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Primljeno 01.10.2009

## CONSORTIUM AND THE JOINT FAMILY (ZADRUGA)<sup>1</sup>

*Roman consortium is often considered as one of the most controversial Roman institutes. This type of family organization has appeared in the cradle of Roman civilization and disappeared in the early stages of Roman history. However, it seems that some mutated forms remained to exist for centuries. Many questions evoke: What was the legal nature of the consortium? Did it have any influence on later institutes? Is there a place for analogy between the consortium and Southern Slavic Joint Families? In an attempt to answer these questions, greatest difficulty presents the general lack of Roman sources. However, Plinius's Epistulae and Gaius's Institutions reveal valuable information for analysis. In this paper, author tried to examine the consortium as it can be found in these two most relevant texts, and on the other hand to analyze the institute of consortium in general- along with some possible comparisons.*

**Key words:** *consortium, socetas ercto non cito, joint family, porodična zadruga, Plinius, Epistulae*

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*Epistulae*, the letters of Gaius Plinius Caecilius Secundus are one of the most important non-legal sources for the research of Roman law. This is due to these letters containing traces of the application of legal norms in everyday life- something that is quite rare when Roman legal history is in question. More importantly, Pliny's *Epistulae* explain some Roman legal matters that have not been regulated in the other preserved Roman sources that we know of. Although the quantity of legal issues in the letters

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<sup>1</sup> This paper was presented at the *Internationales Sommerseminar 2009* conference in Nazarje (Slovenia), held on May 1 – 3, 2009. The Conference was organized by Pravna Fakulteta Univerza v Ljubljani (Slovenia) and Karl- Franzens Univerzität (Graz, Austria), with the general title *Rechtsfragen in den Pliniusbriefen*.

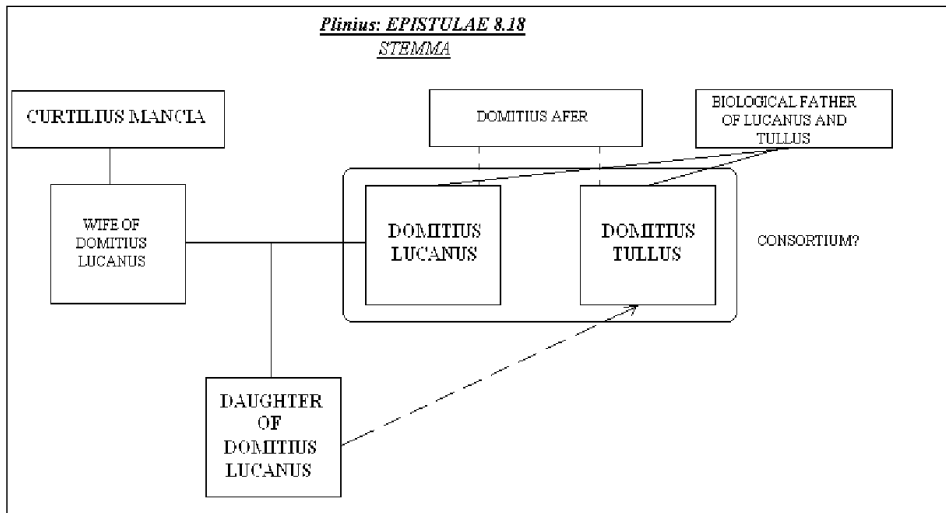
that face Roman private law is significantly smaller than it is in public law (which most likely is the result of Pliny's personal career), some very important fragments about the civil law institutions are found. Hence, one of the most famous letters, letter 8.18 (which was addressed to Pliny's friend Rufinus) mentions the controversial institute of *consortium*<sup>2</sup>, whose legal meaning has not been unanimously understood in doctrine. Basic reasons for this are as follows: only a couple of Roman sources mention *consortium* and on the other hand the institute has survived for so long that it has evolved into its many variations that have mutated throughout the centuries. These changes of the Roman *consortium* are the basic difficulty for its understanding and the insuperable obstacle for explaining this institute in one definition. The legal nature of the *consortium*, relation with *societas*, possible relation with *patria potestas*, its duration and types, and many more other questions evoke. The starting point of this brief analysis will be Pliny's letter 8.18.

This letter is often considered to be the most important source for the research of *consortium* as an institution, apart from famous Gaius's "*Institutiones*". Since it was addressed to Pliny's friend (Rufinus), the tone of the letter is quite informal (it differs a lot from what one can read in the letters addressed to the Emperor or some other officials). The letter tells us about the destiny of two brothers, Domitius Lucanus and Domitius Tullus, who allegedly lived in some kind of *consortium*. Pliny's words have to be analyzed carefully if one wants to understand how it has happened for two brothers that lived in the first century AD to live in a *consortium*, a type of family organization that has almost completely vanished at that time. The legal situation that Pliny describes in 8.18 is a complicated one. It includes four successions and a couple of adoptions. The provided stemma should help in understanding the aforementioned question of family relations.

After a brief introduction to his friend, Pliny mentions Curtilius Mancina, who was the father-in-law of Domitius Lucanus. Apparently, Curtilius Mancina hated his son-in-law. Domitius Lucanus was to be avoided getting the Curtilius Mancina's property through Mancina's daughter. Her name Pliny does not share with us, so she will be here referred to just as "wife of Domitius Lucanus". Curtilius Mancina has made his *testamentum* in which he bequeaths his whole property to his granddaughter (Domiti-

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<sup>2</sup> Plinius *Epistulae* 8.18.4: "...consors frater in frateris..."



us Lucanus's daughter) with the condition *si esset manu patris emmissa*. Lucanus did fulfill the condition- he emancipated his daughter, but the act of emancipation was instantly followed by the adoption carried out by Lucanus's brother- Domitius Tullus. This was a way, Pliny further notices, to get around *decius's* last will and to get large property for Domitius Lucanus, who eventually got rich. This was possible since the adoption undertaken by Tullus has put Lucanus's daughter again under the authority of her biological father, since the brothers were living in a *consortium*. This immediately leads to a series of questions.

It is not completely clear, possibly due to the lack of information that Pliny gives, what would be the reason for action of Domitius Lucanus. Wouldn't it be easier for him to say to Curtilius Mancina that he doesn't want to fulfill his condition to emancipate his daughter and then simply wait to get Curtilius's property through intestate succession? It seems that Mancina had only one daughter that would eventually become his only successor, meaning that the inherited property would be put under the management of his daughter's husband Domitius Lucanus. That is exactly why Mancina made such testament in favor of his granddaughter, but with the condition *si esset manu patris emissa*. The goal was to prevent Lucanus from getting the property, this time through his daughter. This may lead to the conclusion that the daughter of Lucanus had to know and willingly participate in this "conspiracy", since her approval was *conditio sine qua non* for her adoption by the uncle. Some authors consider that she hasn't been *sui iuris* not even for a moment- acts of emancipation and

adoption have been undertaken at the same time<sup>3</sup>. This, however, means that Lucanus's daughter gained her grandfathers confidence, so he made her to be his only testamentary successor. Than by accepting her adoption she indirectly "gave back" the property to her father and in a way betrayed her grandfather. According to what Pliny says in his *Epistulae*, it is hard to conclude what could be Lucanus's motive for such legal maneuver. The reason remains beyond the lines of the letter. Maybe Curtilius Mancina declared that he will leave a testament in favor of some other person if Lucanus does not fulfill condition *si esset manu patris emissa*?

Next issue that comes immediately out of these paragraphs is the relation between the two brothers and Lucanus's daughter after adoption. This is in fact the question of *patria potestas*. Some authors, like Kunkel, believe that family community of these two brothers is a specific sort of partnership – *consortium ercto non cito* in which joint control of two brothers does not include control of the property only, but the *patria potestas* as well<sup>4</sup>. Therefore, when Lucanus's daughter has been adopted she came under some sort of joint *patria potestas* of both her adoptive and biological fathers. In Kunkel's opinion, this kind of *patria potestas* existed in the old *consortium ercto non cito*. However, arguments for the opposite conclusion seem to be far more convincing.

Further research of the other legal sources regarding *consortium*, leads us to Gaius's *Institutiones*, more precisely fragment 3.154-a, b where this institute is called *societas ercto non cito*<sup>5</sup>. In this fragment Gaius describes this situation as *societas*, partnership, and the whole fragment

<sup>3</sup> Jan Willem Tellegen, *The Roman law of succession in the Letters of Pliny the Younger*, Zutphen: Terra Pub.Co, 1982.

<sup>4</sup> More on this: Zdravko Lučić, *Plinijeva pisma kao izvor za istoriju rimskog prava*, Beograd, Pravni fakultet Univerziteta u Beogradu, 1988. p. 105.

<sup>5</sup> Gaius *Inst.* III (154): "Item si cuius ex sociis bona publice aut priuatim uenierint, soluitur societas. sed ea quidem societas, de qua loquimur, id est, quae nudo consensu contrahitur, iuris gentium est; itaque inter omnes homines naturali ratione consistit. (154a). Est autem aliud genus societatis proprium ciuium Romanorum. olim enim mortuo patre familias inter suos heredes quaedam erat legitima simul et naturalis societas quae appellabatur ercto non cito, id est dominio non diuiso: erctum enim dominium est, unde erus dominus dicitur: ciere autem diuidere est: unde caedere et secare [et diuidere] dicimus. (154b). Alii quoque qui uolebant eandem habere societatem, poterant id consequi apud praetorem certa legis actione..."

in question is located in the section about contracts<sup>6</sup>. He explains that *societas ercto non cito* belongs to *ius civile*. It is an institute for Roman citizens<sup>7</sup>. Using the philological and systematic method of interpretation, it is clear that Gaius perceives only the material component of *societas ercto non cito*. He does not mention anything about joint *patria potestas*. Considered within its historical context the *consortium* of brothers from the Pliny's letter 8.18 is an anachronism and mutated version of the old *consortium* which started to disintegrate into *familia* since the Twelve tables (450 BC) until approximately III, II century BC (somewhere around the second Punic war). Traces of the *consortium* can be found until the end of the Republic- Titus Livius mentions a censor who has lived within the *consortium* in 174 BC, as something that even Romans at the time find strange and odd<sup>8</sup>. Different variations of the *consortium* and its possible mutation through history will be examined later.

It seems persuasive that idea about joint *patria potestas* has to be wrong. In the present case, daughter of Domitius Lucanus was at first under his *patria potestas* and from the moment of adoption under the *patria potestas* of her uncle Domitius Tullius. This does not exclude the possibility that perhaps *de facto* Domitius Lucanus had *patria potestas* over his biological daughter. This relation, however, hasn't been based upon law, but perhaps simply upon proper relations between the father and daughter. Another argument in favor of this claim is the fact that Lucanus's daughter willingly assisted her father to foil Curtilius Mancina's testament in order for her father to indirectly become the owner of Mancina's property. They seem to be in very good relations with each other, but from the perspective of *ius civile*, Lucanus's daughter was under *patria potestas* of her uncle alone. Therefore, *consortium* from Pliny's letter, which is *consortium* among brothers- *inter fratrem*, didn't have its *patria potestas* side. That leaves us with its material side and the task to explain the relation between this *consortium* or *societas ercto non cito* and a regular *societas*.

Pliny in his letter says that it seems to be the destiny for these two brothers to get rich against the will of the people that they inherit. Domitius Affer,

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<sup>6</sup> More on this: Franz-Stefan Meissel, *Societas – Struktur und Typenvielfalt des römischen Gesellschaftsvertrages*, Frankfurt am Mein: Peter Lang, 2004. p.78-101.

<sup>7</sup> Gaius *Inst.* III (154a): "...*proprium civium Romanorum*..."

<sup>8</sup> Dragomir Stojčević, *Rimsko privatno pravo*, Beograd: Savremena administracija, 1988. p. 90; Obrad Stanojević, *Rimsko pravo*, Beograd: Službeni glasnik SCG, 2003. p.177

who has adopted both Domitius Lucanus and Domitius Tullus, left a testament (in their favor, as it turns out) eighteen years before his death. In the meantime, he was not pleased with the behavior of his adopted sons, so he somehow seized the property from their biological father. But, since he obviously didn't change his testament before his death, his adopted sons inherited the property. Out of the two brothers Domitius Lucanus was to die first- and he left everything to his brother Tullus. Tullus, however, in his testament named his adopted daughter and biological niece, to be his successor, although, as Pliny underlines, in his great kindness he left significant *legatum* in favor of his wife, grandchildren and cousins. These lines show us that brothers didn't divide the property after the death and succession of their adoptive father. They continued to live in *societas ercto non cito* – partnership of undivided property. In the Gaius's fragment about *consortium*, Gaius explains that this is exactly the way how *societas ercto non cito* is created. After death of *pater familias* sons kept living together with their families in undivided property. At the first glance this part can be applicable to the *consortium* between brothers Lucanus and Tullus. But here we come to several paradoxes- first one being the Gaius's mentioning of *pater familias* figure in the context of *consortium*<sup>9</sup>. According to the convincing opinion of Westrup and Stojčević, in the old *consortium* there was no *patria potestas* in its usual meaning – it was a community of brothers and their families where all the members were equal<sup>10</sup>. The “leader” of *consortium* was just *primus inter pares*-he didn't have the authority like traditional *pater familias* with *ius vitae ac necis*<sup>11</sup>. Still, Westrup states in his “Introduction to early Roman law”, that in Roman primitive Joint Family, there is a tendency of this *primus inter pares*, head of the house, to get more and more authority that will finally lead to the role of *pater familias* that we find in Roman *familia*<sup>12</sup>.

<sup>9</sup> More on this: Milena Polojac, “*Societas i Consortium* – poreklo klasičnog ortakluka”, *Anali Pravnog fakulteta* 6/1992, p.605, 606.

<sup>10</sup> Dragomir Stojčević, *Rimsko privatno pravo*, Beograd: Savremena administracija, 1988. p.88-90.

<sup>11</sup> Žika Bujuklić, *Forum Romanum*, Beograd: Pravni fakultet Univerziteta u Beogradu, 2009. p.149.

<sup>12</sup> Carl W Westrup, *Introduction to Early Roman Law – The Patriarchal Joint Family – Vol. III Patria Potestas*, London: Oxford University Press, 1939.”; Dragomir Stojčević, *Poreklo i funkcija testamenta Calatis Comiitis*, Beograd, Pravni fakultet Univerziteta u Beogradu, p. 38; Dragomir Stojčević: “*Gens, Consortium, Familia*”, *Zbornik Pravnog fakulteta u Novom Sadu*, 1966. p. 265-272.

Gaius later says that this relation between sons of *pater familias*, *consors*, was a natural and legally based *societas*. Is he telling us about the way how some mutated version of *consortium* was created? He is obviously talking about an institute that doesn't exist in his time anymore. Supporting argument is the fact that the fragment *societas ercto non cito* starts with the words "before, a long time ago..."<sup>13</sup> which follows the explanation of the words "*Erctum*"- property and "*Ciere*"- to divide, saying that those are the words from "the old language"<sup>14</sup>. The etymology carries along further problems in understanding the nature of the *consortium* or *societas ercto non cito* from the Gaius's fragment. The word "*consortium*" has more than one meaning- beside for the type of archaic family, it can also stand for community in general. The word "*consors*", however, besides the meaning of brother, can stand for friend, buddy and accomplice. This makes the distinguishing of *societas ercto non cito* as a form of partnership from *consortium ercto non cito* as a type of archaic family to be more difficult<sup>15</sup>. Further in this fragment, Gaius asserts that this form of union can be achieved even if the partners are not brothers through the procedure in front of *praetor*<sup>16</sup>. Many authors like Korošec agree that it had to be done using the procedure *in iure cessio*.<sup>17</sup>

Important information can be found in the last sentence of paragraph 154b. Here Gaius states the authorities of partners in *societas ercto non cito*. If one releases the slave – he will be released to the other as well etc<sup>18</sup>. This may lead to the presumption that the property within *societas ercto non cito* is collective, joint property which triggers collective pro-

<sup>13</sup> Gaius, *Inst.* III (154a, 2) "... *Olim enim mortuo patre familias...*"

<sup>14</sup> Gaius, *Inst.* III (154a, 3) "...*erctum enim dominium est, unde erus dominus dicitur: ciere autem diuidere est: unde caedere et secare [et diuidere] dicimus.*"

<sup>15</sup> Milena Polojac, "Societas i Consortium – poreklo klasičnog ortakluka", *Anali Pravnog fakulteta* 6/1992. p. 602.

<sup>16</sup> Gaius, *Inst.* III (154b, 1) "*Alii quoque qui uolebant eandem habere societatem, poterant id consequi apud praetorem certa legis actione...*"

<sup>17</sup> Viktor Korošec, "Novi odlomki Gajevih institucij.", Ljubljana 1934.

<sup>18</sup> Gaius, *Inst.* III (154b, 2): "...*in hac autem societate fratrum ceterorumue, qui ad exemplum fratrum suorum societatem coierint, illud proprium erat, [unus] quod uel unus ex sociis communem seruum manumittendo liberum faciebat et omnibus libertum adquirebat: item unus rem communem mancipando eius faciebat, qui mancipio accipiebat.*"

perty management and absence of property shares. In efforts to explain the legal nature of *consortium* that Gaius tells us about in his “*Institutiones*” one has to consider that this institute was probably non-existent in his time. His *societas ercto non cito* seems to be a voluntary *societas omnium bonorum* highly influenced by the old *consortium*. Its goal was to ease the living and production of *consors* by putting their property under the regime of joint management. Gaius’s fragment does not mention how this union could be split but the majority of scholars agree that *actio pro socio* could be used here.

Going back to our two brothers from the Pliny’s letter 8.18 comes out the question about the nature of their property? Were they living in *societas omnium bonorum*? At first glance it seems so, but only before the analysis of Domitius Lucanus’s testament in which he denotes his brother Tullus as the successor. As we have seen, two brother have inherited the properties of both Curtilius Mancina and Domitius Afer. Pliny says “... it seems that these brothers are destined to get rich...” like they are both getting rich from both Curtilius Mancina and Domitius Aferus. This would mean that Tullus attached the property of Curtilius Mancina to their joint property. But was this joint property without shares, *ercto non cito*? If so, how could Domitius Lucanus leave a testament with the undefined share? Or did he have some other personal property on a side? In that case it obviously would not have been *societas omnium bonorum* since in *societas omnium bonorum* partners add their whole present and future property to *societas*. Pliny says: “...Lucanus named his brother as main legal successor to get him on his side...” so it seems that he deliberately chose his brother as a successor with intention as it turns out for Tullus to name Lucanus’s daughter as his successor. This is a great obstacle for the *consortium* of two brothers to be considered under the legal regulation of *societas ercto non cito* from Gaius’s *Institutiones*.

Before a final attempt to conclude the nature of legal relation between the brothers in this case, the following facts should be considered: there is a problem with terminology and words “*consortium*” and “*consor*” that have multiple meanings, there is also a fact that Pliny wasn’t that much into civil law as he was into public law, then it is obvious that the institute of old *consortium* was dead for centuries before his time, and finally the analyzed source in front of us is a friendly letter, in which Pliny informally shares gossips with his friend. It is a big question how much was Pliny actually focused on the matters of legal terminology when he



was writing the letter to a friend. Finally, it seems that there are enough arguments to believe that there was regular *patria potestas* of Domitius Tullus over daughter of Lucanus- not certain form of joint *patria potestas* as some authors claim (Kunkel). Therefore, it is possible to conclude that in this case there is most probably no *consortium* in its archaic sense and not even *consortium* in the sense of fragment about *societas ercto non cito* in Gaius's *Institutiones*. The community that brothers used to live in can be considered as *consortium* only in a much wider sense. It seems to be a community that was based upon an informal agreement between brothers- not upon the rules of the old *consortium* and Gaius's *societas ercto non cito*. Maybe Pliny was simply trying to describe two brothers with very strong personal relations that have only *de facto* lived like they had joined their properties? If there really was *consortium* between those two brothers, it would oppose not only the arguments that have just been discussed, but also other important fact- reasons for the creation and disintegration of the Roman *consortium*. One of the decisive reasons is the economic necessity for the attached properties. Since the brothers were very rich, as one can see from the letter, we find this to be another argument in favor of the claim how actually there was no *consortium* among these brothers.

The archaic *consortium* or “*consortium anticum*” as some authors define it, according to their opinion has been the dominant type of Roman family for many centuries<sup>19</sup>. It probably existed in the period when the tribal social structure has been transferring into the organized state. It has been dominant at the time of founding of the City and eventually started to collapse since the Law of the Twelve tables that has introduced *actio familiae erciscundae* as a legal remedy for its dissolution. The *consortium* will coexist with *familia* until the end of the second Punic war<sup>20</sup>. Only

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<sup>19</sup> Dragomir Stojčević, *Poreklo i funkcija testamenta Calatis Comiitis*, Beograd, Pravni fakultet Univerziteta u Beogradu, ; Carl W Westrup, *Introduction to Early Roman Law – The Patriarchal Joint Family – Vol. III Patria Potestas*, London: Oxford University Press, 1939.

<sup>20</sup> The amount of influence that *consortium* has made on later Roman legal institutes is thoroughly researched in legal theory. Although most authors argue about some specific impacts of influence that *consortium anticum* has made, there are some modern authors who deny any significant influence of this institute. See: Miroslav Milošević, *Rimsko pravo*, Beograd: Nomos, 2005. p.118.

anachronic mutated versions of *consortium* that are in their essence only types of very close partnership can later be found. *Consortium* is a community based upon agnatic relation of brothers and their families living together, working together, sharing same family cult and property. One of the most important characteristics of *consortium* is the impossibility of its division. When the possibility for dividing the *consortium* with *actio familiae erciscundae* appeared, soon it has started to disintegrate. Milena Polojac rightly notices that this is yet another argument that shows how *societas ercto non cito* from Gaius's "*Institutiones*" is some sort of mutated *consortium* because of the possible voluntary element for its creation<sup>21</sup>.

Joint Families similar to the *consortium* can be found in many other societies on the certain level of development<sup>22</sup>. They are not bound to appear everywhere at the same time in history. Different societies that existed centuries away from each other went through the stadium of Joint Families when the conditions for its existence were fulfilled. Jean Gaudemet defines these reasons as trade market, geographical isolation and inexistence or lack of state's capacity and strength that hands over the authority to the institution of family. The reasons for disintegration of this type of family are: economic progress, developed trade, increases of communications, individual freedom and as a consequence of everything mentioned- new laws of succession. In his paper "*Gens, Consortium, Familia*", late Belgrade University law professor Dragomir Stojčević examines these "basic economic cells" of Roman history<sup>23</sup>. He claims that all three are communities of property, work (labor) and living and that their succession is a result of changed economy production and strength of state authority.

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<sup>21</sup> Milena Polojac, "*Societas i Consortium – poreklo klasičnog ortakluka*", *Anali Pravnog fakulteta* 6/1992. p.599-607.

<sup>22</sup> Serbian Joint family, for example, was very similar. See more about legal regulation of Serbian Joint Family in: Nikola Pavković, "Porodična zadruga u Srpskom građanskom zakoniku", *Sto pedeset godina od donošenja Srpskog građanskog zakonika*, Beograd: SANU, 1996. p329-335; Ljubomirka Krkljuš "Porodične zadruge u Srpskom građanskom zakoniku i zakonodavstvu Vojne granice", *Sto pedeset godina od donošenja Srpskog građanskog zakonika*, Beograd: SANU, 1996. p. 337-349; Miroslav Đorđević, "Srbijanski građanski zakonik i Pravni transplant", *Strani pravni život* 1/2008 p. 62-84. etc.

<sup>23</sup> Dragomir Stojčević, "*Gens, Consortium, Familia*", *Zbornik Pravnog fakulteta u Novom Sadu*, 1966. p. 265-272.

In the oldest times large community *gens* was necessary type of union for basic survival. The lack of technology and knowledgement made the creation of such communities the only way for continued existence. Besides the economic, *gens* had a very important political role- it was the predecessor of the state organization. With the new discoveries and increased effectiveness of production, Stojčević further explains, we have two separate and parallel processes. On one hand, family function of *gens* is less and less important since now people can survive in smaller social groups. On the other hand *geneses* are united into bigger and bigger communities that will evolve into state. This is the period in which *consortium* appears.

Many authors including Westrup explained why this type of family can be found in many societies in Europe and Asia throughout history. Both Westrup and Stojčević underline that communities of Southern Slavic people are maybe the proper comparison to Roman *consortium*. Like in the ancient Rome these Joint Families were founded in times of poor economic production, trade market, weak communications, lack of good roads and isolation. One of these Joint Families existed in Serbia until the middle of XIX century with some remains found all the way until Second World War. When possibility for its division into nuclear families was given, this type of joint family, just like *consortium* in Rome, started to disintegrate. The same that *actio familiae erciscunde* was to Rome of the time; to Serbia was “Serbian Civil Code of 1844”, the fourth civil code to be enacted in Europe. Creator of the Code, Jovan Hadžić, allowed the Joint Family’s property to be converted to co-property. Immediate disintegration of the great majority of Joint Families (“Porodična zadruga”) suggests that the requirements for the next type of family, nuclear family were already met. Certain linguistical remains of agnatic family relationship in Serbian language today are remarkable. It is common to say “brat od strica” (literary translated- “brother from the uncle” – uncle’s son) while most of other languages do not consider this type of relation as one between brothers and call this relative simply- cousin<sup>24</sup>.

Prof. Sima Avramović’s in his work about comparisons between XIX century Montenegro and ancient Crete, warns about potential misleading effects that comparative method can lead to<sup>25</sup>. Accepting that point, it is

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<sup>24</sup> Obrad Stanojević, *Rimsko pravo*, Beograd: Službeni glasnik SCG, 2003. p.177.

<sup>25</sup> Sima Avramović, “Response to Monique Bile“, *Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Wien, 1993. p.53-60

still possible to assert that Joint Family of XIX century Serbia and Roman *consortium* are not just comparable but in essence very similar. Conclusions of Stojčević, based upon comparison of Roman *consortium* and Joint Family of Southern Slavic people has been widely accepted in Serbian legal literature and discussed on various legal- historical seminars.

It seems that the last Joint Family in Southern Slavic societies has disappeared around Second World War, but what has happened with Roman *consortium*? When did it end? Satisfactory answer gives us Stojčević. In his doctorate thesis<sup>26</sup> he explains that Roman *consortium* can be found in its three sub-forms. The oldest one is very big *consortium* which is basically small *gens*. In this oldest form all the members of *consortium* are absolutely equal. Through time it evolves into the next type of *consortium*, which has less members- only brothers with their families. The role of “*primus inter pares*” slowly evolves into *familia*’s *pater familias*. This type of *consortium* vanishes around III or II century BC. And finally, the third type of *consortium* is the one that we have mostly discussed here. In this third group should be put all the *pseudo- consortium* institutes as the one from Gaius’s *Institutiones*. These mutated forms of *consortium* are mentioned in a few places in Roman sources (for example, beside Gaius and Pliny, Cicero in his famous speech *In Verrinem* tells us about some brothers living in *consortium* in Sicily<sup>27</sup>).

The institute of *consortium* has evolved through history. As it was suppressed and overcome by more advanced and progressive type of family – the Roman *familia*, it has either slowly vanished or mutated into something else. The need for family like *consortium* doesn’t longer exist in the centuries that follow. This is why, as Viktor Korošec explains, fragments about *societas ercto non cito* do not exist in the Verona manuscript of Gaius’ *Institutiones*, but only in the manuscript from Antinopolis, discovered in 1933, which is older<sup>28</sup>. However, the influence of this institute, Polojac notices, can be found in some later Roman institutes like *societas omnium bonorum*, rules *ius fraternitatis* etc<sup>29</sup>. In study of these in-

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<sup>26</sup> Dragomir Stojčević, *Poreklo i funkcija testamenta Calatis Comiitis*, Beograd, Pravni fakultet Univerziteta u Beogradu

<sup>27</sup> Cicero, *In Verrem* II 3.57: “*Sostratus et Numenius et Nymphodorus eiusdem civitatis cum ex agris tres fratres consortes...*”

<sup>28</sup> Viktor Korošec, “Novi odlomki Gajevih institucij.”, Ljubljana, 1934

<sup>29</sup> Milena Polojac, “*Societas i consortium – poreklo klasičnog ortakluka*”, *Anali Pravnog fakulteta* 6/1992. p.600, 606.

fluences we have to be careful with comparative method and always bear in mind historical context of the institute that we are researching. This is the only way to avoid false comparisons and conclusions.

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### **CONSORTIUM AND THE JOINT FAMILY (ZADRUGA)**

*Rimski consortium je u nauci često smatran jednim od najkontraverz-nijih rimskih instituta. Ovaj tip porodice se javlja se još od kolevke Rim-ske civilizacije i nestaje već u ranim stadijumima rimske istorije. Među-tim, izvesni mutirani oblici ove ustanove se sreću i vekovima kasnije. Ana-liza pobudjuje mnoga pitanja: Kakva je pravna priroda consortiuma? Da li je izvršio neki uticaj na kasnije pravne institute? Ima li mesta analogi-ji između rimskog consortiuma i porodičnih zadruga južnoslovenskih na-roda? U pokušaju da se na ova pitanja odgovori, susretanje sa proble-mom nedostatka rimskih izvora je neizbežno. Ipak, Plinijeve Epistulae i Gajeve Institucije jesu dva dela koja nam daju dragocene podatke za ana-lizu ovog instituta. U ovom radu, autor se sa jedne strane trudio da ispi-ta consortium-e kakvi su opisani u ova dva verovatno najrelevantnija tek-sta, a sa druge strane da analizira ovaj tip porodice uopšte, ne gubeći pri tom iz vida neizbežne komparacije sa sličnom institucijom porodične za-druge.*

**Ključne reči:** *consortium, socetas ercto non cito, joint family, poro-dična zadruga, Plinius, Epistulae*