemského soudu českého XVI. sto"l. *Sborník věd právních a státní*ch, 1/1993, 134–146

45 P. Kreuz, I. Martinovský.

46 *Ibid*., 98.

47 *Ibid*., 87 – 93.

48 *Ibid.*, 250–251.

49 P. Kreuz, I. Martinovský, 251.

also counter-dowry was done through a contract[50] that should have been enrolled into the Land Books (the Merchant Land Books)[51] or different relevant registers if the sum of dowry was higher than 100 kop[52] (*sexagenum*) [of] *grossium*[53] (for comparison in 1500 the enrolment as such costed around 4 *grossium*).[54] The enrolment constituted a beneficial ground for them in additional litigation.

Women also had the right to require their dowry of their brothers in case of their father's death, and all of the sisters were entitled to the same amount of wealth.[55] Although it was sometimes their only claim to the family property, the land law recognized a possibility for the woman to lose this right. This legal rule was incorporated into Article 515 that concentrates on marriage requirements, which served as primary conditions for supplementation of dowry and counter-dowry. It states:

> „Thus, was found as law:[56] If any maid, either noble or gentry, would promise herself without the permission of her father, had she any justice [right] to estate either by succession or by money, she shall lose it. If someone would desire to marry a maid, either noble or gentry, who in all decency can be married, then her brothers or uncles [meaning possible relatives and guardians in general] should seek council of their friends. And if in the opinion of their friends is it decent to give her away, then they should do it. – And if regardless of that council they refuse to give her away, and it would be apparent that they do it for their own profit, the maid may seek justice."[57]

The last sentence suggests that a woman could plead with the King, who may allow her to marry the man of her choice, even though her relatives did not agree with it, but in general, if a woman ran off without the permission of her relatives, she would lose her right to the estates.[58] This is an essential provision, since the dowry right determined their position amongst other noble women, so the loss of it would have had far-reaching consequences. The situation could be avoided, though, if her relatives

50 J. Kapras, 31.

51 P. Kreuz, I. Martinovský, 146. [Article 148].

52 A Czech currency, „kopa" serves as a metric measure here, where 1 „kopa" equalled approximately 60 grossium.

53 Name of the Czech currency that was in use from the 13th century and up to the 17th.

54 P. Kreuz, I. Martinovský, 154.

55 *Ibid*, 168.

56 This phrase opens the majority of the articles, pointing out that those were taken from the Land Books and from the rulings given by the Land Court in the previous era.

57 *Ibid*., 250.

58 *Ibid*.

forgave her – and unlike Moravia, this could have been done tacitly in Bohemia.[59]

The customs embodied into the articles of the Ordonnance also prescribed other requirements for marriage. The Article 515 follows with „If it is found that a woman is no longer a virgin, she shall lose her right to any estate she had."[60] This specific provision was included in most of the submitted texts and this paper *inter alia* focuses specifically on the development of this article in different codifications. The idea is all-present, although the penalty differed. Women had to maintain their virginity until marriage, otherwise they would lose their dowry right. In comparison to men this constituted a vast difference, since men usually kept their lovers even during their marriages.[61] The loss of dowry right will be later demonstrated on a case that occurred before the Land court.

A more complex question than the dowry, which was pledged to the women by their families, was the question of counter-dowry. According to Article 528, „A woman is not subordinated[62] to her husband, but in the question of [counter] dowry."[63] Since the husband received his wife's dowry, he was obliged to give her counter-dowry – a sum she would receive in case of his death. The usual tradition was to give (enrol into the Land Books) the sum she received from her father and a little bit more – although Vladislav's Ordonnance does not mention the exact sum, it was said to be 1/3 of dowry. In practice, though, the pledged sum was usually higher than 1/3.[64] The counter-dowry could have been pledged in money, or non-servable estates[65] (if more people held rights to such an estate, it could have been done only with their permission).[66]

It is important to stress the strong position the counter-dowry had regarding the other claims attached to the property of the wife's husband.

59 J. Kapras, 18.

60 P. Kreuz, I. Martinovský, 250.

The translation of the articles is made by the author of this paper, and since some of the words do not have an equivalent in English, a few slight interpretation alterations have been made in accordance with the meaning and use of the articles.

61 A. Kozáková, 13.

62 In the meaning of „bound". Better definition is given in Knihy Dewatery, where Všehrd explains that if a woman has a husband, she cannot herself make an entry into the Land books.

Hermenegild Jireček (ed.), *O právích země české knihy devatery,* Všehrd, Praha 1874, 228.

63 P. Kreuz, I. Martinovský, 252. [Article 528].

64 J. Kapras, 33.

65 *Ibid*., 37.

66 *Ibid*., 35.

The protection that was given by the land law can be primarily visible in procedural law. Usually, if one was to seek justice and take civil action for more than he owned, he was obligated according to Article 37 to secure the sum he was missing in some other way. However, if widows were to seek justice in terms of their counter-dowry, they would be given an exception and did not have to pledge anything.[67] The widow could claim her counter-dowry within three years and eighteen weeks.[68]

The protection of women's rights in question of securing her counter-dowry was in Article 202,[69] which stated that a woman had a higher claim to the estate through her right to counter-dowry than her husband's creditors desiring to satisfy their rights.[70] A similar situation is also mentioned in Article 532, where it is stated that pledging a counter-dowry to an estate was above any later desire to sell or donate it.[71] This did not only concern the counter-dowry, but if a man and his wife were both bound to an estate, the husband could not weight it down by an obligation on it or sell it without her permission.[72]

As long as the husband lived, the estates enrolled as the counter-dowry were technically still his to use, because the woman's right was bound to the condition of his death, and she only held the enrolment.[73] The man was limited in his actions though – as a matter of fact, it was almost impossible at first to dispose of the pledged counter-dowry in any sense, because once it was pledged it „cannot be later taken away. Any future disposition cannot be done to the harm of the [counter] dowry. Neither can it be sold, nor pledged [to someone else for debt], nor used as a gift, even with the woman's consent, it has no effect towards the [counter] dowry, for it cannot be touched. The [counter] dowry takes priority over any other debts."[74] These provisions made the dowry almost untouchable[75] and that is why the institute of transfer of the counter-dowry was also later es-

67 *Ibid.*, 120.

68 *Ibid.*, 253. [Article 530].

This period was valid unless she possessed a dowry sheet, which had no statute of limitations. It also meant she had a right to claim an estate enrolled as her dowry, even though it was weighed by an obligation enrolled later than her dowry right. More: *Ibid.*, 217.

69 *Ibid.*, 169

70 J. Kapras, 70–71.

71 P. Kreuz, I. Martinovský, 253–254.

72 P. Kreuz, I. Martinovský, 168 – 169. Cf.: A. Kozáková, 34.

73 J. Kapras, 54.

74 *Ibid.*, 55.

75 A. Kozáková, 34.

tablished. This institute is covered in Article 381[76] and, most importantly, in Article 199, which states:

> „If a [counter] dowry of a woman is transferred from one estate to another, both the receiver (*příjemce*) and the woman shall be present. It shall be held that the right of use remains the same and the dowry has to be transferred as a non-servable estate. If the [value of the counter] dowry does not equal the original value, then she is entitled to an equal part from the estate of the receiver (*příjemce*) – and if that is still not enough, she should return her dowry back to the estate it was transferred from."[77]

The receiver *(příjemce*) of the counter-dowry is the one who secures the enrolment and, although he technically pledges for the transfer with his property,[78] it is covered in Article 95 that if any harm to his estate would take place – meaning if he had to pay for a part of the dowry to equal the sum originally enrolled – the husband has an obligation to repay the damage occurred.[79] As apparent from the Article itself, this institute serves as protection for women's property and their right.

The question of procedural steps that a widow needed to take to claim her right to counter-dowry is covered in Article 256,[80] and also in Article 419, that states the impossibility of the dowry sheet to be statute-barred, as long as the husband is alive,[81] which also points to the time frame in which she can claim her right to counter-dowry after her husband's death in accordance with Article 256, and that is three years and eighteen weeks.[82]

3.1.2 The Knihy Dewatery of Viktorin Kornel of Všehrdy

Another important source of law, although not officially binding, are the *Knihy Dewatery* from Viktorin Kornel of Všehrdy (Všehrd). He was

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76 Deals with situations where a transfer of the enrolment from the Land Books to the Curial Books is needed.

77 P. Kreuz, I. Martinovský, 169.

Cf.: See also a Land Court ruling from 1485 In. Josef Kalousek (red.). Archiv český čili staré písemné památky české i moravské, sebrané z archivů domácích i cizích, Domestikální fond království Českého, Praha 1901, 590.

78 A. Kozáková, 36.

79 P. Kreuz, I. Martinovský, 132.

80 *Ibid*., 182.

„...[I]f any widow would not receive her rightful dowry or if it was alienated... should come in front of the lower land clerks, and tell who it is that interferes with their right, then the clerks were to send a notice to the accused to come in front of the Land court upon the time of the next summon."

81 P. Kreuz, I. Martinovský, 217. [Article 419].

82 *Ibid*., 253. [Article 530].

a 15th / 16th century lawyer and scribe for the Land Books. Kornel was a rather competent authority on Land law, and apparently, because of his criticism towards some of the higher Land clerks, it was made sure that the King, once present in Bohemia, would sign his dismissal. His opponents based the request on rather false accusations and therefore Viktorin had lost his position at the registers. Also, his thorough knowledge was an obstacle to the newly considered ordonnance, for he did not share the same views as the others, because the Vladislav's Ordonnance was written in favour of the nobility, whereas Viktorin (and thus criticised for it) was opposed to that idea and favoured towns and other subjects.[83] Upon his dismissal he composed his own Bohemian Land law codification, built upon his observations and the experience he had obtained through his position at the Land Books.[84] Although the text was not considered legally binding, Viktorin's authority represents a valuable insight, interpretation and history of the land law and its institutes. That is why this submission focuses on its provisions regarding dowry.

Both Vladislav's Ordonnance and *Knihy Dewatery* have derived their content from the Bohemian judicial praxis, and that is why the norms are similar. This submission focuses mainly on the fifth book, because it consists solely of provisions regarding dowry and may shed light on some unclear provisions.

Knihy Dewatery do not bring any unique provisions opposed to Vladislav's Ordonnance in general, but they do bring to attention one interesting point, not mentioned before, which are unequal marriages. In Article XVI it is pointed out that whenever a nobleman desires to wed a woman and enroll some of her property into the Land Books, he is able to do so and she is lifted up to his status, but *vice versa,* the noblewoman would lose her title and could not pledge him any estate without the consent of the King.[85] Same as in Vladislav's Ordonnance, *Knihy Dewatery* remark on the possibility of a woman losing her dowry if marrying without the father's consent.[86] This provision does not speak of losing her chastity, which may suggest that Viktorin of Všehrdy considered such provision as useless, either because it had been obvious and needless to point out, or not that relevant. We side with the former.[87]

83 H. Jireček (ed.), *O právích země české knihy devatery,* 14.

84 *Ibid*., 11–14.

85 *Ibid*., 224.

86 *Ibid*., 262. Article VII.

87 This provision can be compared to one possibility that regards the loss of a man's part of an indivisible property (which we could consider, on a very basic level, as equal to a woman's dowry). This may occur if he kills or cripples his father, brother, or uncle. „Equal" offence, one might point out.

Knihy Dewatery may serve more as an explicatory source concerning the counter-dowry. Unlike Vladislav's Ordonnance, the book gives an explicit definition and the sum that should be enrolled, when it says:[88]

> „A [counter] Dowry is a sum of money by a third higher or of the same value as what was put down in her name [given in dowry] in the Land Books, dowry sheet, [etc] to wife by husband or from his friend or whoever has right to the inheritance."[89]

The author expands on the idea of how much should be pledged to a woman, where he makes a difference between the counter-dowry being given to a maid or a widow. The „one third" does not really constitute „one third", as a rule. Jan Kapras, the Czech historian, created a diagram showing this relationship in an equation,[90] where a=dowry; a maid should be pledged $\frac{5a}{2}$, and a widow $2a$.[91] Všehrd attributes a higher sum to virgins whereas widows tend to get less. He does not explicitly say why, but the conclusion could be that the widows were expected to possess the inherited estate and thus the pledged sum could have been lower.

Just like in its officially binding counterpart, Všehrd emphasises the enrolment into the Land Books, because, as it is pointed out in the Article 22, women who do not have their counter-dowry enrolled in the books, may encounter many obstacles when making their claim.[92] In addition to the provision regarding the procedure in front of the Land Court, Kornel writes that if the plaintiff does not follow the notification given by the Land clerks (Article X of Vladislav's Ordonnance) the aggrieved woman may seek justice in front of the highest land burgrave or viceburgrave of Prague.[93]

He also speaks in more detail on the matter of „what" can be pledged as counter-dowry, which is also something that is not necessarily expressed in Vladislav's Ordonnance. Všehrd discusses this in Article 21, where he mentions that counter-dowry can be given only on non-servable estates, and in money. Any other estates (royal, church belongings, manx[94] etc.) could have been enrolled only with the permission of the King.[95]

88 H. Jireček, 217 [V. book, Article VI.]

89 *Ibid*., 216.

90 J. Kapras, 32.

91 A. Kozáková, 25.

92 H. Jireček, 226.

93 *Ibid*., 220–221.

94 Meaning estates that originally were part of a bigger manor and were bestowed to people, who oversaw their governance, but weren't their owners.

95 H. Jireček, 226.

The institute of transfer of counter-dowry is described in more detail in *Knihy Dewatery* than in the Bohemian Ordonnance. It also contains some explanations about the type of estate that the change can actually be done on. The main principles which are used is that the value of the counter-dowry must remain the same as it was before the transfer,[96] and the presence of the receiver and the wife's consent are required.[97] The last comment on the topic of transfer is related to the shift of the property from one Book to another.

> „Also, a transfer of [counter] dowry from a manx estate to a non-servable estate, and vice versa, the non-servable estate from the Land Books to the manx estate to the Curial Books. Thus, from Moravia to Bohemia, vice versa, and from other Lands of the Bohemian Crown."[98]

Based on the chosen provisions it can be concluded that the differences weren't significant, which is as expected, since both authors derived the articles from the same sources. Although *Knihy Dewatery* provides readers with more detailed explanations than the Ordonnance, unlike Vladislav's Ordonnance, it does not speak directly of women's chastity, notwithstanding the provision mentioning the occurrence of an unapproved marriage. Other basic provisions: such as where to enrol a dowry,[99] how and when the right to that claim is statute-barred,[100] the priority of a woman's right to counter-dowry against whomever holds the estate after her husband's death,[101] or the fact that she cannot dispose of it while her husband lives[102] etc, are listed with the same meaning as in Vladislav's Ordonnance, and thus do need not to be further examined. The legal handbook is, however, written with more eloquence.

3.2 Moravia

3.2.1. The Moravian Ordonnance from 1535

The codification of Land law in Moravia was more moderate. The first outline of the Moravian Ordonnance was published around 1516[103]

96 H. Jireček, 233. [Article XXX].

97 *Ibid*., 231. [Article XXVII].
Cf.: A. Kozáková, 35.

98 H. Jireček, 234–235.

99 *Ibid*., 216.

100 *Ibid*., 214. [Article XIV.].

101 *Ibid*., 227 – 228. [Article XXIII].

102 *Ibid*., 228. [Article XXVIII].

103 Dalibor Janiš, Jana Janišová, *Komentář k moravským zemským zřízením z let 1516 – 1604.* Svazek I. články 1–74, Leges, Praha 2017, 19.

and was formed on some provisions of the Book of Tovačovy,[104] with the addition of a few remarks[105] from the Book of Drnovice,[106] and it worked aside the rulings of the Land Court, Land Diet, and others[107] as an effective source of law. The Moravian Ordonnance reflects decades [centuries, even] of a long dispute between the king and his idea of codified laws, and the nobility who sought a solid fixation of their privileges.[108] The solution was found in 1535 through the Moravian Ordonnance, which puts together a legally binding codification. In some parts, especially in the matters of dowry, the Ordonnance implemented Articles from the Book of Tovačovy, and thus, as those parts are almost identical, this submission will not examine the Book individually.

This paper analyses the 1535 edition of the Moravian Ordonnance, completed by František Čáda,[109] along with the commentary to individual articles made by Dalibor Janiš and Jana Janišová, who based their work on the issue from 1604.[110] Thus, the paper references articles from Čáda's edition and then, alternatively, adds the numbering of the articles according to the 1604 edition.

As was apparent from the comparison of the Bohemian Ordonnance and *Khihy Dewatery*, the basic institutes provided for women in terms of their property are similar, since the idea of protection[111] of the dowry right was the priority. The Moravian Ordonnance contains only about ten articles concerning dowry rights. There are still some nuances though, that require closer analysis.

The provisions concerning dowry rights start at the Article 120 [Article 112] *(o věnných právích* – About Dowry Rights); in the first place,

Cf.: František Čáda, *Zemské zřízení moravské z roku 1535*, Česká akademie věd, Praha 1937, XXVI.

104 Written by Ctibor of Tovačovy, this legal source constitutes one of the essential Moravian legal sources of the 15th century. It originated from the initiative of the Moravian nobility, who were uneased by the possibility of any codification coming from the king, and thus, entrusted the writing of the norms to one of their own. The book was not an official document, although it did serve as a useful handbook.

Cf.: D. Janiš, Jana Janišová, 300.

105 But very few.

F. Čáda, XXXVI.

106 Vincenc Brandl (ed.). Kniha Drnovská, J. Šnaider, Brno 1868, 142.

107 D. Janiš, Jana Janišová, 19.

108 F. Čáda, XXVII.

109 F. Čáda, 246.

110 D. Janiš, Jana Janišová, 19.

111 Article 120, „widows have primary right on the estate of their deceased husband before anyone else". F. Čáda, 134.

they secure potential widows, by saying they have a right to claim their counter-dowry before anyone else.[112] Apart from the estates or the sum of money that her husband leaves for her, the Ordonnance makes a list of things that are hers by law i.e. jewellery, one third of cattle, carriage, etc.[113] This was a norm valid for women from the higher ranks of nobility, but the Ordonnance also points out rights that women from the lower ranks of nobility (gentry) possess (unlike the higher nobility, the law did not entitle them to jewels, unless bequeathed by their husbands, carriage, etc.). The preserved enrolments from the Land Books of Moravia provide quite a satisfactory insight into the usage and effectiveness of the named provisions from the Ordonnance. For example, in 1572, apart from naming the estates that will fall upon his wife, a man called Balcar Švejnyc points out that she should also receive „what she has of clothing etc., for it is hers by law."[114] Thus, the law and praxis counted with her „indispensable property", which did not need to be named specifically.

The Article 121 [Article 113] of the Ordonnance provides the answer to the basic question of what amount should be enrolled. It states that a virgin should be given her dowry sum and one third of it more, whereas to a widow the same she has.[115] This third is counted in the same way as Viktorin of Všehrdy calculates it, meaning that if she was given a hundred, she shall receive two hundred and fifty *grossium*.[116] Thus, this provision remains the same as it was in Bohemian law.[117] *Ad* the fidelity to this article we can take a closer observation of enrolments of dowry and counter-dowry and compare the sums. A good example is the enrolment of the estates of Elizabeth of Víckov. She was given eight thousand *grossium* in her father's enrolment;[118] her second husband, though, sets a sum of thirteen thousand and six hundred *grossium*, plus the possession and disposition of all of his estates.[119] Considering Elizabeth was already a widow, the Moravian Ordonnance enabled her to receive a sum twice the value of the dowry she had. As was said earlier, the prescribed sum wasn't legally binding and it depended on the mutual agreement of both parties.[120] If the father died before his daughter's marriage, her brothers were obliged to give

112 *Ibid.*

113 *Ibid.*

114 František Matějek (ed.), *Moravské zemské desky – Kraj Olomoucký III. díl, Státní pedagogické nakladatelství*, Praha 1953, 46.

115 F. Čáda, 135. [Article 121]

116 *Ibid.* See also: Vincenc Brandl (ed.), Kniha Drnovská, J. Šnaider, Brno 1868, 142.

117 F. Čáda, 135, fn. 2.

118 F. Matějek, 28.

119 *Ibid.*, 92.

120 A. Kozáková, 25.

her the dowry in accordance with Article 126 [Article 110]. The following Article emphasises that the dowry should be used for the well-being of a woman.[121] The Land Law stipulates that all daughters should receive equal sums for their dowry.[122]

One of the differences between the Moravian and Bohemian Ordonnance is the position of the receiver (*příjemce)* of counter-dowry. In the Bohemian provisions, the person securing the rights of women appeared only during the transfer of counter-dowry (his presence was also required by *Knihy Dewatery*),[123] but the Moravian Ordonnance also demands that the *příjemce* is present at the first deposit of the counter-dowry.[124] It is important to note that unlike the Bohemian one, the Moravian Ordonnance states „and who the woman choses", allowing the woman to choose who will secure her counter-dowry.[125]

The main question to deal with is the possibility of loss of the dowry. The Book of Tovačovy speaks of a loss of the right to a dowry in a situation where a woman decides to marry against her father's will. The provision also adds that „upon him and her a revenge shall be taken"[126] if the daughter ran away. The author of the edition of the Book of Tovačovy, Vincenc Brandl, reflects on what the punishment might be in that case. He references the *Řád práva zemského*[127] *(Ordo iudicii terrae),* in which the punishment for such a crime would be the execution of both. The Laws by Ondřej of Dubá[128] then state that the decision on the type of punishment belongs to the lords and them alone, and the author chooses not to draw any conclusions.[129] The possible loss of dowry right is also mentioned in the Book of Drnovice, which provides an identical provision concerning

121 F. Čáda, 142.

122 *Ibid*.

123 H. Jireček, 220.

124 A. Kozáková, 36.

Cf. D. Janiš, J. Janišová, *Komentář II. svazek,* 306.

125 F. Čáda, 136. See also: A. Kozáková, 36.

126 Vincenc Brandl (ed.). Kniha Tovačovská aneb pana Ctibora z Cimburka a z Tovačova paměť obyčejů, řádů, zvyklostí starodávných a řízení práva zemského v Markrabství moravském, Šnaider, Brno 1868, 90.

127 A Book of Law that was written halfway through the 14th century for the Land of Bohemia, consisting of provisions covering the procedural course of action for the Bohemian Land Court. More in: František Palacký (ed.), Archiv český II. díl, Praha 1842, 76–135.

128 Another Book of Land Law written by a judge of a Land Court, Ondřej z Dubé, for Bohemia. More in: F. Palacký (ed.), 481.

Cf: František Čáda, *Ondřeje z Dubé Práva zemská česká*, Česká akademie věd a umění, Praha 1930.

129 V. Brandl (ed.), Kniha Tovačovská, 90.

such behaviour in the article about a wilful woman or maid.[130] Both of the sources also mention that if a woman „goes with someone", she shall lose all of her rights to the family property. The wording of the provisions suggests that the legal sources focus especially on the cases which concern the merits of a maid running away, and although the law does not directly speak of losing chastity, it is possible that it referred to such situations. After all, this can be demonstrated through judicial praxis.

To provide a better picture of the customs, a closer examination of some of the cases from the Land Court was made. The Commentary serves as an overview source, naming some of the disputes that took place in front of the Land Court. According to the preserved scriptures from1613, once the family found out that their daughter married without their approval, she would lose her right to any estates.[131] Sometimes the family made an effort to annulate the marriage.[132] By all means, such behaviour meant quite a disgrace to the family.[133] The Ordonnance does not directly speak of chastity in the restrictive meaning of the word, although, judging by the wording of the articles concerning women, it can be said that chastity of young women was seen as an essential requirement for a good marriage, as it is a matter directly affecting women's honour.[134] This can only be demonstrated by local precedential praxis. In 1545, a dispute was brought in front of the Moravian Land Court in which there had been a justified suspicion that the accused woman was no longer a maid. The Court ruled in favour of the plaintiff and stated that the accused [through *příjemce*] must give her inheritance back. This dispute was enrolled into the Land books and in its table of contents it is followed by the precedential legal rule that states: „If she loses her chastity, she does not possess rights".[135] According to the Bohemian Ordonnance, she could have been forgiven, but unlike Bohemian law, Moravian law required a special document for such action.[136] This can be demonstrated on a dispute that

130 V. Brandl, *Kniha Drnovská*, 76.

131 Dalibor, Janiš, Jana Janišová, Komentář k moravským zemským zřízením z let 1516 – 1604. Svazek II. články 75 – 190, Leges, Praha 2017, 116.

132 *Ibid*., 166.

133 *Ibid*., 116.

134 *Ibid*., 322.

135 *Ibid*., 322.

Also: MZA, fond G 10, inv. č. Kniha 199, 294.

Cf.: MZA, G 10, inv. č. 820, fol. 199r-v.

136 František Kameníček, „Glossy k věnnému a vdovskému právu moravskému na statcích svobodných za 16. století". In: Jaroslav Bidlo, Gustav Friedrich, Kamil Krofta (reds.). *Sborník prací historických, K šedesátým narozeninám dvor*, rady Prof. Dra Jaroslava Golla, Hist. Klub, Praha 1906, 226.

Also: MZA, fond G 10, inv č. Kniha 199, 4.

occurred in the first half of 15th century between Jaroslav of Boskovice and Vilém of Pernstein, where the quarrel presumably concerned the forgiveness of the father for his daughter, Elizabeth. It is pointed out that the forgiving was done in accordance with the laws of the land, implying that, although the Ordonnance does not contain an explicit rule, there had still been a possibility for the women to receive a dowry. In this case, her father showed forgiveness.[137] The case law shows that although the provisions of the Moravian Ordonnance and other legal books do not directly mention chastity, losing it was still considered as a legitimate reason for stripping the woman of her property rights.

3.3 Silesia

As mentioned in the first part of this submission, Silesia consisted of a number of principalities that changed during time. For the purposes of this text, sources from Upper Silesia were chosen for examination, particularly the Opole-Ratibórz and Cieszyn Ordonnances. Lower Silesia was under the influence of Saxon Law, unlike the Upper Silesia, which had strong Slavic roots less influenced by German law.[138] The local Silesian legal jurisdiction can be divided in two groups: the Opole and Ratibórz Ordonnance, a legal administration which arose from Polish legal customs,[139] and the other group, subordinated to the Opavian influence – that has taken after the Moravian Ordonnance.[140] The Opole and Ratibórz Ordonnance was later adopted and adapted by other divided principalities in Lower Silesia, and, as Marian Ptak suggests, it also served as a base for the Cieszyn Ordonnance.[141] Similarly to any other legal development in the previously mentioned parts of the Bohemian kingdom, the Ordonnance wasn't the first legal document that emerged in Silesia; previous attempts at codification included texts such as the 1565 *Landt und Hofgerichts Ordnung im Furstenthumb Jegerndorf*[142] for Krnovsko (although never confirmed by their princeps), and the 1666 *Opavian Troppawische deutsche Landes Ordnung.*[143]

137 MZA, G 10, inv. č. 199. fol. 4.

Also: D. Janiš, Jana Janišová, II. díl, 322.

138 J. Kapras, *Zemská zřízení opolsko-ratibořské a těšínské.* Sborník věd právních a státních. Praha 1922, 2.

139 Marian Ptak, *"Zemské parvo Horního Slezska – stav bádání a badatelské prespektivy"*, In: Libor Jan, Dalibor Janiš et al. *Ad iustitiam et bonum commune*, Matice Moravská, Brno 2010, 62.

140 *Ibid*., 62.

141 *Ibid*., 64.

142 *Ibid*., 65.

143 *Ibid*., 66.

There are two views regarding the adoption of Law in the Upper Silesia. The one held by Jan Kapras says that parts of the Bohemian code have been adopted into these codifications.[144] He bases his argument on the roots of those sources, for both had emerged from the Great Privileges given by the King, and thus he argues that the following provisions were adopted from the Bohemian Law.[145]

The other stand, mentioned by Pavla Slavníčková, introduces the idea that a reception of the Bohemian Ordonnances into the Silesian Codes is unlikely and that the similarities more likely originate from the Moravian Ordonnance,[146] and possibly as a reception of Roman Law.[147] It is not within the scope of this submission to address any of those theories, although it should be said that the Moravian influence, next to the Polish one and that of other Upper Silesian codifications is apparent also in the Cieszyn Ordonnance, as said by Erich Šefčík, who dedicated his work to Silesian history.[148] A clear conclusion has not been made on that matter, henceforth this submission will focus on the similarities and differences present in both codifications.

3.3.1 The Opole and Ratibórz Ordonnance

The first analysed Ordonnance had arisen from the Great Privilege given to the region of Opole-Ratibórz (*postmodo* ORO) and it constitutes a legal ground for another Land Law codification of the Crown. The Ordonnance had been finally authorized by the King in 1562,[149] and issued the following year.[150] The structure of the text is very similar to the Cieszyn Ordonnance.[151] However, in comparison with the Moravian and Bohemian Ordonnances in general, some provisions concerning the position of widows are not covered in this Ordonnance at all.[152] Whichever the original influence had been, the provisions bear a distinctive nature, where, for example, Article I of the ninth sheet states that:

144 J. Kapras, 1.

145 *Ibid*., 2–3.

146 Pavla Slavíčková, *The influence of Bohemian and Moravian Land Law on the content of the Land Ordinnance of the Duchy of Opole and Ratiborz: the example of Family Law [online]*. 116. Available: *https://journals.umcs.pl/rh/article/view/6395/7095*

147 *Ibid*., 111.

148 Erich Šefčík (ed.), *Zemské zřízení Těšínského knížectví z konce 16. století*, Muzeum Těšínska, Český Těšín 2001, 8.

149 J. Kapras, 4.

150 *Ibid.*

151 P. Slavíčková, 107.

152 *Ibid*., 112.

> „Whichever dowries according to the sealed contracts should be made and to the Chancellery given... They should be enrolled on free [non – servable] estates. Same as is said above about purchase, sale or others."

Article II continues: „And not differently than by ancient customs shall the dowry be made. Namely against one hundred, two, more or less, in accordance with the value of the *posah*."[153]

Just as the Bohemian Ordonnance in many cases quotes „Thus was found as law", this Ordonnance does look up to the old customs as well. A rather interesting difference in comparison with the Bohemian law is the fact that the Opole-Ratibórz Ordonnance did not make a distinction between the counter-dowry given to a maid and the counter-dowry given to a widow, unlike the *Knihy Dewatery.* The Ordonnance, at least, does not suggest so, because the legal position of a widow is not, as a matter of fact, mentioned anywhere in the text.[154] Another point open for debate when discussing the Moravian and Bohemian Ordonnances is the sum that the law prescribes women should get. It seems that the Opole-Ratibórz Ordonnance chose to incorporate a sum that was considered in the west of the Bohemian Kingdom a sum pledged to widows. But, same as in the Bohemian Ordonnance, the sum was more indicative, for what was essential was the agreement between the two parties.[155] If we take a closer look at the enrolments in the Opole-Ratibórz Land Books from 1532–1543,[156] we will see that a variety of sums was pledged, namely from 80 zloty[157] to 2 000 zloty.[158]

An important difference in comparison with the Bohemian code is the enrolment of the dowry itself into the Land Books, because according to the Article IV a woman can name two or three of her friends[159] as her guardians[160] and receivers of the counter dowry. This provision therefore favours the latter theory regarding the inspirations for the Silesian ordon-

153 „Posah" is a word used in Silesia for dowry received from family.

Cf: Karel Kadlec (ed.), *Zržijzenij zemské knijžetstwij oppolského a ratiborského y giných kraguow k nim přijslussegijcých*, Československá univerzita, Praha 1926, 7.

154 P. Slavíčková, 115.

155 J. Kapras, 31.

156 Jiří Stibor, „Zemská kniha opolsko-ratibořská z let 1532 – 1543". Orlice. Časopis pro genealogii, heraldiku a další pomocné vědy historické, Klub genealogů a heraldiků při DK Vítkovice. Ostrava 1993.

157 Zloty is a Polish currency, and to make a comparable paralel, one zloty was 30 grossium, and 60 grossium is commonly considered 1 sexagena – a well-used currency metrics.

J. Stibor, 92.

158 *Ibid*., 18

159 *Ibid.*

160 K. Kadlec (ed.), *Zržijzenij zemské knijžetstwij oppolského,* 7.

nances, because such a provision was also present in the Moravian Ordonnance.[161] As a matter of fact, it is one of the most significant differences from the Bohemian code.

Regarding a woman's right to dispose of her counter-dowry, the norm continues to favour women, and, even when her husband is in debt, he nevertheless cannot pay the debt from the estate she received, for it is hers to do with as she pleases.[162] The provision does not mention whether her counter-dowry right is a priority, as it was in the previous ordonnances, because the provisions that would constitute such a legal obligation are simply not present. Although, exceptions can be made even to the above-mentioned norm, because Article VIII and Article IX state that if the husband would like to sell that estate for the well-being of both of them, he can do so, but only with the consent of those who pledged for her counter-dowry and the Land Court, in accordance with the customs, and not to the harm of his wife's dowry.[163] This key principle reflects the attitude of the society towards women, setting the protection of their estates as a priority. This constitutes a rather remarkable difference between the Bohemian Codes and the Silesian one in regard to the disposition of the counter-dowry. Also, as it was said, the Bohemian Ordonnance developed an institute for the transfer of the dowry precisely as a response to making the estates *de iure* untouchable. On the other hand, the Silesian Ordonnance does not provide any supplement of property for the woman whose estate had been sold in accordance with Articles IX and XII,[164] and since the analysis of Land rulings is missing, any further conclusions cannot be made. However, one claim can be made with the support of Article X, stating that a woman without a guardian cannot give or receive anything on her own.[165]

It is true, though, that the Ordonnance points out in Article XIV that whether an estate to which a counter-dowry is attached is sold (and the counter-dowry rights cannot be transferred immediately), the husband should pledge something to prove his intention to enroll his wife's counter-dowry in the future.[166] This article may seem like a supplement for the transfer of counter-dowry without direct compensation, but it must

161 P. Slavíčková, 110.

162 K. Kadlec (ed.), *Zržijzenij zemské knijžetstwij oppolského*, 8. [Article VII].

163 *Ibid.* [Article XIII].

164 „A woman can sell her inherited estates to her husband, under reasonable circumstances and without coercion, with consent of a clerk from the Land Court." The Ordonnance does not define „resonable circumstances", nor does it explain in the above-mentioned Article VIII the term „for the good of them both".

165 K. Kadlec (ed.), *Zržijzenij zemské knijžetstwij oppolského* 8.

166 *Ibid.* [Article XIV].

be pointed out that Article IX does not only speak of the estates that were sold, but also of the ones that were pledged, which the provision in the Article XIV does not mention. Now, the question remains – how the parties may interact if the estate is not to be sold, but only pledged? In the Bohemian provisions, a woman had a higher claim to satisfy her right than any creditor. The Silesian ordonnance does not contain such provision, but that does not necessarily mean it wasn't used, because, as mentioned before, the custom was an important source of law. For these reasons if the custom did not exist, it would disregard the compensation of woman's counter-dowry loss. On the other hand, if the custom existed and the counter-dowry sum equalled the value of the estate to which it was attached it would make the pledge and collateral security worthless – because the woman had preferential claim to the property. Since the judicial praxis has not been analysed in detail, the author dares not to make any further assumptions.

We have mentioned various ways in which the estates were protected for women; an interesting provision is found in Article XVIII, which is concerned with how to protect the estate from women themselves. If, after the death of her husband, she sells the estate below cost or causes material damage to other inheritors, or if she does any damage to the estate with a bad intent, she will have to compensate for it from her dowry.[167]

Now, a little remark on the investigated matter of chastity. The relevant provisions are set in a different section in the Ordonnance – the section concerning the Orphaned daughters, where in Article II[168] it is stated that if a woman, without the knowledge and the agreement of her closest blood relatives, would run away and marry a man, she would lose half of the estates to which she had the right of inheritance. This is a significant difference compared to the Bohemian Ordonnance, where she lost her right to any estate on the whole. Another significant evolution of law and the position of women is the question of chastity. Throughout the analysis, the loss of virginity equalled the loss of right to dowry. In Article III of the Opole-Ratibórz Ordonnance, the following is stated:

> „And if any [woman] would in her unchastity lose her virginity to another... she shall not receive more than one tenth of what she has the right to."[169]

Whichever the influence of the codification had been, both of the previous ordonnances spoke of the loss of all property claims. This consequently means that the circumstances surrounding the matter of women's virginal state before marriage had loosened a bit. This provision marks

167 *Ibid*., 9. [Article XVIII].

168 *Ibid*., 10.

169 K. Kadlec (eds.), *Zržijzenij zemské knižetstwij oppolského*, 10.

another difference in the condition of women across the society, because here, even without her „chaste" status, she is not left alone with nothing, as was mentioned in the previous provisions it may, in fact, favour the theory regarding the Bohemian influence, because although the disposition of the norm differs, a similar outcome prevails, unlike the Moravian Ordonnance, that does not speak of chastity directly.

3.3.2 The Cieszyn Ordonnance

Before its final division in 1290, Cieszyn was originally part of Opole-Ratibórz.[170] For that reason, its local legal development followed a similar pattern as the one in Opole. Another milestone, which shaped the local history, occurred in 1328,[171] when Cieszyn became a fief. Because of this, a vassal relationship was constituted between the Crown and this small principality. This historical event may have caused the Cieszyn territory to be under a stronger influence of Bohemian-Moravian law.[172] Similar to the situation in Opole and Ratibórz, the crucial point on the path to the Cieszyn codification was the issue of Great privilege in 1572[173] by Vaclav III Adam, which later served as a base for the codification itself. Despite the gruelling resistance from the Cieszyn nobility, the codification was issued in 1573.[174] Just as the Opole-Ratibórz Ordonnance, the Cieszyn codification is a rather brief set of legal rules, which contains even fewer articles about dowry than its Opole counterpart.[175] In analogy to the Land Books of other territories of the Crown, Cieszyn did have „*matriky knížecí kanceláře*" [Books of the Registry office of the principal Chancellery], which served *inter alia* as registers for transfer, enrolment etc. of estates and of course of dowry.[176] Only shards survived into the modern times, namely books covering years 1558–1574 and 1573–1651.[177]

As mentioned before, the Cieszyn Ordonnance is shorter than ORO by five articles precisely (nineteen in total). The focus should be on the fact that, unlike other Ordonnances, Cieszyn codification does not expressly

170 Jan Kapras, *Zemské knihy Opolsko-Ratibořské. Příspěvek k recepci českého práva a českého jazyka*, Alois Wiesner, Praha 1907, 1.

171 Jan Kapras speaks of the year 1327. *Ibid*., 2.

172 *Ibid.*

Erich Šefčík (ed.). *Zemské zřízení Těšínského knížectví z konce 16. století*, Muzeum Těšínsk, Těšín 2001, 8.

173 J. Kapras, 9.

174 *Ibid*., 11.

175 P. Slavíčková, 110.

176 Radim Jež, *Listiny těšínských knížat renesančního věku*, Muzeum Těšínska, Těšín 2010, 48.

177 J. Kapras, 11. Cf.: R. Jež, 50

say how high a sum should be pledged in a counter-dowry.[178] This provision is not present in any amendments and issues later on.[179] Although naming a counter-dowry to a woman was an old institute, surely present in everyday life, as demonstrated on enrolments taken from the remains of the Books of the registry office, it constitutes a remarkable difference compared to the other mentioned texts, even though that, as mentioned before, men very commonly gave different sums to their wives.

The first article cited in the Opole and Ratibórz Ordonnance is in fact very similar to the one in the Cieszyn Ordonnance. Cieszyn, however, emphasizes the precise meaning of making the dowry contracts, whose main purpose is to give a dowry, in order to avoid any further misconceptions.[180] Some of the first articles that were taken under consideration in the previous text are identical to those in the Cieszyn Ordonannce, namely those that concern the possible transfer of the wife's counter-dowry to another estate and the obligation to pledge other land for it.

Article VIII in the Cieszyn Ordonnance makes quite an important difference, because unlike Article X in the ORO, which stated that „No woman [meaning married] nor maid can receive, nor disposes with her estates without her guardians",[181] the Cieszyn Ordonnance excludes married women from it (thus speaking only about maids).[182] This implies that it was considered that widows did not need protection and that their position was stronger and, as can be said, more equal to men's. Moreover, the articles concerning a woman selling her estate to her husband remain in the same wording as ORO, although the Cieszyn Ordonnance requires a needed consent of the local Land Court judges, as stated in Article XII.[183]

The Cieszyn Ordonnance does contain articles regarding the loss of women's dowry right. The question of chastity is codified in Article III, regarding the „Orphaned daughters", and whereas in the case of unapproved marriage the punishment remains identical to the ORO – the woman loses half of her dowry, in matters of lost chastity, unlike the ORO, the woman loses everything, which is the same punishment as in the Bohemian and Moravian Ordonnance. This may highlight the previous theory made by Jan Kapras, pointing out the stronger influence of Bohemian-Moravian law, but a more thorough analysis should be conducted in order to draw any further conclusions. Also, the neighbouring Polish law could be taken into consideration.

178 P. Slavíčková, 110.

179 *Ibid*., 109.

180 *Práwa a zřijzenij zemské knijžetstwij Těssynského, 1592, O wenijch. Article I. Cf: E. Šefčík, 29.*

181 K. Kadlec, 8.

182 *Práwa a zřijzenij zemské knijžetstwij Těssynského, 1592, O wenijch. Article VIII. Cf: E. Šefčík, 30.*

183 *Ibid*., 30–31.

Cases concerning chastity were in the agenda of Land court[184] and thus, an examination of *Soudní knihy Těšínského knížectví* (Books of the Court) from the years 1591–1601 was made. Although the transcripts do not contain a case concerning the loss of a dowry, they point out the importance of women's chastity before marriage, considering it was a thing worth taking to the Court. In 1591 a woman named Anna Ištvanka brings civil action on behalf of her two daughters, Dorothy and Oršula, against Adam Karvinský, who she claims, allegedly „in the night of 1582 visited her daughters in Lizbice in their house, took them from there and brought them into his own house in rush and disposed them of their chastity."[185] The Court did not bring any ruling but postponed the quarrel until the next proceeding, for Anna I. had to bring her daughters in for questioning the next time, as well as a *přítele* (a friend – meaning someone who would lead the dispute on her behalf).[186] The Land Court makes another enrolment into the books a year later, when it refers to a Jiřík Penkal, who kindly refused the offer of leading the dispute and thus, the quarrel was postponed until Anna I. found someone else.[187] The dispute was finally resolved later that year, when the court ruled that Adam K. was not obliged to answer the action against him, for it was found that the girls behaviour was *"suspicious, impiety and dishonest."*,[188] meaning it was allegedly not the first time they had agreed to do such an impetuous thing. He was punished for the fornication that had occurred in his house though, with six weeks of prison and 100 *sexagenum grossium* paid into the Land treasury.[189] Even though this case does not directly talk about dowry loss, it shows the delicacy with which women's chastity was regarded and even discussed in front of the court.

4. REGIONAL PRAXIS OF THE LAND COURT IN BOHEMIA

The above presented analysis can be partly demonstrated on a real-life history that occurred in the 17th century in Bohemia. The story presented below left its imprint in Czech culture, and is still recounted and studied today for its astounding content. The issue is centred around Article 515 of Vladislav's Ordonnance, its breach, and the rather dramatic consequences.

184 *ZAO, Zukal Josef, inv. č. 244, fol. 2.*

185 *ZAO, Zukal Josef, inv. č. 244, fol. 6.*

186 *Ibid.*

187 *Ibid.*, fol. 4.

188 *Ibid.*, fol. 6.

189 *Ibid.*, fol. 7.

The story revolves around Elizabeth Katherine von Schmiritz (*Smiřická),* who came from a powerful Bohemian noble family that was at the peak of its wealth in the 16th century. Her family provided not only a good social position, or a right to inherit an immense estate, but she was also destined to inherit a long ugly face and a limping walk, which made her unattractive for any potential suitors.[190] Since no noble man had any apparent interest in her, Elizabeth decided to take things into her own hands, against the odds (and the law). She started to seek male company among the subjects of the castle.[191] She tried to get her way with many men, who eventually started to avoid her, because they were scared of the punishment that would follow (and rightfully so, because Elizabeth's mother, Hedwig of Hasenburg, physically punished not only the maids that were helping her daughter but also Elizabeth herself, not to mention that she made sure that Elizabeth was imprisoned).[192] One of her targets was the castle's blacksmith Georgie Wagner, upon whom she forced herself (or so he said). This rather eccentric story would go unnoticed, if only, after the death of her parents and older brother, she, as the eldest daughter of Sigismund Von Schmiritz, was not the one to hold the strongest claim to the family estate. She got out of her imprisonment by marrying Otto von Wartenberg, who saw Elizabeth's claim as a possibility to acquire the extensive property of the Von Schmiritz family. Naturally, this wasn't welcomed by her younger sister, Margaret Salomene, who, while Elizabeth was held captive, managed the administration of the domain (securing her position by acquiring guardianship over their demented younger brother).[193]

Looking back to the analysis of the Bohemian Ordonnance and the wording of Article 515, what must be pointed out is the fact that by law, if a woman had lost her chastity before marriage, she was to lose every right she was entitled to regarding any family estates. Although this information was well-known in the family circle (and beyond), it was also essential for Margaret to prove that her sister was no longer chaste.

And so began the quarrel. We do not possess much information, but we do know that after more than a decade from the incident with Georgie Wagner, he was brought in front of the court to testify. His testimony is one of the few sources we have in this matter.[194] Surprisingly enough,

190 Jindřich Francek*, Příběh tajné lásky*, Havran, Praha 2005, 79.

191 J. Francek, 82.

192 *Ibid.*

193 Jindřich Francek*, Eliška Kateřina Smiřická a příběh její lásky*. Východočeský sborník historický. č. 3, 1993, 279.

194 *Ibid*., 286–291.

given that the incident had occurred between 1607 and 1608,[195] he gave a very detailed testimony in 1619[196] regarding his suspicious activities with Elizabeth Katharine, to ensure that the court would favour Margaret Salomene and her husband. Thanks to the detailed testimony, Elizabeth lost her claim to the estates, as was in accordance with the Land law. The court regarded the provision concerning chastity from Vladislav's Ordonnance and agreed with the plaintiff. Although we do not possess many written sources about the breach of Article 515, as shown above, the judicial praxis was intransigent.

The epilogue to this peculiar story is equally fascinating – once the land clerks came to acquire the castle, where Elizabeth Katherine resided, there had been an accidental explosion of the gun powder storage (due to a mishandle of alcohol, musketeers, sparks and explosives) and a part of the castle was destroyed, serving as a grave for the Land Court commission and Elizabeth Katherine herself.[197] No wonder her story became a well-known sensation.

5. CLOSURES

The purpose of this submission was to provide a brief overlook of the women's right to dowry and counter-dowry in the first Land law codifications on the territory of the Bohemian kingdom. Thus, codifications such as Vladislav's Ordonnance (effective in Bohemia), Moravian Ordonnance (used in Moravia), with the additional reflection on some of the articles in the Book of Tovačovy, or the Book of Drnovice, Opole-Ratiborz Ordonnance (one of the key parts of Upper Silesia) and Ciezsyn Ordonnance were taken under consideration.

Since women mainly depended on their given dowry to acquire estate (unless all of their male relatives were dead, because they were not otherwise considered in the hereditary succession), the paper examined the provisions that codified rules regarding the possibility of loss of this prominent right and its possible consequences. The comparison showed that, unlike for men, chastity was essential for a maid and all of the codifications observed the loss of dowry right in case this status was not maintained. The only exception is the Opole-Ratiborz Ordonnance that provides the woman with at least a tenth of her dowry. For a better under-

195 *Ibid*., 276.

196 *Ibid*., 1993, 286.

197 Karel Tieftrunk, *Pavla Skály ze Zhoře Historie česká od roku 1602 do roku 1623, III. díl,* Kober, Praha 1867, 441.

standing of Silesian law a further examination of Polish law should also be made. Also, in all countries of Europe, it was allowed, based on *actio dotis*, to claim a dowry from a seducer who deflowered a virgin.[198]

Judicial praxis in front of the regional Land courts only supported the above-mentioned articles, providing a better understanding to the period praxis. However, it can be pointed out that the enrolled sums in the Land Books barely followed the outlined amount of money mentioned by the Ordonnances. This isn't much of a surprise, because the dowry was given away through a contract[199] between two parties and thus, it was upon them to come to an agreement. This may, though, lead to a question of how accurate the utilization of other non-dowry related norms in comparison with the everyday praxis was – since the provision, although present in some of the codifications, wasn't technically legally binding.

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Вероника ОНДРАШКОВА*

ПРАВНИ АСПЕКТИ КОЈИ СЕ ТИЧУ ПРАВА НА МИРАЗ У ЗЕМЉИШНОМ ПРАВУ У РАНОМ МОДЕРНОМ ДОБУ

Сажетак

Рад се бави улогом жена у раном модерном добу, са нагласком на њиховом праву на мираз и противмираз. Поменуте су различите врсте мираза, као и одређени чланови из Земљишних уредби који се тичу стицања и губитка права на мираз. Чланак се фокусира на територију Чешке Круне, која се

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састојала од неколико спојених области, узимајући у обзир главне регије и поредећи разлике између одредби из различитих Земљишних уредби (ордонанси). У овом раду се, такође, упоређују различити случајеви узети из земљишних књига, у циљу испитивања датог законског оквира. Ближе посматрамо један случај из Бохемије (Чешке), који показује како је суд поступио у случају сумње у оправданост женинoг права на мираз.

Кључне речи: *Земљишно право. – Владисављева уредба. – Моравска уредба. – Шлеске уредбе. – Женски мираз.*

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