

7<sup>th</sup> Conference on Legal History in Szeged

*Codification Achievements and Failures  
in the 19<sup>th</sup>-20<sup>th</sup> Century*

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ISBN 978-963-306-586-0

Published by:  
University of Szeged  
Faculty of Law and Political Sciences  
Department of Hungarian Legal History  
Responsible publisher: Elemér Balogh dean

Szeged, 2018

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## Croatian Law on Regulation of Local Citizenship (1880) – Context and Change

### *Introduction*

From 1868 until 1918 the question of citizenship was one of the most important questions of Croatian-Slavonian legal system and politics. The problem of citizenship was connected with constitutional position of Croatia-Slavonia within the lands of the Hungarian Crown and within the Austro-Hungarian Monarchy as a whole. The complexity of constitutional position referred to the matter of citizenship in a way that there was one national citizenship for all the lands of the Hungarian Crown but also Croatian-Slavonian membership as a form of public law identity that was relevant in internal matters in Croatia-Slavonia.<sup>1</sup> In circumstances in which special law about Croatian-Slavonian membership did not exist, Croatian-Slavonian authorities used local citizenship as a tool for defining of special Croatian-Slavonian population. In other words, everyone who had local citizenship in one of Croatian-Slavonian municipalities was also a member of Croatia-Slavonia.<sup>2</sup> Because of this, the concept of local citizenship had an important position in Croatian-Slavonian legal system.

Central law that regulated the concept was the law on regulation of local citizenship of 1880. Aim of the paper is to shed light on emergence of this law, its content and applications. In doing so, we will first expose broader context of Croatian-Slavonian autonomy, problem of citizenship and possibilities of autonomy-building. After that, we will analyse regulation of local citizenship before enactment of the Law on Regulation of Local Citizenship of 1880. Further, we will analyse process of enactment and the content of the Law on regulation of local citizenship. In doing so we will emphasize the fact that Croatian law only partially regulated the concept of local citizenship by regulating its acquisition and loss and poor relief while other rights were regulated by other particular laws. Further, we will compare Croatian law with other two systems of

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<sup>1</sup> KOSNICA, IVAN: *Das Problem der Staatsbürgerschaft in Kroatien und Slawonien im Ausgleichszeitraum (1868–1918)*, pp. 208–217., in: Máthé, Gábor and Mezey, Barna (hrsg.). *Kroatisch-ungarische öffentlich-rechtliche Verhältnisse zur Zeit der Doppelmonarchie*, Eötvös University Press, Budapest, 2015.

<sup>2</sup> *Ibid.* p. 214.

local citizenship in Austro-Hungarian Monarchy, Austrian and Hungarian. The comparison is particularly relevant because the Croatian law was highly influenced by the Austrian law on local citizenship of 1863, while also contained some solutions from Hungarian law. In the next part of the paper we will analyse the law in legal practice. After that, we will analyse change of regulations about local citizenship in Austria and in Hungary. In the conclusion, we will offer a solution why Croatian law did not change until the end of the Austro-Hungarian Monarchy.

*Croatian-Slavonian autonomy, citizenship and possibilities of autonomy-building*

Constitutional position of Croatia-Slavonia in the Austro-Hungarian Monarchy was defined by two compromises, the Austro-Hungarian compromise reached in 1867 and Croato-Hungarian compromise of 1868. The first compromise defined the Habsburg Monarchy as a *real union* of two states, Austria and Hungary. This compromise defined Croatia-Slavonia as a land within the Hungarian part of the Monarchy. The subsequently reached Croatian-Hungarian compromise regulated internal relations of Croatia-Slavonia and Hungary within the realm of the lands of the Hungarian Crown. The Compromise established sub-dualistic structure. It defined common affairs, i.e. public finances, agriculture, trade, railways, and common institutions, the Central Government and the Croatian-Hungarian Parliament in Budapest. In these institutions Croats were represented but Hungarians had dominant role. The Croatian-Hungarian Compromise also recognized the autonomy to Croatia-Slavonia in remaining affairs such as internal administration, education, religion and judiciary. It also recognized set of autonomous institutions which included the Ban, the Provincial Government, the Croatian-Slavonian Diet and the Supreme Court (*Table of Seven*).<sup>3</sup> Here it should be pointed out that the Central Government had an important influence on Croatian-Slavonian autonomy. The crucial in this sense was position of Croatian-Slavonian minister in the Central Government who controlled compatibility of bills with common interest and who could object to autonomous laws which were not in accordance with it.<sup>4</sup>

The Compromise defined regulation of national citizenship as part of common Hungarian-Croatian competences and part of jurisdiction of the Hungarian-Croatian Diet, while recognized the autonomy to the Croatian-Slavonian Ban in the executive matters of national citizenship in Croatia-Slavonia.<sup>5</sup> The norm of the Compromise about

<sup>3</sup> ČEPULO, DALIBOR: *Building of the modern legal system in Croatia 1848-1918 in the centre-periphery perspective*, in: Giaro, Tomasz: *Modernisierung durch Transfer im 19. und frühen 20. Jahrhundert*, Vittorio Klostermann, Frankfurt am Main, 2006. pp. 64–65.; GROSS, MIRJANA: *Der Kroatische Sabor* (Landtag), in: Rumpler, Helmut and Urbanitsch, Peter (hrsg.), *Die Habsburgermonarchie 1848–1918*, band VII/2., Verlag der Österreichischen Akademie der Wissenschaften, Wien, 2000. pp. 2294–2297.; MÁTHÉ, GÁBOR: *Der Ungarische Rechtsstaat in der Zeit der Doppelmonarchie*, in: Máthé, Gábor and Mezey, Barna (hrsg.), *Kroatisch-ungarische öffentlich-rechtliche Verhältnisse zur Zeit der Doppelmonarchie*, Eötvös University Press, Budapest, 2015. pp. 120–123.; PÉTER, LÁSZLÓ: *Die Verfassungsentwicklung in Ungarn*, in: Rumpler, Helmut and Urbanitsch, Peter (hrsg.), *Die Habsburgermonarchie 1848–1918*, band VII/1, Verlag der Österreichischen Akademie der Wissenschaften, Wien, 2000. pp. 351–352.

<sup>4</sup> ČEPULO 2006, pp. 66–67.

<sup>5</sup> KOSNICA 2015, p. 194.

common regulation on national citizenship finally led to the enactment of the common Hungarian-Croatian law about national citizenship in 1879.<sup>6</sup> The law defined national citizenship as one and the same for all the lands of the Hungarian Crown (§ 1). It named national citizenship as Hungarian, while in Croatia-Slavonia the term Hungarian-Croatian citizenship was also used. The law admitted autonomy to the Croatian-Slavonian Ban in the executive matters of national citizenship in Croatia-Slavonia, including naturalisations.<sup>7</sup>

Opposite to common regulation of national citizenship, which followed dominantly Hungarian interests of unity of the lands of the Hungarian Crown, Croatia-Slavonia had full autonomy in the matters of local citizenship (*zavičajnost*). That included not just competences in executive matters but also regulation of local citizenship.<sup>8</sup> Besides its form of local belonging, the concept had broader importance since it was used as a fundamental criteria for defining of Croatian-Slavonian members. These members had some specific rights which derived from their belonging to Croatia-Slavonia. For instance, the law about counties of 1870 defined Croatian-Slavonian belonging as a fundamental precondition for employment in an autonomous public service. The concept was also relevant, according to the law of 1870, in the elections for Croatian-Slavonian Diet as a basis of active and passive voting rights. Practice of enactment of autonomous laws which included some kind of connection of persons with Croatia-Slavonia continued in the first years of government of the Ban Ivan Mažuranić from 1873-1875. However, it should be pointed out that this policy was not implemented in the legal system consistently. Important limitation of the policy was practice of the Central Government in Budapest which from 1875 onwards often objected to use of local citizenship as a basis of autonomous rights and instead favoured the concept of national citizenship as a basis of rights.<sup>9</sup> Thus partly Croatian-Slavonian belonging, based on Croatian-Slavonian local citizenship, and partly Hungarian-Croatian national citizenship defined legal situation of a citizen in Croatia-Slavonia.

#### *Laws about local citizenship before enactment of the Law on Regulation of Local Citizenship (1880)*

First modern regulations about acquisition and loss of local citizenship and poor relief were introduced in Croatia-Slavonia during 1850/1851 as a part of broader modernization from Vienna. There were three regulations, one regulation for the city of

<sup>6</sup> ZAKONSKI ČLANAK: L. 1879. zajedničkoga hrvatsko-ugarskoga sabora o stjecanju i gubitku ugarskoga državljanstva [Legal article L: 1879 of common Croatian-Hungarian Diet on acquisition and loss of Hungarian citizenship], in: Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju (further: SZ), komad VII, 1880; About process of enactment of the law see: VARGA, NORBERT: *The Framing of the First Hungarian Citizenship Law (Act 50 of 1879) and the Acquisition of Citizenship*, Hungarian Studies, 18 (2004), nr. 2. pp. 128–139.

<sup>7</sup> KOSNICA, IVAN: *Hungarians and Citizenship in Croatia-Slavonia 1868–1918*, in: Frenkel, A. David and Varga, Norbert: *Law and History*, Athens Institute for Education and Research, Athens, 2015. p. 62.

<sup>8</sup> KOSNICA: *Hungarians and Citizenship*. p. 62.

<sup>9</sup> KOSNICA: *Das Problem*. pp. 197–202.

Zagreb, one for the city of Osijek and one for all other cities and market towns with magistrates. According to these regulations primary principle of acquisition of local citizenship was *ius sanguinis*, while local citizenship could have been also acquired by marriage (in a case of a woman), by appointment in a public service and in the procedure of regular local naturalisation. In the procedure of naturalisation, a municipality could recognize an applicant as a local citizen if fulfilled legal preconditions defined by the law. Additionally, the laws for Osijek and other cities and market towns contained a rule about right on naturalization after ten years of settlement for free, moral and wealthy citizens. The laws established a rule about dominance of national citizenship (in this time Austrian) over local citizenship. According to the rule each Austrian national citizen had to have one local citizenship *et vice versa*. A person lost its local citizenship if acquired another local citizenship or if lost Austrian national citizenship. The fundamental right of local citizens was right on social support from their municipality in a case of poverty.<sup>10</sup>

The regulations of 1850/1851 were valid until 1859 when the king enacted new municipal law.<sup>11</sup> The law kept *ius sanguinis* as a basic principle, retained marriage and public service as basis of acquisition of local citizenship but modified system of local naturalizations.<sup>12</sup> The law introduced right on naturalization for free, moral and wealthy citizens after four years of settlement (§ 39). While in Austrian part of the Monarchy this regulation was abolished in 1863 and replaced with the new law, in Croatia-Slavonia this law remained part of legal system until 1880.

In the period after Compromises, during the government of the Ban Levin Rauch (1868-1871), the Croatian-Slavonian Diet in 1870 accepted and the king sanctioned the law about villages and market towns without magistrate.<sup>13</sup> The law prescribed complex structure of local citizens depending on the type of their connection with a municipality; belonging, public service or possession (§ 4). Basic principle of acquisition of local citizenship was *ius sanguinis* and local citizenship could have been also acquired by local naturalization or by marriage (§ 8). The law regulated local citizenship in villages and market towns without magistrate, while local citizenship in cities and market towns with magistrate was still regulated by the municipal law of 1859.<sup>14</sup> Thus the concept of local citizenship in Croatia-Slavonia was regulated by two different regulations.

<sup>10</sup> MUTAVDJIĆ, KOLOMAN: *Zavičajno pravo: Zakon od 30. travnja 1880. ob uređenju zavičajnih odnošaja u kraljevinah Hrvatskoj i Slavoniji i prijašnji propisi o stečenju i gubitku zavičajnoga prava*, Naklada knjižare Lav. Hartmana (Kugli i Deutsch), Zagreb, 1894. pp. 233–270.

<sup>11</sup> *Carški patent od 24. travnja 1859. krijepostan za svekoliku carevinu, osim kraljevine lombardsko-mletačke, Dalmacije i Krajine Vojničke, kojim se izdaje nov zakon općinski* [Caesarean patent of 24 April 1859 valid for the whole Monarchy, with the exception of Lombardy and Venice, Dalmatia and Military Border, by which the new municipal law was proclaimed]. The law was published in: *Zemaljsko-vladni list za kraljevine Hrvatsku i Slavoniju*, kom. XII., nr. 82. 1859.

<sup>12</sup> KOSNICA: *Hungarians and Citizenship*. pp. 62–63.

<sup>13</sup> *Zakonski članak o uređenju općina i trgovišta koja nemaju uređenoga magistrata* [Legal article about municipalities and market towns without magistrate], the law was published in: *SZ*, kom. III, 1871.

<sup>14</sup> KOSNICA: *Das Problem*. p. 215.

*Enactment of the Law on Regulation of Local Citizenship (1880) – Context and Content*

Diverse regulation of local citizenship was recognized as a problem during the reform period of the Ban Ivan Mažuranić (1873-1880) when extensive modernization of autonomous Croatian-Slavonian legal system was conducted.<sup>15</sup> The unification process started in 1877 when the Provincial Government made draft of Croatian law on local citizenship. The draft was made on the basis of the Austrian law on local citizenship of 3 December 1863.<sup>16</sup> Croatian-Slavonian Diet accepted the draft on 24 September 1877 but the king did not sanction it until 30 April 1880.<sup>17</sup> The reason for such long waiting of king's sanction could have been searched in the effort of the Central Government to give primary importance to the law about acquisition and loss of Hungarian national citizenship. Thus the Croatian law about local citizenship could have been sanctioned only when the law about national citizenship entered into force.<sup>18</sup>

The law unified the rules about acquisition and loss of local citizenship and also regulated the institute of poor relief. As previous laws, the law prescribed the concept of *ius sanguinis* as a basic principle of acquisition of local citizenship (§ 4). The law also contained previously known modes acquisition of local citizenship: marriage, acceptance in a municipality and an appointment in a public office (§ 3). Important feature of the law was possibility of acquisition of local citizenship by settlement. To acquire local citizenship in this way a settler should report the intention of settlement to municipal authorities of a municipality in which he plan to settle. Municipal authorities could deny settlement to this applicant only if he was under criminal investigation, if he was under criminal sanction or if he was not capable to support himself (§ 9). If this person after formal notification of intention of settlement continuously lived in a municipality four years long, paid local taxes and the municipality did not object to the settlement a person acquired local citizenship in this municipality (§ 10). A municipality could object if a settler was under criminal investigation or criminal sanction, if he was not capable to support himself or if he continued to pay taxes in his previous municipality (§ 9 and 10).

According to the Law on regulation of local citizenship a person lost its local citizenship if acquired another local citizenship or if lost Hungarian-Croatian citizenship (§ 16 and 18). The law regulated poor relief as a basic obligation of a municipality. Contrary, the law did not regulate other rights of Croatian-Slavonian local citizens such as electoral right, right on employment in autonomous public offices in Croatia-Slavonia, social rights etc. This rights were regulated by other specific autonomous laws. Here it is important to note that enjoyment of autonomous rights was reserved for

<sup>15</sup> More about modernization see in: ČEPULO 2006, pp. 70–80.

<sup>16</sup> ČEPULO, DALIBOR: *Pravo hrvatske zavičajnosti i pitanje hrvatskog i ugarskog državljanstva 1868-1918 – pravni i politički vidovi i poredbena motrišta*, Zbornik Pravnog fakulteta u Zagrebu, 49 (1999), nr. 6, p. 806; *Zakon o uređenju zavičajnih odnosa od 3. prosinca 1863.* [The law on regulation of local citizenship of 3 December 1863], the law was published in: Reichsgesetzblatt, 1863. nr. 105, pp. 368–376.

<sup>17</sup> *Zakon od 30. travnja 1880. o uređenju zavičajnih odnosa u kraljevinama Hrvatskoj i Slavoniji* [The law of 30 April 1880 on regulation of local citizenship in the kingdoms of Croatia and Slavonia], SZ, kom. IX, 1880.

<sup>18</sup> ČEPULO 1999, p. 811.

Croatian-Slavonian local citizens (Croatian-Slavonian members).<sup>19</sup> According to this, the concept of local citizenship had an important role in an autonomous Croatian-Slavonian legal system.

*Comparison of the Law on Regulation of Local Citizenship (1880) with regulations about local citizenship in Austria and Hungary*

As we already mentioned, the Croatian law on regulation of local citizenship was made according to the Austrian law on regulation of local citizenship (*Heimatrecht*) of 3 December of 1863. This resulted in many similarities between Austrian and Croatian regulation of local citizenship. Both laws regulated acquisition and loss of local citizenship and poor relief. They also used *ius sanguinis* as a basic principle of acquisition of local citizenship. Croatian law, as its Austrian role model, contains marriage, acceptance in a municipality and appointment in a public office as possibilities of acquisition of local citizenship. Croatian law also regulated loss of local citizenship in the same way as Austrian law. According to the rule a person lost its local citizenship if acquired local citizenship in another municipality or if lost national citizenship.

Although similar, in some aspects Croatian and Austrian laws were very different. For example, the concept of explicit local naturalisation existed in Austrian and Croatian law but was differently regulated. In Austria the municipality had final right to decide about local naturalisation while in Croatia-Slavonia a rejected person had possibility to complain to higher authorities, including the Provincial Government in Zagreb as highest authority. Important difference of Austrian and Croatian law was possibility of acquisition of local citizenship by settlement which existed in Croatia-Slavonia but not in Austria. Acceptance in an Austrian municipality was thus always explicit while in Croatia-Slavonia implicit naturalization on the basis of qualified settlement was also possible. Finally, a norm about acquisition of local citizenship by appointment in permanent public service was differently regulated in Croatian and Austrian laws. According to the Austrian law in this way local citizenship acquired all permanently appointed public officers including all state and court officials. In Croatia-Slavonia local citizenship on that basis acquired only officers appointed in Croatian-Slavonian autonomous services.<sup>20</sup>

Here it should be said that local citizenship was very important element of someone's legal identity in Austria. Some authors advocate thesis that before the First World War belonging and legal identity of persons were more based on local citizenship (*Heimatrecht*) than on national citizenship.<sup>21</sup> Some of them go further and claim that

<sup>19</sup> KOSNICA: *Hungarians and Citizenship*, pp. 64–65.; KOSNICA, IVAN: *Hrvatsko-slavonska pripadnost u Hrvatskoj i Slavoniji u nagodbenom razdoblju*, Hrvatska komparativna i javna uprava – Croatian and Comparative Public Administration, 14 (2014), nr. 2. pp. 480–485.

<sup>20</sup> ČEPULO 1999, pp. 806–807.

<sup>21</sup> HEALY, MAUREEN: *Becoming Austrian, Women, the State, and Citizenship in World War I*. Central European History, 35 (2002), nr. 1. p. 2.

local citizenship was used as a form of regional citizenship.<sup>22</sup> In this broader significance of local citizenship we see some similarities with position and function of local citizenship in Croatia-Slavonia. However, one should not overlook importance of Austrian national citizenship for someones legal situation and the fact that the law on rights of national citizens of 1867 gave to the concept of national citizenship important position in the Austrian legal system.<sup>23</sup> Thus the legal status of a person was defined by national citizenship as a modern conception and by local citizenship (*Heimatrecht*) as the older concept.<sup>24</sup>

If we compare Croatian with Hungarian regulation of local citizenship of 1876 we can also see many similarities.<sup>25</sup> Hungarian regulation also prescribed *ius sanguinis* as a basic principle of acquisition of local citizenship (§ 2). Hungarian regulation also contained principle of marriage as one of principles of acquisition of local citizenship (§ 3). Hungarian as well as Croatian law included right of appeal to higher authorities when there was a dispute about local citizenship between two or more jurisdictions (§ 14 and 15). Hungarian regulation also contained a rule according to which a person lost local citizenship if acquired another local citizenship (§ 1).

Common ground of Hungarian and Croatian laws was possibility of acquisition of local citizenship by settlement. However, the regulation and position of these concepts in the legal system was different. In Hungarian law settlement was basic and regular way of acquisition of local citizenship (§ 5 and 6).<sup>26</sup> According to the Hungarian law, every national citizen had right to settle in another municipality. If he wishes to use this right, he should notify intention of settlement to a municipality of settlement. A municipality had right to object to the settlement only if an applicant was under criminal investigation, under punishment or if he was unable to support himself (§ 5). After formal statement a person had to live continuously four years in the municipality. During that time a settler had to pay local taxes, and he should not have to be user of poor relief or under criminal investigation or penalty. He also should not have to pay taxes to previous municipality (§ 6). After four years of such residence a person acquired new

<sup>22</sup> HARZIG, CHRISTIANE. *From State Constructions to Individual Opportunities: The Historical Development of Citizenship in Europe*, in: Hoerder, Dirk. Harzig, Christiane and Shubert, Adrian (ed.). *The Historical Practice of Diversity: Transcultural Interactions from the Early Modern Mediterranean to the Postcolonial World*, New York, Oxford, 2003. p. 212.

<sup>23</sup> Staatsgrundgesetz vom 21. Dezember 1867, RGBl. Nr. 142; BERNATZIK, EDMUND: *Die österreichischen Verfassungsgesetze*, Manzsche k. u. k. Hof-Verlags- und Universitätsbuchhandlung, Wien, 1911. pp. 422–427.; BURGER, HANNELORE: *Passwesen und Staatsbürgerschaft*, in: Heindl, Waltraud and Saurer, Edith. *Grenze und Staat: Passwesen, Staatsbürgerschaft, Heimatrecht und Fremden gesetzgebung in der österreichischen Monarchie 1750–1867.*, Böhlau Verlag, Wien, Köln, Weimar, 2000. pp. 168–171.

<sup>24</sup> WENDELIN, HARALD: *Schub und Heimatrecht*, in: Heindl, Waltraud and Saurer, Edith. *Grenze und Staat: Passwesen, Staatsbürgerschaft, Heimatrecht und Fremden gesetzgebung in der österreichischen Monarchie 1750–1867*, Böhlau Verlag, Wien, Köln, Weimar, 2000. pp. 215–216.

<sup>25</sup> *Ugarski zakonski članak V. od 1876. godine kojim je zakonski članak XVIII. od god. 1871. o uređenju općina preinačen i popunjen* [Legal article V:1876 of Hungarian Diet about change of the legal article XVIII: 1871. about municipalities], see in: *Obćinar*, nr. 17, 30 April 1885, pp. 129–130.

<sup>26</sup> According to the Hungarian law of 1876 local naturalisation without settlement was also possible. This was defined as an autonomous right of a municipality and no remedy was permitted in this case (§ 8 of the Hungarian law of 1876).



local citizenship without any other formal application.<sup>27</sup> Besides this, the Hungarian law also regulated two other possibilities of naturalisation by settlement. The first was the case of a person who lived in a municipality longer than two and less than four years. This person could apply for local citizenship and a municipality could not deny him local citizenship if he proved continuous stay in the municipality during two years, if he during two years paid local taxes, was not user of poor relief and was not under criminal investigation or criminal punishment (§ 7). The second was the case when a person lived in a municipality less than two years. In this case a municipality had full right to decide whether it wants to give local citizenship to a settler or not (§ 7). Opposite to Hungarian model where settlement was regular and basic way of local naturalisation, in Croatia-Slavonia settlement was one of possibilities of acquisition of local citizenship that coexisted with explicit acceptance in a municipality which was not necessary connected with notification of formal intention of settlement. We think this was the case because Croatian law incorporated only part of Hungarian regulation about settlement. Finally, it is important to note the difference of Hungarian and Croatian laws in regulation of public service as a basis of acquisition of local citizenship. This possibility did not exist in Hungary while was very important in Croatia-Slavonia.

Here it should be mentioned that position of local citizenship in the Hungarian legal system was fundamentally different than position of this concept in Croatian-Slavonian legal system but also in the Austrian legal system. In Hungary local citizenship should be observed primarily as a basis of poor relief while broader national integration was achieved through Hungarian national citizenship.<sup>28</sup>

#### *The Law on Regulation of Local Citizenship (1880) in Legal Practice*

Basic feature of the Law on Regulation of Local Citizenship of 1880 was its *ius sanguinis* principle and the fact that it transmitted local citizenship within family. According to this regulation local citizenship was much closed concept. Closed nature of the concept resulted in many problems in legal practice, and these problems became more evident with intensification of migration from villages to cities. The most important problem was emergence of persons without local citizenship.

To solve the issue the Provincial Government conducted measures to form registers of local citizens. Although such obligation of municipalities was prescribed by the Law on regulation of local citizenship of 1880 this was not the case in the legal practice (§ 42).<sup>29</sup> In this circumstances the Provincial Government on 13 September of 1886 issued a circular in which it warned subordinated counties to control records of local citizens in

<sup>27</sup> Contrary, Susan Zimmermann states that after four years of continuous residence in a municipality a person had possibility to apply for local citizenship (instead of term local citizenship she uses term legal residence status). ZIMMERMANN, SUSAN: *Divide, Provide, and Rule: An Integrative History of Poverty Policy, Social Policy, and Social Reform in Hungary under the Habsburg Monarchy*, Central European University Press, Budapest-New York, 2011. p. 13.

<sup>28</sup> ZIMMERMANN *op. cit.*, p. 12.; PÉTER *op. cit.*, pp. 338–340.

<sup>29</sup> Zavičajni odnošaji I, *Obćinar*, nr. 3, May, 1883. pp. 137–138.

municipalities.<sup>30</sup> To help formation of these records, the Government on 12 April 1887 issued an order in which it instructed Catholic and Orthodox churches to allow access in their parish registers.<sup>31</sup> The use of these registers should have been only exceptional in cases when civil registers were not sufficient source of information.<sup>32</sup> The order of the Provincial Government of 7 April 1892 stated that right of access to parish registers in principle had only head of municipality upon a prior request.<sup>33</sup> The efforts had limited success in the legal practice. The sources indicate that in 1913 registers of local citizens were mostly not managed properly and were not correct.<sup>34</sup>

Another very important problem in the legal practice was problem of migrants from Hungary. These migrants often did not acquire local citizenship in Croatia-Slavonia. The reason for this should have been searched in disharmony of Croatian-Slavonian and Hungarian system of local citizenship. Crucial was different regulation of settlement in Croatian and Hungarian law. As we already said in Croatian law settlement was not regular but additional way of acquisition of local citizenship connected with explicit and very formal note of intention of settlement to a municipality. On the contrary, in Hungary settlement was regular way of acquisition of local citizenship, from the reform of law of 1886 not anymore connected with a formal notification of intention of settlement.<sup>35</sup> Many Hungarian settlers, especially poor ones, did not know about special and different Croatian-Slavonian system. Another problem was that after longer period of absence Hungarian municipalities refused to recognise these persons as their local citizens, and refused to issue them documents about local citizenship. As persons without documents about local citizenship, they had additional problems in procedure of acquisition of local citizenship in Croatia-Slavonia.

In such circumstances the Provincial Government in 1915 enacted the Instructions for solving local citizenship matters as an act which had to improve application of the Law on local citizenship of 1880.<sup>36</sup> The Instructions in one part referred to position of

<sup>30</sup> SMREKAR, MILAN: *Priručnik za političku upravnu službu u kraljevinah Hrvatskoj i Slavoniji*, book III, Tiskom i nakladom Ignjata Granitza, Zagreb, 1902. p. 63.

<sup>31</sup> *Naredba Zemaljske vlade, Odjela za bogoštovlje i nastavu, od 12. travnja 1887. br. 731*. [The order of the Provincial Government, Department for religion and education, of 12 April 1887, nr. 731], published in: *Ibid.*

<sup>32</sup> *Naredba Zemaljske vlade, Odjela za unutarnje poslove, od 1. travnja 1890. br. 44363/1889*. [The order of the Provincial Government, Department for internal administration, of 1 April 1890, nr. 44363/1889], published in: *Ibid.* p. 72.

<sup>33</sup> *Naredba Zemaljske vlade, Odjela za bogoštovlje i nastavu, od 7. travnja 1892. br. 7767*. [The order of the Provincial Government, Department for religion and education, of 7 April 1892 nr. 7767], published in: *Ibid.* pp. 63–64.

<sup>34</sup> See the report of the city of Varaždin nr. 2518/II-1913 of 7 May 1913 sent to the Department of internal administration of the Provincial Government: *HR Hrvatski državni arhiv 79-Unutarnji odjel Zemaljske vlade* (further: *HR HDA 79-UOZV*), the box 4060, 4-1 29541/1915.

<sup>35</sup> See opinions of Bjelovar and Osijek counties of 13 June 1913 about differences between Croatian and Hungarian systems. *HR HDA 79-UOZV*, the box 4060, 4-1 29541/1915; Compare § 10 *Ugarskog zakonskog članka XXII.: 1886. o uređenju općina* [Legal article XXII: 1886 of Hungarian Diet about municipalities], published in: Mutavdžić, *op. cit.*, pp. 300–310.; ŽGANEC, VINKO: *Zavičajno pravo u Vojvodini, Medjimurju i Prekmurju*, Tiskara Vladimir Takšić, Čakovec, 1924. pp. 1–2.

<sup>36</sup> *Naputak za rješavanje zavičajnih stvari* [The instructions for solving local citizenship matters], published on 22 May 1915. Documents connected with the process of enactment of the Instructions see in: *HR HDA 79-UOZV*, the box 4060, 4-1 29541/1915.; See the Instructions in: *Zbornik zakona i naredaba valjanih za kraljevine Hrvatsku i Slavoniju*, kom. X., 1915.

Hungarian local citizens in Croatia-Slavonia who wish to acquire Croatian-Slavonian local citizenship but can not submit original certificate of local citizenship. For this purpose, the Instructions prescribed a rule which enabled these Hungarian local citizens to prove their national and local citizenship with other documents such as military identity card, passport, servant's certificate and other similar documents which contain clause about local citizenship (§ 20).

Although the Instructions abolished some legal barriers and fulfilled some legal gaps they did not really change closed nature of local citizenship. The sources connected with enactment of the Instructions show unwillingness of the Government to make broader reform which would open the concept significantly. In the debates about final text of the Instructions the Government explicitly refused broader introduction of criteria of residence in disputes about local citizenship. According to the Provincial Government that would additionally complicate position of Croatian authorities toward Hungarian laborers from Hungary who have local citizenship in Hungary but residence in Croatia-Slavonia. The Provincial Government was afraid that such norm would be additional argument to Hungarian jurisdictions not to recognize local citizenship to their Hungarian local citizens who live longer period of time in Croatia-Slavonia.<sup>37</sup> So as we already said, the Instructions did not change closed nature of the system of local citizenship and they did not solve the crucial problem of incompatibility of Croatian-Slavonian and Hungarian system of local citizenship.

Proposal for a significant change happened in 1918 when the Provincial Government proposed reform that included important redefinition of the system of acquisition of local citizenship by settlement. The proposed solution abolished obligatory formal note of intention of settlement to the municipality. Instead, it was only important that municipality knew about settlement and did not object to the settlement. All other prerequisites as continuous living in a municipality at least four years, payment of local taxes, adequate wealth or income and absence of criminal record, were regulated in the same way. If a settler fulfilled all this preconditions he acquired new local citizenship in municipality of settlement.<sup>38</sup> Proposed solution was in accordance with Hungarian regulation of 1886. However, the proposal never came into force because of collapse of the Austro-Hungarian Monarchy.

Finally, it is important to note that the law on local citizenship of 1880 remained in force on Croatian-Slavonian legal area in the new Yugoslav state but of course in completely different constitutional environment. Unification of the regulation of local citizenship happened in 1933 for villages and in 1934 for cities and then the Croatian law on regulation of local citizenship ceased to be valid.<sup>39</sup>

<sup>37</sup> HR HDA 79-UOZV, the box 4060, 4-1 29541/1915 (57913/1913) Résumé.

<sup>38</sup> HR HDA 79-UOZV, the box 4611, V-1 5542/1918. *Prijedlog novele k zakonu od 30 travnja 1880. o uređenju zavičajnih odnošaja u kraljevinama Hrvatskoj i Slavoniji* [Proposal of amendment on the law of 30 April 1880 on regulation of local citizenship in the kingdoms of Croatia and Slavonia]. See § 1, 3 and 4 of proposal.

<sup>39</sup> ŠARKIĆ, SPASOJE: *Zavičajnost po novom zakonu o opštinama*. Općinski upravnik, Zagreb, 9 December 1933, nr. 49; Bogdanović. *Automatsko stjecanje zavičajnosti po novom zakonu o općinama, Općinski upravnik*, Zagreb, 23 December 1933, nr. 51

*Changes in the neighbourhood: reforms of laws about local citizenship in Austria and Hungary*

Important characteristic of Austrian regulation of local citizenship was its exclusionary character. This was mostly because the law of 1863 was based on the principle of *ius sanguinis* and because it did not contain possibility of automatic naturalization after ten years of residence.<sup>40</sup> The fact that authority for local naturalisations was in full competence of municipalities, also had exclusionary effects.

Because of closed character of the concept, many newcomers in cities did not acquire new local citizenship. The data show that, for example, in the Czech lands in the year 1869 on every 100 local citizens there were 37 strangers (persons without local citizenship in a municipality). In the year 1890 this ratio changed in a way that on every 100 local citizens there were 92 strangers. Especially problematic situation was in bigger cities because of greater immigration. For example, the data for the capital Vienna for the year 1890 show that among all population of the city there were only 34,8% of local citizens while other 65,2% of population were strangers (had local citizenship elsewhere). Even worse situation was in Styria in the city of Maribor where only 14,3% population of the city had local citizenship in Maribor while other 85,7% of population were strangers.<sup>41</sup>

To solve the problem, Austrian legislator conducted reform of regime of acquisition of local citizenship in 1896 when the law about local citizenship of 1863 was partially changed.<sup>42</sup> The most important change was introduction of right on local citizenship after ten years of independent and continuous residence in a municipality (§ 2). To acquire local citizenship in this way a settler should not have to be user of social support and he should submit a request to a municipality. If a municipality refused to recognize him as local citizen a person had right of appeal to higher authorities. In this way Austrian authorities significantly eased possibilities of acquisition of local citizenship to persons who permanently lived in a new municipality ten years or longer and reduced power of municipalities in matters of local citizenship.

Conducted reform opened the concept of local citizenship but not fully reduced its usage as an instrument of social closure, especially in the circumstances of nationalization of politics that happened at the end of 19<sup>th</sup> and in the beginning of 20<sup>th</sup> century. This we can see on the example of Czech immigrants in Vienna. Viennese authorities in cases of local naturalizations of such immigrants asked them to declare and support german character of the city. The authorities interpreted the oath very strict

<sup>40</sup> HARZIG *op. cit.*, p. 212.

<sup>41</sup> Reforma zavičajnih odnošaja u Austriji, I, published in: *Obćinar*, 13 December 1894, p. 394.

<sup>42</sup> *Zakon od 5. prosinca 1896. kojim se mijenjaju neke odredbe zakona 3. prosinca 1863 o uređenju zavičajnih odnosa* [The law of 5 December 1896 about change of the law of 3 December 1863 on regulation of local citizenship], published in: *List državnijeh zakona za kraljevine i zemlje zastupane u carevinskom vijeću*, kom. LXXXVI, published and distributed on 19 December 1896.

so for example, membership in a Czech savings association was interpreted as a breach of oath.<sup>43</sup>

Hungarian system of 1876 was more flexible than Austrian, but also had some limitations.<sup>44</sup> Important limitation was obligatory formal notification of intention of settlement. Because of this the central state authorities liberalized the system in 1886 in a way that such formal application was not anymore necessary. So according to the rule a person could acquire new local citizenship after four years of settlement even without this formal application.<sup>45</sup> The change however, did not fully eased procedure of acquisition of local citizenship. Another important limitation was tax system which enabled some groups of persons, namely day-laborers, to easily acquire local citizenship.<sup>46</sup> However, it should be pointed out that the highest administrative authorities particularly from the 1890s promoted policy of integration of immigrants in local communities and supported their efforts to acquire local citizenship in these communities.<sup>47</sup>

### Conclusion

Croatian law on regulation of local citizenship of 1880 was made according to the Austrian model but also contained some important influences of Hungarian law. The law followed previously established principle of *ius sanguinis* as basic criteria for acquisition of local citizenship, but also contained other possibilities of acquisition of local citizenship including local naturalisation by settlement. It regulated acquisition and loss of local citizenship and poor relief while other rights of local citizens were regulated by other autonomous laws.

The law remained unchanged during 38 years of existence of Austro-Hungarian Monarchy and was also relevant after 1918 on Croatian-Slavonian legal area in the first Yugoslavia. Durability of the law did not mean lack of problems. On the contrary, practice has shown that some kind of reform was necessary, especially in the area of acquisition of local citizenship. Comparative experience of Hungary and Austria show that these countries conducted significant liberalization of systems in 1886 and 1896. This however did not happen in Croatia-Slavonia where only Instructions of 1915 entered into force and the Instructions were not reform in a real sense of a word but just help for interpretation of the law of 1880.

As important we would like refer to the question, why Croatian authorities did not follow trends in Austria and Hungary and did not open the concept of local citizenship significantly? We think that the answer should be searched in limited maneuver for adequate reform because of potential influence of the Central Government in Budapest.

<sup>43</sup> JOHN, MICHAEL: *National Movements and Imperial Ethnic Hegemonies in Austria, 1867–1918*, in: Hoerder, Dirk, Harzig, Christiane and Schubert, Adrian (ed.). *The Historical Practice of Diversity, Transcultural Interactions from the Early Modern Mediterranean to the Postcolonial World*, New York, Oxford, 2003. p. 90.

<sup>44</sup> This was result of economic liberalism and optimism about modernization. ZIMMERMANN *op. cit.*, pp. 12–13.

<sup>45</sup> More about this regulation see in: ŽGANEC *op. cit.*, p. 1–13.

<sup>46</sup> ZIMMERMANN *op. cit.*, pp. 12–13.

<sup>47</sup> *Ibid.* 13–14.

Another reason, was fear that wide opening of the concept will result in the rise of expenses for support of poor immigrants, including ones from Hungary. Another explanation would be that wide opening of a concept would reduce its importance as an instrument of autonomy-building.

At the end, it should be pointed out that Croatian law, although made according to the Austrian model and influenced by Hungarian law, in a way differed from both of these systems, and besides Austrian and Hungarian, represented third model of regulation of local citizenship in the Austro-Hungarian Monarchy. In absence of separate Croatian national citizenship, this law was an important element of Croatian legal culture and an important element of separate Croatian identity in the Austro-Hungarian Monarchy.