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PRVA MERA KREDITNE POLITIKE U SRBIJI

Povodom osamdeset godina od osnivanja Privilegovane agrarne banke - prvi deo

Rezime

Istorija kreditne politike u Srbiji započinje 1836. godine, kada je knez Miloš Obrenović zabranio da se seljaku uzmu za dug kuća, baština, dva vola i jedna krava. Ova prva kreditno-politička mera imaće dalekosežne, dugoročne nepovoljne posledice na razvoj hipotekarnog kreditiranja poljoprivrede u Srbiji, jer će se iz nje izroditi čitav sistem tzv. okućnog prava. Primenom odredaba okućnog prava, Srbija je postala država sitnih zemljoposednika, koji su gotovo čitav vek bili van domašaja hipotekarnog kredita. Zakonska ograničenja koja je hipotekarnom kreditu u poljoprivredi postavljalo okućno pravo, biće ukinuta tek sa osnivanjem Privilegovane agrarne banke 1929. godine.

Ključne reči: zaštićeni zemljišni minimum, prezaduženost seljaka, sitan seljački posed, devetnaestovekovna Srbija

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THE EARLIEST MEASURE OF THE CREDIT POLICY IN SERBIA

On the occasion of the 80th anniversary of the establishment of The Privileged Agrarian Bank - part one

Summary

The history of credit policy in Serbia began in 1836, when Prince Milos Obrenovic had forbidden that a peasant could be left without his house, land, a pair of oxen and a cow when he could not pay his debts. This first credit policy measure will have far-reaching, long-term negative consequences for the financing of Serbian agriculture with mortgage loans because it will produce an entire system of the so-called homestead law. By applying the measures prescribed in the homestead law, Serbia became a country of small land-owners, who were deprived of mortgage loans for almost a century. Legal limitations for mortgage loans in agriculture instituted with the homestead law will be suspended only in 1929, when the Privileged Agrarian Bank was constituted.

Key words: protected land minimum, peasant over-indebtedness, small peasant land ownership, Nineteenth Century Serbia.

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Tapija na sitan seljački posed

Neophodan uslov za hipotekarni kredit u poljoprivredi stvoren je u Srbiji u prvoj polovini XIX veka, kada su ukidanjem spahijskog sistema zemljoradnici postali sopstvenici zemlje od koje su živeli. Zatim su 1860-ih godina počeli da posluju prvo novčani zavodi.

U vreme uvođenja privatno svojinskih odnosa na zemlji, srpski seljak je živeo i radio na imanjima spahija. Spahijski, timarski sistem, koji je vekovima bio osnova vojničke i finansijske moći Osmanskog carstva, nastao je iz potrebe da se finansira veliki vojni aparat. Spahije konjanici dobijali su od sultana zemlju na korišćenje od koje su se izdržavali. Bili su u obavezi da obezbede određeni broj konjanika u zavisnosti od veličine prihoda koji su ubirali sa zemlje. Seljaci, raja, koji su živeli i radili na spahilucima, dobijali su zemlju u doživotni zakup, pod uslovom da sultanu plaćaju državni porez u novcu, harač, a spahiji daju desetak, ušur, tj. deseti deo svih zemljoradničkih i stočarskih proizvoda. Seljak je mogao da zakupi samo onoliko zemlje koliko je bio u stanju da obradi. Ako tri godine ne bi obrađivao zemlju, ona mu je oduzimana.[1]

U trenutku zakupa zemlje, kadija, kao predstavnik osmanske sudske vlasti, izdavao bi seljaku potvrdu koja se nazivala tapija. Tapija je dobila ime prema dažbini "tapu" (od grčkog "tapos"), koja se naplaćivala prilikom prenosa zakupnog prava. Dakle, u osmansko doba, tapija je bila potvrda o zakupnom pravu nepokretnog dobra.[2] U navici da zemljom doživotno raspolaže, kod srpskog seljaka se razvilo verovanje, kada se plati dažbina za prenos zemlje i dobije tapija, da to znači prenos svojine na zemlji koja se, prema srednjovekovnim običajima, nazivala baština. Međutim, seljakovo pravo raspolaganja zemljom pod Osmanlijama bilo je ograničeno. Ukoliko bi dobio odobrenje spahije i kadije, seljak je mogao zemlju da proda, razmeni ili pokloni, ali nikako da joj promeni namenu. Bilo je strogo zabranjeno da se na obradivoj zemlji zidaju zgrade, jer bi se na taj način osmanska država lišila izvesnih prihoda od zemlje. To upućuje na zaključak da je struktura poljoprivredne proizvodnje bila praktično uslovljena potrebama države, ne uvek u duhu potreba seljaka koji su je obrađivali.[3] Kada bi zemlju na bilo koji način seljak otuđivao, on je, u stvari, otuđivao svoje zakupno pravo, a ne svoje vlasništvo. Novi zakupac dobijao bi tapiju kao potvrdu zakupnog prava držanja zemlje, uz obavezu plaćanja carskog harača i spahijskog desetka.

Srpski seljak će postati potpuni sopstvenik zemlje na kojoj je živeo tek sa ukidanjem spahijskog sistema i uvođenjem privatno-svojinskih odnosa na zemlji 1830-ih godina. Posle Drugog ustanka 1815. godine, aktivnom politikom kolonizacije, knez Miloš Obrenović je ubrzao povećanje broja baština, a intervencijama u podeli zemlje uticao da baština zadrži skromne razmere koje je imala pre ustanka. Pridržavajući se osmanskog načela da se zemlja može držati samo ako se radi, kolonistima su davane ne samo opustošene zemlje, nego i površine koje su oduzimane od starosedelaca, kada oni nisu stizali da ih obrade.[4] U raspisu br. 88, od 10. maja 1822. godine, knez Miloš je naredio:

Dajem vlast knezovima da mogu naseljavati strane ljude svuda po selima gdi prilično nađu i njima zemlje ili za krčevinu opredeliti ili od sobstveni nekoga, neradina, ili koji više ima nego što obrabotati može, odvojiti i onomu novonaselcu ili boljem radinu predati.[5]

Porta se nije protivila kada je Miloš samovlasno preuzeo pravo oduzimanja zemlje od starosedelaca i dodeljivanja naseljenicima zato što primenom ovakvih mera agrarne politike nisu bili ugroženi fiskalni interesi sultana. Naprotiv, državna blagajna u Istambulu mogla je od primene ovakvih mera da ima samo koristi, jer je sa porastom broja stanovnika u Srbiji stalno rastao broj poreskih obveznika. Dok je 1820. godine u Srbiji živelo manje od pola miliona duša, 1829. godine računalo se da ih ima već 700.000.[6] Tokom 1820-ih, u vreme ukidanja spahijskog

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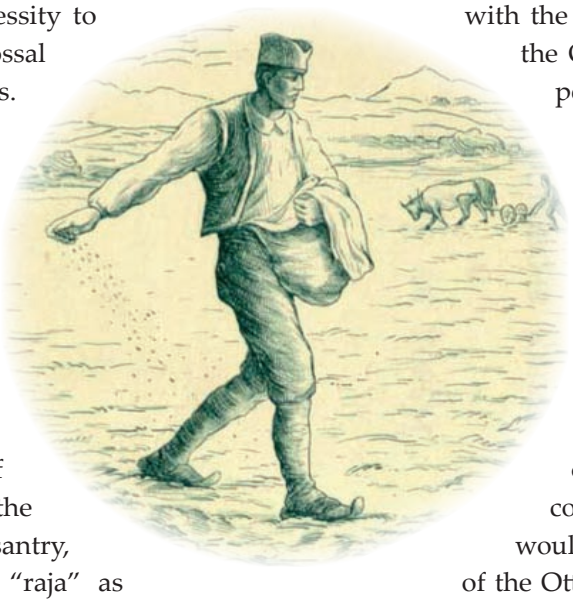
1 Zoran Njegovan: *Poljoprivreda srednjovekovne Srbije,* Beograd, 1997.
2 Stojan Novaković: *Srpska baština u starijim turskim zakonima*, Beograd, 1892, str. 9.
3 Zoran Njegovan, citirano delo, str. 123.
4 Života Đorđević: "Mali seljački posed kao ograničenje razvoja privrede Srbije u IX veku", *Ekonomska misao*, br. 3, 1989, str. 375.
5 Vukašin J. Petrović, Nikola J. Petrović: Građa za istoriju Kraljevine *Srbije*, Druga knjiga, Beograd, 1884, str. 483.
6 Mihailo Gavrilović: Miloš Obrenović, Knjiga druga, Beograd, 1909, str. 258.

"Tapia" title deed on small farming land ownership

Mandatory requirement for a mortgage loan to be granted in the area of agriculture was set-up in Serbia in the first half of the 19th century, when the system of spahi-landlord estates was abolished and farmers rendered owners of the farming land providing for their subsistence. Later on, in the 1860s, the earliest monetary institutes started to operate in the country.

At the time when the private land ownership was introduced, Serbian peasant lived and worked on the estate owned by the spahi-landlord. Spahi-estates landowner system, or the timari-fiefdom system, which served for centuries as the fundament of the military and financial might of the Ottoman Empire, originated from the necessity to provide finance for a colossal military apparatus. The Ottoman spahi-cavalrymen would be granted a land estate by the Sultan for their use and upkeep. In return, they had the duty to provide a certain number of cavalry troops, depending on the size of revenues drawn from the estate received. The peasantry, common villagers - or "raja" as they were called, living and working on the spahi-owned estates, were given the land in a lifetime tenancy, on condition that they would pay their state tax dues to the Sultan, the money tax called "harach", while giving their spahi-landlord the tithe-tax, known as "ushur", i.e. the tenth part of all their agricultural cultivation and stockbreeding produce. The peasant could only rent as much land as he would be able to cultivate, and if he was to fail in cultivating land-crop for three consecutive years, the land would be taken away from him.[1]



At the time of leasing the land a Muslim judge called "quadi", in his capacity of the representative of the Ottoman judiciary, would issue the peasant certificate known as "Tapia". Tapia was named after the "tapu" dues (from the Greek word "tapos"), payable during the assignment of the land rental or leasing right. Thus at the time of the Ottoman rule, "tapia" served as a certificate on the leasing right on a chattel real leasehold.[2] Being accustomed to hold the land in lifetime tenure, Serbian peasant developed a belief that once the dues are paid for the assignment of land and "tapia" received, this would mean that the ownership of the land was also assigned, which according to the mediaeval tradition, was called the inheritance property, or a free simple "bastina". However the right of the peasant to freely dispose with the land was limited under the Ottoman rule. When the peasant would be granted the agreement of the spahi or quadi to sell the land, exchange it or bequest it as a gift, he would be free to do so, but never to change the use of the land in question. There was a strict prohibition on an arable land to construct buildings, as that would lead to the deprivation of the Ottoman state from certain revenues collected from the cultivated land. This leads to the conclusion that the structure of the agricultural production was practically conditioned by the needs of the state, albeit not always in the spirit of necessities of peasants actually farming the land.[3] Whenever the peasant would in any way alienate the land, what he was in fact alienating was his land leasing right, and not his own possession. The new tenant would receive the "tapia" as a certificate of the land leasing right, with the obligation to pay the imperial dues of Harach

1 Zoran Njegovan: Poljoprivreda srednjovekovne Srbije (Agriculture in Mediaeval Serbia), Belgrade, 1997.
2 Stojan Novakovic: Srpska bastina u starijim turskim zakonima (Serbian land property in the old Turkish laws), Belgrade, 1892, p. 9.
3 Zoran Njegovan, op. cit. p. 123.

sistema, seljak se oslobađao plaćanja spahijskog desetka, ali ne i poreske obaveze prema sultanu. Seljakova ekonomska snaga ostaće izvor prihoda carske državne blagajne u Istambulu sve do međunarodnog priznanja nezavisnosti Srbije na Berlinskom kongresu 1878. godine. Sve do tada, Srbija je sultanu plaćala harač.

Naseljavanje zemlje u Srbiji i stvaranje novih baština i baštinika u početku je predstavljalo pre tehničku nego pravnu radnju. Kasnije počinju da se utvrđuju međe i vade tapije, da se vode sporovi oko vlasništva nad zemljom, da zemlja postaje sve više predmet kupoprodaje. Tapija postaje potvrda o neograničenoj privatnoj svojini nad zemljom jer, osim seljaka, niko više nije bio njen gospodar. Tapiju ne izdaje više kadija, već domaće narodne kancelarije i sudovi. Odmah posle ustanka bile su osnovane narodne kancelarije u Beogradu i Kragujevcu koje će kasnije da prerastu u sudove. Zatim je, 1821. godine, bio osnovan sud u Požarevcu, a 1823. sudovi u Šapcu, Valjevu i Jagodini. Za izdavanje ili prenos tapija od nepokretnih dobara sudovi su naplaćivali taksu po dva groša, bez obzira na vrednost nepokretnosti.[7]

Svojina nad zemljom se pravno uobličava u periodu od 1830. do 1844. godine. Bilo je to vreme krupnih reformi svojinskih odnosa u čitavom Osmanskom carstvu, koje će zahvatiti i Srbiju. Hatišerifima iz 1830. i 1833. godine, ukidaju se formalno feudalne dažbine u Srbiji i sve obaveze seljaka prema spahijama. Istovremeno, Srbija preuzima obavezu da carski porez plaća u ugovorenom iznosu i da porez prikupljaju lokalni knezovi, umesto carskih haračlija. Proglasom kneza Miloša Obrenovića iz 1834. godine i odlukom Sretenjske skupštine 1835. godine, obznanjeno je ukidanje spahijskog sistema u Srbiji. Zatim je neograničeno vlasništvo seljaka nad zemljom uvedeno Zakonom o povraćaju zemlje iz 1839. godine. Te iste godine bio je ukinut spahijski sistem u čitavom Osmanskom carstvu. Hatišerifom iz Đulhane, ukinuti su spahiluci i svaki građanin je proglašen vlasnikom poseda koji je do tada obrađivao. Osmanska država više nije imala potrebe za spahijama jer je uvela redovnu vojsku.[8] Neograničeno vlasništvo seljaka nad zemljom u Srbiji potvrđeno je Građanskim zakonikom koji je bio donet 1844. godine.

Knjaz Miloš (1848. rad austrijskog slikara Morica Dafingera, Narodni muzej)

Prince Milos (a 1848 painting by Moritz Daffinger, an Austrian painter, The National Museum)

Posle hatišerifa iz 1830. i 1833. godine, naseljavanje Srbije dobija novi zamah. Mnogi doseljenici iz okolnih krajeva pritiču u zemlju koja će ih hraniti. Zauzimaju što je još nezauzeto, krče što je još neiskrčeno i kupuju od Turaka koji se iseljavaju ono što oni nude na prodaju. Knez Miloš se i dalje drži pravila da je zemlja onoga koji je radi, što je podsticajno delovalo na nove sopstvenike. "Drugim rečima, sve što seljak zahvati i obradi, postaje njegova privatna

[7] Groš je bio turska obračunska novčana jedinica kojom je izražavana vrednost svih vrsta stranog novca u opticaju. U vreme kada su u Srbiji uvedene sudske takse za izdavanje tapija, dukat cesarski (austrijski zlatnik) vredeo je 18 groša, a talir orlaš (austrijski srebrenjak) 8 groša. Vukašin J. Petrović, Nikola J. Petrović, citirano delo, str. 367, 479.

[8] Zoran Njegovan, citirano delo, str. 95.

and the tithe due, the tenth part of his produce, to the Spahi landowner.

Serbian peasant is to become full owner of the land on which he lived only with the abolishment of the Spahi landownership system and the introduction of the private proprietary land rights in the1830s. After the Second Insurrection in 1815, with his policy of active colonisation, Prince Milos Obrenovic accelerated the growth of the number of bastina land plots, and through his interventions into the division of land, kept the bastina land plot within modest proportions, as it previously had, before the Insurrection. Upholding the Ottoman principle that the land could be held only if cultivated, the new settlers were given not only the devastated land portions, but also the areas expropriated from the autochthonous population whenever it was incapable of cultivating land.[4] In his Decree No. 88, of 10 May 1822, Prince Milos ordered as follows:

"I hereby grant the powers to squires to allow foreign settlers to settle everywhere in the villages wherever squires should deem suitable, and the land for cultivation or allowed for clearing to be to them given, or from some land-holder, not diligent or having more than he can cultivate, plot to be taken away and to the newly settled or a better husbandry hand so be entrusted."[5]

The Sublime Porta (the Ottoman Empire chief state administration), did not oppose Prince Milos when he self-proclaimed his right to expropriate land from the indigenous peasantry and allocate it to the new settlers, as the implementation of such measures of agrarian policy did not undermine any of the fiscal interests of the Sultan. On the contrary, the state treasury in Istanbul could only have profited from such measures as with the growth of the number of inhabitants in Serbia, the number of taxpayers was also constantly growing. While in 1820 there was less than half a million people living in Serbia, by 1829 estimates were that there were already 700.000 inhabitants.[6] During the 1820s, at the time of abolition of the spahi-landlord system, the peasant was exempt from paying the spahi tithe due tax, but not from paying his tax dues to the Sultan. Economic strength of the peasant would remain the source of revenues for the imperial state treasury in Istanbul throughout the time until the international recognition of the independence of Serbia at the Berlin Congress in 1878. During all that period, Serbia was paying harach tax to the Sultan.

Settling of the land in Serbia and the creation of the new bastina land properties and proprietary heirs, in the beginning presented more of a technical than of a legal action. Only later is to start setting up of property boundaries and issuing of tapia land title certificates, court disputes and lawsuits to be conducted in connection with ownership rights over land, with the real estate increasingly becoming the subject of purchase and sales. Tapia is to become a title deed certificate on an unlimited land proprietary private right, because except for peasants, there was no longer any other lord and master over the land. Tapia certificate was no longer being issued by the quadi, but by the local national offices and courts of law. Immediately following the Insurrection, national offices were established in Belgrade and in Kragujevac, which are in time to grow into courts of law. Thereupon, in 1821, court of law was established in Pozarevac, and in 1823 the courts were also set up in Sabac, Valjevo and Jagodina. For the issue or transfer of tapia title deed certificate on immovable property, courts were collecting the court tax in the amount of two groschen, regardless of the value of the immovable property.[7]

Land tenure was to be legally regulated in the period from 1830 to 1844. It was the time

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4 Zivota Djordjevic: Mali seljacki posed kao ogranicenje razvoja privrede Srbije u IX veku (Small land-owners as a limitation to the economic development of Serbia in the 19th century), Ekonomska misao, No. 3, 1989, p. 375.

5 Vukasin J. Petrovic, Nikola J. Petrovic: Gradja za istoriju Kraljevine Srbije (Corpus for the history of the Kingdom of Serbia), Knjiga druga, Belgrade, 1884, p. 483.

6 Mihailo Gavrilovic: Milos Obrenovic, Knjiga druga, 1909, p. 258.

7 Groschen (gros) was a Turkish monetary unit expressing the value of all types of foreign currencies in circulation in the country. At the time when the court taxes were introduced in Serbia for the issue of tapia deeds, one imperial ducat (Austrian gold coin) had the value of 18 groschen, and the eagle taler (Austrian silver coin) was worth 8 groschen. Vukasin J. Petrovic, Nikola J. Petrovic, op. cit. p. 367, 479.

sopstvenost. Seljački apetit za zemljom dobija time novo podsticanje. Sekira radi na sve strane: seče se gora da se ogradi što se zauzelo; krči se šuma da se dođe do nove zemlje za obrađivanje."[9]

Zaštita seljaka od propadanja

Seljakova svojina nad zemljom, proklamovana 1830-ih godina, koja je trebalo da postane osnov kapitalističkog načina poljoprivredne proizvodnje, razvijala se u Srbiji veoma sporo. Jedan od uzroka zastoja u ukrupnjavanju i tehničko-tehnološkom napredovanju zemljišnih poseda, bila je primena mera kojima je ograničavan promet zemlje u cilju zaštite sitnih seljaka od propadanja.

Seljak, sitni baštinik, bio je poreski obveznik na čijim plećima je počivala poreska snaga države. Da su seljaci masovno propadali i gubili zemlju, što je bila karakteristika prvobitneakumulacije kapitala u ranoj kapitalističkoj fazi svake zemlje, država bi izgubila osnovni izvor poreskih prihoda. A seljak je, objektivno, stalno bio izložen opasnosti od propadanja. Reprodukcija njegovog poljoprivrednog gazdinstva često je bila ugrožena ćudima prirode: poplavama, sušama, stočnim bolestima. Tada bi seljak upadao u dug zelenašima, a ako ne bi imao novac da dug vrati, odužio bi ga svojim gazdinstvom i propadao.

Da propadanje seljaka ne bi postalo masovna pojava, knez Miloš je, 29. maja 1836. godine, izdao ukaz sledeće sadržine:

"Da bi se predupredila bjednost i propasti mnogih familija koje od tuda proishode, što mnogi zadužuju se na svoja dvižima i nedvižima dobra, pa kad ne mogu ovog duga svog isplatiti, prodaju im se sva dobra na koje su dug učinili, i tako im žene i djeca lišena svoga imjenija, sasvim propadaju, uređujemo i zaključujemo da u varošima na kuću u kojoj ko s familijom živi, a u selima na kuću, baštinu, dva vola i kravu niko se zadužiti ne može niti će se intabulacija na rečena dobra učinjena i pred kakvim sudom za pravilnu priznati, da bi takvim načinom bezpomoćne žene i djeca, po upropastćeniju svega imjenija krov barem nad glavom imala.

Ovdje se ne razumevaju dućani, hanovi, kuće, ako ji ko više ima osim one u kojoj živi, kao i proče imjenije varošanina na koje mu je slobodno zajam činiti, tako isto ne razumjeva se proče imjenije seljanina krom je gore navedenog, t.j. kuće, baštine, dva vola i krave, od koji živi."[10]

Jovan Hadžić, tvorac Srbijanskog građanskog zakonika 1844.

Jovan Hadžić, creator of the Serbian Code Civile 1844.

Pokazaće se da je ukaz kneza Miloša od 26. maja 1836. godine bio od istorijskog značaja za gotovo vekovni zastoj u razvoju kredita u Srbiji. Ova prva kreditno-politička mera imaće dalekosežne, dugoročne nepovoljne posledice pre svega na razvoj hipotekarnog kreditiranja poljoprivrede, jer će se iz nje izroditi čitav sistem tzv. okućnog prava.[11] Primenom odredaba okućnog prava, Srbija je postala država sitnih zemljoposednika, koji su skoro čitav vek bili van domašaja hipotekarnog kredita. Zakonska ograničenja

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9 Slobodan Jovanović: *Ustavobranitelji i njihova vlada 1838-1858*, Beograd, 1933, str. 10.

10 *Zbornik zakona i uredaba za Knjaževstvo Srbije*, br XXX, str. 119.

11 Sistem pravnih propisa kojima je ograničavan promet poljoprivrednog zemljišta u Srbiji od 1836. do 1929. godine, Jelenko Petrović je nazvao okućno pravo. J. Petrović objašnjava da je, zahvaljujući ustanovljenju zaštićenog zemljišnog minimuma, seljak dobijao sigurnost da neće ostati bez kuće i nešto zemlje; zaštićeni zemljišni minimum tako seljaka "okućuje", pa mu priliči naziv okućje, a sistemu pravnih normi kojima se uređuje okućje, priliči naziv okućno pravo. Jelenko Petrović, Okućje ili zaštita zemljoradničkog minimuma, Beograd, 1930, str. 87.

of major reforms in the proprietary relations in the entire Ottoman Empire that will involve Serbia as well. Sultan's Edicts from 1830 and 1833 formally abolished feudal taxes and dues in Serbia and all the liabilities of peasants towards the spahi-landowners. At the same time, Serbia undertook to pay the imperial tax in the contracted amount, and to have taxes collected by the local squires, instead of imperial harachli-tax collectors. In the proclamation of Prince Milos Obrenovic of 1834, and the decision adopted at the Visitation of the Virgin Day Assembly in 1835, it was proclaimed that the spahi-landownership system in Serbia is abolished. An unlimited ownership and tenure of land by the peasants was introduced in the Law on Land Restitution in 1839. In that same year, spahi-landownership system was abolished in the entire Ottoman Empire. Sultan's Edict of Djulhana abolished spahi-fiefdoms and every citizen was proclaimed the owner of the land that he was currently cultivating. Ottoman Empire no longer had the need for the spahis because it had already introduced the regular army.[8] The unlimited land tenure of peasants in Serbia was confirmed in the Code Civile passed in the year 1844.

After the Sultan's Edicts from the year 1830 ad 1833, settling of colonists in Serbia gained a new momentum. Many settlers from the neighbouring lands arrived in the country that was to feed them. They took possession of what land was yet not in tenure, cleared the land that still remained uncultivable and purchased from Turks, who were preparing to emigrate, everything that they were ready to sell. Prince Milos still adhered to the rule that the land belongs to the one who is working on it, which was an additional impetus for the new owners. "In other words, everything that the peasant holds and cultivates becomes his own private property. Peasant apatite for land thus gained a new momentum. The hatchets flashed on all the sides: woods were being cut down to serve for fencing of what has been seized; forests were being cleared to provide land for new cultivation."[9]

Protection of peasants from ruin

Peasants' right of tenure over land proclaimed in the 1830s, intended to serve as basis for promotion of a capitalist manner of agricultural production, developed in Serbia very slowly. One of the causes for the setback in aggregation and technical and technological progress, and for the lack of growth of farming lands, was the implementation of measures limiting trade in land property for purpose of protecting small rural land-owners from ruin.

The peasant, now a small land-owner, was the taxpayer on whose shoulders rested the burden of the entire fiscal strength of the nation state. If the peasants were to massively fall in ruin and lose their land, a circumstance characteristic for the initial accumulation of capital in the early capitalist phase of development in every country, the State would have lost its basic source of tax revenues. Truthfully, however, the peasant was continuously exposed to and faced with the danger of ruin. Production on his farming homestead was often threatened by the whims of nature: floods, droughts, animal diseases. Peasant would thereupon fall into debt to money-lending loan sharks, and if unable to repay his debt would settle it with his homestead and fall into ruin.

Prince Milos, striving to avoid a massive ruin of the peasantry, on 26 May 1836, promulgated the ordinance which reads as follows:

"Aiming to avert poverty and ruin of many families brought upon them by the borrowing of many when pledging their movable and immovable property, and once unable to properly settle so incurred debt, all their goods pledged for debt are sold, thus leaving their wives and children deprived of all subsistence, thrown in abject poverty, we hereby order and proclaim that in the townships, be it a house where he with his family lives, and in the villages, be it a house, land, a pair of oxen and one cow, no person shall borrow money pledging the same, and neither shall any in tabulation made on the above property be recognised before any magistrate or tribunal as just and proper, so that

[8] Zoran Njegovan, op. cit. p. 95.

[9] Slobodan Jovanovic: Ustavobranitelji i njihova Vlada 1838-1858 (Defenders of the Constitution and their government 1838-1858), Belgrade. 1933, p. 10.

koja je hipotekarnom kreditu u poljoprivredi postavljalo okućno pravo, biće ukinuta tek sa osnivanjem Privilegovane agrarne banke 1929. godine.

Zakonom o povraćaju zemlje iz 1839. i Građanskim zakonikom iz 1844. godine bili su definitivno uređeni privatno-svojinski odnosi na zemlji, tako što je svaki Srbin postao od svoga dobra savršen gospodar ili pravi baštinik, u kom se zakonom obezbeđava i zaštićava.[12] Jovan Hadžić, tvorac Srbijanskog građanskog zakonika, uveo je u Srbiju pravnu ustanovu potpune, neograničene, apsolutne sopstvenosti na zemlji, po ugledu na Austrijski građanski zakonik koji se u ovom pitanju oslanjao na rimsko pravo.[13] Ograničavanje svojinskih prava zaštitom zemljoradnika od propadanja, na osnovu Miloševog ukaza iz 1836. godine, nikako nije bilo u skladu sa ovom pravnom ustanovom. Kako je Hadžić bio pozvan u Srbiju 1837. godine iz Austrije da bi napisao građanski zakonik, Miloš se trudio da umanji značaj pomenutog ukaza. On je objašnjavao Hadžiću: "*… po selima kuće, nešto zemlje i koj komad stoke za dug prodavati ja sam zabranio, iz uzroka što ja želim preduprediti pijanice, kockaroše i lenštine u rđavom namereniju njiovom, upropastiti kuće nad glavom u kom slučaju žene i deca njiova Praviteljstvu na tužbu i dosadu dolaze.*"[14]

Ustanova zaštite seljaka od propadanja nije našla mesta u prvom srpskom Zakonu o postupku sudskom u građanskim parnicama iz 1858. godine, što je bilo u skladu sa slovom Građanskog zakonika. Jer, ako je seljak savršeni gospodar svoje zemlje, kuće u kojoj živi i stoke koja mu služi za vuču i mužu, to je značilo da ima sva prava da ih otuđi, pa i prodajom za dug. Tako je zaštita seljaka od propadanja koja je bila propisana Miloševim ukazom iz 1836. godine bila, u pravnom smislu reči, dovedena u pitanje. Međutim, pravne norme koje su seljaka proglasile neprikosnovenim titularom svojine na zemlji, bile su sredinom XIX veka daleko od njegovih stvarnih ekonomskih mogućnosti da tu zemlju sačuva kao sopstvenost.

Pravno slobodan, seljak je i dalje bio ekonomski zaostao. Obrađivao je zemlju na primitivan način kao i ranije, pa su prinosi jedva podmirivali potrebe njegovog porodičnog domaćinstva. Kako su robno-novčani odnosi sve više prodirali na selo potiskujući naturalno privređivanje, dolazi do izmene načina života u kojem jača duh individualnosti. Potreba pojedinca za prisvajanjem materijalnih dobara dovodi do raspadanja patrijarhalnih porodičnih zadruga. Usitnjena seoska domaćinstva, prepuštena sama sebi, počinju da se zadužuju ne samo kada je nerodica, ne bi li se porodica prehranila, već i kada je rodna godina, da bi se kupovala različita dobra na seoskim pijacama i u varoškim dućanima. Nepismen i neuk, seljak nije mogao da sagleda posledice zapadanja u dugove. Njemu je bilo samo važno da nađe zajam, pa ga je uzimao tamo gde je mogao, ne raspitujući se za uslove.[15] Zbog toga je u Narodnoj skupštini, koja je bila uspostavljena 1858. godine, u prvi plan izbilo pitanje prezaduženosti seljaka i opasnosti od njihovog propadanja. Pod uticajem upozorenja narodnih poslanika, već 1860. godine, u Građanski sudski postupak se unosi odredba kojom se seljaku izuzimaju od naplate za dug dva vola ili tegleća konja, plug i hrana za petnaest dana, a visokim rešenjem od 13. marta 1861. godine propisuje se da seljak ne može zadužiti "ni dva dana oraće zemlje ni sabrani plod sa nje".[16] Na taj način, zakonodavstvo kneza Miloša o zaštiti seljaka od propadanja iz 1836. godine, doživljava renesansu. Novina je bila u tome što je prvi put bila konkretno utvrđena od duga zaštićena veličina zemljoradničkog minimuma od dva dana oraće zemlje, što bi odgovaralo površini od oko 0,8 hektara.

Pokušaji uređivanja poljoprivrednog kredita

Za obrađivanje zemlje koju je stekao, seljaku je trebalo novaca. Međutim, u vreme uvođenja privatno-svojinskih odnosa na selu, u Srbiji nije postojala nijedna državna ni privatna finansijska

[12] Član 213 Građanskog zakonika za Kneževin*u Srbiju*, 1844.
[13] Miroslav Đorđević: "Pravni transplanti i Srbijanski građanski zakonik iz 1844", *Strani pravni život*, br. 1, 2008, ss. 62-84.
[14] Pismo kneza Miloša Jovanu Hadžiću od 28. jula 1837. godine. Državni arhiv, Akta Jovana Hadžića; prema: Jelenko Petrović, citirano delo, str. 88.
[15] Milan J. Komadinič: Problem seljačkih dugova, Beograd, 1934, str. 11.
[16] *Zbornik zakona i uredama za Knjaževstvo Srbije*, br. 14, 1862, str. 32.

in such a manner helpless women and children, rendered pauper by the ruin of all their chattels, shall at least have a roof over their heads preserved.

Present ordinance shall not be deemed to extend on shops, inns, houses, if a person should have more than the house where he with his family lives, or such property of a city-dweller which is free for him to pledge it for a loan, and shall also be deemed not to extend to the other property of a villager in addition to the above said, i.e. a house, land, a pair of oxen and a cow necessary for his subsistence."[10]

Time will prove that Prince Milos's ordinance of 26 May 1836 was of a historical importance for an almost century-long delay in the development of the crediting policy in Serbia. Being the earliest credit policy measure, it shall have far-reaching, long-lasting and negative consequences primarily on the development of mortgage loan financing of agriculture, as it will give ground for the creation of an entire system of the so-called homestead law.[11] Implementation of the homestead law provisions led Serbia to become the country of small land-owners, who remained for almost an entire century beyond the reach of mortgage loans. Legal restrictions on the mortgage loans in agriculture were instituted by the homestead law, to be suspended only with the establishment of the Privileged Agrarian Bank in 1929.

The Law on Land Restitution in 1839, and the Code Civile in 1844, finally and definitely regulated the private land ownership or free-hold tenure, in such a manner that every Serb was vested with the right of becoming "*of his own land property his own lord and master or a true landowner, by that same Law so secured and protected.*"[12] Jovan Hadzic, the creator of the Serbian Code Civile, introduced in Serbia legal institute of full, unlimited, and absolute proprietary free-hold land tenure, after the Austrian Code Civile, which in this matter applied the Roman law.[13] Limitation of the proprietary rights by protecting farmers from financial ruin, in accordance with Prince Milos's ordinance of 1836, in no manner was concordant with this legal institute. When Jovan Hadzic was recalled to Serbia in 1827 from Austria to write the Code Civil, Prince Milos strived to undermine the importance of the above mentioned ordinance. He would argue with Hadzic: "… In villages, a family home, a bit of land and some cattle I have prohibited from being sold for debt settlement, for the reason that I wish to prevent drunkards, gamblers and indolents in their foul intent of bringing ruin and misery over the heads of their families, when in such cases their pauper women and children plead and complain and bother the Magistrates."[14]

The institute protecting farmers from

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10 Zbornik zakona i uredaba za Knjazevstvo Srbije (Code of Laws and Regulations for the Principality of Serbia), No. XXX, p. 119.

11 The system of legal regulations limiting the trade in agricultural land in Serbia, in the period from 1836 to 1929, Jelenko Petrovic called the homestead law. J. Petrovic argues that, thanks to the introduced protection of agrarian land minimum, peasant was granted security not to be deprived of his home and a bit of land; agrarian land minimum so protected provided for a secure "home and stead" for the peasant, and thus the appropriate name of a homestead, and the system of legal norms regulating the matter of homestead received the appropriate name of a homestead law. Jelenko Petrovic, Okucje ili zastita zemljoradnickog minimuma (Homestead or Protection of the Agrarian Land Minimum), Belgrade, 1930, p. 87.

12 Code Civile of the Principality of Serbia, Article 213, 1844.

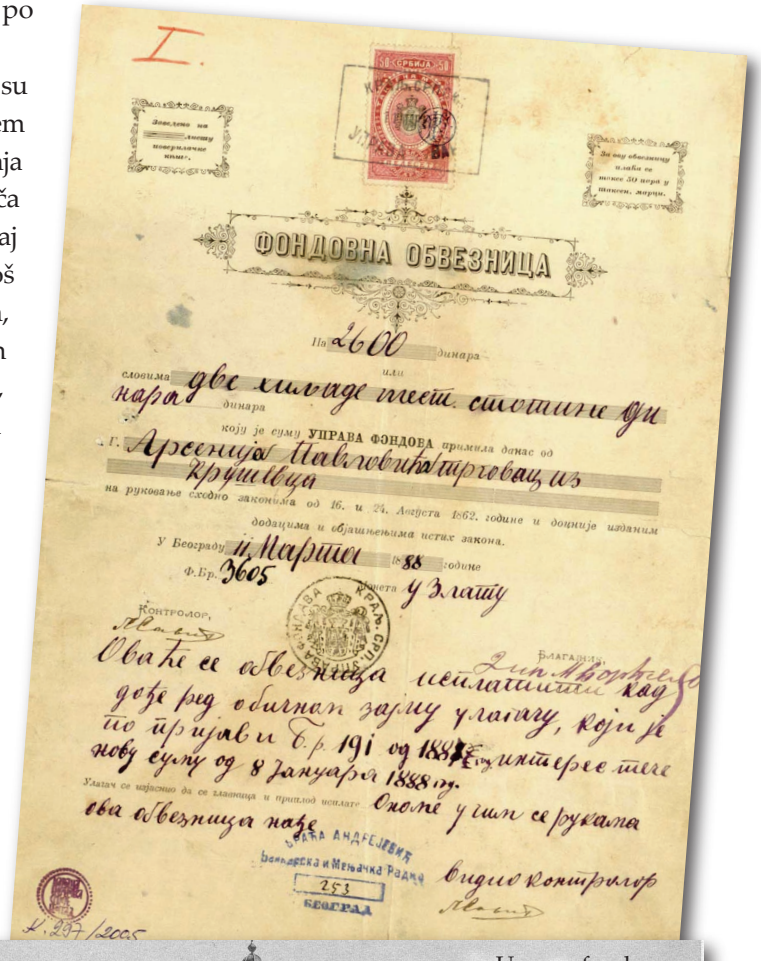
13 Miroslav Djordjevic: Pravni transplanti i Srbijanski gradjanski zakonik iz 1844 (Legal transplants and the Serbian Code Civil of 1844), Strani pravni zivot, No. 1, 2008, p. 62-84.

14 Letter of Prince Milos sent to Jovan Hadzic, of 28 July 1837. State Archives, Akta Jovana Hadzica; according to Jelenko Petrovic, op. cit., p. 88.

institucija, niti zemljoradnička kreditna zadruga kojoj bi se seljak obratio za zajam. Jedini izvor zajmovnog kapitala bio je zelenaški kapital. Kreditori seljaka bili su varoški trgovci, državni činovnici i imućnije seoske gazde. Seljaci su zelenašima plaćali godišnju kamatu od 24% do 50%, a kada su zajmili manje sume na kratko vreme, plaćali su godišnje i do 120%, odnosno "po pola dinara ili po dinar na banku na mesec".[17]

Kneževske vlasti Srbije u više navrata su bezuspešno pokušavale da upošljavanjem javnih fondova započnu rešavanje pitanja kreditiranja poljoprivrednih proizvođača i suzbijanja zelenaštva. Prvi pokušaj učinjen je 1836. godine, kada je knez Miloš Obrenović propisao davanje povoljnih, šestoprocentnih zajmova privatnim licima iz crkvenog fonda i fonda siročadi, a naredne 1837. godine naredio da pijačna kamata ne sme da bude iznad 12%. Kako je tražnja za zajmovnim kapitalom bila mnogo veća od ponude, ova naredba je ostala bez ikakvog dejstva. Posle Miloševog pada 1839. godine, kao zajmovni kapital davan je i novac iz državne rezervne kase, a počev od 1847. godine, pod vladom kneza Aleksandra Karađorđevića, za zajmove su poslužili i besplodni sudski, školski i udovički fondovi. Pozajmice iz fondova odobravane su na tri godine, uvek uz godišnju kamatu od 6%. Godine 1858. započeto je prvi put i odobravanje dugoročnih hipotekarnih kredita iz javnih fondova, sa rokom otplate do 23,5 godina. Zajmove iz javnih fondova, čiji je minimalni iznos bio 300 cesarskih (austrijskih) dukata, razgrabili su imućniji varoški trgovci i tako došli do još jednog izvora kreditiranja sela pod zelenaškim uslovima.[18]

Drugi pokušaj države da se seljaku obezbedi zajmovni kapital, učinjen je osnivanjem Uprave fondova pri Ministarstvu finansija 1862. godine. Zbog stalnog nedostatka gotovine u državnoj blagajni, 1860. godine obustavljeno je odobravanje dugoročnih hipotekarnih kredita iz javnih fondova i, dve godine kasnije, svi javni fondovi bili su centralizovani i stavljeni


ФОНДОВНА ОБВЕЗНИЦА

На 2600 динара

словима две хиљаде шест. стотине ди-
нара динара

који је суму УПРАВА ФОНДОВА примила данас од

г. Арсенија Павловића трговца из
Крушевца

на руковање сходно законима од 16. и 24. Августа 1862. године и доцније изданим додацима и објашњењима истих закона.

У Београду 11 Марта 1888 године

Ф.Бр. 3605

Кнеза у Злату

Контролор,

Благајник,

Ова ће се обвезница исплатити кад
дође ред обичан зарму улагачу, који је
по пријави бр. 191 од 188[illegible] и интересе тече
нову суму од 8 Јануара 1888 г.

Улагач се изјасни да се главница и приход исплате Онопе у гиш се рукама

ова обвезница наше

Видио Контролор

Л. 297/2005


Uprava fondova
Funds Directorate

[17] Jelenko Petrović: citirano delo, str. 158.

[18] Velimir Bajkić: Seljački *kredit*, Beograd, 1928, str. 34.

financial ruin did not find its place in the first Serbian Law on Judicial Procedure in Civil Litigation of 1858, which was concordant with the letter of the Code Civile. The argument was that if the peasant was deemed a perfect lord and master over his land, the house in which he lives and of the cattle that serve him for ploughing and milking, he should equally be deemed free to dispose and alienate the same, even by selling it to settle a debt obligation. Thus the protection of peasants from financial ruin prescribed in the Prince Milos's ordinance of 1836 was, in the legal sense, brought under a question mark. However, legal norms that have proclaimed the peasant an undisputable holder of the title deed over his land, in the mid-19th century were very far indeed from his real economic capability to preserve and keep that land-owned property in his own hands.

Although legally free, the peasant still remained economically backward. He was farming the land in a primitive manner and in the ways of old; his yield barely covering the basic necessities of his family household. As the commodity and money relations started increasingly to penetrate into villages suppressing natural husbandry as means of earning, the way of living also started to change, invigorating spirit of individuality. The need of an individual to acquire material goods brought about the disintegration of patriarchal family cooperatives. Fragmented rural households, left to cope alone, started to borrow not only when the year was bad for crops, in order to feed the family, but also when the year was good, to purchase various goods at village marketplaces and in township shops. An illiterate and unenlightened peasant could not grasp the consequences of falling in debt. He only cared for finding the loan, taking loans where he had access, without asking any questions about borrowing conditions.[15] This caused the issue of over-indebtedness of peasantry and the danger of their financial ruin to be placed at the fore in the National Assembly, which was established in 1858. Impressed by warnings voiced by the people's deputies, already in 1860, provision was introduced in the Civil Judicial Procedure prohibiting the peasant, in case of debt collection, to be deprived of a pair of oxen or draft horses, a plough, and food for fifteen days, while a high decree of 13 March 1861 prescribed that a peasant, when borrowing, can pledge "neither a two day's ploughing, nor the fruit from it harvested".[16] In this way, Prince Milos's legislature on protection of peasantry from ruin, of the year 1836, experienced its renaissance. The novel idea was in setting up, for the first time, a concretely determined size of the farming-land minimum to be exempt from the burden of debt, in the amount of two day's ploughing field, corresponding to some 0.8 hectares.

Attempts at regulating agricultural loans

Peasant, when farming the land he acquired, needed the money. However, at the time of introduction of the private ownership relations in the rural areas, there was not even a single either state or private financial institution in Serbia, or any other farming crediting cooperative, that would be accessible to the peasant for granting him a loan. The only source of lending capital was the capital in the hands of money lenders. Creditors financing peasants were the township merchants, civil servants and wealthier village chieftains. Peasants were paying money lenders an annual interest rate from 24% to 50%, and when borrowing smaller amounts short-term they would be paying even up to 120% annual interest rate, i.e. "half a dinar, or a dinar, for the ten dinars banknote, for a month".[17]

Authorities of principality of Serbia, on several occasions tried to set in motion resolution of the issue of financing agriculture and farmers and suppression of loan sharking by engaging public funds, but without any success. The first such attempt was made in 1836 when Prince Milos Obrenovic prescribed

[15] Milan J. Komadinic: Problem seljackih dugova (Problem of farmers debts), Belgrade, 1934, 11.
[16] Zbornik zakona i uredaba za Knjazevstvo Srbije (Code of Laws and Regulations of the Principality of Serbia), No. 14, 1862, p. 32.
[17] Jelenko Petrovic: op. cit. p. 158.

pod nadležnost Ministarstva finansija. Počevši sa radom 1864. godine, Uprava fondova je odobravala dugoročne šestoprocentne zajmove, na hipoteku na nepokretna dobra, i to samo do polovine procenjene vrednosti nepokretnosti. Pod hipoteku su mogle da se stave kuće, kućni placevi, njive, vodenice, livade i zemlja pod voćnjacima, vinogradima i šumama.[19] Hipotekarni zajmovi Uprave fondova bili su nedostupni sitnom seljaku jer su ga ograničavale odredbe okućnog prava. Ove zajmove su, praktično, mogli da dobiju samo imućniji trgovci, činovnici i seljaci. Oni su često sredstva zajmova Uprave fondova koristili kao zelenaški kapital. Zahvaljujući ovim zajmovima, "zelenaši iz palanke su došli do gotovine koju su davali seljaku pod interes sa dvesta na sto zarade".[20]

Treći pokušaj da se javnim kreditom pomogne poljoprivredna proizvodnja, učinjen je osnivanjem okružnih štedionica na osnovu zakona iz 1871. godine. Centralizacija javnih fondova u Upravi fondova u Beogradu dovela je do produbljivanja podvojenosti između varoši i sela i tako stvorila suprotan efekat od onog željenog: približavanja jeftinijih izvora zajmovnog kapitala selu. Zbog toga je odlučeno da se u lokalnim zajednicama, na nivou okruga, koncentrišu slobodna novčana sredstva i da se ovim sredstvima kreditiraju poljoprivredni proizvođači. Bilo je predviđeno da se kapital okružnih štedionica formira od crkvenih i manastirskih kapitala, opštinskih kapitala, starateljskih fondova, bolničkih prireza, depozitnog novca kod okružnih sudova i privatnih štednih uloga. Zajmovi okružnih štedionica bili su namenjeni isključivo poljoprivrednicima iz okruga u kojem bi se one osnivale. Zbog siromaštva izvora kapitala iz javnih fondova na selu, okružne štedionice bile su osnovane 1872. godine samo u pet od sedamnaest okruga, koliko ih je tada bilo u Srbiji, i to u Kragujevcu, Užicu, Kruševcu, Smederevu i Čačku. Skromni kapital okružnih štedionica bio je plasiran u sedmoprocentne zajmove koje su brzo prigrabili imućniji žitelji okruga. U nestašici kapitala, okružne štedionice bile su "za kratko vreme po svojoj pojavi raznesene od kobaca, pre nego što je seljak i saznao za njih".[21] Ljudi koji su uzeli zajmove iz štedionica, neredovno su ih vraćali. Nelikvidne i sa masom nenaplaćenih potraživanja, one su likvidirane 1898. godine, a njihovu aktivu i pasivu preuzela je Uprava fondova u Beogradu.

Izgledalo je da će se mogućnosti jeftinijeg kreditiranja poljoprivrednika, makar onih imućnijih, bar u skromnoj meri stvoriti u Srbiji sa pojavom privatnih novčanih zavoda. Privatno bankarstvo pojavilo se u Srbiji krajem 1860-ih godina, a počelo da se razvija sa osnivanjem Privilegovane narodne banke Kraljevine Srbije 1884. godine. U vreme njenog osnivanja, Srbija je imala samo sedam privatnih novčanih zavoda sa 3,2 miliona dinara uplaćenog kapitala.[22] Krajem XIX veka, bankarska kamata na dugoročne zajmove u Srbiji kretala se između 9% i 12%, pa je bankarski kapital bio pet do deset puta jeftiniji od zelenaškog, na koji su se oslanjali seljaci. Zbog toga oni pokušavaju da dođu do bankarskih kredita. Međutim, njihovi pokušaji većinom propadaju jer privatne banke kreditiraju prvenstveno varošane. One su izbegavale da daju zajmove seljaku, jer je to bio posao skopčan sa specifičnim rizikom.

Seljak, čak i onaj imućniji, sa više zemlje od zaštićenog minimuma koji nije bilo moguće staviti pod hipoteku, teško je mogao da postane hipotekarni dužnik. Svojinu na zemlji karakterisala je nedovoljna imovinsko-pravna sigurnost, jer tada u Srbiji još uvek nisu bile izrađene zemljišne knjige ni katastar. Katastarski premer zemljišta u Srbiji započinjan je u dva navrata tokom 1890-ih godina, "ali u užim razmerama i necelishodno, pa je napuštan".[23] Pravo svojine jamčilo se tapijom u kojoj nije bilo strogo utvrđenih zemljišnih međa. Kada

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19 Momir Glomazić: *Istorija državne hipotekarne banke 1862-1932*, Beograd, 1933, str. 55.

20 Velimir Bajkić, citirano delo, str. 35.

21 Velimir Bajkić, citirano delo, str. 36.

22 Naime, posle propasti Prve srpske banke koja je poslovala samo dve godine, od 1869. do 1871, osnovani su Beogradski kreditni zavod (1871), Smederevska kreditna banka (1871), Valjevska štedionica (1871), Šabačka štedionica (1880), Beogradska zadruga (1882), Srpska kreditna banka (1882) i Obrenovačka štedionica (1883). Veroljub Dugalić: *Narodna banka 1884-1941*, Beograd, 1999, str. 17.

23 Jelenko Petrović, citirano delo, str. 399.

granting of favourable, six-percent loans to private persons from church funds and funds for orphaned children, and in 1837 ordered the green-market interest rate not to exceed 12%. However as the demand for lending capital exceeded by far the supply, and this ordered remained without any effect. After the fall of Prince Milos, in 1839, even the money from the state treasury reserves was deployed as lending capital, and starting from 1847, under the rule of Prince Aleksandar Karadjordjevic, loans were served also from the sterile judicial, schools' and widows' funds. Lendings from funds were approved on a three-year period, and always with the interest rate of 6%. In 1858, for the first time the approval of long-term mortgage loan started from the public funds, with the maturity of up to 23.5 years. Loans from public funds, in the minimum amount of 300 imperial (Austrian) ducats, went for grabs of the wealthier urban merchants, and thus yet another source of financing villages under loan sharking terms was created.[18]

The second attempt by the state to secure lending capital for the peasants was made with the establishment of the Funds Directorate at the Ministry of Finance in 1862. Due to the continuous shortage of cash in the state treasury, in 1860 all approval of long-term mortgage loans from the public funds was suspended, and two years later, all the public funds were centralised and placed under the jurisdiction of the Ministry of Finance. Funds Directorate started work in 1864 with the approval of long-term six percent mortgage loans on immovable property, but only up to the amount of half appraised value of the immovable property. Mortgage could be taken on the houses, housing land plots, farming fields, water mills, meadows and land under orchards, vineyards and forests.[19] Mortgage loans granted by the Funds Directorate were inaccessible to the rural small land-owner because he was constrained by the provisions of the homestead law. These loans were practically given only to the wealthier merchants, civil servants and farmers. They were often using the money from loans received from the Funds Directorate as their loan sharking capital. Thanks to these loans, "money lenders from the township acquired cash which in turn they would lend to peasants at a rate of two hundred gained on one hundred loaned".[20]

The third attempt to support agricultural production through public financing was made when district savings institutions were established under the Law of 1871. Public funds centralised at the Funds Directorate in Belgrade caused the deepening of the gap between the townships and villages, actually creating an effect opposite to the desired one: bringing closer low-cost sources of lending capital to the village. Decision was made thereupon to concentrate in the local communities, at the level of the districts, disponible money to be used for financing agricultural producers. The idea was that the capital of the district savings institutions be formed from the church and monastery capital, from the municipal capital, trust funds, hospital dues, money deposited with district courts, and from the private savings deposits. Loans of the district savings institutions were to be allocated exclusively to the farmers from the respective district where they would be formed. Scarcity of the capital sources from public funds in villages caused the district savings institutions

[18] Velimir Bajkic: Seljacki krediti (Peasant Loans), 1928, p. 34.
[19] Momir Glomazic: Istorija drzavne hipotekarne banke 1862-1932 (History of the State Mortgage Bank 1862-1932), Belgrade, 1933, p. 55.
[20] Velimir Bajkic: op. cit., p. 35.

su potrebe hipotekanog kredita to nalagale, varošani su bili u prilici da brže i jeftinije dobiju stručno izrađen i jasno omeđen plan imanja koji su, uz tapiju, prilagali novčanom zavodu od kojeg su tražili hipotekarni kredit. Dakle, iako je prerasla u pravnu potvrdu o vlasništvu na nepokretnosti, tapija nije bila dovoljan dokaz za obezbeđenje poljoprivrednog hipotekarnog zajma.

Zabrana otuđivanja zaštićene zemlje

Zaštićena zemlja od dva dana oranja bila je 1860. godine izuzeta od naplate za dug, ali je i dalje seljak nju mogao da proda. U oskudici, da bi platili dug i došli do novog zajma, "mnogi su otuđivali sami i zaštićena dva dana oranja, pošto je to moglo biti".[24] Međutim, početkom 1870-ih, uglavnom je već bila zauzeta pusta zemlja, pa su oni seljaci koji bi prodali svoja imanja postajali beskućnici. Kako industrije tada još uvek nije bilo u Srbiji, od beskućnika je nastajala seoska sirotinja. Na drugoj strani, postojala je opasnost od ukrupnjavanja seoskih poseda i stvaranja veleposednika, što nije bilo u interesu države. Zbog svega toga, propisi o zaštićenom zemljoradničkom minimumu iz 1860. i 1861. godine, kojima je obnovljeno zakonodavstvo kneza Miloša o zaštiti seljaka od propadanja iz 1836. godine, nisu više zadovoljavali svrhu. Polazeći od uverenja da je pretila opšta opasnost od pauperizacije sela i stvaranja veleposeda, u Narodnoj skupštini javlja se 1871. godine pokret za proširenje okućnog prava. Narodni poslanici su tražili, prvo, da se zaštićeni zemljišni minimum poveća sa dva na šest dana oranja (oko pet hektara) i, drugo, da zemljoradnik ne sme, ne samo zadužiti, već ni prodati zaštićenu zemlju. Njih nije brinulo to što će uvođenjem ovakvog proširenja okućnog prava većina seljaka ostati van domašaja hipotekarnog kredita, jer neće raspolagati zemljom koja bi mogla da se stavi pod hipoteku. Naprotiv, cilj proširenja okućnog prava bio je da se urazumi seljak koji se nerazumno zadužuje, a smatralo se da je to jedino moguće ako se on ne bude nikako zaduživao.

Đorđe Cenić, ministar pravde (1860. talbotipija Anastasa Jovanovića, Muzej grada Beograda)
Đorđe Cenić, Minister of Justice (1860, Anastas Jovanović, Belgrade City Museum)

Kada je Narodna skupština ponovo stavila ovaj predlog na dnevni red 1873. godine, skupštinska manjina, koja je bila protiv proširivanja okućnog prava, isticala je da je zaduživanje posledica, a ne uzrok nemaštine na selu. Njihovo stanovište izneo je poslanik koji je rekao da "gde god se hoće zemljoradnja da unapredi, tu se uravnjavaju putovi kapitalima, da tamo poteku…, a mi sa ovim predlogom idemo upravo kako da kapital od zemljoradnje otklonimo, idemo da ubijemo radnoga, razboritog od nekoliko njih neradnih i nerazboritih".[25] I sam ministar pravde Đorđe Cenić, imao je rezerve prema proširivanju okućnog prava. On je narodnim poslanicima rekao: "Predlog ima i rđave i dobre strane. Rđava je ova. Usvojiti predlog znači staviti gotovo celu zemlju pod tutorstvo, jer se naša država sastoji iz zemljoradnika. Iako je seljak kao sposoban stekao zemlju, dolazi zakon

[24] Jelenko Petrović, citirano delo, str. 94.
[25] Milan J. Komadinić, citirano delo, str. 7.

to be established in 1872 in only five, from the total of seventeen districts existing at that time in Serbia. Those five district savings institutions were established in Kragujevac, Uzice, Krusevac, Smederevo, and in Cacak. Modest capital of the district savings institutions was placed in seven-percent loans that were promptly grabbed by the more affluent citizens of the district. Due to the shortage of capital, district savings institutions "soon after they appeared, were devastated by the vultures, before the peasants had even heard of their existence".[21] People were taking loans from savings institutions, and defaulting in repayment. Illiquid and burdened with massive outstanding receivables, they were liquidated in 1898, and their assets and liabilities were taken over by the Funds Directorate in Belgrade.

It would appear that the options for cheaper financing of farmers, at least those more opulent ones, and within a modest scope, were feasible in Serbia with the advent of private monetary institutes. Private banking first appeared in Serbia in the late 1860s, and started to develop with the establishment of the Privileged National Bank of the Kingdom of Serbia in 1844. At the time of its constitution, there were only seven private monetary institutes in Serbia, with 3.2 million dinars of paid-in capital.[22] By the end of the 19th century, bank interest rate on long-term loans in Serbia ranged from 9% to 12%, so that the banking capital was five to ten times cheaper than the money lenders charged on the capital that the peasants relied upon. Thus their attempts to find access to the bank loans. However, their efforts in most cases failed as the private banks were lending primarily to the township residents. They avoided lending to the peasant as it was an operation linked with a specific risk exposure.

Peasants, even those more affluent, having more land than the protected minimum which was prohibited from pledging in mortgage, were finding it hard to become a mortgage loan beneficiary. Land ownership was characteristic for an insufficient proprietary and legal security, as at that time in Serbia neither land registers nor a cadastre existed. Cadastre land survey in Serbia was initiated on two occasions during the 1890s, "but within a narrow scope and not sufficiently meaningful, so it was abandoned".[23] Property right was guaranteed by a tapia title deed, yet strictly determined land borders were not there to be found. Whenever mortgage loans would so require, township residents were able faster and cheaper to acquire a professionally drawn and clearly bordered plan of the lot line which they would submit, together with the tapia certificate of the title deed to the monetary institute when applying for the mortgage loan. Therefore, although tapia had progressed into a legally binding certificate of ownership over immovable property, tapia certificate was not deemed a sufficient proof for granting an agricultural mortgage loan.

Prohibition of alienation of the protected land

Protected land "of two day's ploughing", in 1860, was exempt from debt collection, but the peasant still remained free to sell it. In their paucity, striving to repay the debt and acquire new loans, many peasants "of their own free will alienated even those protected two day's of ploughing land, as they were so allowed".[24] By mid 1870s, however, the empty land was mostly already occupied, and those peasants who had sold their homesteads turned into vagrants. As the industry did not exist in Serbia of that time, vagrants turned into village homeless paupers. On the other side, danger appeared of compounding farming land and creating large-estate land owners, which was not in the interest of the State. Thus the regulations prescribing protected farming land minimum of 1860 and 1861, reinstating legislature promulgated by Prince Milos on the

[21] Velimir Bajkic: op. cit., p. 36.

[22] Namely, after the fall of the First Serbian Bank that was in operation for only two years, from 1869 to 1871, Belgrade Credit Institute was established (1871), and also Smederevo Credit Bank (1871), Valjevo Savings Bank (1871), Sabac Savings Bank (1880), Belgrade Cooperative (1882), Serbian Credit Bank (1882), and Obrenovac Savings Bank (1883). Veroljub Dugalic: Narodna banka 1884-1941 (National Bank 1884-1941), Belgrade, 1999, p. 17.

[23] Jelenko Petrovic: op. cit., p. 399.

[24] Jelenko Petrovic, op. cit., p. 94.

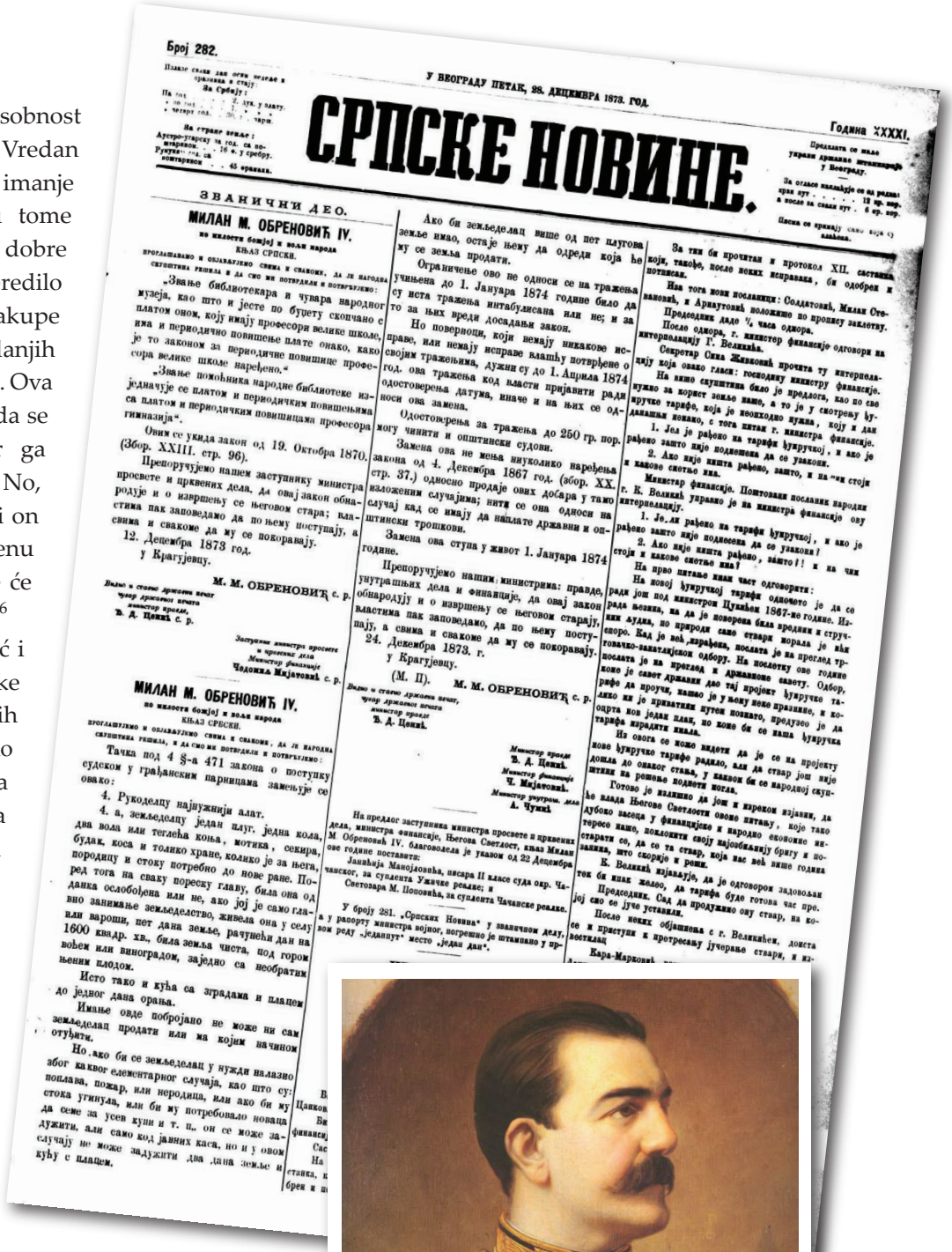
koji mu odriče sposobnost da raspolaže njome. Vredan čovek može kupiti imanje na kredit, ali ga u tome sprečava zakon… A dobre su strane ove. Predupredilo bi se da bogataši zakupe cela sela i od dosadanjih gazda naprave čivčije. Ova će mera stati na put da se seljak zadužuje, jer ga neće niko kreditirati. No, treba uzakoniti da ni on sam ne može zaštićenu zemlju otuđiti, inače će se zakon izigravati."[26]

Uvažavajući stanovište skupštinske većine narodnih poslanika da "pametno tutorstvo treba primiti", Narodna skupština je usvojila Zakon od pet dana oranja, 23. decembra 1873. godine. Ovaj zakon, koji je knez Milan Obrenović potpisao već narednog dana, osvanuo je na naslovnoj strani *Srpskih novina* 28. decembra 1873. godine.

Zemljodelcu jedan plug, jedna kola, dva vola ili tegleća konja, motika, sekira, budak, kosa i toliko hrane, koliko je za njega, porodicu i stoku potrebno do nove rane. Pored toga na svaku poresku glavu, bila ona od danka oslobođena ili ne, ako joj je samo glavno zanimanje zemljedelstvo, živela ona u selu ili varoši, pet dana zemlje, računeći dan na 1600 kvadr. hv., bila zemlja čista, pod gorom, voćem ili vinogradom, zajedno sa neobratim njenim plodom.

Isto tako i kuća sa zgradama i placem do jednog dana oranja.

Imanje ovde pobrojano ne može ni sam zemljedelac prodati ili ma kojim načinom otuđiti.[27]



Broj 282.

У БЕОГРАДУ ПЕТАК, 28. ДЕЦЕМБРА 1873. ГОД.

СРПСКЕ НОВИНЕ.

Година XXXXI.

ЗВАНИЧНИ ДЕО.

МИЛАН М. ОБРЕНОВИЋ IV.

по милости божјој и вољи народа

КЊАЗ СРПСКИ.

ПРОГЛАШАВАМО И ОБЈАВЉУЈЕМО СВИМА И СВАКОМЕ, ДА ЈЕ НАРОДНА СКУПШТИНА РЕШИЛА И ДА СМО МИ ПОТВРДИЛИ И ПОТВРЂУЈЕМО:

„Звање библиотекара и чувара народног музеја, као што и јесте по будућу скопчано с платом оном, који имају професори велике школе, има и периодично повишење плате онако, како је то законом за периодичне повишиње професора велике школе наређено.“

„Звање помоћника народне библиотеке изједначује се платом и периодичким повишењима са платом и периодичким повишицама професора гимназија“.

Овим се укида закон од 19. Октобра 1870. (Збор. XXIII. стр. 96).

Препоручујемо нашем заступнику министра просвете и црквених дела, да овај закон обнародује и о извршењу се његовом стара; властима пак заповедамо да по њему поступају, а свима и сваконе да му се покоравају.

12. Децембра 1873 год.

у Крагујевцу.

М. М. ОБРЕНОВИЋ с. р.

Ваљано и стављено државни печат
чувар државног печата
министар правде,
В. Д. Ценић с. р.

Заступник министра просвете и црквених дела
Министар финанасије
Чедомиљ Мијатовић с. р.

МИЛАН М. ОБРЕНОВИЋ IV.

по милости божјој и вољи народа

КЊАЗ СРПСКИ.

ПРОГЛАШУЈЕМО И ОБЈАВЉУЈЕМО СВИМА И СВАКОМЕ, ДА ЈЕ НАРОДНА СКУПШТИНА РЕШИЛА, И ДА СМО МИ ПОТВРДИЛИ И ПОТВРЂУЈЕМО:

Тачка под 4 §-а 471 закона о поступку судском у грађанским парницама замењује се овако:

4. Рукоделцу најнужнији алат.

4. а, земљеделцу један плуг, једна кола, два вола или тегледа коња, мотика, секира, будак, коса и толико хране, колико је за њега, породицу и стоку потребно до нове ране. Поред тога на сваку пореску главу, била она од данка ослобођена или не, ако јој је само главно занимање земљеделство, живела она у селу или вароши, пет дана земље, рачунећи дан на 1600 квадр. хв., била земља чиста, под гором воћем или виноградом, заједно са необратим њеним плодом.

Исто тако и кућа са зградама и плацем до једног дана орања.

Имање овде побројано не може ни сам земљеделац продати или ма којим начином отуђити.

Но ако би се земљеделац у нужди налазио због каквог елементарног случаја, као што су: поплава, пожар, или неродица, или ако би му стока угинула, или би му потребовало новаца да семе за усев купи и т. п., он се може задужити, али само код јавних каса, но и у овом случају не може задужити два дана земље и кућу с плацем.

Ако би земљеделац више од пет плугова земље имао, остаје њему да одреди која ће му се земља продати.

Ограничење ово не односи се на тражења учињена до 1. Јануара 1874 године било да су иста тражења интабулисана или не; и за то за њих вреди досадањи закон.

Но повериоци, који немају никакове исправе, или немају исправе влатћу потврђене о својим тражењима, дужни су до 1. Априла 1874 год. ова тражења код власти пријавити ради одостоверења датума, иначе и на њих се односи ова замена.

Одостоверења за тражења до 250 гр. пор. могу чинити и општински судови.

Замена ова не мења ништолико наређења закона од 4. Децембра 1867 год. (збор. XX. стр. 37.) односно продаје ових досара у тамо изложеним случајима; нити се она односи на случај кад се имају да наплате државни и општински трошкови.

Замена ова ступа у живот 1. Јануара 1874 године.

Препоручујемо нашим министрима: правде, унутрашњих дела и финанасије, да овај закон обнародују и о извршењу се његовом старају, властима пак заповедамо, да по њему поступају, а свима и сваконе да му се покоравају.

24. Децембра 1873. г.

у Крагујевцу.

(М. П.) М. М. ОБРЕНОВИЋ с. р.

Ваљано и стављено државни печат,
чувар државног печата
министар правде
В. Д. Ценић.

Министар правде
В. Д. Ценић.
Министар финанасије
Ч. Мијатовић.
Министар унутрош. дела
А. Чумић.

На предлог заступника министра просвете и црквених дела, министра финанасије, Његова Светлост, кнез Милан М. Обреновић IV. благоволела је указом од 22 Децембра ове године поставити:

Јанићија Манојловића, писара II класе суда окр. Чачанског, за судијета Ужичке реалке; и

Светозара М. Поповића, за судијета Чачанске реалке.

У броју 281. „Српских Новина“ у званичном делу, а у рапорту министра војног, погрешно је штампано у правом реду „једанпут“ место „Један дан“.

За тим би прочитан и протокол XII. састанка, који, такође, после неких исправака, би одобрен и потписан.

Иде тога нови посланици: Солдатовић, Милан Стевановић, и Арнаутовић положише по процесу заклетву.

Председник дадо ½ часа одмора.

После одмора, г. министар финанасије одговори на интерполацију Г. Великића.

Секретар Сима Живојнић прочита ту интерполацију која овако гласи: господину министру финанасије.

На нашо скупштина било је предлога, као по сверучуче тарифе, која је неопходно нужна, и да данашњи понако, с тога питам г. министра финанасије.

1. Јеа је рађено на тарифи ђумручној, и ако је рађено зашто није подношена да се узакони.

2. Ако није ништа рађено, зашто, и на чиј стоји и какове сметње има.

Министар финанасије. Поштовани послани народни г. К. Великић управо је на министра финанасије ову интерполацију.

1. Је.ли рађено на тарифи ђумручној, и ако је рађено зашто није подношена да се узакони?

2. Ако није ништа рађено, зашто!! и на чиј стоји и какове сметње има?

На прво питање иман част одговорити:

На новој ђумручној тарифи одномоћо је да се ради још под министром Цукићем 1867-ме године. Изнови алдма, по природи саме ствари морала је ићи споро. Кад је већ „израђена, послата је на преглед трговачко-занатлијском одбору. На послотку ове године послата је на преглед и државном савету. Одбор, коме је савет државни дао тај пројект ђумручке тарифе да прочи, камо је у њему нешо празнино, и колико ми је приватним путем познато, предузео је да оцрта нов један план, по коме би се наша ђумручка тарифа израдити имала.

Из овога се може видети да је се на пројекту нове ђумручко тарифе радило, али да ствар још није дошла до оваког става, у каквом би се народној скупштини на решоно подићи могла.

Готово је излишно да још и широком изјави, да ће влада Његове Светлости овоме питању, које тако дубоко засеца у финанцијско и народно економне интересе наше, поклонити своју најозбиљнију бригу и постарати се, да се та ствар, која нас већ више година занима, што скорије и реши.

К. Великић изјављује, да је одговором задовољан ток би иак желео, да тарифа буде готова час пре.

Председник. Сад да продужимо оку ствар, на којој смо се јуче установили.

После неких објашњења с г. Великићем, доиста се и приступи к претресању ђучерање ствари, и изостилад

Кара-Марковић.

Knez Milan Obrenović (1881. Steva Todorović, Muzej grada Beograda)

Prince Milan Obrenović (1881, Steva Todorović, Belgrade City Museum)

[26] *Protokoli Narodne skupštine Kneževine Srbije 1873*, str. 214, 217, 218. Prema: Jelenko Petrović, citirano delo, str. 95.

[27] *Srpske novine*, br. 282, 28. decembar 1873, str. 1.

protection of peasants from financial ruin of the year 1836, were no longer sufficient to achieve their purpose. With a growing belief that there was a threat and global danger of rural pauperisation, with simultaneous emergence of large-estate landowners, at the National Assembly, in 1871, a movement was set up in support of extension of the homestead law. National deputies demanded, firstly, that the protected arable land minimum be increased from two to six day's ploughing land (some five hectares), and secondly, for the farmer to be prohibited not only from mortgaging but also from selling his protected land plot. They did not care for the fact that with the introduction of such an extension to the homestead law the real majority of peasants would remain without an access to the mortgage loans, as it shall not have the land that could be pledged in mortgage. On the contrary, the objective of extending homestead law was to reason with the peasant who was unreasonably falling in debt, as the opinion prevailed that this was only possible if the peasant should be prevented from entering into any debt at all.

When the National Assembly placed this proposal again on its agenda in 1873, parliamentary minority, which was always opposed to the extension of the homestead law, argued that indebtedness was an effect and not the cause of poverty in villages. Their stance was presented by the deputy claiming that "wherever there is a will to promote farming, there is a road paved to capital, so that it may flow there…, yet we with our proposal are heading actually straight towards removing capital from the farming, heading towards killing all those diligent and reasonable ones, amongst only a few who are indolent and unreasonable".[25] Minister of Justice himself, Mr. Djordje Cenic, had his reservations regarding the extension to the homestead law. This is what he said to the national deputies: "Proposal has both its bad and its good sides. The bad side is this. Adoption of the proposal would mean that almost the entire country would be placed under tutorship because our country consists of farmers. Although the peasant in his capacity was granted and acquired land, there comes a law which denies him his capacity to dispose with it. A diligent man can buy land property on credit but the law prevents him from doing so…. And the good sides are the following. Those wealthy men would be prevented from buying up entire villages, while rendering the present-day landowners into pauper farm hand. This is the measure that will stand in the way of a peasant borrowing money, because no one will be ready to lend him any. Nevertheless, it should be legally prescribed that he can not himself alienate the protected land, or otherwise the law will be circumvented."[26]

National Assembly, while adopting the stand of the parliamentary majority of national deputies that "enlightened tutorship should be accepted", also adopted the Law on 5 day's ploughing, on 23 December 1873. This Law, which Prince Milan Obrenovic signed already the next day, was published on the front page of the Serbian Newspapers (Srpske novine) of 28 December 1873:

"Farmer shall be given one plough, one chart, a pair of oxen or drawing horses, one hoe, a hatchet, a pickaxe and scythe, and as many foodstuffs as he needs for himself, his family and cattle until the new ploughing. In addition, for every taxpaying head, whether it be tax exempt or not, if farming the land is its main occupation, whether it lives in the village or in the town, five day's ploughing land is granted, calculating the day at 1600 square fathoms, be it the land cleared, or under forest, orchard or vineyard, together with its uncollected yield.

The same applies to the family home, with buildings and a land plot of one day's ploughing.

The homestead so listed can not be sold even by the farmer himself, or in any other manner alienated."[27]

Homestead law, institutionalised in Serbia in the period from 1836 to 1873, was not an original concept. It was introduced after the fashion of the regulation by the Hapsburg Monarchy of its Military Border. Merits for the introduction

[25] Milan J. Komadinic, op. cit., p. 7.

[26] Protokol Narodne skupstine Knezevine Srbije 1873 (Protocol of the National Assembly of the Principality of Serbia 1873), p. 214, 217, 218. According to Jelenko Petrovic, op. cit., p. 95.

[27] Srpske novine (Serbian Newspaper), No. 282 of 28 December 1873, p. 1.

Okućno pravo, institucionalizovano u Srbiji u vremenu od 1836. do 1873. godine, nije bilo originalna tvorevina. Ono je bilo uvedeno po ugledu na uređenje Vojne granice u Habzburškoj monarhiji. Za uvođenje i razvoj institucije zaštićenog, a kasnije i neotuđivog zemljoradničkog minimuma u Srbiji, bili su zaslužni učeni Srbi Jakov Živković i Nikola Hristić, rodom iz Srema - gde je bila Vojna granica. Jakov Živković je, uz Kneza Miloša, bio idejni tvorac uvođenja zaštite seljaka od dugova 1836. godine, a Nikola Hristić zakonopisac obnove okućnog prava 1861. godine i njegovog proširenja 1873. godine.[28] Vojna granica je nastala u prvoj polovini 16. veka, radi odbrane od navale Osmanlija. Naseljeničke, pretežno srpske porodice dobijale su autonomne povlastice uz obavezu čuvanja granice. Institucija koja je u svakom trenutku mogla da pozove svoje brojne članove u vojnu službu austrijskog cara, bila je srpska patrijarhalna porodična zadruga. Da bi se porodične zadruge održale u vreme kada su kapitalistički odnosi proizvodnje već podsticali njihovu deobu, austrijske vlasti uvode ograničenja u raspolaganju zemljom. Prema Graničarskom zakonu iz 1807. godine, nepokretnosti koje su u zamenu za graničarsku vojnu službu uživali graničari, podeljene su na selišta i suvišak zemlje. Selište, koje je obuhvatalo jedno jutro zemlje, kuću i potrebne privredne zgrade, bilo je neotuđivo. Zemlja u okviru selišta nije mogla da bude prodata, data pod zakup, niti predmet zaloge. Suvišak zemlje, naprotiv, mogao se otuđiti, dati pod zakup ili založiti. Pravilo neotuđive zemlje bilo je na snazi do 1871. godine, kada je započeto razvojačenje Vojne granice. Tada je Vojna granica bila već faktički delimično odvojena od teritorije Osmanskog carstva jer su Srbija i Rumunija u njemu uživale široku autonomiju; takođe, modernim državnim uređenjem, u Austro-Ugarskoj je bila uvedena opšta vojna obaveza. Tako je Vojna granica postala preživela institucija. U prelaznom periodu razvojačenja Granice bila je dopuštena deoba porodičnih zadruga, pri čemu je svaki član zadruge dobijao pravo da raspolaže svojim delom u zadružnoj imovini, u skladu sa Austrijskim građanskim zakonikom. Sa završetkom prelaznih reformi, Carevim manifestom iz 1873. godine Granica je razvojačena, a 1881. godine konačno ukinuta.

Zakon od pet dana oranja naći će se kao tačka 4a u članu 471 Zakona u postupku sudskom u građanskim parnicama Srbije, koji će ostati na snazi do 1929. godine.[29] Ovaj zakon, koji je 1873. godine skupštinska većina nazvala "Zakonom narodnog blagostanja", dugoročno je ograničio kreditnu sposobnost poljoprivrednog stanovništva Srbije. Umesto da se seljacima stvore povoljni uslovi za kredit, oni su ostali van njegovog domašaja. Bez investiranja u intenzivni razvoj poljoprivredne proizvodnje, zaštićena površina nije bila dovoljna da održi i ishrani seljačku porodicu u Srbiji. Tehničke transformacije u evropskoj poljoprivredi koje su u drugoj polovini XIX veka nastajale kao rezultat naučno-tehničkog progresa, odbijale su se u Srbiji o Zakon od pet dana oranja. Njegovom primenom, stvoren je sistem anemičnih i kržljavih gazdinstava nesposobnih za privredni razvitak, a često i za puku reprodukciju.[30]

Zaključak

Već prilikom zasnivanja novih gazdinstva u Srbiji tokom 1820-ih godina, kada je bilo proklamovano osmansko načelo da seljak može imati onoliko zemlje koliko može da je obrađuje, bili su položeni temelji agrarne strukture kapitalističke Srbije. Ovi temelji utvrđeni su 1836. godine, kada je Srbija postala zemlja sitnog seljačkog poseda koji je bio zaštićen od prodaje za dug. Početkom 1870-ih godina, u Srbiji nastaje retrogradni proces u razvoju svojinskih odnosa na zemlji, jer se seljaku zabranjuje da prodaje zaštićeni zemljišni minimum. Na taj način bio je, u stvari, okamenjen oblik svojine karakterističan za feudalni sistem srednjovekovne Srbije. Zakon od pet dana oranja iz 1873. godine vezao je

[28] Jelenko Petrović, citirano delo, str. 105, 106.

[29] Član 471 ovog zakona govori o tome koje se stvari ne mogu uzeti u popis prilikom izvršenja presuda. Zakon o postupku sudskom u građanskim parnicama, Beograd, 1905, ss. 123-134.

[30] Milan J. Komadinić, citirano delo, str. 7.

and development of the institution of initially protected, later to become an arable land minimum banned from alienation in Serbia, is due to the learned Serbs, Jakov Zivkovic and Nikola Hristic, originating from Srem - where the Military Border was located. Jakov Zivkovic, together with Prince Milos, was the conceptual forefather of the idea of introducing protection of peasants from indebtedness in the year 1836, while Nikola Hristic was the author of the law on the reinstatement of the homestead law in 1861, and its extensions in 1873.[28] Military Border was set up in the first half of the 16th century for defence purposes against the Ottoman Turks. Frontier settlers, mainly Serb families, were given autonomous benefits on condition that they shall guard the frontier. The institution capable of summoning up, at any moment, its numerous members to joint military service of the Austrian Emperor, was the Serbian patriarchal family compound. In order for the family cooperative compounds to prevail during the times when the capitalist relations in production were already instigating their division, Austrian authorities introduced limits over land holding rights. According to the Border Guard Law of 1807, immovable property that was received by the border guards in return for their border guarding military service, was divided into "seliste" settlement land, and the "suvisak" surplus lands. "Seliste" comprised one acre of land, a house and the necessary husbandry buildings, and it was inalienable. The land within the scope of seliste could not be sold, given in tenure, and neither given in pledge. "Suvisak" or surplus land, however, could be alienated, given in tenure or pledged. The inalienable land rule was in force up to 1871, when the disarmament of the Military Border started. By that time, Military Border was already partially and de facto separated from the territory of the Ottoman Empire, as both Serbia and Romania enjoyed within their territory substantial autonomy; in addition, modern State set-up in Austro-Hungary introduced general compulsory military service. Thus the Military Border became an obsolete institution. In the transitional period of demilitarisation of the Military Border, division of family compounds was allowed, where every member of the compound would be given the right to dispose with his part in the common, cooperative property, in accordance with the Austrian Code Civile. With the completion of the transitional reforms, Imperial Manifesto of the year 1873 demilitarised the Border, and in 1881 it was finally dismantled.

The Law on five day's ploughing is to find itself in Article 471 as item 4a of the Law on Judicial Procedure in Civil Litigation of Serbia, and is to remain in force up to 1929.[29] This Law that was in 1873 called by the parliamentary majority the "Law of national welfare", will impose a long-term limitation on the credit worthiness of the farming population in Serbia. Instead of creating favourable environment for credit facilities to be offered to farmer, it left them stranded outside of its reach. Without investments made into an intensive development of agricultural production, protected land proved insufficient to sustain and nourish a farming rural family in Serbia. Technical transformations taking place in the European farming in the second half of the 19th century, as a result of scientific and technical progress, in Serbia were faced with the wall of the Law on 5 day's ploughing. Through its implementation, a system of anaemic and dwarfed homesteads was created, incapable

[28] Jelenko Petrovic, op. cit., p. 105, 106.

[29] Article 471 of the Law speaks of the items that can not be taken into inventory during the enforcement of the court rulings. Zakon o postupku sudskom u gradjanskim parnicama (Law on Judicial Procedure in Civil Litigation), Belgrade, 1905, p. 123-134.

seljaka za zemlju da bi ga spasao od propasti. Vezivanjem seljaka za zemlju bio je usporen proces propadanja siromašnih seljaka, ali je istovremeno bilo onemogućeno investiranje u poljoprivredu dugoročnim hipotekarnim kreditom. Prema podacima o posedovnoj strukturi Srbije, po popisu iz 1897. godine, više od polovine zemljišnih poseda bilo je, u stvari, neotuđivo - jer je 54,6% domaćinstava raspolagalo imanjima manjim od pet hektara površine; 41,5% domaćinstava posedovalo je imanja površine između pet i 20 hektara, dok je samo 3,9% domaćinstava imalo posede veće od 20 hektara.[31] Mali, neotuđivi seljački posed, ne samo što neće spasiti poljoprivredu Srbije od siromaštva, nego će doprineti dugom opstanku specifičnih, retrogradnih odnosa svojine na selu.

[31] *Statistika Kraljevine Srbije*, Knjiga XVI, Beograd, 1900.

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2. *Protokoli Narodne skupštine Kneževine Srbije*, 1873.
3. *Srpske novine*, br. 282, 28. decembar 1873.
4. *Statistika Kraljevine Srbije*, Knjiga XVI, Beograd, 1900.
5. *Zakon o postupku sudskom u građanskim parnicama*, Beograd, 1905.
6. *Zbornik zakona i uredaba za Knjaževstvo Srbije*, br, 14, 1862; br. 30, 1873.

either of an economic development, or even of its mere reproduction.[30]

Summary

Already in the early times of setting up new homesteads in Serbia during the 1820s, when the Ottoman principle was proclaimed prescribing that the peasant can have as much land as he can cultivate, corner stones were laid for the agrarian structure of the capitalist Serbia. These fundaments were confirmed in 1836 when Serbia became the land of a small land-owned homestead that was protected from debt collection. In early 1870s, in Serbia started a backward process in the development of land proprietary relations, as the peasant was prohibited from selling his protected farming land minimum. This was the way, in fact, to petrify an ownership form characteristic of the feudal system prevailing in mediaeval Serbia. The Law on five day's ploughing of 1873 tied the peasant to the land in order to save him from perdition. Binding the peasant to the land was a process that slowed down the devastation of impoverished farmers, but at the same time it made impossible investments into agriculture through long-term mortgage loans. According to the data on the ownership structure in Serbia of the census conducted in 1897, more than one half of the land ownership was, in fact, inalienable - as there were 54.6% of households holding the proprietary rights over the homesteads smaller than an area of five hectares; 41.5% of households held the property rights over the land ranging in size from five to 20 hectares, while only 3.9% of households owned the land property larger than 20 hectares.[31] Small, inalienable farming homestead not only shall fail to save the agriculture of Serbia from poverty, but shall help a long-lasting prevalence of specific, backward land ownership proprietary relations in the villages.

[30] Milan. J. Komadinic, op. cit., p. 7.
[31] Statistika Kraljevine Srbije (Statistics of the Kingdom of Serbia), Volume XVI, Belgrade, 1900.