

# CONSEQUENCES OF THE “SPRINGTIME OF NATIONS” IN CROATIA – FINDING A SEPARATE LEGAL SYSTEM BASED ON THE ROMAN LEGAL TRADITION THROUGH REACTION

## Abstract

The events of 1848 and the political changes following the revolution in Hungary had lasting legal consequences in Croatia, more specifically in the Triune Kingdom of Dalmatia, Croatia and Slavonia. Direct results of the “Springtime of Nations” can be recognized in the abolition of serfdom, i.e. of the feudal system, and the rising self-awareness in the attempts to regulate the relationships with the Crown, Hungary and other parts of the Empire. The indirect outcome, significant both on the national level and in an individual’ life, was the introduction of ABGB and the institutionally sanctioned reception of Roman law in the Triune Kingdom, which also meant that for a longer time there was to be in force the same civil code in the majority of Croatian lands. Additionally, the continued use of ABGB after 1861 meant the legal separation of Croatia (the Triune Kingdom of Dalmatia, Croatia and Slavonia) from Hungary and an independent legal development, esp. in private law matters, after centuries of common legal tradition.

**Keywords:** springtime of nations, Croatia, Triune Kingdom of Dalmatia, Croatia and Slavonia, ABGB, Roman legal tradition, Roman law

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## 1. Introduction

The revolutionary 1848 is considered as a major threshold in the development of the idea of nation and national states in the Central and East Europe.<sup>76</sup> Furthermore, it marked the end of feudalism in these parts of Europe and the beginning of a move towards the modern organization of states. However, as it is known, the transition from the old system was not easy, peaceful or swift, and the repercussions of the revolutionary 1848 diverged substantially. Specific circumstances in different empires, countries or the lands resulted in diverging “national” approaches to the revolutionary idea, what it comprised, and the appreciation of its consequences as reflected in later national historiographies. Thus, a nuanced and multifaceted approach to the topic is required, taking account of different perspectives on the same events and the positions of all the actors taking part in these events. In that sense, the happenings of 1848 and the quick succession of political and legal changes in its aftermath within the Habsburg Empire represent a highly complex issue.

In the Croatian lands, the situation was further complicated by their division among those under the direct control of the House of Habsburg and those belonging to the Lands of the Crown of St. Stephen, the latter forming the (Triune) Kingdom of Croatia, Slavonia and Dalmatia (also shorter the Triune Kingdom).<sup>77</sup> As the Croatian Diet (*Sabor*) of the Kingdom of Croatia, Slavonia and Dalmatia was the primary representative of the Croatian lands, main bearer of the historical national rights and the center of political will of Croatian people within the Habsburg Empire<sup>78</sup>, the focus in the elaboration of the topic is put on the Triune Kingdom and the role of the *Sabor* during the events of 1848 and in the following years. More precisely, the nature of decisions made in Croatia during this period are elaborated, as well as those imposed from above, on one side giving impetus to the formation of modern state institutions, and on the other side having long-term consequences on national level and for individuals.

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76 Von Strandmann, 2002, pp. 1-8; Okey, 1986, pp. 84 ff.; Clark, 2023, pp. 93-169.

77 On the position of Croatian lands within Habsburg Empire and the name the Triune Kingdom of Croatia, Slavonia and Dalmatia and, see more in: Beuc, 1985, pp. 159-160, 320 ff.; Čepulo, 2006a, 48-50; Čepulo and Matković, 2022, pp. 93-94.

78 See more in Čepulo, 2012, pp. 84-87.

It is especially stressed the significance of these events in bringing about the late reception of Roman law in the continental part of Croatia<sup>79</sup>, much later than in other parts of the Central Europe because of the Ottoman (Turkish) occupation and permanent border wars during the previous centuries.<sup>80</sup> Despite the fact that some elements of Roman law, especially title of the Digest 50, 17, were made a part of the *Corpus Iuris Hungarici*, and thus a part of the law in the Lands of the Crown of St. Stephen<sup>81</sup>, with the pertaining impact of the rules of Romano-canonical procedure<sup>82</sup>, the actual reception of Roman law in the continental Croatia from the beginning of Ottoman incursions was indeed slight comparing to situation in the Western Europe and in the Holy Roman Empire.<sup>83</sup> In that sense, the impact of legislation imposed in the Triune Kingdom in the aftermath of 1848 was essential for later development of Croatian legal system fully based on the reception of Roman law as the common denominator of the civil law (continental) legal systems.

## 2. Pre-1848 situation in the Kingdom of Croatia, Slavonia and Dalmatia

The events of 1848 in Croatia primarily unfolded in relationship and in reaction to what was happening in Hungary. Many centuries of common living within one kingdom, starting from 1102 and the *Pacta conventa*<sup>84</sup>, and continued from 1527 under the Habsburgs<sup>85</sup>, brought closer the Croatian and Hungarian people, creating many connections especially among the nobility and clergy.<sup>86</sup> As for the nobility, both Croatian and Hungarian, for example, this can be easily observed in the legal literature, noticing the

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79 Cf. Petrak, 2022, pp. 24-25. On the short-lived influences of Roman law during the medieval period in Zagreb see Apostolova Maršavelski, 2015, pp. 254-261. Also, concerning the common legal development for Hungary see: Bónis, 1964, pp. 111-113. For the importance of Roman law in the statutes in Dalmatia and Istria see in general Čepulo, 2012, pp. 98-100.

80 See in general: Stein, 1999, pp. 88-92.

81 Béli, Petrak and Žiha, 2012, p. 72.

82 See more in: Erdő, 2016.

83 For the reception of Roman law in Germany see: Wieacker, 1995, pp. 93-97.

84 On the *Pacta conventa* and the relevant literature see: Majnarić, 2008, pp. 5-10.

85 See Beuc, 1985, pp. 159 ff.; Kann and David, 1984, pp. 56 ff., 86 ff.

86 See e.g. for the iconography in the frescos from 1700 in the Collegium Illyricum-Hungaricum in Bologna in Premerl, 2014.

origin of authors of commentaries on the Werbőczy's *Tripartitum* (1514) and the afterwards developing common (customary) law.<sup>87</sup> Nevertheless, the language difference and the care to preserve legal and feudal rights, tightly connected with the historical political identity at the level of higher strata of society, expressed in the first place through the autonomy of Croatian *Sabor*, preserved the distinctiveness of the lands and two (political) nations during this long period.<sup>88</sup> Decisions of the *Sabor* of 1712 (Croatian Pragmatic Sanction)<sup>89</sup> and 1790<sup>90</sup>, as well as the discussions at the Hungarian Diet (or the Hungarian-Croatian Diet or Common Diet as it is called in Croatian literature based on the separate representation of the Croatian Diet and the Triune Kingdom at the Common Diet)<sup>91</sup> in 1790<sup>92</sup>, confirm the awareness of Croatian historical (national) rights on the eve of period of the overall European national awakening.

The nation building processes, instigated by the ideas of the French revolution and propagated with the Napoleonic wars, swiftly spread through the Habsburg Empire during the first half of the 19<sup>th</sup> Century.<sup>93</sup> In Croatia, the national movement developed as the Illyrian renaissance movement, or the Croatian national revival, during the 1830s<sup>94</sup>, with the first journal published in Croatian language in the Triune Kingdom and the booming activities in other areas of the cultural life.<sup>95</sup> Its bearers were the members of enlightened nobility, civil officials, and the emerging bourgeoisie, the latter although still rather small and weak. The political thought, centred in the *Sabor*, consequently evolved in the ranks of the nobility, tied to the existing concepts of feudal "constitutionality".

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87 In general, on *Tripartitum* see: Rady, 2005; Rady, 2015, pp. 168 ff. Also see in general papers contained in Rady, 2003. For Kitonich, for example see Jureković, 2004.

88 On the institutional elements of the Croatian autonomy during the medieval period see e.g. Čepulo, 2007a, pp. 511-512.

89 Jukić, 2008, pp. 143-163.

90 Engelsfeld, 1999, pp. 61-67; Čepulo, 2012, pp. 70-72.

91 Čepulo, 2012, p. 88.

92 Heka, 2011, pp. 145.

93 See e.g. Decker, 2017, pp. 158-164. For the stance of the Habsburgs towards the South-Slavic nationalities see Suppan, 2014, pp. 226 ff.

94 Stančić stressed the difference between the terms Croatian national revival which would represent the first phase in the nation building process, while the Illyrian renaissance movement would be its form, external representation. See Stančić, 2008, p. 8. See also for the Croatian national revival and the building of Croatian identity, with further references, Despalatović, 1975; Korunić, 2006a; Sršen, 2017.

95 See Švoger, 2016, pp. 73-74.

The central notion on which the programmatic texts of the Croatian revival were centered, was the *iura municipalia* (municipal rights), the autonomous rights and privileges recognized to the Triune Kingdom as a part of the Lands of the Crown of St. Stephen, and to the Croatian Diet (*Sabor*) in relation to the competencies of the Hungarian Diet (Common Diet).<sup>96</sup> With the rising national movement in Hungary<sup>97</sup>, and following the dispute of 1790 with further perceived encroachments into the autonomous prerogatives of Croatian organs, most visibly in the sphere of official language in the administration and in the schools<sup>98</sup>, the representatives of the Croatian political elite wrote the treatises and invectives to the defence of municipal, in essence, the Croatian national rights.<sup>99</sup> Among them, one can single out first the work *De municipalibus iuribus et statutis regnorum Dalmatiae, Croatiae et Slavoniae* published in Latin in 1830 by Josip Kušević, protonotary to the Ban of the Triune Kingdom.<sup>100</sup> Using the legal-historical documents entrusted to him in the official capacity of the safe-keeper of official documents issued by the Croatian government bodies, he argued for the separate position of the Triune Kingdom towards the Hungary. Another one was the *Disertacija iliti razgovor, darovan gospodi poklisarom zakonskim i budućim zakonotvorcem kraljevinah naših za buduću dietu ungarsku odaslanem, držan po jednom starom domorodcu kraljevinah ovih*, written in the Croatian language, štokavian dialect, in 1832 by count Janko Drašković.<sup>101</sup> By its name, it was the instruction to the Croatian representatives at the Common Diet in Požun (Pozsony, Pressburg or Bratislava) with arguments with which they would defend the national rights, but which, furthermore, comprised the recommendations concerning other issues of economic importance for the development of Croatian lands.

Prepared by the faculty trained jurists, the documents focused on the legal arguments and the foundations of Croatian autonomous rights, as the authors were very careful to stress the intention to defend the existing,

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<sup>96</sup> Čepulo, 2012, pp. 135-136.

<sup>97</sup> See e.g. László, 2012, pp. 183-191.

<sup>98</sup> Čepulo, 2006a, p. 52; Heka, 2008, p. 160; Kolak Bošnjak, 2017, pp. 45-55. See also on the role of language in the development of two national ideas papers collected in: Almási, G., Šubarić, L. (eds.), 2015.

<sup>99</sup> Engelsfeld, 1999, pp. 73-76.

<sup>100</sup> Kušević, 1830.

<sup>101</sup> Drašković, 1832.

age-old rights and privileges, aware of the general, political, economic and demographic position of Croatia regarding both the Imperial Court in Vienna and the Budapest, i.e. the Diet of Požun. In the following years, as the Croatian national movement progressed during the 1830s and 1840s based on the alliance between the nobility and the representatives of the urban intelligence, organized also through the newly established Illyrian (People's) political party in 1841<sup>102</sup>, this conservative element remained dominant, stressing the defense of municipal rights.

However, not everyone accepted these ideas. A significant part of the nobility remained convinced that the only possible solution for the defence of national rights and the interests of the estates, especially towards the Imperial Court in Vienna, was through the closest possible connection with Hungary.<sup>103</sup> Thus, the Croatian-Hungarian party was established the same year, 1841, with the opposing political programme. In the years leading to the events of 1848, nevertheless, the People's party had a majority in the *Sabor*, and within its ranks the liberal civic and national ideas gained more traction.<sup>104</sup>

### **3. Reform through reaction – reflection of the “revolutionary” events and changes of March 1848 in Croatia**

#### ***3.1. National ideas, new (type of) government and majoritarianism in the Common Diet – reaction in defence of the Croatian autonomy***

Growing tensions between the Hungarian and Croatian national movements during the 1830-1840s, expressed for example in Kossuth's negation of the Croatian separate polity<sup>105</sup>, came to head in 1848. The centralising and unitarist tendencies, especially represented by the radical Hungarian

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102 The Illyrian name was banned in 1843 so the party was renamed from Illyrian People's party just to People's party. See more in Čepulo, 2012, pp. 137-138.

103 Heka, 2011, p. 166.

104 See Markus, 1999, pp. 101-103; Stančić, 2021, pp. 105 ff. Also, in 1847, in line with the accelerated development of, the *Sabor* enacted that the Croatian language will be the official in the Triune Kingdom. See Markus, 2009, p. 14.

105 Heka, 2011, p. 184.

opposition<sup>106</sup>, focused on the transformation of the Lands of the Crown of St. Stephen into the Hungarian national state and on strengthening the position of Hungary towards the Imperial Court in Vienna, while disregarding the similar position of the Triune Kingdom towards the Hungarian Diet and the position of Croatia as a politically separate nation, as well as that of other nationalities within the lands<sup>107</sup>, culminated at the Common Diet of 1847-1848 and its decisions of March 1848. The talks at the Diet, as well as the rapid exchange of events during the March 1848, the Address to the king and the revolutions in the streets of Vienna and in Buda, caused deep concerns among the representatives of the *Sabor* and in Croatia.<sup>108</sup>

The March events developed as a bilateral Austro (Imperial)-Hungarian matter, without concern at the official level of the Croatian rights and interests. In that constellation of forces, in a time when the old common feudal ties between the Croatian and Hungarian nobility forming a group with similar interests represented in the Common Diet were replaced by the Hungarian national idea, the separate existence of Triune Kingdom was in danger. It was considered that the new laws, the “March (April) laws” prepared and enacted in the Common Diet<sup>109</sup>, will completely suppress and curtail the Croatian autonomy, at the same time taking over the Slavonian counties from the Triune Kingdom.<sup>110</sup>

An immediate reaction was not to be waited for long. Under the leadership of the prominent members of the People’s Party, there was organized in Zagreb the unofficial “Great National Assembly of the Triune Kingdom of Dalmatia, Croatia and Slavonia”, which proclaimed the “Demands of the

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106 On the politically diverging paths between Széchenyi and Kossuth, and Kossuth’s skilful exploitation of the momentary weakness of the Court see e.g. Molnár, 2001, p. 173 ff.

107 See e.g. Tóth, 1955, pp. 235-277; Gángó, 2001, p. 45; Molnár, 2001, pp. 172-183; László, 2012, pp. 203-204.

108 See Heka, 2011, p. 180.

109 They will be later on mentioned as April Laws, in accordance with the predominantly accepted name, and especially in this book. For the text of the “April Laws” see <https://www.verfassungen.eu/hu/gesetz1848-i.htm>.

110 Threatened by being left aside for later, in a way that was partially realized after the Austro-Hungarian Settlement of 1867, this meant that the Triune Kingdom would be dealt with as an internal Hungarian affair. As it was to be expected from the earlier, pre-1848, attempts to abrogate Croatian autonomous rights and privileges, and especially in the circumstances and with the messages echoing during the early 1848, without a recourse to the Imperial Court as before, such an outcome was deemed to be calamitous for Croatian position. The language in Art. V of the specific worry. See more in Markus, 1996a, pp. 13-14.

People” on the 25 March 1848.<sup>111</sup> After stating in its introduction the will of the people to remain under the Crown of St. Stephen, as it was once accepted by the free will, and under the Habsburg rule, thus reaffirming in general the adherence to the existing legal-political framework (important as they were to be presented to the King Ferdinand V), 30 points of “Demands” aimed at the establishment of Croatian state autonomy and its organs on the similar lines with the Common Diet’s Address and the Hungarian “Twelve Points”.<sup>112</sup> It is demanded of the King the convocation of the Croatian Diet, which would be established based on equal representation, a special Croatian *Ministerium*, a national bank and the fiscal independence, use of national language in the administration and in the schools, establishment of the University, abolition of serfdom, freedom of press, religion and use of language, the creation of a national guard with the local officers and the use of national language, repeal of all the customs and the freedom of commerce, equality for all the inhabitants of the Military Frontier, etc.

One should especially stress the “Demand” no. 3 for the unification of all Croatian lands – Dalmatia, Military Frontier which was under the direct control of the Court in Vienna, and all other lands annexed to Hungarian and Austrian lands, with the Triune Kingdom, followed by the no. 4 and the claim for national independence, which is to be interpreted in a sense of an independent rule by the Croatian organs – *ban*, *Ministerium* and the *Sabor*. In essence, these can be easily compared with the Hungarian demands for the unification and independence, however, the perspectives on the issues to whom the specific territories appertained and what this independence meant for the other nationalities within its territories differed, or indeed clashed, as would be seen in later developments.

The most important, the first “Demand”, made in connection with the ongoing talks from the beginning of 1848 on the nomination of a new Croatian *ban* (*banus*, viceroy and military commander)<sup>113</sup>, highest executive position and one of the principle symbols of separate Croatian rule<sup>114</sup>, was the request to the King for the appointment of count Josip Jelačić Bužimski, a lieutenant in command of one of the regiments in the Military Frontier, as

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111 For the text see: Čepulo et al., 2010, pp. 39-46. More about their significance see in: Čepulo, 2006a, pp. 53-54. Švoger, 2016, pp. 75-76; Stančić, 2021, pp. 107-108.

112 For the ‘Twelve Points’, with further references, see the chapter in this book by G. Képes.

113 Beuc, 1985, pp. 202-211.

114 Čepulo, 2012, pp. 82-84, 140; Stančić, 2021, p. 116.



the *ban*.<sup>115</sup> Unbeknownst to the organizers of the “Assembly”, however, he was already appointed by the King’s decree as a *ban* two days earlier, on the 23 March 1848. Additionally, it was also the one “Demand” to be accepted by the King, as he, albeit receiving the Croatian legation, refused the official recognition of the (condensed and modified)<sup>116</sup> “Demands of the People”, as did the *Staatskonferenz* which discussed the Croatian positions on the 1-2 April 1848, considering that they were proclaimed by an unsanctioned body.<sup>117</sup> Nevertheless, the appointment of count Josip Jelačić as a *ban* had far-reaching consequences.

After being officially given the authority in Vienna on the 8 April, one day after the Hungarian *Ministerium* was confirmed and three days before the King’s sanction of the “April Laws”, Jelačić returned to Croatia. Being aware of the significance of the “April Laws” for the Triune Kingdom, as the Croatian political elites were as well, he sent the proclamation on the 19 April to all the public bodies that they are not supposed to accept any orders from the Hungarian *Ministerium* until the Croatian *Sabor* will be convened, and that in the meantime the supreme power will pertain to the office of the *ban*. Furthermore, he issued a line of decrees, among them also abolishing the serfdom and the feudal relationships, the issues that were part of the “April Laws” but which were not recognized and were not to be accepted as such in the Triune Kingdom. Although it is a question whether they would have been abolished so swiftly without the revolutionary/reform events of the 1848, the transformation of the society’s legal-economical basis was thus executed by the Jelačić’s decree, which still needed to be confirmed in the *Sabor*.

### 3.2. Acts of the Croatian Sabor 1848 (5 June – 9 July)

Based on the new rules for the election of representatives prepared by the Ban’s Conference, which introduced general and equal representation (with the limitations characteristic for the period)<sup>118</sup>, the members of the *Sabor* were elected during May and it was convened on the 5 June 1848. Its activity, split in two sessions until the 9 July, was marked by a wide legislative activity.

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115 Markus, 2009, p. 16; Stančić, 2021, pp. 116-117.

116 At the request of the Court Minister there was made a limitation of the 17 to 11 “Demands” and the omission of 13. See Engelsfeld, 1999, p. 83.

117 See Engelsfeld, 1999, pp. 83-84; Čepulo, 2012, p. 139.

118 For details in English see Čepulo, 2006a, p. 54.

First of all, it confirmed Jelačić's decrees, giving them the form of legislative acts.<sup>119</sup>

For wide number of individuals, certainly the most important was the abolishment of serfdom and the grant of ownership of household land to former serfs (Art. XXVIII:1848).<sup>120</sup> However, that was not the sole object of legislative efforts. While the affairs of constitutional nature and stating the principles for the regulation of relationships with other parts of the Monarchy required fast reaction without any delays, there was created a number of *Sabor's* Committees to prepare the draft acts regarding different issue of public and private law and rights of citizens. These drafts were ultimately not enacted as the *Sabor* was soon disbanded, but they laid the foundations for later reforms.<sup>121</sup>

Corresponding to the moment, the *Sabor* focused on the position of the Triune Kingdom at the "inter-national level" in the Monarchy.<sup>122</sup> As the speeches reported in the newspapers witness, e.g. for the 9 June 1848<sup>123</sup>, the representatives extensively discussed the future relationship towards and with the Hungary, expressing the views that the "March (April) Laws" unlawfully changed the age-old constitution of the Monarchy and refusing any recognition or acceptance of decisions by the Hungarian *Ministerium*. The main line of reasoning in these speeches followed the precepts of the French revolution – *liberté, égalité, fraternité*<sup>124</sup>, whereby, while acknowledging the long, 800 years old community of life and legal union, its future continuation was conditioned on the equality of Croats and Hungarians, but even more, all nations – especially having in mind and endorsing the requests from Serbian Vojvodina, which was supposed to enter into close union with the Triune Kingdom.<sup>125</sup>

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119 Art. III:1848. See the text in: Kolanović (ed.), 2001, p. 540.

120 Čepulo, 2012, p. 144.

121 Markus, 1996b; Čepulo, 2012, p. 146.

122 Despite the conciliary attempts from time to time, which were usually judged as a way to keep a secure flank during the negotiations with the Court, the press reports both in Buda – Pest and in Zagreb were quite inflammatory. See Heka, 2011, pp. 187-196.

123 See Novine dalmatinsko-hrvatsko-slavonske, vol. XIV, br. 60, 13 June 1848, <http://dnc.nsk.hr/DataServices/ImageView.aspx?id=7de5291e-1aa7-4955-bed6-97f66ffc59ba>

124 It should be mentioned that the *Sabor* also issued a Manifesto of the Croato-Slavonian people as a public proclamation towards foreign nations on the principles of government and the positions of the Croatian people towards other peoples, nations in the Monarchy. The main idea behind the Manifesto, as well as most of the legislative activity in public law sphere was safeguarding the Croatian historical rights. See Stančić, 2021, p. 117.

125 The debates revolved also around the borders between the Triune Kingdom and the Serbian Vojvodina and the position of Srijem which was supposed to be donated to Vojvodina on the condition of close union with the Triune Kingdom and the sanction of the King.

At the moment, however, this did not seem so realistic, so the political shift was made in favour of Austria. This is especially recognized in Article (Act) XI:1848 "On the basis for the regulation of relationships with Hungary and with Austria".<sup>126</sup> Starting from the wishes to preserve the unity of Monarchy and to remain in friendly relations with the Hungarian people<sup>127</sup>, the *Sabor* first reaffirmed the Croatian historical freedom and independence and the complete refusal of all the acts and instructions from the present Hungarian *Ministerium*, requesting from the King the establishment of a separate Croatian government under the *ban*. Furthermore, it is proposed a unified government for the whole Monarchy, with a minister for the Triune Kingdom responsible to the *Sabor* who would be required to countersign the decisions concerning the Triune Kingdom. The Article also contained the statement that the Lower Slavonia, Military Frontier<sup>128</sup> and the Croatian Littoral (the area of the northern Adriatic Coast which includes Rijeka) are the integral parts of the Triune Kingdom, which will be guarded and defended against everyone, as well as the request for the unification of Dalmatia with the Triune Kingdom, and the creation of closer ties of other Southern Slavic lands (Serbian Vojvodina, Lower Styria, Carniola, Carinthia, Istria and Gorizia) within the Monarchy with the Triune Kingdom. Finally, as the expression of Austro-Slavism, the term used to describe the attitude of Croatian politics during the revolutionary 1848-1849, on one side intended to bring the

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On the exchange of letters between *ban* Jelačić and patriarch of the Serbian Orthodox Church Josif Rajačić, as the political leader of Serbs in the Monarchy, concerning the patriarch's attempts of pre-emptive exercise of control in Srijem, whereby *ban* Jelačić warned that the conditions for any surrender of authority were not fulfilled, as well as the borders were not defined, see Markus, 1998, pp. 589-595. See also on the support and defence of the positions and rights of Serbs within the Monarchy, viz. Hungary, by the Croatian *Sabor* and the *ban* in Heka, 2011, pp. 192-193.

<sup>126</sup> See Čepulo *et al.*, 2010, pp. 57 ff.

<sup>127</sup> This is elaborated in sec. 7 of the Article XI:1848: „Let the friendly union with the Hungarian peoples be maintained in the sense of the (Croatian, author's remark) Pragmatic sanction and on the basis of liberty, equality, and fraternity, – but, in what manner this will be realized, the people of the Triune Kingdom wishes to decide only after the King will fulfil its' wishes and when the relationship of Hungary towards the whole Austria will be more clear.” Additionally, the principles of the unity of central government and the equality of all nations in the lands of the Crown of St. Stephen are set out in Art. XX:1848. See Kolanović (ed.), 2001, pp. 552-553.

<sup>128</sup> The position of Military Frontier was especially regulated in Art. XXVI:1848 recognizing the Military Authority controlled by the central government, while stating its political belonging to the Triune Kingdom. See Kolanović (ed.), 2001, pp. 553-570.

Triune Kingdom closer to Austria, and on the other side forging closer bonds between (South) Slavic lands which would play a more significant role in the Monarchy<sup>129</sup>, it was decided that the *Sabor* would send three emissaries to the Austrian Diet.

The Article XI:1848 contained the provisions which could be deemed as a constitutional program on the position of the Triune Kingdom within the Monarchy, directed towards the King. Indeed, it was the only act (resolution) of this *Sabor* to be sanctioned by the King Franz Joseph, i.e. the parts which were in accordance with the new 1849 (imposed) Constitution as the sanction was granted only in 1850. This practically meant the recognition of the integrity of Triune Kingdom<sup>130</sup>, however now as one of the lands of the Empire, and severing the ties with Hungary, while the centralized government of the Monarchy and the local (Croatian) government under the direct authority of a minister proceeded from the Constitution itself. Although it seemed that these results corresponded to the Croatian requests, with regard to the preservation of Croatian autonomy they went much farther in limiting it. Accordingly, the new Constitution was not received with much enthusiasm and was not even proclaimed immediately, but only after the break of Hungarian revolution on the 6 September 1849.

#### **4. Reforms from above during the period of Neoabsolutism (1849-1859) – ABGB and the late reception of the Roman law**

It was mentioned that the *Sabor* of 1848 constituted a number of committees to prepare drafts of acts which would regulate private law issues, in essence bringing Croatian legal framework and economy from the feudal to the capitalist

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<sup>129</sup> For the Austro-Slavism see more in Markus, 2009, pp. 19-20.

<sup>130</sup> In the letter by Franz Joseph on the recognition of Art. XI:1848 it is recognized belonging of the Croatian Littoral with Rijeka (Lower Slavonia was not deemed an issue at all) to the Kingdom of Croatia and Slavonia, as a separate land independent of Hungary. The pertinence of the Military Frontier to the Triune Kingdom was not problematic, however, it was not yet surrendered to the civilian governance of the *ban* and the *Sabor*. See Engelsfeld, p. 93.

system.<sup>131</sup> However, as it was disbanded and was not convened until 1861, i.e. during the period of false constitutionality (1848-1851) and Bach's Absolutism (1851-1859), the envisaged acts and reforms were not realized. Nevertheless, the transition to the new system was begun, but only from above.

The new, March Constitution of 1849, while maintaining and extending the prerogatives of the Monarch, confirmed (from the revolution) or introduced at the level of the whole Monarchy, many of the enlightened and liberal reforms with regard to the rights of individuals. They included, among others, the equality of all citizens, the protection of private ownership, the freedom of trade and the freedom of occupation. Equally important for their enforcement was the new organization of judiciary and administration on the modern (civic) foundations.<sup>132</sup> While these changes had been already mostly accepted in the Western Europe, in the greater parts of Central East Europe, including the Triune Kingdom, economically under-developed, with stronger nobility and with the high percentage of peasantry, they were recognized as needed by the political elites in the years leading to the revolution of 1848, but were not carried out because of the conflicting interests and ideas on their implementation. In the end, thus, the Court's efforts to strengthen the economic and financial foundations of the Monarchy brought about the attainment of revolutionary ideas on economic level, especially concerning the personal liberties. The new, centralised organization of government certainly was not in conformity with the political ideas behind the reforms and revolutions of 1848, however, it was expected to be more successful in fostering new economic relationships and accelerating the transition of wider array of common people from old to the new legal, economic and the political system, catching up with the remainder of Europe.<sup>133</sup>

Much greater significance than the March Constitution, which was rather quickly suspended on the 31 December 1851, had the introduction of the Austrian *Allgemeines Bürgerliches Gesetzbuch* (ABGB)<sup>134</sup> in all the lands

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131 In general on the transition from the oligarchic society, from 1848, to the modern state, with the reforms by *ban* Ivan Mažuranić, see Markus, 1999, p. 103; Čepulo, 2003, 215-222 (summary in English language); as well as the papers collected in: Čepulo, Rogić Musa and Roksandić, 2019.

132 Čepulo, 2012, pp. 147-151.

133 Gross, 1985, pp. 11-26.

134 *Allgemeines bürgerliches Gesetzbuch für die gesamten deutschen Erbländer der Oesterreichischen Monarchie*, JGS 946/1811., last amended on 9 September 2021., BGBl. I 175/2021.

of the Monarchy, i.e. those that did not belong to the Austrian Hereditary Lands where it was already in use.<sup>135</sup> Among the Croatian lands belonging to the latter, the ABGB had become the law in force in the Military Frontier immediately (1 January 1812)<sup>136</sup>, while in Dalmatia, Istria, Dubrovnik, and other parts of the Illyrian Provinces established by the French, in the period from 1814 to 1820.<sup>137</sup> Now, as decided by a decree from the 2 November 1852, the application of the ABGB was to be extended to the Triune Kingdom from the 1 May 1853.

The introduction of ABGB in the Triune Kingdom had wide and long-lasting consequences. In first place, as a codification of private law, although with the public law elements of constitutional significance<sup>138</sup>, it was of primary relevance for individuals. It confirmed the equality of all the citizens and the entrepreneurial freedom, but not only that, codifying the general principles and so many details belonging to the Roman legal tradition, i.e. Roman law as elaborated through the reception<sup>139</sup>, it allowed in every-day life the free development of commercial activities. At the same time, it provided the safeguards and protection of the weaker party, as envisaged already by the Roman magistrates, jurists and emperors, e.g. in the area of liability for eviction and material defects. Despite the fact that during the first several decades the individualistic character of the Roman law and the ABGB could be considered more as the legal irritant, as it was shown in a study by D. Čepulo concerning the dissolution of communal ownership (*zadruga*)<sup>140</sup>, it could be said that the liberties granted by the ABG allowed for the faster transformation of society.<sup>141</sup>

In a broader sense, the ABGB signified a final break-up with the feudal state following the abolishment of serfdom. As the reception of Roman law during the Middle Ages and later on is associated primarily with the cities,

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135 See e.g. Neschwara, 2009; Olechowski, 2012.

136 For the earlier efforts of regulation and modernization of law in the Military Frontier see Petrak and Milković Šarić, 2014, pp. 45-55.

137 See in more detail Derenčin, 1880, pp. 15-16; Gavella, 1993, p. 337; Olechowski, 2012, p. 692.

138 Brauneder, 2013, pp. 1020-1023.

139 See more, e.g. in Koschembahr-Lyskowski, 1911; Steinwenter, 1954; Meissel, 2014.

140 *Zadruga* was still rather widely used among the peasants, so the division of its property, esp. *mortis causa*, into private ownership arising from the Roman legal tradition created many problems. See Čepulo, 2007b.

141 Krešić, 2017, p. 6.

burgesses and merchants, the feudal system was based upon and developed through the customary law. In the Lands of the Crown of St. Stephen, including the Croatian lands (at least the continental part), the reception of Roman law (*ius commune*) was rather limited before the 15<sup>th</sup> Century, but this was not something exceptional.<sup>142</sup> The Roman law moved slowly to the east, only with the establishment of greater, richer cities, rise in the number of university schooled citizens and the immigration of foreign merchants. In the tension between the customary law and *ius commune*, the former kept its force by the power of nobility, while the latter gained ground with the growth of bourgeoisie and spread of universities. However, the quickening expansion of *ius commune* in Central Europe from the 16<sup>th</sup> Century, in first place in the Holy Roman Empire, was prevented in the Croatian and Hungarian lands by the Turkish incursions, already from the mid-1400s, and later occupation of large portions of these lands. In these circumstances, despite the efforts to use the results of *ius commune* and incorporate it into the fabric of the law of the lands, the customary law maintained its primacy.

Stronger influences of the study of Roman law began to be perceptible, at least in the law in books, during the late 17<sup>th</sup> and in the 18<sup>th</sup> Century<sup>143</sup>, e.g. in the elaboration of law of the country with the Roman legal terminology and system, but the old categories were still defining the legal system.<sup>144</sup> Thus, when speaking about the substance of law, while the received Roman law, *ius commune*, in the guise of natural law systematizations, was already being codified in the beginning of the 19<sup>th</sup> Century in France, Austria, and other countries, in the lands of the Crown of St. Stephen, including the Triune Kingdom, there was still in 1850 mainly used the customary law, centered on the *Tripartitum* and the *Corpus Iuris Hungarici*.<sup>145</sup>

Unification of the civil law in the Monarchy with the ABGB was consequently not only necessary from the economic standpoint, but for the modernization of the legal system as a whole. It could be called “better late than never” attachment to the European legal mainstream, i.e. to the European legal production as it was based on the reception of the Roman law and the evolving Roman legal tradition, especially with the Pandectist school.<sup>146</sup>

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142 See Bónis, 1964.

143 Gönczi, 2008.

144 E.g. Huszty, 1745. See Karlović, 2013, pp. 1310-1311.

145 Rady, 2015, pp. 220-221.

146 See more in Haferkamp, 2018.

Regardless of the specific acts which would regulate singular areas, without the central, civil code, law based on the protection of absolute ownership, the freedom of contract and the testamentary freedom, there could have been hardly expected any real progress. One could even dare to say that such a late catch-up with the common European legal development may have influenced the legal culture up until these days, although, this would not depend only on the substantive, but maybe even more on the procedural law.

In any case, with the introduction of the ABGB in the Triune Kingdom, the new phase of the development of private law began in Croatia. Here, the use of the name Croatia, relating to the territories of modern-day Republic of Croatia, is justified by the fact that from 1853 there was the same basis of private law, respectively of the legal system, in the majority of Croatian lands – Triune Kingdom as well as the Military Frontier, Dalmatia (with the wider area of Dubrovnik) and Istria.<sup>147</sup> Taking into account the original particularism of the medieval law which was present in the Croatian lands, as well as elsewhere, the Venetian conquests on the eastern coast of Adriatic taken over by Austria after its demise, the independent development of Dubrovnik, the permanent occupation of Turkish Croatia and Turkish Dalmatia, separate regulation of Military Frontier, there were divergent developments of law well into the 19<sup>th</sup> Century. Thus, with the gift of hindsight, the use of one private law in different Croatian lands for a longer period<sup>148</sup>, although without a specific effect at that time because of the separate systems of judiciary, can be considered as a significant step in the overall development of law in Croatia up until today. What is more, as the developments of 1861 will show, the consequences of the 1852 decree on the introduction of ABGB in the Triune Kingdom were to be even more far-reaching.

## **5. *Sabor* of 1861 – creation of a separate legal system**

Following the October Diploma of 1860 and the February Patent of 1861, Croatian *Sabor* was convened on the 15 April 1861. It was active again for a short period time, until the 9 September 1861, during which it prepared and

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<sup>147</sup> Krešić, 2017, pp. 5-6.

<sup>148</sup> Meaning, if we disregard the relatively short use of Napoleon's Code civil. See Petrak, 2022, p. 27.



enacted many new laws.<sup>149</sup> However, only the Art. XLII:1861 on the relationship with the Crown and the Kingdom of Hungary was sanctioned by the king.<sup>150</sup> According to its contents, this Act is primarily considered as a program for the new, envisaged negotiations with the Hungary.<sup>151</sup> It was based on the confirmation of the decisions by the *ban* and the *Sabor* of 1848, basically repeating that all the state bonds between the Triune Kingdom and Hungary were severed in 1848, while stating that there was still the wish, based on the historical relationship, to enter the new union based on the recognition of Croatian state right and the principles on equality.<sup>152</sup> Despite the war and everything that happened during the 1848, recent bitter experience with the absolutism, duplicitousness by the Court concerning the unification of Dalmatia with the Triune Kingdom<sup>153</sup>, and the rejection of new constitutionality based on the representation in the Imperial Council (parliament), which would make the Croatian *Sabor* insignificant, it was thought there must be some compromise with the Hungary for the defence of Croatian state rights.<sup>154</sup>

With all the work on the acts, drafts and proposals which were not sanctioned or completed, but were of great use in the legislative work during the later period, after the Croatian-Hungarian Compromise, and especially under the *ban* Ivan Mažuranić who was an important actor of this session<sup>155</sup>, one of the major results of activity of the *Sabor* of 1861 concerned the use of the laws introduced during the neoabsolutism. In general, the premise was expressed in the Art. LXXX:1861 (being a conclusion, rather than an act).<sup>156</sup> More specifically, there was established the *ad-hoc* judicial committee (*Odbor za pravosudne poslove*) for the purpose of checking the new laws

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149 Čepulo, 2012, pp. 162-164.

150 Kušlan and Šuhaj, 1, 1862, pp. 39-40. See Čepulo, 2006a, p. 62; Heka, 2011, p. 266.

151 Engelsfeld, 1999, p. 131; Čepulo, 2002, pp. 144-145.

152 See the speech by later *ban* Ivan Mažuranić, the author of the Art. XLII:1848, in Mažuranić, 1886. See also Heka, 2011, p. 268.

153 Engelsfeld, 1999, p. 131. For the repeated requests concerning the reintegration within the historical Triune Kingdom of Dalmatia, including Dubrovnik, Kotor and the islands of Kvarner, and the recognized intentional prolongation of this process by the Court, see Arts. X and XXVIII:1861, Kušlan and Šuhaj, 1, 1862, pp. 14, 32.

154 Čulinović, 1967, p. 81; Čepulo, 2006a, p. 61.

155 See Čepulo, 2002, pp. 141-143.

156 Although, see in the Dnevnik Sabora notices of the proposal for the abolishment of all laws introduced during the last 12 years by Jovan Živković, e.g. Dnevnik Sabora, 1862, pp. 82, 85.

and changing them<sup>157</sup>, among others. The committee's final proposal was to take over the acts introduced during the absolutism, among which was also the ABGB, but which would come into force on the 1 January 1862 with the exactly proposed set of changes.<sup>158</sup> However, as the *Sabor* was prematurely disbanded, the ABGB was just continued to be used<sup>159</sup>, but without the proposed changes.

Thus, contrary to the decision by the Hungarian "Conference of the Justice of the Realm" and the Parliament to return, in general, to the old (primarily) customary law<sup>160</sup>, which conclusions were consulted by the members of the *Sabor's* committee<sup>161</sup>, the new laws introduced during the absolutism were accepted and used as a law of the Triune Kingdom. This resulted in the separation of two legal systems, Croatian and Hungarian. While for the earlier period one would speak of the common, Hungarian-Croatian customary law, especially in the matters of private law, acknowledging the Croatian autonomous rights (law) in the sphere of public law, for the period after the 1861 this was not the case anymore. Primarily taking into account the importance of the ABGB as the basis (and the greatest part) of the private law, but also other acts, e.g. the Temporary Rules of Civil Procedure for Hungary, Croatia, Slavonia, Serbian Vojvodina and Tamiški Banat<sup>162</sup>, 1861 marked the threshold from which the Triune Kingdom started with the development of an independent Croatian legal system.

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157 During the 20th session, on the 15 June 1861, with the appointment of the members. See *Dnevnik Sabora*, 1862, pp. 156, 158, 161 (the public announcement of the elected members). See also Kušlan and Šuhaj, 1, 1862, p. 72. It is also said that the conclusions of the Judexcurial Conference could be consulted, which was rather mild phrasing following a dispute between the deputies on the independent work of the committee and the possibility to issue orders what the committee should take into account or not, as preserved in the minutes of the 67th session of the *Sabor* (*Dnevnik Sabora*, 1862, pp. 690-691). See also Čepulo, 2002, p. 151.

158 Kušlan and Šuhaj, 4, 1862, pp. 1-2.

159 As phrased by Čepulo, „...it was tacitly accepted as part of the Croatian legal system...” Čepulo, 2006a, p. 63; Čepulo, 2012, pp. 154, 164.

160 Essentially, as Képesy summarized the contents of the Provisional Judicial Rules which were accepted by both houses of the Parliament: “Therefore, its propositions re-introduced the old Hungarian legal norms in “most” cases... Finally, and perhaps most importantly, they acknowledged that some of the Austrian legal norms should stay in effect for the sake of legal certainty.” See; Képesy, 2019, p. 164. See also Homoki-Nagy, 2011, 140-151; Képes, G. (2016), pp. 106-107

161 Kušlan and Šuhaj, 4, 1862, p. 264; Čulinović, 1967, pp. 127-128. See *supra* fn. 81

162 Čepulo, 2006a, pp. 58-59; Krešić, 2017, p. 7.

The ABGB in use in the Triune Kingdom, and later in the legal area that corresponded to it within the Kingdom of Serbs, Croats and Slovenes (and in Kingdom of Yugoslavia), as it continued until the 1946 (and in some parts even later)<sup>163</sup>, became in a way a separate Croatian civil code (*OGZ – Opći građanski zakonik* translated in Croatian), as it did not contain or follow later amendments enacted in the Austrian part of Monarchy, nor was it in any relation to the Hungarian law or practice with regard to the accepted rules of the ABGB.<sup>164</sup> Its interpretation was developed in the practice of the Croatian Supreme Court (*Stol sedmorice, Tabula Regia Septemviralis*, Table of the Seven)<sup>165</sup>, the other direct result of the work of the *Sabor* in 1861.<sup>166</sup> Consequently, in this synergy of a codified law, which was rooted in Roman law and which made it possible to accept more easily the new concepts created on its basis during the 19<sup>th</sup> and 20<sup>th</sup> Century, and the autonomous judicial organs, a separate legal system emerged.

## 6. Conclusion

The “Springtime of Nations” of 1848 in Croatia (the Triune Kingdom) was materialized at first as a reaction to the reforms coming from the Common Diet in Požun, which were in essence considered as an infringement of the Croatian autonomous (later on: historical state) rights. Threats to the Croatian identity and separate political rights during the first half of the 19<sup>th</sup> Century, in first place through the attempted impositions of the Hungarian language (as the foremost element of national identity during this period of national revivals) in the public sphere, made the political elites arising from the Croatian National Revival movement and active in the Croatian *Sabor* very apprehensive of the events of the March 1848 and the ensuing laws. The reforms which were done without the consideration of the Croatian autonomous position and which would have taken away parts of Slavonia and completely undermine the specific prerogatives of the Croatian *Sabor*,

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<sup>163</sup> Petrak, 2003.

<sup>164</sup> Derenčin, 1880, pp. 21-24.

<sup>165</sup> Although they took into account the Austrian practice and legal literature. See Derenčin, 1880. pp. 20-22; Krešić, 2017, p. 5.

<sup>166</sup> This court was established by the royal decree on the basis of the *Sabor*'s conclusion in the same year. Čepulo, 2006b, pp. 344-345.

have thus caused a strong reaction leading to the “counter-revolution<sup>167</sup> and the severance of ties between the Triune Kingdom and Hungary, laying the groundwork for later developments. Thus, apart from the abolition of serfdom and the new electoral order in 1848, the lasting consequences of the “Springtime of Nations” in the legal system would come about in Croatia only later and indirectly.

To be more specific, the reaction to the events of 1848 served more as a catalyst for later changes in the legal sphere, despite, and in one part on the basis of, externally forced legislation. This relates to the introduction of the ABGB, among other “Austrian” laws, in the Triune Kingdom in 1853, which brought about the late reception of Roman law in the continental part of Croatia. The enactment of 1853 also meant, having in mind that the ABGB was already in force in the Croatian lands under the direct control of the Imperial Court in Vienna, that there was to be in use the same civil code in the majority of Croatian lands.

Furthermore, the introduction of these laws during the period of Absolutism (1849-1859), caused another type of reaction in 1861, i.e. after the restauration of constitutionality. Specifically, the proposal of the judicial committee of *Sabor* was in favour of the continued use of these, prominently the first one in their proposal was the ABGB, although revised laws in the Triune Kingdom, resulting in their continued application, contrary to the situation in Hungary. This decision to keep up the “modern” and “foreign” legislation had as a consequence the reintegration of legal system of Triune Kingdom of Croatia, Slavonia and Dalmatia into the mainstream European line of legal development based on the Roman law. On the other side, it was of seminal importance for the independent, as opposite to the earlier common Hungarian-Croatian customary law, development of private law institutions in Croatia and the Croatian legal system as such.

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167 The term is used here as the reforms were deemed illegal as they were made under duress, and especially with regard to the later Hungarian revolution.

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