Women's right to the dowry in the Early Modern Age: Its Obstacles and Challenges

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1. Introduction

This paper aims to provide a structural treatise of women's rights in the question of dowry in the Lands of the Bohemian Crown *(postmodo* "the Crown") in the Early Modern Age (from around the year 1500 up to the beginning of 17th century) and state the main similarities (influences) and possible critical differences between them in chosen institutes. The paper primarily focuses on women in land law and on the decisive legal sources that bound the nobility in the above-mentioned time. Since the Lands of the Bohemian Crown consisted of several territories that were under a rule of the Bohemian King but had more or less independent administrative rule, the paper tries to provide a systematic analysis of their legal texts and provisions on dowry implemented in them. It does not and possibly cannot have the ambition to introduce the complex problematics of all the provisions and requirements constituting dowry rights, but instead provides a brief introduction to the topic and an overlook of the problematic.

The submission is divided into three parts. The first concerns the administrative and partly autonomous establishment of the Lands of the Bohemian Crown with an explanation of essential features of those territories and its organisation in the regarded period. It also strives to provide an understanding of the fragmented legal development and the list of crucial legal sources of land law in Bohemia (*Vladislavské zřízení zemské* [Vladislav's Ordonnance], *Knihy Dewatery*[1] of Viktorin Kornel of Všehrdy, then the *Moravské zemské zřízení* [Moravian Ordonnance], *Kniha Tovačovská* [Book of Tovačov] 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 regards to selected provisions on dowry and the possibility of its gain and loss with a concentration on women's position and possible requirements for the acquisition of the dowry.

Lastly, the third part chooses to demonstrate some of the mentioned provisions regarding the loss of a dowry right on a real-life history from 17th century Bohemia. The story oscillated 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 position women had and their rights in the early modern era, with a rather dramatic narrative. A few remarks on the dowry disputes in the other territories of the Crown are also made, although for the lack of detailed source material, they were joined to their applicable parts.

[1] The Nine Books that concerns 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 context of the organization of the analysed territory must be made. The Lands of the Bohemian Crown *(Corona Regni Bohemiae)*[2] refers to 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 was one of the crucial regions, which was joined to Bohemia in 11th century[4], and together with Bohemia constituted key part of the Crowns territory.[5] Apart from those, the Crown was formed by 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 rose and fell in regards to the current political and diplomatic situation.[10] The Crown also held power over external fiefs that consisted mainly of small territories. Those were located especially 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

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[2] MALÝ, Karel. Dějiny českého státu a práva do roku 1945. Praha: Leges, 2010, s. 38.
Cf.:

[3] ADAMOVÁ, Karolina; SOUKUP, Ladislav. Vývoj veřejné správy v českých zemích I. do roku 1848. Plzeň: Západočeská univerzita. 1996, s. 14.

[4] SOMMER, Petr; TŘEŠTÍK, Dušan; ŽEMLIČKA, Josef. (eds.). *Přemyslovci. Budování českého státu.* Praha: Lidové noviny, 2009, s. 220.

[5] MALÝ. 2010. opt. cit. s. 38.
Cf.:

[6] Silesia was constituted from 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. Although, more of the principalities were indirect, and let by their dux terrae – to date 1526 four out of ten indirect Silesian principalities were managed by some parts of Piastov family.
VOREL, Petr. Velké dějiny zemí Koruny české VII. 1526 – 1618. Praha: Paseka, 2015, s. 55.
Confer: PTAK, Marian. Zemské právo Horního Slezska – stav bádání a badatelské perspektivy, in: JAN, Libor; JANIŠ, Dalibor a kol. Ad iustitiam et bonum commune: proměny zemského práva v českých zemích ve středověku a raném novověku. Brno 2010, s. 61.

[7] The centre of Upper Lusatia was formed around six of the most powerful conurbations.
VOREL. 2015. opt. cit. s. 59.

[8] VOREL. 2015. opt. cit. s. 43.

[9] ADAMOVÁ; SOUKUP. 1996. opt. cit. s. 12.
Chebsko was primarily acclaimed as a dowry to the king Ottocar's mother in 1266 but was later lost and then finally gained back in the 1322.
Cf.: DOBEŠ; HLEDÍKOVÁ; JANÁK. 2005, opt. cit. 17.
Cf.: SOMMER, Petr; TŘEŠTÍK, Dušan; ŽEMLIČKA, Josef. (eds.). *Přemyslovci. Budování českého státu.* Praha: Lidové noviny, 2009, s. 492.

[10] MALÝ. 2010. opt. cit. s. 37

[11] VOREL. 2015. opt. cit. s. 61-62.

from 13th century on[12] when kings ceased to appoint Moravia as a fief to the margraves, and thus, they claimed the title of the margrave for themselves. Henceforth, as the most important land clerks in that region, only hetmans were appointed by the King.[13] The institute of hetmanship was later constituted also in Silesia, where the official was selected from the local nobility. The only difference was in Upper Lusatia, where the clerks (*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 was the hetman at first the representative of the barons[15], whereas in Moravia and Bohemia they represented the king in his absence.[16]

The most prestigious institutions in the regions were the Land Diets and Land Courts, which, quite simplified, 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 a power to rule over some of the agenda concerning the whole Crown territory[17] (unlike the others that held only regional capacity). The submitted paper focuses on the 16th and 17th century and thus, only one remark remains to be mentioned in regards to the territory of the Crown and that is its conjunction to the Habsburg Empire in the year 1526, after the coronation of Ferdinand I. Habsburg the king of Bohemia.[18]

2.2 As to the question of legal particularism

A defining characteristic of Mediaeval and Early Modern Law lies in its particularism, meaning fragmentation. This implies that the Crown wasn't unified under the rule of conjoint body of law, but consisted of rather small territories applying its unique law customs.[19] It can be differentiated between particularism territorial and personal, but since this submission focuses only on land law, the text will overlook the fragmentation of law on the field of different social structures (such as towns, guilds, etc.)

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[12] As a matter of fact, the first unification of the title of the margrave and the king of Bohemia happened in the 13th century through the persona of Ottocar II. and got carried with the Přemslid kings, but was later punctuated by the rule of the Luxemburg dynasty as Jan of Luxemburg named Moravian margrave his son Charles (later Charles the fourth).
VOREL. 2015. opt. cit. s. 48.

[13] DOBEŠ, Jan; HLEDÍKOVÁ, Lenka; JANÁK, Jan. *Dějiny správy v českých zemích: Od počátku státu po současnost.* Praha: Nakladatelství Lidové noviny. 2005, s. 87.

[14] Ibidem.

[15] JAN, Libor. Česká a moravská šlechta ve 13. a 14. století – otázkyzrodu a kontinutity. In: KNOZ, Tomáš; DVOŘÁK, Jan. (eds.) Šlechta v proměnách věků. Brno: Matice moravská. 2011, s. 56.

[16] Ibidem.

[17] DOBEŠ; HLEDÍKOVÁ; JANÁK. 2005, opt. cit. s. 93.

[18] MALÝ. 2010, opt. cit. s. 38.

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

Thus, the regional particularism remains, which was based on the regions mentioned in the first part that were governed by different law alterations. This submission regards legal texts from Bohemia, Moravia, and Silesia. These texts, called Land Ordonnances ("*Landesordungen")* that started to emerge after the year 1500 were effective only in the certain parts of the Crown. The text argues their undeniable similarities that may appear from their inspiration with one another, and thus containing more, or less similar provisions. That is why the aim of the text pursues to compare particular ordonnances in the question of women and their right to dowry and emphasizes the possibility of loss of that right.

III. The comparative analysis of women in the question of dowry in selected Land Law codifications throughout the Lands of the Bohemian Crown

In general, women's position in Slavic countries wasn't as unequal as it was in Roman Law or on German territories[20] e.g. women did not need guardians and in terms of legal proceedings (apart from some limitations) were equal to men, which is a difference that originates from cultural and social differences – Roman society was militant, the capacity for rights originated from capacity to bear a weapon[21] and since women did not hold a weapon they were excluded from that privilege. Unlike Slavic countries where the society was more patrimonial and therefore did not have the urge for such limitations.[22] This, of course, bore some exceptions as for underage women, married women and women living in indivisible ownership.[23] The latter may serve as a defining feature in regards to the women's claim to an estate. In general, women had the right to demand a suitable dowry from their fathers, brothers, or possibly uncles in the case of their father's death. They ought to pay the dowry to the groom as a price for the daughter. If the daughter chose to join the church, they had the right to be provided for nevertheless.[24]

Before conducting any analysis, few remarks on the terminology used in connection to the question of dowry and women receiving it must be made. It is necessary to start with women's position in family and relations to the estate. First to mention is the indivisible property, which was the estate of the family in terms of immovable property that the family owned and was essential for their functioning (its origin arose from the agricultural organization of medieval lands).[25] The crucial part was, simply said, that every family member had the same right to the estate, but none of them could disposition with it altogether. Once of legal age, men could sell only their part, and if they wanted to name dowry on the indivisible estate, they needed the permission of the other holders.[26] This institute was to ensure the estate would remain with the family. The head of the unit was usually the father of the family, or other elder family member, who dispositioned with the estate. Though it is essential to state, that to end the indivisible ownership, the person had to be divided (separated) from the estate (only men could ask for the division, and then the division could have been done either on

[20] KOZÁKOVÁ, Anděla. Právní postavení ženy v českém právu zemském. Praha. 1926.
[21] KAPRAS, Jan. Manželské právo majetkové dle českého práva zemského. Praha: Královská české společnost náuk. 1908, s. 14.
[22] Ibidem.
[23] KAPRAS. 1908. opt. cit. s. 15.
[24] KAPRAS. 1908. opt. cit. s. 13.
[25] KAPRAS. 1908. opt. cit. s. 7.
[26] KADLEC, Karel. Rodinný nedíl: čili zádruha v právu slovanském. Praha: Bursík a Kohout. 1898, s. 81-83.

the estate or through money) – this led to a complete separation of the person from the family (in the question of property).[27] Women did not have an equivalent right to a part of indivisible property, but to endowment, which was given to her by her father or relative and became part of the possession of her husband.[28] She couldn't raise any claim to the indivisible property, as long as she had any male relative with lawful claim to the succession.[29]

As was distinguished, women had a right to demand a dowry from their fathers or brothers, which was received by the woman's husband through a contract after their wedding.[30] This has to be distinguished from another institute that is in the older sources also referenced by the same term as dowry [*věno*], but later on, is differentiated as *obvěnění* [pledged dowry].[31] This institute refers to the estate that the husband pledges to his wife as an inheritance in case of his death – it was usually the price she received from her family plus more depending on the regarded territory (as will be demonstrated below). She still could not disposition with the pledged dowry as long as her husband lived, but those estates were protected from potential misuse,[32] as will be showed. The old Silesian word, also used in the Ordonnance, referring to a family-given dowry is *"posah."* To avoid any particular confusion, this term will be later on used to refer to the family dowry in general, and then to refer to a pledged estate given by a husband to his wife the term "*dowry"* will be used.

BOHEMIA

3.1 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,[33] it wasn't until the year 1500 those attempts finally became successful. The reason why the previous attempts had failed was mainly that such ambitions couldn't have been upheld against the power of the noble houses – who naturally saw those intentions as the King´s desire to tame their power.[34] Despite these inconveniences some legal texts had emerged, and although they did not constitute any officially binding legal codifications, they served as a source of

[27] KAPRAS. 1908. op. cit. s. 10.
[28] KAPRAS. 1908. op. cit. s. 27.
[29] KADLEC. 1898. op. cit. s. 84
[30] KOZÁKOVÁ. 1926. op. cit. s. 24.
[31] Also referred in some sources as „odvěnění".
[32] KADLEC. 1898. op. cit. s. 89.
[33] KREUZ, Petr; MARTINOVSKÝ, Ivan. ed. *Vladislavské zřízení zemské: a navazující prameny (Svatováclavská smlouva a Zřízení o ručnicích)*. Praha: Scriptorium, 2007. s. 11.
[34] Ibidem.
A rather amusing illustration of the political situation can be drawn through *Maiestas Carolina, a* land law codification set by Charles IV., who after an evident antipathy from the nobility, issued a statement, where he called out his proposition, saying that the codification has burnt down and therefore does not bide anyone in Bohemia.
KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 18.

law – to name a few; *Ordo Iudicii terrae*[35] *or Práva zemská česká*[36] *(The Bohemian Land Laws)* by a notorious Land judge Ondřej z Dubé. But despite this exhaustive persisting resistance the antipathy slowly faded, for the nobility began to seek official document that would secure their rights against the king and thus, in the late 15th century a commission for preliminary works was established – knights and noblemen combined.[37] 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).*[38] 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 those court precedents that were contradictory to the legal rules presented by the articles of the Ordonnance.[39] The Ordonnance was written to the favour of the nobility; conurbations were excluded from some decision-makings regarding the Land agenda.[40]

One of the last remarks that must be made before the comparison itself is an acknowledgement that since its first publication in 1500, it has undergone many amendments and many changes. This paper, with regards to the accessibility and reliability, bases its analysis on a 2007 edition[41] that used a variety of different preserved manuscripts with the diction of the Ordonnance,[42] most of them printed decades after the first issue.[43] The set forth submission works with numbered articles, as they have been edited by the authors of the above-mentioned edition.[44] for the processed manuscripts at the beginning did not even contain a numbering of the articles.

A rather comprehensive, but essential for the analysis, is *Article 515* that concentrates on marriage requirements, which served as primary conditions for supplementation of *posah* and dowry. The Article states:

"Thus, was found as law:[45] *"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*

[35] A book containing various branches of land law, written in 14th century in Bohemia.
[36] GRANT, Jean E. *For the Common Good – The Bohemian Land Law and the Beginning of the Hussite Revolution.*
[37] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 47.
[38] Named after then king Vladislav II. Jagellon
[39] Rauscher Sborník věd právních a státních, 136
[40] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 50.
[41] petr kreuz Ivan Martinovský
[42] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 98.
[43] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 87 – 93.
[44] KREUZ; MARTINOVSKÝ. 2008.
[45] This phrase opens the majority of articles, pointing out that those were taken from the Land Books and from the rulings given by the Land Court in the previous era.

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."[46]

The wording at the beginning of the Article denotes that the contained norm was judicated before by the Land Court, and thus it is a common legal rule. As to the content of the Article women weren't always just dependent on the opinion of their father and relatives; if they disagreed with the given resolution of family friends, she could have come to the King for a ruling, who may permit the marriage and the women would not lose her right to the estates.[47] If though she received no permission, she would not only lose her right to the estate but according to the *Ordo Iudicii terrae*, she and her so thought husband would be punished by the penalty of death.[48] This was not an unyielding obstacle, the situation could have been evaded if her relatives forgave her – and unlike Moravia, this could have been done tacitly.[49]

Article 515 follows with *"If there would be found that the woman is no longer a maid, she shall lose her right to the estate."*[50] This specific provision was included in majority of the submitted texts and this paper *inter alia* focuses specifically on the development of this article in different codifications. The idea permeates all, although the penalty differed. Amongst others, this was one of the many inequalities for women in comparison to men, because men usually kept their lovers even during their marriages.[51] The question of chastity is closely linked to the notorious Land Court dispute regarding Elizabeth Katherine, which is discussed in the third part of this paper.

But if there were none of the above-mentioned obstacles, a dowry could have been named. Securing women's right and naming her dowry and *posah* was done through a contract[52] that then had to (should) be enrolled into the Land Books (the Merchant Land Books)[53] or different adequate

[46] KREUZ ; MARTINOVSKÝ. 2008. op. cit. 250.
[47] Ibidem.
[48] KAPRAS. 1908. op. cit. s. 17.
See also in: PALACKÝ, František. *Archiv český II. díl.* Praha. 1842. s. 124.
A defining element would be, if she acted from her own will or not. If so, she and her husband would lose their heads by the hand of her father, although if she was taken unwillingly, It is only the husband that will be granted the ultimate penalty.
[49] KAPRAS. 1908. op. cit. s. 18.
[50] KREUZ ; MARTINOVSKÝ. 2008. op. cit. 250.
The translation of the articles is made by the author of this paper, and since some of the words do not bear an English equivalent, few slight interpretation alterations has been made in accordance with the meaning and use of the articles.
[51] KOZÁKOVÁ. 1926. op. cit. s. 13.
[52] KAPRAS. 1908. op. cit. s. 31.
[53] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 146. [Article 148].

registers if the dowry was sum higher than a 100 kop[54] (*piles*) [of] grošů (*groschen*)[55] (for comparison in 1500 the enrolment as such costed around 4 groschen).[56] The enrolment constituted a beneficial ground for them in additional litigation. The *posah*, which was pledged to the women by her family, and brought to the marriage, had to be outweighed from her husband by an adequate sum that would fall upon her in the case of her husband's death. For *"Woman is no slave to her husband, but in the question of dowry. If he weights her dowry with an obligation, she does not have to pay it in case of his death."*[57] Usual tradition was to give (pledge her into the Land Books) the sum she received from her father and a little bit more – although the Vladislav's Ordonnance does not mention the exact sum, it was said to be 1/3 of *posah*, but this sum was rarely pledged, seldom it was, when the sum wasn't pledged higher than posah[58]- this could have been pledged in money, non-servable estates[59] (if more held rights to such estate, it could had been done only with their permission).[60]

It is important to stretch out the strong position the dowry had in regard to the other claims attached to the property of her potentially deceased husband. And thus, widows were also protected by the law – usually, if one was to seek justice and bring civil action for more than he owned, he was obligated according to *Article 37* to pledge the sum he was missing somehow else. Widows, however, if seeking justice from their dowry, were given an exception and did not have to pledge anything.[61] The protection of women's rights in question of securing her expenditure was *Article 202,*[62] which stated that women had a prior claim to the estate through her right to dowry, than her husband's creditors desiring to satisfy their rights.[63] A similar situation is also mentioned in *Article 532*, where it is stated that pledging a dowry to an estate was prior to any later desire to sell or donate it.[64] This did not only concern the 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.[65]

Until the man lived, the estates pledged for the dowry were still technically his to use, because the women's right was still just bound to the condition of his death, and the wife just held the enrolment.[66] The man was limited in his actions though - as a matter of fact, at first, it was almost

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[54] A Czech currency, „kopa" serves as a metric measure here, where 1 „kopa" equalled approximately 60 groschen.
[55] Name of the Czech currency that persisted from 13th century up to the 17th.
[56] XXX
[57] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 252. [Article 528].
[58] KAPRAS. 1908. op. cit. s. 33.
[59] KAPRAS. 1908. op. cit. s. 37.
[60] KAPRAS. 1908. op. cit. s. 35.
[61] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 120.
[62] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 169
[63] KAPRAS. 1908. op. cit. s. 70 – 71.
[64] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 253-254.
[65] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 168 – 169.
Cf.: KOZÁKOVÁ. 1926. op. cit. s. 34.
[66] KAPRAS. 1908. op. cit. s. 54.

impossible to disposition in any sense with the pledged dowry, because once it was pledged it "*cannot be later taken away. Any future disposition cannot be done to the harm of the 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 value towards the dowry, for it cannot be touched. The dowry has a priority against any other debts."*[67] These provisions made the dowry almost untouchable[68] *a*nd that is why also the institute of transfer of the dowry was allowed. This institute is covered in *Article 381*[69] and most importantly in *Article 199*, which states:

"If a dowry of a woman shall be transferred from one property to another, both the příjemce [receiver][70] *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 non-servable estate. If the* [value of the] *dowry would not be the same, then she is entitled to equal the part from estate of the příjemce [receiver]– and if that is still not enough, she should return back to the estate her dowry was transferred from."*[71]

The *příjemce* [receiver] of the dowry, is the one who secures the enrolment and although he technically pledges for the transfer with his property[72], it is covered in *Article 95* that if any harm to his estate would take place – meaning if he had to equal the part missing the woman was promised - the husband has an obligation to repay the damage occurred.[73] As apparent from the Article itself, this institute serve as a protection for women and their right.

The question of procedural steps in the case of an action from the widow for her right of dowry is covered in *Article 256,*[74] and also in *Article 419* that states the impossibility of the dowry sheet to be statute-barred, *as long as the husband is alive,*[75] which also points out to the term in which she can

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[67] KAPRAS. 1908. op. cit. s. 55.
[68] KOZÁKOVÁ. 1926. op. cit. s. 34.
[69] Mentions situations with a need of transfer of the enrollment from the Land Books to the Curial Books.
[70] Cf.: KOZÁKOVÁ. 1926. op. cit. s. 36.
[71] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 169.
Cf.: See also a Land Court ruling from 1485 In. KALOUSEK, Josef (reds.). *Archiv český čili staré písemné památky české i moravské, sebrané z archivů domácích i cizích.* Praha: Domestikální fond království Českého. 1901. s. 590.
[72] KOZÁKOVÁ. 1926. op. cit. s. 36.
[73] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 132.
[74] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 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." Ibidem.
[75] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 217. [Article 419].

claim her right to the dowry after her husband's death in accordance with *Article 256*, and that is three years and eighteen weeks.[76]

An interesting detail in the question of dowry, which any other Ordonnance did not cover (quite naturally) was Article 476 regarding the dowry that is allowed to be enrolled to the Queen herself. It mentions as follows:

"No Bohemian Queen, nor this, nor those to come, can sell her dowry or register it, she can only use it until she dies. And after her death it shall fall upon the Crown. And if one shall bequeath any of it, it shall not bear any legal consequences." [77]

This provision should remind the ruler that they cannot disposition with the Lands of the Bohemian Crown and cannot pledge the territories belonging to the Crown on dowry to their wives.[78] Two Jagellonian kings (one of which gave name to the Ordonnance) that sat on the Czech throne had to sign a promise not to pledge those territories.[79] It also leads us back to the beginning of an explanation regarding the administrative division of the Bohemian kingdom with an acknowledgement that the peripheral lands were pledged not to the king, but to the Crown itself as an independent unit.[80]

2.2 THE *KNIHY DEWATERY* OF VIKTORIN KORNEL OF VŠEHRDY

Another important source of law, although not officially binding, are the *Knihy Dewatery* of Viktorin Kornel of Všehrdy. Viktorin was a 15th / 16th century lawyer and scribe by the Land Books. Kornel was a rather competent authority in regard to the knowledge of Land law, and apparently for 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 by the registers. Also, his thorough knowledge was an obstacle to the newly considered ordonnance, for he did not share the same position 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.[81] Upon his dismissal from *curia,* and built upon his remarks and experience he had obtained within his position by the Land books, he wrote his own Bohemian Land law codification, with, at first, no intention to publish.[82]

[76] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 253. [Article 530].
[77] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 238. [Article 476].
[78] JIREČEK, Hermenegild. *Codex juris Bohemici.* Praha: F. Tempsky. 1873, s. 123.
[79] KREUZ; MARTINOVSKÝ. 2008. op. cit. s. 238. [Article 476].
[80] ADAMOVÁ, Karolina, s. 40.
[81] JIREČEK, Hermenegild (ed.). *O právích země české knihy devatery.* Praha: Všehrd. 1874, s. 14.
[82] JIREČEK. 1874. op. cit. s. 11-14.

Although the text was not considered legally binding, Viktorin's authority presents a valuable perception, 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, that is why naturally the *commune* norms are quite similar. This submission focuses mainly on the fifth book, because it consists solely of provisions regarding dowry and may serve as an enlightenment to some acrimonious and unclear provisions. Just a gentle reminder that the norms regarding dowry and posah were scattered throughout the Vladislav's Ordonnance without any clear pattern or aforethought as it may seem.

Before a dowry is pledged, a marriage must occur, now *Knihy Dewatery* do not bring any unique provisions contrasting the Vladislav's ordonnance in general, but brings to attention one interesting point, not mentioned before, which are the unequal marriages. In *Article XVI*. it is pointed out that whenever a nobleman desires to wed a woman and pledge her some property into the Land Books, he can, and she follows his status, but *vice versa,* the noblewoman would lose her title and cannot pledge him any estate, without the consent of the King.[83]

Unlike the Vladislav's ordonnance Kornel explicitly defines the dowry and the sum that should be pledged, when he says:[84]

"A Dowry is a sum of money by third[85] *higher or of same price, what was named after her* [given in posah] in *the Land books, dowry sheet,* [etc] *to wife by husband or from his friend or whoever who has right to the inheritance."*[86]

The author expands on the idea of how much should be pledged to a woman, where he makes a difference, whether the dowry pledged is given to a maid or a widow. The readers shouldn't be confused by the fact that by "*one third"* he does not really mean *"one third"* as it may occur. Jan Kapras, the Czech historian, constituted a diagram showing this relationship on a mathematical equation,[87] where a = *posah* - maid should be pledged $\frac{5a}{2}$ and to a widow $\mathbf{2}a$.[88] Viktorin attributes higher sum to maids, whereas widows tend to get less. He does not explicitly say why, but it can be drawn perhaps that widows were expected to possess the inherited estate and thus the pledged sum could have been lower.

[83] JIREČEK. 1874. op. cit. s. 224.
[84] JIREČEK. 1874. op. cit. s. 217 [V. book, Article VI.]

[86] JIREČEK. 1874. op. cit. s. 216.
[87] KAPRAS. 1908. op. cit. s. 32.
[88] KOZÁKOVÁ. 1926. op. cit. s. 25.

Same as in the Vladislav's Ordonnance, *Knihy Dewatery* remarks on the possibility of a loss of woman's *posah* in relation with marrying without the father's consent.[89] Although 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 the former.[90]

Other basic understatements; such as where to enrol a dowry,[91] how and when the right to that claim it is statute-barred,[92] and also the priority of women's right to the dowry against whoever holds the estate after her husband's death,[93] or that she cannot disposition with it till her husband lives[94] etc. are listed in the same meaning as in the Vladislav's Ordonnance, and thus need not to be cited. Although the eloquence with which the text is written, should be honoured.

As well as for its officially binding sister, Viktorin emphasises the enrolment to the Land Books, because as it is pointed out in the *Article 22*, women who do not have their dowry pledged in the books, may encounter many obstacles, when applying their claim.[95] 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 (Vladislav's Ordonnance *Article X*) the aggrieved woman may seek her justice in front of the highest land burgrave or viceburgrave of Prague.[96]

More eloquence is also expressed on the matter of *"what"* can be pledged on dowry, which is also something that is not necessarily expressed in the Vladislav's Ordonnance, Kornel remarks in *Article 21*, where he mentions that dowry can be named only on non-servable estates, and also in money. Any other estates (royal, belonging to the church, manx[97] etc.) could have been named only with the permission of the King.[98]

The institute of transfer of dowry is in *Knihy Dewatery* described in more detail than in the Bohemian Ordonnance, with also some explanations on what type of estate can the change actually be done. The main principle used is that the value of the dowry has to remain the same[99] and the presence of *příjemce* [receiver] and the wife's consent are required.[100] There is also pointed out the

[89] JIREČEK. 1874. op. cit. s. 262. Article VII
[90] Amusingly enough, this provision can be compared to one possibility that regards the loss of man's part of an indivisible property (simplified his equivalence to woman's dowry). This may occur, when he kills or cripples his father, brother or uncle. Equal offence one might point out.
[91] JIREČEK. 1874. op. cit. s. 216.
[92] JIREČEK. 1874. op. cit. s. 214. [Article XIV.].
[93] JIREČEK. 1874. op. cit. s. 227 – 228. [Article XXIII].
[94] JIREČEK. 1874. op. cit. s. 228. [Article XXVIII].
[95] JIREČEK. 1874. op. cit. s. 226.
[96] JIREČEK. 1874. op. cit. s. 220-221.
[97] Meaning estates that originally were part of bigger manor and were bestowed to people, who were in charge of their governance, but weren't their owners.
[98] JIREČEK. 1874. op. cit. s. 226.
[99] JIREČEK. 1874. op. cit. s. 233. [Article XXX].
[100] JIREČEK. 1874. op. cit. s. 231. [Article XXVII].

main reason for the transfer, which is the man's desire to sell the estate, and the one who buys has usually desire to buy a non-servable estate.[101] The last comment on the topic of transfer is made with a word about the shift of the property from one Book to another.

"Also, a transfer of dowry from 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 also from other Lands of the Bohemian Crown."[102]

As can be drawn out from the chosen provisions the differences weren't significant, which could have been predicted, since both the authors derived the articles from the same sources. Although *Knihy Dewatery* provides readers with more explanatory character than does the Ordonnance, unlike the Vladislav's Ordonnance it does not directly speak of women's chastity, only the provision mentioning the unapproved marriage occurs.

MORAVIA

2.3 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] and was formed on some provisions of the Book of Tovačov,[104] adding a few remarks[105] from the Book of Drnovice[106] and worked aside the rulings of the Land Court, Land Diet, and others[107] as an effective source of law. The Moravian Ordonnance reflects a decade [even centuries] 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 outcome was achieved in 1535 through Moravian Ordonnance, which puts together a legally binding codification. Because in some parts, especially in the question of Dowry, the Ordonnance implemented Articles from the Book of Tovačov,

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Cf.: KOZÁKOVÁ. 1926. op. cit. s. 35.

[101] JIREČEK. 1874. op. cit. s. 230-231.

[102] JIREČEK. 1874. op. cit. s.234 – 235.

[103] JANIŠ, Dalibor; JANIŠOVÁ, Jana. *Komentář k moravským zemským zřízením z let 1516 – 1604. Svazek I. články 1 – 74.* Praha: Leges. 2017, s. 19.
Cf.: ČÁDA, František. *Zemské zřízení moravské z roku 1535.* Praha: Česká akademie věd. 1937, s. XXVI.

[104] Written by Ctibor of Tovačov, this legal source constitutes one of the essential Moravian legal sources of 15th century. It originated from the initiative of the Moravian nobility, who were uneased by a possibility of any codification coming from the king, and thus, entrusted the writing of the norms into the hands of one of their own. The book was not an official document, although served as a useful handbook.
Cf.: JANIŠ; JANIŠOVÁ. 2017. op. cit. s. 300.

[105] But very few.
ČÁDA. 1937. op. cit. s XXXVI.

[106] BRANDL, Vincenc (ed.). *Kniha Drnovská.* Brno: J. Šnaider. 1868. 142 s.

[107] JANIŠ; JANIŠOVÁ. 2017. op. cit. s. 19.

[108] ČÁDA. 1937. op. cit. s. XXVII.

and thus, those parts are almost identical, this submission will not examine the Book of Tovačov solemnly.

The for-handed paper analyses the edition of 1535 Moravian Ordonnance, completed by František Čáda[109] as well as a 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 in the alternative adds the numbering of the articles according to the 1604 edition.

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

The provisions concerning dowry rights starts with *Article 120* [Also article 112] *(o věnných právích* [About Dowry Rights]) and at the very beginning secures potential widows, by saying they have a right to claim their dowry before anyone else.[112] Apart from the estates or sum of money that her husband leaves her, the Ordonnance makes a list of things that are hers by law (*svršky* - clothing) e.g. also; jewellery, one third of cattle, carriage, etc.[113] This was a norm valid for women from higher nobility, whereas the Ordonnance also points out rights that possess women form lower nobility (gentry) (not allowed to jewels, unless bequeathed by her husband, carriage, etc.). Through the preserved enrolments from the Land Books of Moravia, we can make a quite satisfactory reflection of the usage and effectiveness of named provisions from the Ordonnance. For example in 1572 apart from naming the estates that will fall upon his wife, her husband Balcar Švejnyc, also points out that beside those, she should receive *"what she has on svršky (clothing) etc., for it is hers by law."*[114] Thus, the law and praxis counted with her "indispensable property", which didn't need to be named specifically.

The very basic question as to how much of a sum should be pledged answers the Ordonnance in *Article 121* [Article 113], where it states that a maid should be given more by one third and to a widow the same, she has.[115] This third is counted the same as does Viktorin of Všehrdy, meaning if she was given hundred, she shall receive two hundred and fifty groschen.[116] Thus, this provision remains

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[109] ČÁDA, František. *Zemské zřízení moravské z roku 1535.* Praha: Česká akademie věd. 1937. 246 s.
[110] JANIŠ; JANIŠOVÁ. 2017. op. cit. s. 19.
[111] Article 120 *„widows have primary right on the estate of their deceased husband before anyone else…"*
[112] ČÁDA. 1937. op. cit. s. 134.
[113] ČÁDA. 1937. op. cit. s. 134.
[114] MATĚJEK, František (ed.). *Moravské zemské desky – Kraj Olomoucký III. díl.* Praha: Státní pedagogické nakladatelství. 1953. s. 46.
[115] ČÁDA. 1937. op. cit. s. 135. [Article 121]
[116] Ibidem.

the same as in the Bohemian law.[117] *Ad* the fidelity to this article we can take a closer observation of enrolments of *posah* and dowry and compare the sums. Under consideration were taken those enrolments that include both naming *posah* and later dowry. One of those is enrolment of estates of Elizabeth of Víckov in her father's enrolment, when he names her eight thousand groschen,[118] her second husband though names thirteen thousand and six hundred groschen plus the possession and disposition with all of his estates.[119] Considering Elizabeth was already a widow, Moravian Ordonnance names her double the dowry she had. As was said earlier the named sum wasn't legally binding and It depended on mutual agreement of both parties.[120] If the father died before his daughter's marriage, it was the obligation of her brothers in accordance with *Article 126* [Article 110] to name her the dowry. The following Article emphasises on not spending their sister's dowry, but rather using it for the women's good.[121] The Land Law provides daughters with the equality in sum receive on dowry.[122]

One of the differences drawing a distinction between Moravian and Bohemian Ordonnance is the question of the position of the *příjemce* [receiver, pledger] of Dowry. Whereas in the Bohemian provisions the position of the person securing the rights of women appeared only during transfer of the Dowry, and whose presence was required also by *Knihy Dewatery*,[123] now already appears in the first deposit of dowry.[124] Important is to note that unlike Bohemia, Moravian Ordonnance states *"and who the woman choses"* allowing women to choose their pledgers.[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, if a woman decides to marry against her fathers will. Also, the provision adds that "*upon him and her a revenge shall be taken"*[126] if the daughter would run away. The author of the edition of the Book of Tovačovy, Vincenc Brandl makes a reflection on what the punishment there actually might be. He references the *Řád práva zemského*[127] *(Ordo iudicii terrae) [as was mentioned in regards to Bohemia],* where the punishment for such crime would be the execution

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See also: BRANDL, Vincenc (ed.). *Kniha Drnovská.* Brno: J. Šnaider. 1868. 142 s.

[117] ČÁDA. 1937. op. cit. s. 135, 2. pozn. pod čarou

[118] MATĚJEK. 1953. op. cit. s. 28.

[119] MATĚJEK. 1953. op. cit. s. 92.

[120] KOZÁKOVÁ. 1926. op. cit. s. 25.

[121] ČÁDA. 1937. op. cit. s. 142.

[122] Ibidem.

[123] JIREČEK. 1874. op. cit. s. 220.

[124] KOZÁKOVÁ. 1926. op. cit. s. 36.

[125] ČÁDA. 1937. op. cit. s. 136.
See also: KOZÁKOVÁ. 1926. op. cit. s. 36.

[126] BRANDL, Vincenc (ed.). *Kniha Tovačovská aneb pana Ctibora z Cimburka a z Tovačova paměť obyčejů, řádů, zvyklostí starodávných a řízení práva zemského v Markrabství moravském.* Brno: J. Šnaider. s. 90.

[127] A book of Law that was written halfway through 14th century for the Land of Bohemia, consisting of provisions covering procedural course of action of Bohemian Land Court. More in: PALACKÝ, František. *Archiv český II. díl.* Praha. 1842. s. 76 – 135.

of both. The Laws by Ondřej of Dubá[128] then states that the decision on the content of the punishments belongs to lords and them alone, and he chooses not to draw any conclusions.[129] The possible loss of the dowry right is also mentioned in the Book of Drnovice, which provides an identical provision concerning such behaviour in an article about a *shrew 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 suggest that the legal sources focus especially on those cases, which concern the merits of a maid running away, and although the law here do not directly speak of losing chastity, it is still probable that the interpretation also involved such situations. After all, this can be demonstrated on a judicial praxis.

To provide with 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 in 1613, the family, once found out about their daughter married without their approval, they gave up on her – which naturally meant she lost her right to any estates.[131] Sometimes the family displayed 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 from the wording of the articles concerning women, it can be said, they presumed the girls to be chaste, as it is matter directly affecting women's honour, which was one of the *features* for good marriage.[134] This can be only substantiated by local precedential praxis. In 1545 a dispute was brought in front of the Moravian Land Court, for there has been a justified suspicion that the accused woman was no longer a maid. The Court has ruled in favour of the one that sued and stated that she [through *příjemce*] must give her inheritance back. This dispute was enrolled into the Land books and in its index it is scripted by the precedential legal rule that states: *"If she loses her chastity, she does not possess rights".*[135] As was said in regards to the Bohemian Ordonnance she could have been forgiven, but unlike Bohemia, Moravia required a special document for such action.[136] This can be demonstrated on

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[128] Another Book of Land Law written by a judge of a Land Court Ondřej z Dubé for Bohemia. More in: PALACKÝ, František. *Archiv český II. díl.* Praha. 1842. s. 481.

[129] BRANDL. 1868. op. cit. s. 90.

[130] Brandl, Vincenc. *Kniha Drnovská.* Brno: Šnaider. 1868. s. 76.

[131] JANIŠ, Dalibor; JANIŠOVÁ, Jana. Komentář k moravským zemským zřízením z let 1516 – 1604. Svazek Ii. články 75 – 190. Praha: Leges. 2017, s. 116.

[132] JANIŠ; JANIŠOVÁ. II. díl. 2017. op. cit. s. 166.

[133] JANIŠ; JANIŠOVÁ. II. díl. 2017. op. cit. s. 116.

[134] JANIŠ; JANIŠOVÁ. II. díl. 2017. op. cit. s. 322.

[135] JANIŠ; JANIŠOVÁ. II. díl. 2017. op. cit. s. 322.
Also: MZA, fond G 10, inv. č. Kniha 199, s. 294.
Cf.: MZA, G 10, inv. č. 820, fol. 199r-v.

[136] KAMENÍČEK, František. Glossy k věnnému a vdovskému právu moravskému na statcích svobodných za 16. století. In BIDLO, Jaroslav; FRIEDRICH Gustav; KROFTA, Kamil (reds.). Sborník prací historických. K šedesátým narozeninám dvor. rady Prof. Dra Jaroslava Golla. Praha: Hist. Klub. 1906. s. 226.

a dispute occurring in the 50. of 15th century between Jaroslav of Boskovice and Vilém of Pernstein, when the quarrel presumably concerns 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 say it directly, there still had been a chance for those women that in the wording of the ruling *"se zmrhá"* (loses virginity) hinting she was with a man before marriage. In this case, her father showed forgiveness.[137] The case law shows that although the provisions of the Moravian Ordonannce 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.

SILESIA

As mentioned in the first part of this submission, Silesia consisted of number of principalities that changed during time. For the purposes of this text sources from Upper Silesia were chosen for examination; Opole - Ratibórz and Cieszyn Ordonnances. It would have been very impetuous, of course, to not mention Lower Silesia, which was under the influence of Saxon Law unlike the Upper Silesia, which had strong Slavic roots influenced less by German law.[138] The local Silesian legal jurisdiction can be divided into two: One of them is the Opole and Ratibórz Ordonnance, this legal administration has arisen, *inter alia*, from polish legal customs.[139] The other group can be subordinated under 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 Cieszyn Ordonnance.[141] Similarly to any other legal development in previously mentioned parts of the Bohemian kingdom, the Ordonnance wasn't the first legal document that emerged in Silesia, previous attempts of codification included texts such as 1565 *Landt und Hofgerichts Ordnung im Furstenthumb Jegerndorf*[142] for Krnovsko (although never confirmed by their *princeps), or* 1666 Opavian *Troppawische deutsche Landes Ordnung.*[143]

There are two conception as to the adoption of Law in the Upper Silesia. One stated by Jan Kapras saying that parts of the Bohemian code have been adopted into these codifications.[144] He bases

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

[137] MZA, G 10, inv. č. 199. fol. 4.

[138] KAPRAS, Jan. Zemská zřízení opolsko-ratibořské a těšínské. In *Sborník věd právních a státních.* Praha. 1922. s. 2.

[139] Soudnictví a prameny zemského práva 62

[140] PTAK. 2010. op. cit. s. 62.

[141] PTAK. 2010. op. cit. s. 64.

[142] PTAK. 2010. op. cit. s. 65.

[143] PTAK. 2010. op. cit. s. 66.

[144] KAPRAS. 1922. op. cit. s. 1.

his argument on the roots of those sources, for both had emerged from Great Privileges given by the King, and thus he argues the following provisions have adopted the Bohemian Law.[145]

Other stand mentioned by Pavla Slavníčková introduces the idea, which claims that a reception of Bohemian Ordonnances into the Silesian Codes is harsh and the similarities more likely originates from Moravian Ordonnance[146] and also from 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 Moravian influence, next to Polish and of other Upper Silesian codifications is apparent also in the Cieszyn Ordonnance as mentions Erich Šefčík, a Czech historian, who dedicated his work to Silesian history.[148] A clear conclusion has not been made on that matter, henceforth this submission will draw similarities and differences present in both codifications.

2.6 The Opole and Ratibórz Ordonnace

The first analysed Ordonnance had arisen from the Great Privilege given to the region of Opole-Ratibórz (*postmodo* ORO) and thus, constituting a legal ground for another Land Law codification of the Crown. The Ordonnance had been finally authorised by the King in 1562[149] and printed the following year.[150] To the question of dowry is dedicated XIV. Articles, whose system bear a very similar structure to the Cieszyn Ordonnance.[151] Although, in comparison with the Moravian and Bohemian Ordonnance in general, some provisions e.g. position of widows are not covered in the Silesian Ordonnances at all.[152] Had the primal influence been whichever, the provisions bear distinctive nature, where *par example* in Article I. of the ninth sheet states that:

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

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[145] KAPRAS. 1922. op. cit. s. 2-3.
[146] SLAVÍČKOVÁ, Pavla. 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]. s. 116. Dostupné z: https://journals.umcs.pl/rh/article/view/6395/7095
[147] SLAVÍČKOVÁ. 2019. op. cit.
[148] ŠEFČÍK, Erich (ed.). *Zemské zřízení Těšínského knížectví z konce 16. století.* Český Těšín: Muzeum Těšínska. 2001, 8.
[149] KAPRAS. 1922. op. cit. s. 4.
[150] Ibidem.
[151] SLAVÍČKOVÁ. 2019. op. cit. s.
[152] SLAVÍČKOVÁ. 2019. op. cit. s.
[153] *„posah"* is a word used in Silesia for dowry received by family. Cf: KADLEC, Karel (ed.). *Zržijzenij zemské knijžetstwij oppolského a ratiborského y giných kraguow k nim přijslussegijcých.* Praha: Československá univerzita. 1926, s. 7.

As well as the Bohemian Ordonnance in majority of cases referenced *"Thus was found as law"*[154] this ordonnance does look up to the old customs as well. A rather interesting difference in comparison with the Bohemian law is a fact that the Opole Ratibórz Article did not make a distinction between a dowry named to a maid and to a widow as it is in *Knihy Dewatery.* Or at least the ordonnance does not suggest so, because the legal position of widow is not, as a matter of fact, mentioned anywhere in the text.[155] A polemics can be conducted on the comparison of Moravian and Bohemian Ordonnances in regards to the sum that law prescribes to pledge to women. It seems that Opole and Ratibórz Ordonnance chose to incorporate a sum that was in the west of Bohemian Kingdom considered a sum pledged to widows. But same as in the Bohemian Ordonnance the sum was more indicative, for essential was the agreement between both parties.[156] If we take a closer look on the enrolments in the Opole Ratibórz Land books. from 1532-1543,[157] we will see that a variety of sums was pledged, namely from 80 zloty[158] to 2 000 zloty.[159]

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 choose her guardian and receiver of the dowry, namely two or three of her friends.[160] This provision therefore favours latter the theory regarding the inspirations for the Silesian ordinances, because such provision was also present in the Moravian Ordonnance.[161] And as a matter of fact bears one of the greatest significant differences from the Bohemian code.

In regards to the woman's right for disposition with dowry, the norm remains the same in favour of women, as even when her husband is in debt, he nevertheless cannot pay the debt from the estate she received, for it is hers to operate with.[162] The provision does not mention whether her dowry right is a priority, as it was in the previous ordonnances, because the provisions that would constitute such legal obligation is simply not present. Although, even form the above-mentioned norm exception can be made, because *Articles VIII*. and *Article IX.* states that if for the good of both of them, the husband would like to sell that estate, he can do so, but only with a consent of those, who pledged for

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[154] Cf.: footnote 42.
[155] SLAVÍČKOVÁ. op. cit. s. 115.
[156] KAPRAS. 1908. op. cit. 31.
[157] STIBOR, Jiří. Zemská kniha opolsko-ratibořská z let 1532 – 1543. *Orlice. Časopis pro genealogii, heraldiku a další pomocné vědy historické.* Ostrava: Klub genealogů a heraldiků při DK Vítkovice. 1993.
[158] 1 zloty is a polish currency, and to make a comparable pararel one zloty was considered to be 30 groš, and 60 groš is commonly considered 1 hřivna – a well used curency metrics STIBOR. 1993. op. cit. s. 92.
[159] http://www.historie.hranet.cz/heraldika/zkgho/orlice1993.pdf str. 18
[160] KADLEC. 1926. op. cit. s. 7.
[161] SLAVÍČKOVÁ. 2019. op. cit. s. 110.
[162] KADLEC. 1926.op. cit. s. 8. [Article VII].

her dowry and a Land Court in accordance with the customs not to the harm of his wife's dowry.[163] This key principle reflects the positions towards women and the priority to protect them. This constitutes a rather remarkable difference between the Bohemian Codes and the Silesian one in regard to the disposition with the dowry. Also, as it was said, the Bohemian Ordonnance developed an institute for transfer of the dowry right in 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. Although one claim can be made with support of *Article X.* stating that women without her guardian cannot give or receive anything on her own.[165]

It is truth though that the Ordonnance makes an effort in *Article XIV.* to point out that whether an estate to which a dowry is attached is sold and the right cannot be transferred to another estate, he should pledge something in order to prove his intention to enrol his wife's dowry in the future.[166] This article may seem as a supplement for the transfer of dowry without direct compensation, but it has to be pointed out that the *Article IX.* does not speak only of the estates sold but also pledged, which provision 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, women had priority right before every creditor to satisfy her right. The Silesian ordonnance does not contain such provision, which does not necessarily mean it wasn't used, because as mentioned before the law had also custom nature, but if it wasn't utilised it would disregard the compensation of her dowry loss, and on the other hand if it was used it would make the pledge and collateral security worthless. Since the judicial praxis has not been analysed in detail, the author dares not to make any further assumptions.

We have mentioned various ways how the estates were protected for women but a rather interesting wording bears *Article XVIII.*, which concerns with question how to protect the estate from women themselves. If after the death of her husband, she sells the estate not for a very profitable price for the damage of other inheritors, or if she would do any damage to the estate with a bad intent, she will have to compensate on her dowry.[167]

Now a little remark on the investigated matter concerning chastity. The concerned provisions are set to a different section in the Ordonnance – section concerning the Orphaned daughters, where

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[163] Ibidem. [Article XIII].

[164] *„A woman can her inherent estates sell to her husband, under reasonable circumstances and without coercion with consent of clerk from the Land Court."*
Needless to say, the Ordonnance does not define „resonable circumstance neither it does in the above-mentioned *Article VIII*. explain the term „for the good of them both".

[165] KADLEC. 1926. op. cit. s. 8.

[166] Ibidem. [Article XIV.]

[167] KADLEC. 1926. op. cit. s. 9. [Article XVIII].

in *Article II.*[168] is stated that whether a woman without the knowledge and agreement of her closest blood relatives would run away and marry a man, she loses half of estates to which she had her inheritance right. This is a significant difference in regard to the Bohemian Ordonnance, where she lost her right to any estate as a whole. Another significant evolution of law and position of women is the question of chastity. Throughout the analysis the loss of virginity equalled the loss of right to dowry. Here in the Opole and Ratibórz Ordonnance in *Article III.* is stated following:

"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 right to."*[169]

Now, had the influence of the codification been whichever, both of the previous territories spoke of loss of all inheritance claims. This consequently means that the relations in question of women's virginal state before marriage had loosened a bit. This provision marks another difference in conditions of women in 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, the hypothesis is present, the commission chose to incorporate such provision, unlike the Moravian Ordonnance, that does not speak of chastity directly in the examined Ordonnance.

2.7 THE CIESZYN ORDONNANCE

Before its final division in 1290, Cieszyn was originally part of Opole-Ratibórz.[170] And thus, for that reason its local legal development followed similar pattern as it did in Opole. Another milestone, which shaped the local history, occurred in 1328,[171] when Cieszyn became a fief and thus a vassal relationship was constituted between the Crown and this small principality. This historical event may have caused that Cieszyn territory was under stronger influence of Bohemian-Moravian law.[172][173] Similar to the situation in Opole and Ratibórz the crucial point on the path to the Cieszyn codification

[168] KADLEC. 1926. op. cit. s. 10.
[169] KADLEC. 1926. op. cit. s. 10.
[170] KAPRAS, Jan. *Zemské knihy Opolsko-Ratibořské. Příspěvek k recepci českého práva a českého jazyka.* Praha: Alois Wiesner. 1907, s. 1.
[171] Jan Kapras speaks of year 1327.
KAPRAS. 1907. op. cit. s. 2.
[172] Ibidem.
[173] *„By its structure, the codification resembles similar codifications of Upper Silesia region, namely the Opole-Ratiborz Ordonnance. Also, the influence of Moravian law from the codifications from 1535 and 1545 is very strong. The influence of Polish law also cannot be left aside."*
ŠEFČÍK, Erich (ed.). *Zemské zřízení Těšínského knížectví z konce 16. století.* Český Těšín: Muzeum Těšínska. 2001, s. 8.

was the issue of Great privilege in 1572[174] by Vaclav III. Adam, which later served as a base for the codification itself. Despite gruelling resistance of the Cieszyn nobility, the codification was issued in 1573.[175] As the Opole-Ratibórz Ordonnance, so is the Cieszyn codification a rather brief set of legal rules, which contains even less articles about dowry than its Opole sister.[176] 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.[177] Only shards prevailed into the modern times namely from years 1558-1574 and 1573-1651.[178]

As mentioned before, the Cieszyn Ordonnance is shorter than ORO, precisely of five articles. Focus should be turned on a fact that unlike other Ordonnances, Cieszyn codification does not expressly say how much of a sum in a dowry should be pledged.[179] This provision is neither present in any later on amendments and issues.[180] Although naming a dowry to a woman was an old institute, surely present in everyday life, which can be demonstrated on enrolments taken from the remains of the Books of registry office, it constitutes a remarkable difference with the other mentioned texts, even though that as mentioned before, men very commonly named different sums to their wives.

In comparison the first article cited in the Opole and Ratibórz Ordonnance is in fact similar very similar in the Cieszyn Ordonnance. Cieszyn however emphasizes on making the dowry contracts precise, meaning naming a *posah*, so that later any unclearness wouldn't arise.[181] Some of the first articles that were taken under consideration in the previous text are identical in the Cieszyn Ordonannce namely those that concern the possible transfer of wife's dowry to another estate and the obligation to pledge another land for it. Also, the unidentified formula "for the good of both of them" persisted into the Cieszyn ordonnance.

Quite important difference constitutes *Article VIII.* in the Cieszyn Ordonnance and *Article X.* in the ORO, because unlike the latter where it is stated "*No woman* [meaning married] *nor maid can receive, nor possess with her estates without her guardians",*[182] the Cieszyn Ordonnance excludes married women from it, and thus speaking only about maids,[183] which implies widows weren't

[174] KAPRAS. 1907. op. cit. s. 9.
[175] KAPRAS. 1907. op. cit. s. 11.
[176] SLAVÍČKOVÁ. 2019. op. cit. s. 110.
[177] JEŽ, Radim. *Listiny těšínských knížat renesančního věku.* Těšín: Muzeum Těšínska. 2010, s. 48.
[178] KAPRAS. 1907. op. cit. s. 11.
Cf.: JEŽ. 2010. op. cit. s. 50
[179] SLAVÍČKOVÁ. 2019. op. cit. s. 110.
[180] SLAVÍČKOVÁ. 2019. op. cit. s. 109.
[181] Práwa a zřijzenij zemské knijžetstwij Těssynského. 1592. O wenijch. Article I.
See Also: ŠEFČÍK. 2001. op. cit. s. 29.
[182] KADLEC. 1926. op. cit. s. 8.
[183] Práwa a zřijzenij zemské knijžetstwij Těssynského. 1592. O wenijch. Article VIII.
ŠEFČÍK. 2001. op. cit. s. 30.

considered to need a protection and their position was stronger and, as can be said, more equal to men's. Moreover, the articles concerning selling her estate to her husband remains in the same wording as ORO, although the Cieszyn Ordonnance requires a needed consent of the local Land Court judges, as states *Article XII.*[184]

Cieszyn Ordonnance does contain an article regarding losing women's *posah*. The question of chastity is here 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 *posah*, in question of a lost chastity, unlike the ORO, here the woman, same as in the Bohemian and Moravian Ordonnance, loses everything. 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 under examination.

Cases concerning chastity were in the agenda of Land court[185] 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 loss of a dowry, they point out to 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."*[186] The Court did not bring any ruling but postponed the quarrel until next proceeding, for Anna I. should bring her daughters for questioning next time, as well as a *přítele* (friend – meaning someone who will lead the dispute on her behalf).[187] Land Court makes another entrance into the books year later, when he refers to *Jiřík Penkal*, who kindly refused the offer of leading the dispute and thus, the quarrel is postponed until Anna I. finds someone else.[188] The dispute was finally resolved later that year, when the court ruled that *Adam K.* is not obliged to answer the action against him, for was found *"suspicious, impiety and dishonest behaviour on that girls",*[189] meaning it was not allegedly the first time they agreed to do such an impetuous thing. He was punished for the fornication occurring in his house though, with six weeks of prison and 100 hřiven grošů into the Land treasury.[190] Even though

[184] Práwa a zřijzenij zemské knijžetstwij Těssynského. 1592. O wenijch. Article XII. ŠEFČÍK. 2001. op. cit. s 30-31.
[185] ZAO, Zukal Josef, inv. č. 244, fol. 2.
[186] ZAO, Zukal Josef, inv. č. 244, fol. 6.
[187] Ibidem.
[188] ZAO, Zukal Josef, inv. č. 244, fol. 4.
[189] ZAO, Zukal Josef, inv. č. 244, fol. 6.
[190] ZAO, Zukal Josef, inv. č. 244, fol. 7.

this case does not directly talk about dowry loss, it only shows the delicacy with which women's chastity was regarded and even decided in front of the court.

IV. A brief application of analysed provisions onto the praxis of regional Land courts in the *Corona Regni Bohemiae*

BOHEMIA

The above presented analysis can be partly demonstrated on a real-life history occurring in the 16th – 17th century in Bohemia. The story presented below left its imprint in Czech culture and is still regarded today, for its astounding content. The problematic is centred around *Article 515* of the Vladislav's Ordonnance, its breach and the rather dramatic consequences.

The story revolves around Elizabeth Katherine Von Schmiritz (*Smiřická),* who came from a powerful Bohemian noble family that was at its wealth peak 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 limping walk, which made her unattractive for any potential suitors.[191] Since no noble man had any apparent interest in her, Elizabeth decided to take things into her own hands, against the odds (and law). She started to seek company of men within the subjects of the castle.[192] 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 she made sure Elizabeth was imprisoned).[193] One of her *victims* was the castle's blacksmith Georgie Wagner, upon whom she forced herself (or so he said). This rather eccentric story would go unnoticed, only if after the death of her parents and older brother, she, as the eldest daughter of Sigismund Von Schmiritz, wouldn't 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 Von Schmiritz extensive property. 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 her demented younger brother).[194]

Looking back to the analysis of Bohemian Ordonnance and the diction of *Article 515,* must be pointed out that by law, if a woman lost her chastity before marriage, she was to lose every right she would be entitled in regards to any family estates. Thus, because this information was known (not only) in the family circle, it was essential for Margaret to prove that her sister is no longer chaste.

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[191] FRANCEK. 2005. op. cit. s. 79.
[192] FRANCEK. 2005. op. cit. s. 82.
[193] Ibidem.
[194] FRANCEK, Jindřich. Eliška Kateřina Smiřická a příběh její lásky. *Východočeský sborník historický.* č. 3, 1993, s. 279.

And so began the quarrel. We do not possess much information, but we do know that after more than a decade of the incident with Georgie Wagner, he was brought in front of the court to testify. His testimony is one of the few sources we hold on that matter.[195] Surprisingly enough, given the incident occurred between 1607 – 1608,[196] he gave a rather very well detailed testimony in 1619[197] regarding his suspicious activities with Elizabeth Katharine, to ensure that the court will favour Margaret Salomene and her husband. And it did, because 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 present in Vladislav's Ordonnance and agreed with the plaintiff. Although we do not possess many of scribed enrolments about the breach of *Article 515,* as shown above, the judicial praxis was intransigent.

To conclude this peculiar story, its epilogue must be pointed out, for once the land clerks came to acquire the castle, where Elizabeth Katherine resided, there had been an accidental explosion of the storage with gun powder (due to a mishandle of alcohol, musketeers, sparks and explosives) and thus part of the castle was destroyed, serving as a grave for the Land Court commission and Elizabeth Katherine herself.[198] No wonder her story became a well-known sensation.

[195] FRANCEK. 1993. op. cit. s. 286 – 291.
[196] FRANCEK. 1993. op. cit. 276.
[197] FRANCEK. 1993. op. cit. 286.
[198] TIEFTRUNK, Karel. Pavla Skály ze Zhoře Historie česká od roku 1602 do roku 1623, III. díl. Praha: Kober. 1867, s. 441.

Closures

The purpose of this beforehand presented submission was to provide a brief overlook on women's right to dowry in the first Land law codifications on the territory of the Bohemian kingdom. Thus, were taken under consideration codifications as the Vladislav's Ordonnance (effective in Bohemia), Moravian Ordonnance (used in Moravia), with the additional reflection of some articles in the Book of Tovačov (60. of 15th century), or the Book of Drnovice, Opole-Ratiborz Ordonnance (one of the key parts of Upper Silesia) and Ciezsyn Ordonnance.

Since the accession to estates for women mainly depended on their given dowry (unless all of their male relatives were dead, they weren't considered in the hereditary succession), the submission observed those provisions that codified rules regarding the possibility of loss of this prominent right and possible consequences. The comparison showed that unlike for men, women's chastity was an essential feature for maid and all of the codifications regarded loss of the dowry right in case of the non-maintenance of this status. An only exception is the Opole-Ratiborz Ordonnance that provides the shrewd woman at least with a tenth of her *posah.* For a better understanding of Silesian law also a further examination of Polish law should be made.

Judicial praxis in front of the regional Land courts only supported above named 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 *posah* was named through a contract[199] between the two parties and thus, is was upon them to conclude an agreement. Though, this may lead to a question, how accurate was the utilization of other non-dowry related norms in comparison with the everyday praxis - since the provision although present in some of the codifications, wasn't technically legally binding.

[199] KOZÁKOVÁ. 1926. op. cit. s. 24.

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