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COLLECTIVE FARMING COMMUNITY (*ZADRUGA*) IN SERBIAN CIVIL CODE OF 1844 AND THE ROMAN LAW

Abstract: *The subject of this paper are the norms regarding zadruga, the traditional rural cooperative-farming family-based community, in the Serbian Civil Code of 1844, in the light of the roman law. The authors are making an analysis of the rules of the Serbian Civil Code regarding zadruga with intention of showing possible influence of the roman law on the way in which the traditional serbian institution has been regulated in the Civil Code. The authors also payd special attention to the the influence that the institute of zadruga had in the later serbian legal theory and praxis.*

Keywords: *Collective property; Zadruga; Serbia; Roman Law; Rural Cooperative.*

1. Introduction. Zadruga as a family-based farming community and the rules of the Serbian Civil Code of 1844

The term *zadruga* has been historically used to indicate different types of economic communities existing among southern Slavs in the Balcan peninsula. The exact form and the legal regime of the *zadruga* varied significantly since the high middle ages, when we encounter such communities in the sources for the first time. There were significant differences in regard of what *zadruga* actually means in times, and in different regions of the Balkans. In spite of variations, some traits are common for all *zadruga*-type communities. Traditional *zadruga* is a type of rural extended family, which functions as a cooperative-farming community with collective property of the members on land and other means of production. Although a comparatist research would undoubtfully lead us to find similar communities in othe parts od the world, *zadruga*, in it's purest form, remains an institution typical for the Balcans with particular caracteristics, as we shall see.[1]

Although the term *zadruga* derives from the beginning of XIX century, demographic data indicate that such a type of family, allthough under different

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[1] About history of *zadruga* see for example Н. Илијић, *Исūорија задруīе код Срба*, Службени лист, Београд 1999.

name, might have been dominant form of family in the medieval Serbian villages, althought even at that time has been often divided into smaller, nuclear families. Still, it was regulated only by consuetudinary law, both in medieval Serbia and during the ottoman rule.[2]

The first modern legal act in which the institution of zadruga has been regulated in a systematic way is the serbian Civil Code of 1844 (SCC). Officially Civil Code for Serbian Principality (*Грађански законик за Књажевство српско*,[3] it was one of the first civil codes in Europe (preceded only by the French, Austrian and Dutch). Although abolished in the 1946, SCC influenced heavily later Serbian legislation, and some of it's norms are still in use.

The author of the draft of the Serbian Civil Code, serbo-austrian lawyer Jovan Hadžić, has been criticized by contemporaries as being noting but a copyist of the Austrian Civil Code of 1811. This libel has only recently proved to be false. Hadžić moved away from the Austrian model in several aspects, mostly under the influence of the original roman law and the Serbian customary law, especially in the family and inheritance law.[4]

However, even these "original" parts of the Code have been subject to critique, especially in regard of unequal position of male and female children in inheritance. The second major objection addressed to Hadžić is related to the way of regulating the institution of *zadruga*.[5]

Serbian Civil Code dedicates an entire chapter to this institute and defines a family cooperative as follows:

Article 57: "*A cooperative (*zadruga*) or a cooperative house (*zadružna kuća*) is understood to mean several persons of full age, living alone or with their offspring*

[2] About zadruga in the middle ages see: С. Мишић, *Српско село у средњем веку*, Еволута, Београд 2019, 171-182.

[3] Civil Code for Serbian Principality, proclaimed on Feast of Annunciation 25 March of 1844, Belgrade, Editorial of Serbian Principality.

[4] M. Kulauzov, "Direct Reception of Roman Law in Serbian Civil Code – *consortium ercto non cito* and Serbian Zadruga", *Ius romanum* 2/2017, electronic edition, http://iusromanum.eu, 1/12; S. Aličić, „Sistematika odredbi o obligacionim odnosima u Srpskom građanskom zakoniku u svetlu sistematike Justinijanovih Institucija", *Zbornik radova Pravnog fakulteta u Novom Sadu* 2/2004, 117/134; А. Маленица, „Римска правна традиција у српском праву", *Зборник радова Правног факултета у Новом Саду* 2-2004; С. Аврамовић, „Српски грађански законик (1844) и правни трансплланти – копија аустријског узора или више од тога?", Српски *грађански законик – 170 година*, Правни факултет Универзитета у Београду, Београд 2014, 13-46; М. Ђорђевић, „Pravni transplanti i Srbijanski građanski zakonik iz 1844", *Strani pravni život* 1/2008, 62-84; Ј. Даниловић, „Српски грађански законик и римско право", *150 година од доношења Српског грађанског законика*, САНУ, Београд 1966, 49-66; Д. Кнежевић-Поповић, „Удео изворног римског права у српско грађанском законику", 150 година *150 година од доношења Српског грађанског законика*, САНУ, Београд 1996, 67-78; М. Полојац, „Српски грађански законик и одредбе о присвајању дивљих животиња – рецепција изворног римског права", *Анали Правног факултета Универзитета у Београду* 2/2012, 117-134; С. Аличић, „Уговор о послузи у српском грађанском законику у светлу римског права", *Српски грађански законик – 170 година*, Правни факултет Универзитета у Београду, Београд 2014, 219-230, Valentina Cvetković-Đorđević, „Le basi romanistiche del codice civile serbo fra tradizione e modernità", *Roma e America. Diritto romano comune* 43/2022, 233-294.

[5] For example, С. Јовановић, „Јован Хаџић", *Из наше историје и књижевности*, Београд 1931, 45; see also С. Аврамовић, 19.

in a community. They are mutually cooperative. Where there is no such communal life, they are called inokosni (*single*)."[6]

Another definition of *zadruga* is given in Article 507:

"*A cooperative (*zadruga*) exists, when both the common living and the (common) property are established by the virtue of kinship or adoption. A cooperative is also called a house or a cooperative house (*kuća zadružna*), as opposed to a private (*inokosna*) house.*"[7]

The three elements of the legal notion of cooperative which can be extracted from these definitions are, that *zadruga* is: 1. family-based community; 2. working and living community; 3. community of property.

1. A cooperative assumes at least two persons who are called cooperative members (*zadrugari*). In practice, the cooperative counted a large number of people, sometimes 100 members. A cooperative can only exist between persons who are related to each other. Primarily, it is a community of blood relatives. Although SCC does not specify that cooperative members can only be blood relatives through the male line, as a rule this is the case.[8] *Zadrugari* can be blood relatives both in the direct and collateral lines. They can also be half-brothers on the father's side and on the mother's side, while stepchildren cannot be.[9] Apart from blood kinship, the cooperative can also be based on kinship by adoption.[10] The cooperative consists only of men. Women could not be cooperative members.[11]

2. For the existence of the cooperative it is necessary that its members live and work together. However, this condition could be waived. An individual cooperative member could stay outside the cooperative for a certain period of time, for example while serving in the army or studying. It does not affect his membership of the cooperataive. Moreover, even if a person permanently leaves the common life and work in the cooperative (for example, one son started trading in the city or started working in the civil service), he will be considered a cooperative member until he asked for his share to be separated from the cooperative property. In other words, for membership in a cooperative, it is sufficient that there is a latent

[6] 57 *Под задругом или задружном кућом разумева се више лица пунолетних, самих или са својим потомством у заједнини живећих. Они су у одношају међусобном задружни. Где таква заједнинскога живота нема, зову се инокосни.* The term *inokosni* (*инокосни*) means literally, belonging to a single persone.

[7] 507 *Задруга је онде, где је смеса заједничкога живота и имања свезом сродства или усвојењем по природи основана и утврђена. Задруга зове се и кућа или кућа задружна за разлику од инокосне.*

[8] A cooperative can be formed by both blood relatives on the male and female lines. Children that a woman gives birth to in a cooperative are related by the male line to the members of the cooperative among whom they were born, and related by the mother's line to persons from the family from which their mother came. If, after the death of her husband, the mother returned to her former family with her children, they would, under certain conditions, become cooperative members of that family. Ж. Перић, *Задружно право по Грађанском законику Краљевине Србије* (I vol.), Издавачка књижарница Геце Кона, Београд 1924, 48.

[9] Stepchildren are the children the woman had from her previous marriage, so she brought them to the house of her new husband. They cannot be cooperatives in their stepfather's family. Ж. Перић, (1924), 35.

[10] In order for a person to be adopted, the consent of all cooperative members is required. Ж. Перић, (1924), 36.

[11] Explaining why women cannot be cooperative members, Perić says that the work of men and women in a cooperative is not the same - women's work is smaller and less useful than men's work, therefore it would not be fair to equate them. Ж. Перић, (1924), 29.

common life, which is reflected in the fact that the absent person can always return to the cooperative and live and work together again with the other members.[12]

3. The interpretation of the third element - community of property caused difficulties. On the basis of the art. 507, however, it is not clear, what is the exact nature of the property of a family cooperative? Is it common property that each member can use and dispose of, collective property owned and administrated by all the members of the community, or co-ownership where the ideal parts belonging to each of cooperative member are known and determined?

From other articles of the Code, most of the Serbian doctrine concluded that Hadžić had in mind the co-ownership of cooperative members. This interpretation, which exists since XIX century, seems to be still dominant in the serbian legal thought. It can be summarized in following way. Before SCC, in the consuetudinary law, *zadruga* was a indivisible community, with collective property without defined shares. Hadžić re-defined the property of *zadruga* as co-property of cooperative members, with defined shares of individual co-owners, and *zadruga* became divisible.[13]

The main arguments in favor of this interpretation are, that in the SCC there is a possibility of partition of property on request of individual members of *zadruga* (Art. 492), members have the right to testamentary disposal of their ideal share (Art. 521), and cooperative member is responsible for his personal debts with his ideal share (Art. 515). Taking this conclusion for granted, opponents proceeded to accuse Jovan Hadžić, that by qualifying the cooperative property in this way, he contributed to it's demise. The critique went to the point of accusing Hadžić for the spread of poverty in the Serbian countryside in the XIX century, which poverty was at least in a part consequence of division of cooperatives into less productive small households.

While to this point almost unanimous, the critique was divided on the question, which were Hadžić's motives for this legal solution? Some went so far, to suggest that it was made with the specific aim of destroying the traditional rural cooperative. More moderate theory, which later came to be dominant, is that this solution has been made unconsciously, under the influence of roman law. Namely, taken in consideration that Jovan Hadžić has been educated on the principles of the roman law (which was believed to be generally in favor of the individual private ownership), it seemed plausible that he did not really understand the very essence of the traditional cooperative property. Due to a fundamental misunderstanding of the collectivistic spirit of the traditional cooperative and introducing an individualistic principle, Hadžić changed the nature of the legal institution of traditional collective ownership, and transformed it into a co-ownership. Thus, he practically abrogated the traditional collective cooperative property. In other words, the traditional Serbian rural family cooperative, based on the collec-

[12] Ж. Перић, (1924), 101-103.

[13] Г. Никетић, *Грађански законик Краљевине Србије протумачен одлукама одељења и опште седнице Касационог суда*, Геца Кон, Београд 1922, 317-319; M. Kulauzov, 10.

tive ownership, was reformed using roman contract of partnership (*societas*) as a model, which contract was based on co-ownership. It was in those provisions that Hadžić's critics saw new, externally inserted elements, which abolished the original nature of the cooperative and had a devastating effect on its further survival.

In recent times, the generally unfavorable judgment of contemporaries on Hadžić's legislative work seems to be out of fashion. Nowadays, it is more popular to write apologies than critiques of SCC. In the manner of époque, even the criticisms of norms on *zadruga* became judged to be unfounded. Namely, it has been found that traditional (pre-SCC) *zadruga* was something different than what the critiques of the SCC imagined, and that the rules of consuetudinary law didn't differ that much of Hadžić's legislation. The critique was based on an idealized and inaccurate picture of traditional cooperative family, mostly based on some sketchy ethnographic descriptions, and sentimental stories about patriarchal life in the countryside.[14] The reality, as depicted by authentic legal sources, was different. The property rights of individual cooperative members on the shares in the cooperative property mentioned in the SCC - the right to partition, the right to testamentary disposition of the share, the possibility of guarantee for a personal debt by the share - were by no means unknown in the Serbian legal tradition before the adoption of the SCC. Court rulings from the time before the adoption of the clearly testify that Hadžić's legislation on *zadruga* did not differ from the norms of consuetudinary law and legal practice already in existence.[15]

So, Hadžić can be found "not guilty" for decline in numbers of the family cooperatives in the XIX century. He didn't enable the cooperative members to exercise the right to share it, but rather legalized a trend that existed before. It should be however noticed that some legislations explicitly prohibited division of *zadruga*, while Hadžić didn't even try to do it. Most notably, Austrian legislation prohibited explicitly division of family cooperatives in the Military Frontier (ger. *Militärgrenze*; ser. *Војна Крајина*), a predominantly Serb-inhabited borderland along the border with the Ottoman Empire, whose inhabitants (*Grenzer*) the House of Habsburg granted various privileges as a compensation for their military service. The reason for favoring the collective farming was the fact that it facilitated the continuity of agricultural production in the case of drafting the peasant-soldiers (*Wehrbauer*) into the military. In a larger farming community, missing a workforce of a single person was not that much of a problem like in a small household. However, should be noted that in practice the prohibition on dividing the cooperatives into single family households has often been circumvented. Several elementary families would *de facto* divide the property among them, although they would be formally still united in a *zadruga*.[16]

[14] М. Стефановски, „Кодификаторски рад Валтазара Богишића и Јована Хаџића", in: *Сто педесет година од доношења Српског грађанског законика (1844-1994)* (ed. Миодраг Јовичић), Београд 1996, 133.

[15] M. Kulauzov, „Pravila običajnog prava o deobama porodičnih zadruga južnih Slovena", *Zbornik radova Pravnog fakulteta u Novom Sadu* 2/2010, 281-289; M. Kulauzov, „Pravila običajnog prava o imovini u porodičnoj zadruzi južnih Slovena", *Zbornik radova Pravnog fakulteta u Novom Sadu* 1/2009, 305-315.

[16] M. Kulauzov, (2010), 283-284.

2. Later developments. Zadruga as a modern farmer's cooperative

Serbian Civil Code was *de facto* abolished after the liberation of Serbia in WWII in the 1944 after hundred years of application, and formally abrogated in 1946, although some of it's norms continued to be in use in the case of existence of lacunas in the currently applicable law – a praxis that continues even nowadays in some specific areas of law.

Well before the abrogation of SCC, in spite of both the legal measures and nostalgia for good, old days of idyllic pastoral life in extended family, *zadruga* became rare as a type of family life. However, extended family with common property didn't completely disappear even to this day, especially in the countryside, and it is far from being a defunct legal institute. But the regulation of property relations in extended family after WWII became quiet different from the traditional *zadruga*. It is regulated in the currently valid Serbian Family Law of 2005[17] under the name of family community (*porodična zajednica*; *породична заједница*) in the art. 195. There are many, including very recent, examples in the praxis of serbian tribunals of applications of this rules. But, not only the name, but also the norms for such a community are different than traditional *zadruga*. *Porodična zajednica* is not a legal entity but a group of persons, it is egalitarian and without elected chief, and it is defined as common property of all the owners with undefined shares, so that all the owners can use it directly and make decisions regarding administration of the property.

So, original *zadruga* does not exist anymore in the family law. But it doesn't mean that it is without importance nowadays. Let us remind that a number of historical institutes of private law found application in the public law. The norms of roman law on avulsion in a riverbed are today used for demarcation of not only private properties, but the State borders also. The political representation in modern democracies is also partially based on concept of representation from private law. Something similar happened with *zadruga.* It disappeared from the family law, but it became a basis for a development of a specific type of commercial enterprise.

The idea of *zadruga* had a huge impact on leftist economic and political thought in Serbia in the XIX century. Especially important in that regard is the thought of Svetozar Marković, a very influential Serbian political writer and founder of the Radical party, the leading serbian political party at the end of XIX and the beginning of the XX century. Marković held *zadruga* in high regard, as well as other elements of communitarianism in Serbian tradition: associations who possessed common property like the village commune (*opština*; *општина*); mutual help of the members of a village (not necessarily relatives) in occasion of big works like, harvest or building a house (*moba* and *zamanica*); and material help from common founds in the case of trouble (*pozajmica*). He has seen in

[17] Porodični zakon, *Službeni glasnik RS*, br. 18/2005, 72/2011, 6/2015

them the seed of possible future socialist society, although he considered the patriarchal elements necessary to be eliminated. Svetozar Marković didn't only see *zadruga* as a model for modernization of the agricultural production based on socialist principle. He considered also creation of manufacturing, credit and even consumer co-operatives. A variety of societies and enterprises named *zadruga* were founded in the second half of the XIX century.[18]

Some of them were not even founded with intention of making profit, but with cultural, educational or philanthropic goals, like *Serbian editorial zadruga* (*Srpska književna zadruga*). It was a society founded in 1892 in Belgrade by a group of scientist and writers. It's members had an obligation to pay an annual subsidy, and had a right to get a copy of all the editions published in that year, and to participate in the assembly of *zadruga*. This society exists still as an important learned society.[19]

While the family cooperatives were rapidly disappearing at the end of XIX century, the idea of *zadruga* did not; it continued to exist in a different form, liberated from it's patriarchal elements. First modern village cooperatives, also called *zadruga*, were established at the end of XIX century by the followers of Svetozar Marković, most notably by Mihalo Avramović, which is sometimes called a father of *zadruga movement* (*zadružni pokret*). Rural cooperatives inspired by traditional *zadruga* continued to exist in the Kingdom of Jugoslavia. In the 1937 first law on *zadrugas,* valid for all the territory of Jugoslavia, was enacted. By then, this term indicated modern farmer's cooperatives, inspired by traditional *zadruga* family.[20]

The specific socialist system that has been introduced in Jugoslavia after WWII, so called self-management socialism, was greatly influenced by the ideas of Svetozar Marković. It was based on the ideas of collective property of workers on the means of production, and on the self-management system in which the most important decisions were brought by assembles of workers, and those of minor importance by the organs elected by them. There were experiments of collectivization of land too in the form of *zadruga*, which were, however, considered a failure, and the collectivization was since the 70's generally limited to industrial enterprises. Well before the end of the communist regime, the number *zadrugas* begun to diminish, and this process accelerated after the dissolution of communist system after 1990.

It is interesting to note, that while the industrial social enterprises completely disappeared after the fall of communism, farming cooperatives, which were considered less successful, survived, although in smaller number. Moreover, recently the interest in this type of enterprises rose, and Serbian government

[18] В. Милић, Схватања Светозара Марковића о задругама и њиховој улози у друштвеном преображају, *Анали Правног факултета Универзитета у Београду* 3/1975, 259-272.

[19] Љ. Трговчевић, *Историја Српске књижевне задруге*, Српска књижевна задруга, Београд 1992; D. Stojanović, „Imagining the *zadruga*. *Zadruga* as a Political Inspiration to the Left and to the Right in Serbia", 1870-1945", *Revue des Études Slaves* 3/2020, 333-353.

[20] М. Аврамовић, *Тридесет година задружног рада*, 1894-1924, Земунска штампарија Главног савеза српских земљорадничких задруга, Земун 1924.

even launched recently project of reviving *zadruga*, especially in underdeveloped regions.

The institute of *zadruga* is regulated predominantly with the recent *Zakon o zadrugama* (Law on cooperatives) from 2015.[21] As a curiosity, it is worth mentioning that the current Constitution of Serbia promulgated in 2006[22] protects explicitly the cooperative (*zadruga*) property as one of the forms of the property:

Equality of all types of property

Article 86

Private, cooperative and public property shall be guaranteed. As public property shall be considered State property, property of autonomous province and property of local self-governing units. All types of property shall have equal legal protection.

The existing social property shall become private property under the terms, in a manner and within the deadlines stipulated by the law.

Resources from the public property can be alienated in a manner and under the terms stipulated by the law.[23]

So, property of a *zadruga* is guaranteed as a specific type of property. Obviously, cooperative property is neither public nor private, but *sui generis*. But it is distinguished from social property, a form of collective property inherited from communist period, which, is according to constitution, to be abolished and become private property in the near future. The Law of Cooperatives too, in the art. 108, clearly distinguishes cooperative property from the social property, and it is prescribed a possibility of transformation of social property into cooperative property.

The currently valid *Law of cooperatives* does not define the nature of the cooperative property. It only enumerates in the art. 53 the property rights that can be part of this type of property, establishes how it can be formed or alienated, and briefly proclaims:

Assets of a cooperative are cooperative property.[24]

But again, there is no legal definition of cooperative property.

3. In search of the possible definition of the zadruga property. Serbian Civil Code of 1844 and the roman law

The common misconception, according to which the traditional Serbian *zadruga* property was a form of indivisible collective property, which was trans-

[21] Zakon o zadrugama, *Službeni glasnik RS*, br. 112/2015

[22] Ustav Republike Srbije, *Službeni glasnik RS*, br. 98/2006 i 115/2021

[23] *Равноправност свих облика својине. Члан 86 Јемче се приватна, задружна и јавна својина. Јавна својина је државна својина, својина аутономне покрајине, својина јединице локалне самоуправе. Сви облици својине имају једнаку правну заштиту. Постојећа друштвена својина претвара се у приватну својину под условима, на начин и у роковима предвиђеним законом. Средства из јавне својине отуђују се на начин и под условима утврђеним законом.*

[24] *Имовина задруге је у задружној својини.*

formed in the SCC in a divisible co-property, is, as said before, misleading: cooperative property was divisible even before the enactment of SCC.

But, are the facts, that there is a possibility of partition of property on request of individual members of *zadruga* (Art. 492), that members have the right to testamentary disposal of their ideal share (Art. 521), and that cooperative member is responsible for his personal debts with his ideal share (Art. 515)[25], enough to mark *zadruga* property as a form of co-owned property, as most of scientists does?

It seems that cooperative property, both in serbian customary law, in SCC, and in contemporary law, does not correspond to the roman notion of co-owned property,[26] for a number of reasons:

- co-owned property in Roman law has defined shares; *zadruga* does not (SCC art. 508). If shares are defined, it is not *zadruga* anymore;

- acts of administration in co-owned property (like leasing it) are to be decided by those who have a majority of shares, and it can be even one share holder, if he owns majority of the property. In *zadruga*, it is not the case: organs elected by the members of zadruga are responsible for the acts of administration. In the traditional *zadruga* family, it was usually the oldest male; but it wasn't necessarily the case (SCC art 510).

- the acts of extraordinary administration (like alienating parts of property) in roman co-ownership are to be decided by all the share holders, no matter how small their shares be. In some contemporary civil law legislations it can be a qualified majority (like, the holders of two thirds of the shares in Italian civil code, art. 1008).[27] In *zadruga*, it is most commonly decided by consensus of members (SCC art. 510), or by simple or qualified majority by principle one person-one vote.

- co-ownership does not lead to a creation of a legal person separated by the members. *Zadruga* is a legal person on it's own (SCC art. 58).

- it is true that there is possibility to dispose one's share in *zadruga* by testament, and that a member of *zadruga* in SCC can be responsible for his debts by his share; but otherwise, it is not possible to dispose by own share by legal transactions *inter vivos* like by selling or by gift, what is possible in co-ownership.[28]

[25] About a not directly related but interesting problem in contemporary serbian law (the payment of debt from inherited property) see: V. Čolović, „Stečaj nad imovinom ostavioca (zaostavštinom) kao oblik ličnog stečaja", *Strani pravni život* 3/2020, 75-88.

[26] On roman notion of co-property, see: G. Von Beseler, „Miteigentum", *SDHI* 7/1941, 421-423; S. Perozzi, "Saggio critico sulla teoria della comproprietà", *Scritti giuridici, I - Proprietà e possesso*, Milano, Giuffrè 1948, 437-554; S. Perozzi, "Un paragone in materia di comproprietà", *Scritti giuridici, I - Proprietà e possesso*, Milano, Giuffrè 1948, 555-584; L. Barassi, *Proprietà e comproprietà*, Giuffre, Milano 1951; A. Biscardi, "La genesi della nozione di comproprietà", Labeo 1/1955, 156-165; M. Bretone, *Servus communis. Contributo alla storia della comproprietà romana in età classica*, Jovene, Napoli 1958.

[27] Codice Civile, *Gazzeta Ufficiale* n. 79/1942

[28] Perić had a different attitude according to which members of *zadruga* could dispose of their share also by *inter vivos* legal transactions. Ж. Перић, *Задружно право по Грађанском законику Краљевине Србије*, IV - О постанку и престанку задруге, Издавачка књижарница Геце Кона, Београд 1920, 101.

So, property of *zadruga* is definitely not a co-owned property; but for abovementioned reasons (the possibility of division), it doesn't fit into the classical notions of collective property either. Such a form of property exists in modern Serbian family law. The family property is commonly owned, and there is a possibility of alienation of property by any member of the community, if others do not oppose. In SCC it is not allowed to the members of the family cooperative to alienate the commonly owned assets. Only if chief of *zadruga* alienates a thing belonging to community, and other members do not object within a year, the transaction is valid (SCC art. 510).

On the basis of the right of family members to oppose the transactions ma ()de by the patriarch of *zadruga*, we can conclude that the Serbian family cooperative has also nothing to do wđith the Roman agnatic family. While in Rome the *pater familias* has the right to dispose of the entire property, the head of *zadruga* is more like the first among equals, and has no *abusus* over the cooperative property.

There are much more similarities between *zadruga* and roman *consortium ercto non cito*. These similarities have been noted in literature several decades ago. They might be casual, based on similarities between social and economical development between the ancient Rome and medieval and early modern Serbia. But, recent research provided significant proofs to believe that Jovan Hadzic used ideas from roman law to create the regulation regarding *zadruga* in the SCC.[29]

It is interesting to note that rules regarding *zadruga* are according to the norms of SCC (art. 494) applicable to regulate the hereditary communion too: a obvious association with the roman *consortium ercto non cito* (or *dominio non diviso*).[30] Also, there is possibility for family members to have separate private property, if it is created not by work in community, but in other way – a hint of roman *peculium*. Also, it is interesting to note that apart of the patriarch (*starešina*) of *zadruga*, SCC mentions a matriarch (*starešica*), whose position is similar to that

[29] M. Kulauzov, (2017), 1-12; А. Маленица, 20-21.

[30] On *consortium* in the roman law see: S. Solazzi, "*«Tutoris auctoritas» e «consortium»",* SDHI 12/1946, 7-44; H. Ankum, «La vente d'une part d'un fonds de terre commun dans le droit romain classique», *BIDR*. 83/1980, 67-107; W. Waldstein, „Eigentum und Gemeinahl im römischen Recht", *Für Staat und Recht. Festschrift für H. Schambeck*, Berlin, Duncker & Humblot, 1994, 169-182; T. Drosdowski, *Das Verhältinis von actio pro socio und actio communi dividundo im klassischen römischen Recht,* Duncker und Humblot, Berlin 1998*;* D. Daube, "«Consortium» in Roman and Hebrew Law", The Juridical Review 52/1950, 71-91; W. Kunkel, "Ein unbeachtetes Zeugnis über das römische Consortium", *Annales de la Faculté de Droit d'Istanbul* 4-5/1955, 56-78; H. L. W. Nelson, „Zur Terminologie der römischen Erbschaftsteilung: Ercto non cito. Familia erciscunda", *Glotta. Zeitschrift für griechische und lateinische Sprache* 44/1966, 41-60; S. Tondo, "Il consorzio domestico nella Roma antica", *Atti e memorie Acc. toscana di sc. e lett. «La Colombaria»* 40/1975, 131-218 *;* L. Gutierretz-Masson, *Del « consortium » a la « societas », I: « Consortium ercto non cito »,* Madrid, Univ. Complutense 1987*;* S. Tondo, "Ancora sul consorzio domestico nella Roma antica", *SDHI*. 60/1994, 601-612. Specifically on the rapport between *consortium* and the hereditary communion see: M. Bretone, "«Consortium» e «communio»" *Labeo* 6/1960, 163-215; J. Baron, *Die Gesammtrechtsverhältnisse im Römischen Recht,* M. Keip, Frankfurt 1968; A. Torrent, "Notas sobre la relación entre «communio» y copropiedad" *Studi Grosso 2*, Torino 1968, 95-116; A. Fernandez Barreiro, "La «actio communi dividundo utilis»", *Estudios Santa Cruz Teijeiro 1, Univ. de Valencia, Fac. de Derecho*, 1974, 267-284.

of the roman *mater familias*: she has no rule in administration of the property, but the organization of work of the female members of *zadruga* is her competence (SCC art. 111).

4. Conclusion

Collective farming community or *zadruga*, as regulated in SCC, does not fit in any of modern legal categories of property defined by owner. It is not individual, nor classical common or collective property, but it is also not the co-ownership as often stated. It is a specific type of property that has been developed on the basis of the traditional serbian institution of family community. It was initially regulated by consuetudinary law. For the first time it was regulated in a systematic manner in the Serbian Civil Code of 1844, in a manner that has presumably been influenced by the roman *consortium ercto non cito*.

While some other legislations like Austrian, prohibited division of *zadruga*, SCC allowed it. Still, it is not enough to define the property of *zadruga* as co-property. Rather, it is a specific form of collective property, which can't fit into any modern category.

Just as roman *consortium*, *zadruga* evolved from extended family into a sort of partnership-based enterprise in the XIX century, which was liberated of patriarchal elements, and not based on kinship anymore, although the regime of collectively owned property remained similar to the original family-based community. Since the end of the XIX century, the term *zadruga* started to be used to indicate rural cooperatives, not based on the kinship anymore.

It is, however, not a completely new institute, that only uses the name of the old institute. The Serbian cooperative law distinguishes itself strongly from the solutions that can be found in comparative law by equality of the members and direct decision-making of the members of cooperative. Both principles are inherited from traditional community and the roman law, and are not present in some other legislations. For example, in the Law of the People's Republic of China on Specialized Farmer's Cooperatives of 2006 (emended in 2017)[31] in the art. 22 allows a possibility that members of a cooperative who disproportionally contribute with their shares to the capital of the cooperative have bigger influence on decision-making. For the big cooperatives of more than 150 members the art. 32 allows a possibility of creation of a representative governing assembly, instead of assembly of members.

So, the ownership regime of modern Serbian cooperative is at leas partially inspired by the family-based *zadruga*, which derivates from Serbian consuetudinary law, and it's modernized form is created in the SCC under the influence

[31] Law of the People's Republic of China on Specialized Farmers Cooperatives, adopted at the 24th Meeting of the Standing Committee of the Tenth National People's Congress on October 31 of 2006, enacted by *Presidential Decree No. 57*, last time amended on 27 December 2017

of the roman law. In that light, research of the roman *consortium* family, roman partnership (*societas*) and the connected institutes like *actio familiae erciscundae* could be of great importance to fully understand the regime of the *zadruga* property in contemporary serbian law.[32]

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[32] Serbia is facing the challenge of redefining it's law of corporation in the process of harmonization of law as the part of accession to the European Union, see for example M. Mijatović, „Izazovi recepcije prava Evropske unije u Srbiji – primer korporativnog prava u Srbiji", *Strani pravni život* 1/2019, 91-102.

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