

THE POSITION OF WOMAN IN «ISTRIAN MARRIAGE PATTERN» (ISTRIA IN THE 15TH AND THE 16TH CENTURIES)

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In the Middle and Early Modern Ages property and personal relations in the family were largely determined by the type of marriage. In Istrian communes woman's position in the family and the society was greatly affected by the Istrian marriage pattern. The paper will, therefore, analyse the position of the woman in that type of marriage in the 15th and the 16th centuries. Special attention will be given to the property and personal relations.

The analysis is based on both the published and unpublished sources. From the published sources the Istrian statutes¹ and the register of the notary Martin

¹ M. Zjačić, *Sačuvani fragment starog statuta općine Buje iz 1412. godine* [hereinafter as Statut of Buje], "Jadranski zbornik", VII, 1969, pp. 365-416; Id., *Statut bužetske općine* [hereinafter as Statut of Buzet] "Vjesnik historijskih arhiva u Rijeci i Pazinu" [hereinafter as VHARIP], VIII-IX, 1963-1964, pp.71-137; X, 1965, 118-199; Id., *Dvigradski statut* [hereinafter as Statut of Dvigrad], "VHARIP", VI-VII, 1961-1962, pp. 233-294; D. Klen, *Statut Grožnjana*

Sotolić (1492-1517) of Buzet have been used, while the unpublished comprise sources from Novigrad – by the head of commune (1492-1600), stored in the State Archives in Pazin, as well as the register of births from the Novigrad parish (1591-1632) and Labin

[hereinafter as Statut of Grožnjan], “VHARIP”, VIII-IX, 1963-1964, pp. 205-256; X, 1965, pp. 201-243; L. Morteani, *Isola ed i suoi statuti* [hereinafter as Statut of Izola], “Atti e memorie della società istriana di archeologia e storia patria”, IV, fasc. 3-4 (1888), pp. 349-421; V, fasc. 1-2, 1889, pp.155-222; *Statuto municipale della città di Albona dell'a. 1341* [hereinafter as Statut of Labin], a c. di Società del gabinetto di Minerva in Trieste, Trieste: Tipografia di L. Herrmanstorfer, 1870; L. Morteani, *Storia di Montona con Appendice e documenti* [hereinafter as Statut of Motovun], Trieste, Stabilimento Artistico Tipografico G. Caprin, 1895, pp. 249-400; L. Parentin, *Statuti di Cittanova* [hereinafter as Statut of Novigrad], in “Atti e memorie della società istriana di archeologia e storia patria”, XIV n.s (1966), pp. 105-220; G. Vesnaver, *Statuto municipale di Portole* [hereinafter as Statut of Oprtalj], “Archeografo Triestino”, XI, 1884, pp.133-180; M. Pahor – J. Šumrada, *Statut Piranskega komuna od 13. do 17. stoletja* [hereinafter as Statut of Piran], Ljubljana, Znanstvenoraziskovalni center SAZU, Zgodovinski inštitut Milka Kosa, 1987; M. Zjačić, *Statut grada Poreča (Statutum comunis Parentii) iz 1363. godine* [hereinafter as Statut of Poreč], “Monumenta historico-juridica slavorum meridionalium”, XVIII, 1979, pp. 5-203; *Statuta Communis Polae. Statut pulske općine* [hereinafter as Statut of Pula], prepare by Mate Križman, Pula, Povijesni muzej Istre, 2000; P. Kandler, *Statuti municipali di Rovigno* [hereinafter as Statut of Rovinj], Trieste, Tipografia del Lloyd Austriaco, 1851; B. Benussi, *Lo statuto del comune di Umago* [hereinafter as Statut of Umag], “Atti e memorie della società istriana di archeologia e storia patria”, VIII., fasc. 3-4, 1892, pp. 227-313; G. Radossi, *Statuto di Dignano* [hereinafter as Statut of Vodnjan], “Atti del Centro di Ricerche storiche-Rovigno” [hereinafter as Atti], 1 (1970), pp. 49-151.

parish (1536-1583). All these towns are situated in Istria, today's Croatia. In the analysed period, Istria was divided into Venetian and Austrian part, and the analysis was done only of the area under the Republic of Venice. Istria had earlier been under the patriarch of Aquileia, but from the middle until the end of the 13th century almost all coastal towns acknowledged the Venetian government. In the second half of 14th century Habsburgs became rulers in the central part of Istria. Since then until the 18th century Istria was divided between the Venetian Republic and the Habsburgs.

When property relations in marriage in the Istrian communes are observed, one must mention 'Istrian marriage pattern' that is «marriage like brother and sister». It can be defined as a communal governing of marital property, where the surviving spouse has the hereditary right to half of the inheritance of the deceased spouse.² This was most common way of disposition of the marital property in Istria. Namely, there was a general rule by which people were married in Istrian marriage pattern, unless they explicitly designated in their marriage certificate their wished to be married in a different way.³ This is explicitly regulated by the Istrian statutes.⁴

² L. Margetić, *Brak na istarski način* [Istrian marriage pattern], "VHARIP" 15, 1970, p. 301.

³ L. Margetić, *Hrvatsko srednjovjekovno obiteljsko i nasljedno pravo* [Croatian medieval law of family and succession], Zagreb, Narodne novine, 1996, p. 96; Cfr. M. Bertoša, *Valle d'Istria durante la dominazione veneziana*, *Atti*, III, 1972: 132-137, 200-206; M.

However, Venetian and Slavic pattern of marriage were used as well. These patterns provided women with less protection and without the control of the property. In the istroromanian cultural milieu, poor Istrian families considered Venetian marriage pattern unsuitable since it confined a woman to just a housewife who owned only her dowry. Furthermore, the wife had to leave the house after her husband's death.

The Istrian marriage pattern, on the other hand, considered women as equal to men in economic rights, so that women were protected after the husband's death – woman was the owner of half of the house and half of the goods and, therefore, her bare existence was guaranteed. Although there was Slavic marriage pattern, people of Slavic-Croatian cultural milieu found Istrian marriage pattern quite attractive.⁵ Namely, Croats settled in Istria in the 7th

Bertoša, *Istra: Doba Venecije (XVI.-XVIII. stoljeće)* [Istria: the Venetian Period (16th-18th Centuries)], Pula, Zavičajna naklada "Žakan Juri", 1995, pp. 704-706; See: S. Bertoša, *Život i smrt u Puli: starosjeditelji i doseljenici od XVII. do XIX. stoljeća* [Life and Death in Pula: Locals and Immigrants from the 17th to the 19th Century], Pazin, Skupština Udruga Matice hrvatske Istarske županije, 2002, p. 55.

⁴ M. Mogorović Crljenko, *Nepoznati svijet istarskih žena. Položaj i uloga žene u istarskim komunalnim društvima: primjer Novigrada u 15. i 16. stoljeću* [The Unknown World of Istrian Women. Women's Position and Role in Istrian Commune Societies: Example of Novigrad in the 15th and 16th Century], Zagreb, Srednja Europa, 2006, p. 16.

⁵ Mogorović Crljenko, *Nepoznati svijet*, cit., p.15-16.

century. A new wave of settlement of Croats in Istria was caused by Ottoman invasion, but also it was encouraged by the Venetian government – reasons for this can be ascribed to the fact that Istria was devastated at the period and lacked people who would cultivate the land, especially after the war of the League of Cambrai (1508-1523).⁶ Istrian marriage pattern had a role of gradual ethnic assimilation of Croats and other South-Slav settlers as well as the acceptance of Italian culture.⁷ Although one could assume that Istrian marriage pattern was specific only for the lower and poorer stratum, this was not the case – it was very often used by Istrian patricians. This can be certified by the preserved marriage certificates from the 17th and the 18th century.⁸

The registers of marriages and the registers of marriage certificates in the 17th and the 18th centuries in Bale provide evidence of the frequency of Istrian marriage pattern. The data, analysed by M. Bertoša, show that Istrian marriage pattern («a Fratello e Sorella ad uso di questo Luogo»), was most spread (79.7%), while Slavic pattern of marriage («all'usanza illirica»; «alla slava»; «alla morlacca») had a considerably lower presence (16.2%). Other patterns had almost negligible percentage: Venetian pattern of marriage

⁶ M. Levak, *Slaveni vojvode Ivana. Kolonizacija Slavena u Istri u početnom razdoblju franačke uprave* [The Slavs of Count Iohannes], Zagreb, Leykam international, 2007; M. Bertoša, *Istra: Doba Venecije*, cit.

⁷ Bertoša, *Istra: Doba Venecije*, cit., p. 706.

⁸ Mogorović Crljenko, *Nepoznati svijet*, cit., p. 16.

made 0.6%, marriage patterns of other areas made 0.2%, and those made under a special contract made 3.3%.⁹

Istrian marriage pattern had considerable influence on the position and role of the woman in the marriage, family and in society in general. Istrian marriage pattern is the institution which had been discussed in different studies, however, often only on a surface level. This was the case until the study of one of the most important Croatian legal historians, Lujo Margetić. Having studied Istrian statutes, he gave a new explanation of the way of functioning of Istrian marriage pattern.¹⁰ Although earlier authors defined it as common ownership of property of the spouses, he went a step further and by the in-depth analysis he proved that it was a community which governs the property brought into the marriage and acquired in the marriage.¹¹

When marrying in the Istrian pattern, the spouses' property i.e. both goods and debts were united and they became co-owners of the property. However, the goods and the debts made during the marriage

⁹ Bertoša, *Valle d'Istria*, cit., pp. 132-137, 200-206; Bertoša, *Istria: Doba Venecije*, cit., p. 704. See also: Mogorović Crljenko, *Nepoznati svijet*, cit., p.17.

¹⁰ See: Margetić, *Brak na istarski*; cit.; Id., *Neoporučno nasljedno pravo u srednjovjekovnoj Istri* [Law of succession without testaments in medieval Istria], "VHARIP", XVII, 1972; Id., *Hrvatsko srednjovjekovno*, cit.

¹¹ Mogorović Crljenko, *Nepoznati svijet*, cit., p. 17.

remained separate unless acquired and contracted by both spouses. Naturally, it followed that in the Istrian marriage pattern i.e. in the communal governing of marital property there was the impossibility of taking the property of one spouse without the consent of the other.

There are many sources which provide evidence for this. For example, a man could sell the property with the consent of his wife (if not, his wife could sue him).¹² For instance, on the 20th August 1593 Piero Radoicovich sold a piece of cultivable land in Tar in presence of his wife Lucia («Piero Radoicovich della villa di Torre con la presenza de Lucia sua moglie ha dato venduto et in perpetuo alienato per se et suoi heredi a Mathio et Thomaso Biacovich della villa de Torre un pezzo di terra arrativa...»).¹³ In the register of notary Martin Sotolić of Buzet there are many examples of selling and donating which was done by one spouse with the other one's consent. For instance, with the consent of his wife Michaela, Blasius Bobolla donated an arable field to goldsmith Bernardino from Buzet.¹⁴ Mrs Domcha (with the consent of her husband Gregorio) and Mrs Stepcha

¹² State Archives in Pazin [hereinafter as HR-DAPA] HR-DAPA-4: book [hereinafter as b.] 38, fol. 103.

¹³ HR-DAPA-4: b.38, f. 103.

¹⁴ M. Zjačić, *Notarska knjiga bužetskog notara Martina Sotolića (Registrum imbreviaturarum Martini Sotolich notarii Pinquentini) 1492-1517. godine*, "Monumenta historico-juridica slavorum meridionalium", XVIII, 1979, pp. 316-317. [January 28, 1492]

(with the consent of her husband Stephan) made a donation to their brother.¹⁵

In certain towns in Istria (Novigrad, Izola, Piran, Kopar) it was possible for a spouse to break off the communal ownership of the acquired goods after the death of the other spouse. Still they could not do that with the goods which were brought into the marriage. If the surviving spouse had not broken off this communal ownership, a complete unity of the property of both spouses would follow. Therefore, one had the right to half of the acquired property. By this, the spouse did not inherit the deceased spouse, but just took his/her own part.¹⁶ Such a possibility of breaking off the community is mentioned only in some Istrian statutes (statute of Milje/Muggia, Kopar, Isola, Piran, Novigrad) with specifications that within 8 i.e. 30 days after husband's death, the wife had to decide if she considered the marriage to be in the Istrian pattern. Thus she could inherit half of both the inheritance and the debts.¹⁷

The woman was protected in such a marriage, although her legal competence was only partial. Only with her husband's agreement was she able to decide

¹⁵ *Ibid.*, pp. 324-325. [March 15, 1493]

¹⁶ Margetić, *Hrvatsko srednjovjekovno*, cit., p. 77; Cfr. D. Mihelič, *Žena v piranskem območju do srede 14. stoletja* [Woman in Piran till the mid 14th century], "Zgodovinski časopis" XXXII, 1978, p. 27; Mogorović Crljenko, *Nepoznati svijet*, cit., pp.17-18.

¹⁷ Statute of Novigrad, V,18; Statute of Izola, II, 8; Statute of Piran, VII, 12; See: Margetić, *Brak na istarski*, cit., pp. 297-298; Id., *Hrvatsko srednjovjekovno*, cit., pp. 69-70; Mogorović Crljenko, *Nepoznati svijet*, cit., p. 22.

what to buy or sell. However, the husband could not sell without his wife's agreement either, not even his own property, which he had inherited from his parents, so that the wife could not have ended up in debts because of his extravagance.¹⁸

Despite the fact that husband and wife were considered to be almost equal partners in economic terms, the husband had some more rights than the wife.¹⁹ Still, the wife was quite secure even after the husband's death. Thus, she was no longer under his patronage and she became more independent, if the finances allowed.²⁰ Namely, since it was communal governing of marital property, the wife owned half of the house and could not have been evicted from it.²¹ Unless the husband stated differently in his will, she would become the guardian of their children.²² Taking

¹⁸ Statute of Izola, II, 35; Statute of Piran 1307, VII, 3; 1332, VII, 2; 1358, VII, 1; Statute of Motovun, 211; L. Margetić, *Hrvatsko srednjovjekovno*, p. 76; Mogorović Crljenko, *Nepoznati svijet*, cit., p. 23.

¹⁹ Margetić, *Hrvatsko srednjovjekovno*, cit., 96; Bertoša, *Istra: Doba Venecije*, cit., p. 706.

²⁰ C. Opitz, *La vita quotidiana delle donne nel Tardo Medioevo* in ed. by Christiane Klapisch-Zuber, *Storia delle donne: Il Medioevo*, Roma-Bari, Laterza, 1999, pp. 382–386; Mogorović Crljenko, *Nepoznati svijet*, cit., p. 23.

²¹ Margetić, *Hrvatsko srednjovjekovno*, cit., p. 96; M. Mogorović Crljenko, *Nepoznati svijet*, p. 24.

²² Statute of Buje, 91; Statute of Buzet, 98; Statute of Dvigrad, 85; Statute of Grožnjan, III, 114; Statute of Izola, II, 25; Statute of Motovun, 34; Statute of Novigrad, II, 18; Statute of Oprtalj, 103; Statute of Piran, VII, 23; Statute of Umag, III, 39; Statute of

all that into consideration, it can be concluded that women/widows were more protected in the Istrian marriage pattern than in the Venetian marriage pattern or in the other east-Adriatic communes, as well as those in other European areas.

In the Venetian marriage pattern the wife did not have the advantage over her husband's creditors. Moreover, her husband's inheritors could have evicted her, so that she had to leave the house within a year and a day.²³

Personal relations between the spouses, and thereby the position and the role of the woman in the family, was affected by many things, from the choice of the spouse and the age of entering a marriage to conditions in which the spouses lived. When choosing a spouse, girl's parents and family (i.e. those under whose authority the girl was) had the crucial role. On the other hand, men could decide by themselves, even though they could have been disinherited in case their choice was not the same as their parents' choice. Nevertheless, there were love matches (e.g. arranged kidnapping), regardless of parents' wish.²⁴

Vodnjan, II, 20; Cfr. Mogorović Crljenko, *Nepoznati svijet*, cit., pp. 97-98.

²³ Bertoša, *Istra: Doba Venecije*, cit., p. 706; Z. Janeković Römer, *Rod i grad: Dubrovačka obitelj od 13. do 15. stoljeća* [The Lineage and the City: the Family in Dubrovnik from 13th to 15th Century], Dubrovnik, Zavod za povijesne znanosti HAZU u Dubrovniku, Zavod za hrvatsku povijest Filozofskog fakulteta u Zagrebu, 1994, p. 78; Margetić, *Hrvatsko srednjovjekovno*, cit., p. 96.

²⁴ Mogorović Crljenko, *Nepoznati svijet*, cit., pp. 39-76.

For example, there was a case in 1595 against Nicolo Fonargulia (Fondruglia), who was brother of Vucassin Fondruglia – the deputy county prefect. Nicolo was accused of kidnapping a girl Marizza (Mariza) – daughter of the late Antonio Naperitocich from the land of her uncle Giure Naperotich (Naperitocich). Namely, Nicolo proposed to Marizza on several occasions, but this had been unsuccessful because her uncle wanted to marry her to another man – Martin Naïcinovich. In the process Marizza testified that she had not been taken away by force. On the contrary, she had willingly gone with him, because she did not want to marry the man her uncle had chosen for her.²⁵

By such a marriage the newly-weds would risk to be disinherited, but at least they could decide with whom they want to spend most of their life. Still, in many arranged marriages there was love or at least mutual appreciation and sympathy between the spouses. This can be seen in the wills where their children are often obliged to obey the other parent. They also appoint the spouse as the tutor of the children, the user of the goods and the executor of the will.

For instance, Michael Sarsich from Buzet specifically stated in his will what should go to his two daughters and his son, while he named his wife Ursula to be his main heir (*«beredes eius universalem instituit Ursulam»*), guardian of the children and of the goods,

²⁵ HR-DAPA-4: b. 40, fol. 1495-1502.

but only while living in widowhood (*«conditio si viduabitur»*). If not, his children would become the main heirs (*«heredes universales»*) and divide all the goods in equal parts.²⁶

In the Istrian statutes the full age is stated to be between twelve and fifteen years. However, some statutes explicitly say that such an early age was valid only for marriage. On the basis of comparative data for later period in Istria, and the region of Dalmatia and Italy, it is more likely that the girls and the boys did not marry so young, but a bit later. It seems that, as a rule, the girls were younger than boys, who would marry only when they were able to support a family.²⁷

Many women worked and participated in the work while their husbands were alive. Their legal competence was greatly influenced by Istrian marriage pattern. It acknowledged their contribution to the house budget and it understood that they can do business, but with their husband's agreement. However, they had even more active role in business as widows. Not only because they were not under supervision of the deceased husband, but also because they were forced to do business if they had wanted to make a living for themselves and their children.

There are many examples of women from the common and country people. Their jobs were similar

²⁶ Zjačić, *Notarska knjiga*, cit., pp. 464.-466. [February 1510]; See also: Mogorović Crljenko, *Nepoznati svijet*, cit., p. 54.

²⁷ Mogorović Crljenko, *Nepoznati svijet*, cit., pp. 47-52.

to those of women living in other areas of east-Adriatic coast and western Mediterranean. Not surprisingly the jobs were related to household chores such as care of the textile, working on the fields and vineyards, supplying food and drinks, taking care of poultry, carrying corn for grinding to the mill.²⁸ However, there are instances of women doing craft and retail primarily related to food. They worked as baker-women, saleswomen of flour, bread, milk, butter, oil, fruit and vegetables, corn, salt, wine, linen, keeping taverns, and there were those who were fishing. Furthermore, women used to care for the poor or worked as maids.²⁹ In medicine they practiced gynaecology and obstetrics, but most frequent female occupation in medicine was a midwife – if the child had been in life danger, the midwife's obligation was

²⁸ See Opitz, *La vita quotidiana*, cit., and F. Piponnier, *L'universo femminile: Spazi e oggetti* in ed. by C. Klapisch-Zuber, *Storia delle donne: Il Medioevo*, Roma-Bari, Laterza, 1999, pp. 362-364 and pp. 412-416; Mogorović Crljenko, *Nepoznati svijet*, cit., pp. 99-111; Statute of Buzet, 82; HR-DAPA-4: b.17, fol. 508-553; b. 43, fol. 225-230; b. 41, fol. 820-822; b. 45, fol. 640-641; D. Mihelič, *Udeležba žena v kazenskih procesih (Piran, 1302-1325)*, [Women in criminal proceedings (Piran, 1302-1325)] "Etnolog. Glasnik Slovenskega etnografskega muzeja" XI, 2001, p. 42.

²⁹ Statute of Poreč, II, 115; Statute of Buzet, 77; Statute of Oprtalj, 87; Statute of Izola, III, 21. and 108; Statute of Umag, IV, 46; Statute of Labin, II, 18; Statute of Pula, IV, 16 and 41; Statute of Izola, III, 21. and 108; Statute of Motovun, 217; HR-DAPA-4: b.190, fol. 363-371; b. 27, fol. 630-645; b. 40, fol. 1653-1658; b. 41, fol. 1089-1091; Mihelič, *Žena v piranskem*, cit., p. 29; Id., *Udeležba žena*, cit., pp. 47-52; Mogorović Crljenko, *Nepoznati svijet*, cit., p. 102.

to baptize it immediately after the birth. In cases of infanticide they were important witnesses.³⁰

In Istria, as well as in the most of western Europe, women were considered as weaker than men, which is literally stated in some cases as the basic characteristic of the woman and her thoughtless act. For example, in a case in 1598, Ursa from Novigrad was trialed because she had tried to free her husband Simeone Segando. He had been in prison, sentenced to death. The justification of her act is stated in the fact that women are weaker sex and liable to fall («il sesso fragile femineo atto a cadere»).

³¹

Inequality of the position of women in Istrian societies is stated in some other instances of legal provisions – for example, a woman could be the guardian of her children only while living in chastity and in widowhood, or that a widow should give blessing to her children's wedding, but that was not enough – male cousins should have approved of it as well. These regulations also speak of the perception of a woman as the weaker sex, not able to make important decisions by herself – since women are thoughtless, and therefore should leave final decision

³⁰ M. Bertoša, *Etnička struktura Pule od 1613. do 1797. s posebnim osvrtom na smjer doseljivanja njezina stanovništva* [Ethnic structure in Pula with special attention to direction of immigration from 1613 to 1797], "VHARIP", XV, 1970, pp. 64-65; Bertoša, *Život i smrt u Puli*, cit., pp. 260-263; Mogorović Crljenko, *Nepoznati svijet*, cit., p. 105.

³¹ HR-DAPA-4: b. 43, fol. 119-130.

to men. On the other hand, women could file charges by themselves, although they were represented by a man. Their testimony was not considered less valuable than men's. In Istria women are regularly found as godmothers in the registers of births. Furthermore, they could have been witnesses in the wills. In some occupations, such as midwife, they were irreplaceable.³²

To conclude, thanks to the Istrian marriage pattern, woman's role in the contribution to the economic profit of the household was acknowledged. A woman in Istria could make a living even after husband's death, and while he was alive, she could actively take part, at least in principle, in the family business.

³² Mogorović Crljenko, *Nepoznati svijet*, cit., pp. 112-118.