

A MAN'S GIFT TO A WOMAN AT THE DAWN

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Abstract: This paper is focused on the legal institute entitled “the morning gift” (*Morgengabe*). It was a gift given by the husband to his wife after the wedding night as appreciation of her virginity. The morning gift was given in the form of money, but also as jewelry, land, cattle etc. It is an ancient legal institute appearing already in barbaric German or Anglo-Saxon legal codes we encounter since early Medieval times in both European and non-European law, for instance in Islamic law, in essence until today. It was eventually also codified, ex. in the 1811 ABGB. In the Czech lands this institute had been applied until 1950 when a new Civil Code was enacted. In Liechtenstein, the statutory regulation of the morning gift lasted until 1993, in Austria the institute was abolished as late as 2009. The aim and object of this paper is to outline the developments of the “morning gift” as a legal institute in wider international context as well as, more specifically, in the Czech lands; to outline its significance in matrimonial law including the handling of this gift after death of the husband; and to provide examples of private legal acts establishing a morning gift, including on what were their contents; as well as to consider what role the notion of the morning gift can have in contemporary (and dynamic in its changes) Europe, especially in the context of encounters with different legal systems due to migration.

Keywords: law, morning gift, *Morgengabe*, marriage, dowry

INTRODUCTION

The legal institute of “*Morgengabe*” (the Morning Gift), the origin and development of which is discussed in this article, has shown admirable persistence over time, remaining in use for over 2,000 years. Even today, it cannot be called completely extinct with certainty, as evidenced by the contemporary examples described below, and this is also one of the reasons that inspired this article. To confirm this, we can point to the *Encyclopedia Britannica* that to this day references the *morganatic marriage* (*matrimonium ad morganaticum*) as the general term for an unequal marriage where one of the partners is of a lower social class, meaning restrictions for him/her and the descendants under the law of the country. According to *Britannica*, the origin of this word can be found in the Gothic *maurjan*, “to restrain,” or in the notion of the morning gift: this gift is all the brides can expect to receive in the marriage.¹

I. THE NOTION AND USAGE OF MORNING GIFT IN HISTORICAL SOURCES

The gift of a man given to a woman at dawn (lat. *donum matutinale*) was a specific gift that could be encountered mainly in German lands under the name *Morgen-*

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¹ “Morganatic marriage”. In: *Encyclopedia Britannica* [online]. [2024-07-01]. Available at: <<https://www.britannica.com/topic/morganatic-marriage>>. We will, however, not delve too deeply into English usage of terms related to the morning gift – that would be a topic for a different, much more linguistic research. Suffice to say that there appears to be no dedicated English term for this legal institute – only sometimes it is wrongly conflated with “dower” (see e.g. the translation of Tacitus below).

gabe,² but also under the names *Heiratsgut*, *Kramgeld*, *Liebgeld*, *Zugeld* etc.³ In German countries, especially in Bavaria, a gift was given after the wedding night also to a widow, but it was called *Abendgabe* – evening gift.⁴

It had appeared in other European countries as well: in Sweden under the names *Hindradagsgat* and *Mundur*, in Spain as *Arrha*,⁵ *Haereditamentum maritorum* or *Firma dotis*,⁶ *Screix*,⁷ or *Greix*,⁸ etc.⁹

Medieval Icelandic law, in the *Grey Goose Code*, recognized *linfé* and two types of dowry: *munð* and *heimanfylgja*. *Munð* was obligatory; without it, the marriage was not concluded, and it was provided by the groom directly to the bride. The smallest value of the *munð* was one mark and it was administered by the husband. After the death of the husband, it was assigned to the wife as a widow's share. *Heimanfylgja* was not obligatory, it was provided by the bride's parents; if the bride died childless, *heimanfylgja* returned to the parents. In addition, the bride could receive a *linfé*, a morning gift that became her personal property.¹⁰

In Czech lands this institute is known under the name *jitřní dar*.¹¹

However, we encounter this legal institute not only in European countries, but also in non-European ones. For example, in Iran, this legal institute is still used today and is enshrined in the Iranian Civil Code.¹² Likewise, it is an ancient institution of Islamic law, enshrined in the Qur'an: verse four of the fourth sura called "Women" reads, "Give women you wed their due dowries graciously. But if they waive some of it willingly, then you may enjoy it freely with a clear conscience."¹³ Here, the morning gift for the wife represents some financial security to be used in case of divorce or of death of the husband.

As noted above, the morning gift was a predominantly German institution. Already Tacitus, in his *Germania*, i.e. the book *On the Origin and Situation of the Germans* (*De origine*

² NAPIERSKY, J., G. *Die Morgengabe des rigischen Rechte*. Dorpat 1842, provided us with abundant information about the German Morgengabe, Morgengab or morgangeba in barbarian codes, but also in the 19th century.

³ Cf. "Morgengabe". In: *Deutsches Rechtswörterbuch. Band 9*. Heidelberg: Heidelberg Akademie der Wissenschaften, 1996, p. 892ff.

⁴ LAFARGUE, P. *Vývoj cizoložství [The Development of Adultery]*. Prague: Hugo Kosterka, 1901, p. 14.

⁵ In Castille.

⁶ In Aragon.

⁷ In Catalonia.

⁸ In Valencia.

⁹ Cf. KRÜNITZ, J. G. "Morgengabe". *Oekonomische Encyclopädie oder allgemeines System der Staats-, Haus- und Landwirthschaft, in alphabetischer Ordnung; aus dem Französischen übersetzt und mit Anmerkungen und Zusätzen vermehrt, auch nöthigen Kupfern*. Berlin 1773–1858. In: *kruenitz1.uni-trier.de* [online]. [2024-08-01]. Available at: <<http://www.kruenitz1.uni-trier.de/xxx/m/km08447.htm>>.

¹⁰ DOOVÁ, L. *Islandské středověké zákoníky [The Icelandic Medieval Codes]*. Olomouc: Univerzita Palackého v Olomouci, 2014, p. 300.

¹¹ ADAMOVÁ, K., LOJEK, A. Jitřní dar – institut zcela zapomenutý? [The Morning Gift: An Entirely Forgotten Institute?] In: Karolina ADAMOVÁ – Vilém KNOLL – Václav VALEŠ, et al. *Pozapomenuté právní instituty [Rusty Legal Institutions]*. Plzeň: Aleš Čeněk, 2014, pp. 84–87.

¹² Cf. art. 1091 of the Iranian Civil Code.

¹³ In: *quran.com* [online]. [2024-06-16]. Available at: at: <www.quran.com>. A different translation of the Quran (by Muhammad Muhsin Khan and Muhammad Taqi-ud-Din al-Hilali). In: *noblequran.com* [online]. [2024-08-01]. Available at: <www.noblequran.com>, reads as follows: "And give to the women (whom you marry) their Mahr (obligatory bridal money given by the husband to his wife at the time of marriage) with a good heart, but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allah has made it lawful)."

et situ Germanorum), writes in its chapter 18 about *dos* (dowry) provided by a man to a woman as follows: “*Their marriage code, however, is strict, and indeed no part of their manners is more praiseworthy. Almost alone among barbarians they are content with one wife, except a very few among them, and these not from sensuality, but because their noble birth procures for them many offers of alliance. The wife does not bring a dowry to the husband but the husband to the wife. The parents and relatives are present, and pass judgment on the marriage-gifts, gifts not meant to suit a woman’s taste, nor such as a bride would deck herself with, but oxen, a caparisoned steed, a shield, a lance, and a sword. With these presents the wife is espoused, and she herself in her turn brings her husband a gift of arms. This they count their strongest bond of union, these their sacred mysteries, these their gods of marriage. Lest the woman should think herself to stand apart from aspirations after noble deeds and from the perils of war, she is reminded by the ceremony which inaugurates marriage that she is her husband’s partner in toil and danger, destined to suffer and to dare with him alike both in peace and in war. The yoked oxen, the harnessed steed, the gift of arms, proclaim this fact. She must live and die with the feeling that she is receiving what she must hand down to her children neither tarnished nor depreciated, what future daughters-in-law may receive, and may be so passed on to her grand-children.*”¹⁴ The above statement that “the wife does not bring a dowry to the husband but the husband to the wife”¹⁵ makes it clear that Tacitus himself understood that this is no case of dowry as known by the Roman law – as the property brought into the marriage by the woman (or by somebody else who could establish dowry for her, such as the father of the family – *pater potestas*).

The morning gift also appears as *morginegiva* in the barbaric codes – for example in *Lex Gundobada* 42,2 or in *Lex Ribuarica* 37,2. In Anglo-Saxon legal environment the morning gift can be encountered as early as in one of the oldest legal acts, the 596 AD code of Æthelberht, king of Kent (The Laws of Æthelberht, 81).¹⁶

The Burgundy Code (*Lex Gundobada*) mentions the morning gift (*morgengeba*, *morginegiva*) in its chapter entitled “Of the Inheritance of Those Who Die without Children”. The chapter has two paragraphs – in the first, the legislator explains the reason for its adoption; he considers that although a number of provisions on inheritance from childless women had been previously adopted, the prescribed rules needed to be somewhat corrected. Thus, it is provided that a childless woman, if she does not remarry, shall, on the death of her husband, receive one-third of his property. Upon her death, this property goes to the heirs of her original husband. The second paragraph is then introduced by maintaining all that has been laid down concerning the morning gift in force. It is further provided that the wife may remarry within one year of her husband’s death, but if she does, one-third of the property left to her under paragraph 1 is forfeited. If she remarries

¹⁴ TACITUS, C. *Complete Works of Tacitus*. Alfred John Church and William Jackson Brodribb. (transl.). New York: Random House, 1942. In: [perseus.tufts.edu](https://www.perseus.tufts.edu) [online]. [2024-08-01]. Available at <<https://www.perseus.tufts.edu/hopper/text?doc=urn:cts:latinLit:phi1351.phi002.perseus-eng1:18>>.

¹⁵ In original: “Dotem non uxor marito, sed uxori maritus offert.” Tacitus, De origine et situ Germanorum. In: *VICIFONS* [online]. [2024-07-01]. Available at: <[https://la.wikisource.org/wiki/De_origine_et_situ_Germanorum_\(Germania\)](https://la.wikisource.org/wiki/De_origine_et_situ_Germanorum_(Germania))>. Other translations use “dowry” here.

¹⁶ DONAHUE, C. *Documents on Continental Legal History*. [unpublished]. In: [law.harvard.edu](http://www.law.harvard.edu) [online]. [2024-07-26]. Available at: <<http://www.law.harvard.edu/faculty/cdonahue/courses/CLH/mats/MAT13CLH.03.pdf>>.

after the lapse of a year or two, then all the property she received from her first husband is forfeited. The heirs of the original husband shall also receive the amount to be paid for the remarriage.¹⁷

Similar regulation can be found in the Ripuarian Franks Code (Lex Ribuarica) in the chapter entitled “On Gifts of Women” (De dotis mulierum). This chapter also has two paragraphs; the second provides that if a woman survives her husband, she should (as a widow) receive 50 shillings, one-third of the common property, as well as the property she had received as a morning gift.¹⁸

Seemingly simple provision of the Æthelberht Code “If she does not bear a child, her paternal kin should obtain [her] property and the morning-gift.” (Gif hio bearn ne gebyreþ, fæderingmagas fioh agan morgengyfe)¹⁹ is unequivocal with regard to the morning gift: It is to be received by the paternal kin of the woman. It is also apparent that this rule was to be applied to a woman who had not given birth to a child (yet). However, it is unclear from what position the woman enters this provision. That is because, considering the preceding provisions of the code, it could be a woman who lost her husband as childless (Æthelberht 78), but it could also be a childless woman whose marriage ended due to divorce (Æthelberht 79, 80). And it could also be the case that it refers to inheritance for a childless (and deceased) woman.²⁰

The nature of the morning gift is aptly described in the laws of the 8th century Lombard king *Liutprand*, amending the oldest legal monument of Lombard law entitled *Edictum Rothari*.²¹ Specifically, Article 7.I. of the law from the fifth year of the reign of King *Liutprand* states that “*Should any of the Langobards wish to give a morning gift to his wife when he marries her, we shall stipulate as follows (Si quis langobardus morgingab coniugi suae dare voluerit, quando eam sibi in coniugio sociaverit): that on the next day (after the wedding) he should show the deed, attested by witnesses, before relatives and friends and say: ‘Look what I gave my wife as a morning gift (quia ecce quos coniugi meae morgingab dedi).’ So that in the future there is no quarrel over it. However, we do not allow the morning gift itself to include more than one quarter of the property of the person who established the morning gift himself. However, if he wants to give less than one quarter of his property, let him be completely free to give as much as he wants. But he cannot donate more than one quarter under any circumstances.*”²² It follows from the above that the validity of the morning gift requires not only a written form of the gift deed confirmed by witnesses but also its public presentation before a circle of close people, i.e., before relatives and friends. The aim of this public meeting is to try to prevent future disputes. The provision in question

¹⁷ DONAHUE, C. *Documents on Continental Legal History*.

¹⁸ *Monumenta Germaniae Historica, Leges Nationvm Germanicavm*, edidit Societas aperiendis fontivbvs rerum Germaniarvm, Lex Ribvaria, herausgegeben von Franz Beyerle und Rudolf Buchner. In: *dmgh.de* [online]. [2024-07-26]. Available at: <https://www.dmgh.de/mgh_ll_nat_germ_3_2/#page/95/mode/1up>.

¹⁹ DONAHUE, C. *Documents on Continental Legal History*. pp. III-12 and III-13.

²⁰ HOUGH, C. A. The Early Kentish „divorce laws“: a reconsideration of Æthelberht, chs. 79 and 80. *Anglo-Saxon England*. 1994, Vol. 23, pp. 19–34, at p. 20. In: *JSTOR* [online]. [2024-08-01]. Available at: <<https://www.jstor.org/stable/44510235?seq=1>>.

²¹ BALÍK, S. et al. *Texty ke studiu obecných dějin státu a práva II. (Texts to Study the General History of the State and Law)*, Vol. 1. 2nd ed. Univerzita Karlova v Praze: SPN Praha, 1986, p. 56.

²² *Ibid.*, p. 60. Note the term “morgingab” used here.

(twice!) prohibits the value of the morning gift from exceeding one-quarter of the property of the one who gives the morning gift. However, he has the freedom (liberty) to donate less than one-quarter of his property. In this context, it is appropriate to explain the nature and concept of gift in archaic (original, early) Germanic law. Here, the gift is not perceived in today's sense as a gratuitous performance but is understood purposefully, in anticipation of a consideration, a counter-performance (*do ut des*). The gift had to be matched by a counter-gift. Thus, when a woman leaves her parents' house for a man's house, this must be confirmed by gifts, just as when giving an engagement ring. A daughter was also given in marriage, and a dowry was given to her. For this, a counter-gift was given in the form of a bride price. Even the marriage itself had to be accompanied by an oath and gifts, and everything had to take place in public.²³

Later, we encounter the morning gift, for example, in the *Schwabenspiegel*, where we learn that a horse, a young cow, a sheep, or a goat, could also be given as an object of the morning gift.²⁴

The issue of the morning gift is also regulated by the *privilege of Emperor Rudolf II. dated 28 May 1584*, announced at the castle in Frankenstein on 27 August of the same year. Specifically, the issue of the morning gift, as well as of dowry, is covered by the third (out of four) legal articles of that privilege. This article cancels the previous custom, according to which childless widows are left with only half of the registered property. With reference to the fact that marriage is a Christian and honorable state, the above custom was abolished and widows were left with their entire property.²⁵

Morgengabe was also covered in the 1765 *Codex Maximilianeus Bavaricus civilis* (I 6, 16), as follows: “*das Geschenk, womit die Braut in Ansehen ihres jungfräulichen Standes entweder von dem Bräutigam selbst oder von anderen in den nämlichen Absicht beehrt wird*”.²⁶

It is also worth mentioning here that even in such an elaborate legal system as Roman law, this legal institution did not exist, although, for example, apart from and in addition to dowry, Roman law recognized the institution of donations for the case of the impoverishment of the husband or his death.²⁷

II. MORNING GIFT IN THE CZECH ENVIRONMENT

In the Czech lands, the morning gift had undergone a number of changes. At first, it was a kind of honorary gift given by the husband to his wife after the wedding night as recognition of her virginity (*munus virginitatis, praemium amissae virginitatis*). The morning

²³ HATTENHAUER, H.: *Evropské dějiny práva [European History of Law]*. 1st ed. Prague: C. H. Beck, 1998, pp. 22–23.

²⁴ Adalbert ERLER – Ekkehard KAUFMANN – Ruth SCHMIDT-WIEGAND – Dieter WERKMÜLLER (eds.). *Handwörterbuch zur deutschen Rechtsgeschichte. III. Band*. Berlin: Erich Schmidt Verlag, 1984, p. 680. Cf. also ENNEN, E. *Ženy ve středověku [Women in the Middle Ages]*. Praha: Argo, 2001, p. 36.

²⁵ STARÝ, M. Münsterbergica – právněhistorický silesiakální rukopis v drážďanské univerzitní knihovně [Münsterbergica – a Legal-historical Silesiacal Manuscript in the Dresden University Library]. *Právněhistorické studie*, 2015, Vol. 45, No. 2, p. 153.

²⁶ Cf. *Handwörterbuch zur deutschen Rechtsgeschichte. III. Band*. Berlin 1984, p. 682.

²⁷ On these in great detail see DOSTALÍK, P. *Majetková ochrana ženy po smrti manžela v římském právu [Property Protection of a Woman after the Death of Her Husband in Roman Law]*. Praha: Leges, 2023, p. 50ff.

gift consisted of jewelry, but also of the land, and it depended purely on the husband's will to give this gift to his wife, i.e., at the beginning, it was not legally enforceable and did not have a security function. The wife could therefore dispose with the morning gift only after receiving it.

In order to show any voluntariness in the morning gift, the husband had to actually give this gift in the morning after the wedding night. Eventually, a promise that the gift would be provided to the wife was sufficient. A husband could make such a promise to his future wife even before the marriage was concluded. The wife was not entitled to the morning gift, hence the term "gift."²⁸

However, if the wife had received a promise that the morning gift would be provided to her, she could enforce the fulfillment of the promise in court, but only after the marriage was concluded. The claim could be made no earlier than the first morning after the wedding night or, more precisely, after the conclusion of the marriage.

In the case of the death of the wife, the husband received the morning gift back, but only if the wife died childless.²⁹

A number of accounts of the giving of the morning gift have survived from earlier times. Let us cite at least some examples of morning gifts from the Middle Ages.

First, we can mention the morning gift (together with the dower) in the amount of 21,000 hrivnas of silver, which was received by *Anne of Bohemia* from her husband, *Henry of Carinthia*. Along with the money, she also acquired a stake in the Tyrolean estates in the city and the castle *Halle* (Halls, today the town of Hall in Tyrol, Innsbruck-Land district, Republic of Austria), in the castles of *Thaur* (Taur, today in the Innsbruck-Land district, Republic of Austria) and *Trazberg* (Trasperch, today part of the municipality of Stans, Schwaz district, Republic of Austria) as the dower and the *Friedberg castle* (Vridberch, today part of the municipality of Volders, Innsbruck-Land district, Republic of Austria) as the morning gift.³⁰

Another case is the morning gift that the *daughter* of Henry of Carinthia was to receive after her marriage to *John Henry*, the son of John of Luxembourg. This morning gift included 20,000 hrivnas in addition to 10,000 hrivnas of silver in the form of real estate and miner fees in Moravia.³¹

We can also mention the morning gift (together with the dower) in the amount of 6,000 Rhine guldens, which the Lower Silesian Piast *Henry XI of Glogow* promised to *Princess Barbara of Brandenburg*, married to him in her childhood.³²

²⁸ ROUČEK, F. *Československý obecný zákoník občanský a občanské parvo [The Property Tenure of Czech Princesses and Queens Until Year 1310]*. Prague: Československý kompas, 1932, p. 1226.

²⁹ Ibid.

³⁰ FRIEDLOVÁ, J. Příspěvek k majetkové a pozemkové držbě kněžen a královen do roku 1310 [Contribution to the Property and Land Holdings of Priests and Queens until 1310]. *Mediaevalia Historica Bohemica*. 2017, Vol. 20, No. 2, p. 71. In: *Historický ústav AV ČR, v. v. i.* [online]. [2024-07-01]. Available at: <https://www.hiu.cas.cz/user_uploads/vydavatelska_cinnost/periodika/mediaevalia_historica_bohemica/mhb_20_2_2017_fin.pdf>.

³¹ SPĚVÁČEK, J. *Král diplomat Jan Lucemburský 1296–1346 [King Diplomat John of Luxembourg 1296–1346]*. Prague: Panorama, 1982, p. 163.

³² STARÝ, M. Dědičnost slezských knížectví v ženské linii ve středověku a v raném novověku [Heritability of Silesian Principalities in the Female Line in the Middle Ages and Early Modern Period]. *Právněhistorické studie*. 2022, Vol. 52, No. 2, p. 37.

In 1557, *William of Rosenberg* promised to his future (first) wife *Catherine*, the sister of Duke Erich II of Brunswick, 10,000 gold tolars as the morning gift,³³ to his second wife, *Sophie Brandenburg of Hohenzollern*, William of Rosenberg promised, in the wedding contract, the same amount, but paid annually. Both wives came from a German background where it was customary to give the morning gift. In contrast, William of Rosenberg did not give any morning gift to *Polyxena of Lobkowicz*.³⁴

In 1602 the knight *Asmann Stampach of Stampach* registered the amount of 3,500 Miesen schocks on his estate Sedčice to his wife *Sofia* as a morning gift.³⁵

Although the *Joseph II Civil Code* (published 1 November 1786 for all Czech and Austrian lands, in force until 31 December 1811) did not acknowledge the institute of morning gift, legal regulation of morning gift can be found in § 1232 of the 1811 Civil Code (ABGB), in force in Czechoslovakia until 1950.

Systematically, the morning gift is included in title XXVIII of ABGB on marriage contracts. All provisions on marriage contracts are based on the general provisions of contracts. Under § 1217, marriage contracts are contracts negotiated with respect to property and with regard to the marriage union and primarily have as their object a dowry, dower, morning gift, community of property, management, and enjoyment of one's own property, order of inheritance, or lifelong enjoyment of property, determined for death, and widow's pay.

According to § 1232 of the Civil Code, it was a gift that a man promised to give to his wife on the first morning after marriage. The Civil Code made no distinction in the case of this gift on whether it was a wife who sacrificed her virginity after a wedding night (or as a sign of love and thanks for her devotion – *Hingabe*) or a wife who had previously been a widow and remarried.

In the legal theory of the 19th century, we also encounter the opinion that the claim to the morning gift presupposed that the marriage was actually consummated. Therefore, if the husband died before the marriage was consummated, the surviving wife was not to claim this gift. In the event of her death, her heirs were not to claim this gift, but if the wife did not live to see the morning after intercourse, this wife's claim belonged to them because according to the above-mentioned legal opinion the morning did not mean the time of the obligation's origination, but only the time of its fulfillment. On the other hand, in relation to this issue of morning not meaning the time of the origination of the obligation but only the time of its fulfillment, there also existed an opposing view, a claim that the morning gift appears only at the dawn of the morning.³⁶

³³ BŮŽEK, V., HRDLIČKA, J. et al. *Dvory velmožů s erbem růže, Všední a sváteční dny posledních Rožmberků a pánů z Hradce [Courtyards of Princes with the Coat of Arms of the Rose, Weekdays and Holiday Days of the Last Rosenbergs and Lords of Hradec]*. Prague: Mladá fronta, 1997, p. 81.

³⁴ RYANTOVÁ, M. *Polyxena z Lobkovic – obdivovaná i nenáviděná první dáma království. Velké postavy českých dějin [Polyxena of Lobkovic – Admired and Hated first Lady of the Kingdom. Great figures of Czech history]*. Vol. 20, Prague: Vyšehrad 2017, p. 193.

³⁵ In: *Obec Nové Sedlo [Municipality Nové Sedlo]* [online]. [2024-04-04]. Available at: <<http://www.nove-sedlo.cz/titulni-strana/historie/sedcice/>>.

³⁶ VESELÝ, F. X. Dar jitní [The Gift of Morning]. In: *Všeobecný slovník právní: Příruční sborník práva soukromého i veřejného zemí na radě říšské zastoupených se zvláštním zřetelem na nejnovější zákonodárství a poměry právní zemí Koruny české. Díl první. Accessio – Jistota žalobní [General legal Dictionary: A Handbook of the Private and Public Law of Countries on the Council of the Reich represented with Special regard to the Latest Legislation and Legal Relations of the countries of the Czech Crown. Part one. Accessio – the Guarantee of the Applicant]*. Prague: self-published, 1896, Vol. 1, pp. 211–212.

According to § 1232 of the Civil Code, among other things, if the morning gift was promised, in doubt it was presumed that it had already been given in the first three years of marriage. Under this legal presumption, therefore, in doubt, the morning gift in the first three years of marriage is deemed to have been given, and the wife bears the burden of proof to prove otherwise. Therefore, if the wife insisted on fulfilling the gift promise more than three years after the marriage, she had to prove that the promise was not fulfilled.

Act No. 76/1871 RGBl.³⁷ introduced a form of notarial act as a requirement for the validity of the donation promise. Before the adoption of this law, it was only required to conclude the morning gift contract in written form – cf. § 943 of ABGB. The aforementioned Act No. 76/1871 RGBl. lists in its § 1 contracts and acts that require a record in the form of notarial act. Its very first point a) lists wedding contracts which also include, according to the aforementioned system of ABGB, the morning gift.³⁸ Other acts requiring notarial acts, in addition to marriage contracts, were market, exchange, lifetime pension, and loan contracts made between spouses, and acknowledgment of debt made by one spouse to the other, confirmation that the wife has received a dowry even if the confirmation was issued to someone other than the wife, contracts on gifts when the chattel is not actually handed over, all kinds of documents about legal transactions between the living concluded by blind, or by deaf, or by people who cannot read, or by mute, or by people who cannot write when these persons perform the legal act by themselves. The entry of this law into force was tied to the entry into force of the notary code. It is not without interest that the law did not enter into force throughout the monarchy at once; it was expected that it would only enter into force when appropriate number of notary offices was filled in specified areas.³⁹

The morning gift could be claimed immediately, but interest could not be claimed.⁴⁰

According to § 48 of the Bankruptcy Code (Act No. 1/1869 RGBl.),⁴¹ in case of bankruptcy, the morning gift was to be included in the fifth, i.e., the last class of bankruptcy creditors as what “*someone has to claim from donation.*” Fines for all kinds of offenses also belong to the same class, if the claim and these fines are not insured by a lien. If the bankruptcy estate (bankruptcy substance) is not sufficient, the competing claims are settled according to the ratio of their amount.⁴²

In the Commentary on the Civil Code from the period of the First Czechoslovak Republic, it is stated that the first sentence of § 1232 applies, but the second sentence on the three-year period does not.⁴³ Furthermore, it is stated there that the morning gift often occurred in noble circles, and it was noted that this institute had little practical importance already at the time of the drafting of the Civil Code. The contract for the morning gift could only be concluded between the betrothed, and the wife was to receive the gift immediately on the next day after the wedding.

³⁷ Act, given on 25 July 1871, on what legal acts require a notary file.

³⁸ See § 1 of Act No. 76/1871 RGBl.

³⁹ See § 2 of Act No. 76/1871 RGBl.

⁴⁰ See Supreme Court Decision No. 8302 Gl. U. 4343 from 30 November 1871.

⁴¹ Act, dated 25 December 1868, introducing the bankruptcy code.

⁴² § 48 of Act No. 1/1869 RGBl.

⁴³ ROUČEK, E., SEDLÁČEK, J. *Komentář k Československému obecnému zákoníku občanskému a občanské právo platné na Slovensku a v Podkarpatské Rusi. Díl pátý [Commentary on the Czechoslovak General Civil Law applicable in Slovakia and in the Ruthenia. Part Five]*. Prague: V. Linhart, 1937, p. 497.

According to the jurisprudence cited in the Commentary on the Civil Code, the morning gift could not accrue interest, was considered only as a gift between spouses according to § 1246 and §§ 947 to 954 of the Civil Code, and could in no way be considered a provision for widowhood, but rather a gift that was eligible for revocation for ingratitude.⁴⁴

The 1811 General Civil Code (ABGB) was the last of the modern codes to regulate the morning gift. Even the German BGB, which had been in force since 1900, did not take up this legal institute anymore. In the Czech lands, the institute of the morning gift was abolished by the 1950 Civil Code. In Austrian law, the morning gift as a gift from a man to a woman was available until 2009, when it was abolished.⁴⁵ In Liechtenstein, where ABGB is also still valid today, the regulation of the morning gift was removed in 1993.⁴⁶

III. OUTLINE OF POSSIBLE DEVELOPMENTS

As we have already mentioned in the introduction, it might seem that future use of the institute of the morning gift is unlikely, given the developments of social conditions in European area.

However, it seems that the certainty of this statement may be challenged by the immigration of persons from countries, especially Arab countries, where the institute of the morning gift continues to have practical use and its application is also expected in positive law.

An example that can confirm this idea is the decision of the Austrian *Supreme Court* (Oberster Gerichtshof), deciding on appeals in civil and criminal matters, no. 5Ob213/05t, dated 4 October 2005.

There, the Supreme Court decided on an extraordinary remedy in the matter of divorce and provisional establishment of alimony, and the parties were persons of Syrian origin. The case was first decided by the *District Court* (Bezirksgerichte) in Fünfhaus, whose decision was also confirmed by the *Higher Regional Court* (Landesgerichtes für Zivilrechts-sachen) in Vienna, the subject of the dispute being the extent to which the Austrian court should in these proceedings examine and apply Syrian law and jurisprudence on determining the status of persons.

Since the aforementioned case involved a provisional establishment of circumstances in relation to alimony, the Supreme Court rejected the appeal, stating that it is permissible for lower courts to waive complete examination of a foreign legal order,

⁴⁴ *Ibid.*, p. 497.

⁴⁵ Repealed by Art. 1(12) of FamRÄG 2009 (BGBl I Nr.75/2009).

⁴⁶ DŮLÁKOVÁ JAKŮBEKOVÁ, D., SKORKOVÁ, V. (eds.). *Zborník odborných príspevkov z konferencie „Užitočné nez-náme inštitúty v občianskom práve“ konanej v dňoch 5. a 6. októbra 2017, Stretnutie katediier občianskeho práva právnických fakúlt v Slovenskej republike a Českej republike*, Paneurópska vysoká škola, Fakulta práva, 2018 [Proceedings of the Conference “Useful Unknown Institutes in Civil Law” held on 5th and 6th October 2017. Meeting of the Departments of Civil Law of Faculties of Law in the Slovak Republic and the Czech Republic, Pan-European University, Faculty of Law, 2018]. In: *Paneurópska vysoká škola* [online]. 2018 [2024-07-01]. Available at: <https://www.paneurouni.com/wp-content/uploads/2017/03/zbornik%CC%81k_odborny%CC%81ch_pri%CC%81spevkov_z_konferencie_uz%CC%8Citoc%CC%8Cne%CC%81_nezna%CC%81me_ins%CC%8Citit%CC%81ty_v_obc%CC%8Cianskom_pra%CC%81ve22_5_a_6.10.2017.pdf>.

here Syrian law, when deciding on a provisional establishment, as performing it would result in failing to observe a reasonable period within which the provisional alimony must be established.

It was precisely because the lower courts did not make sufficient efforts to determine the foreign law that the applicant made the core of their final remedy. Specifically, he stated that according to § 72(1) of the Syrian Law on Personal Status (qānūn al-ahwāl ash-shahsiya)⁴⁷ the wife's claim to alimony expires if the wife refuses to move in with the husband without a justifiable reason. In § 72(2) of the cited law, it is explicitly stated that a justifiable reason why a woman does not have to move in with her husband is the failure to provide a morning gift or the husband's failure to furnish an apartment. If there is a justifiable reason, the alimony claim is maintained.

Despite its rejection of the remedy, the Supreme Court briefly assessed that the provision referred to by the applicant would not be relevant given the circumstances of the case under consideration, as it was not the case of initial entry into the domestic community. At the same time, the Supreme Court commented on the nature of the morning gift, namely that even for the morning gift, it is decisive that it be given immediately after the conclusion of the marriage.⁴⁸

Quran, mirrors, candlesticks and gold coins, this is what many Muslim men promise their wives in their marriage contracts, sometimes even in those concluded in German mosques. Can a Muslim woman in Germany sue for her oriental wedding gift? This is a question that divides the German courts.

Federal Court of Justice (Bundesgerichtshof) expressed, back in 2009, the opinion that a morning gift is a promise of the husband to the wife in the marriage contract, and this commitment must be fulfilled. Recently, however, German courts have been deviating from this practice. Either because the morning gift is a product of a patriarchal society and admitting it would discriminate against women, or on the contrary, because even the courts of predominantly Muslim countries do not interpret this institute literally. “Fabulous sums of gold coins” were promised in exaggeration, of which there was no doubt among any of the parties involved.⁴⁹ In Czech circumstances, the notion of “bringing down the blue from the sky,” used even in legal textbooks, could fittingly be used instead.⁵⁰

⁴⁷ BEZOUŠKOVÁ, L., PAUKNEROVÁ, M. Mahr (Věno) v právu muslimských zemí a mezinárodní právo soukromé [Mahr (dowry) in the Law of Muslim Countries and International Private Law]. *Právník*. 2019, Vol. 158, No. 4. In: *Ústav státu a práva AV ČR, v. v. i.* [online]. [2024-07-01]. Available at: <https://www.ilaw.cas.cz/upload/web/files/pravnik/issues/2019/4/PRAVNIK_4_2019_TEXT_349-444.pdf>.

⁴⁸ Decision of Oberste Gerichtshof, Geschäftszahl 5Ob213/05t. In: *Rechtsinformationssystem des Bundes* [online]. 4. 10. 2005 [2024-01-06]. Available at: <https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20051004_OGH0002_0050OB00213_05T0000_000>.

⁴⁹ Muslimisches Brautgeschenk: Gerichte kämpfen mit Morgengabe. In: *Frankfurter Allgemeine Rechtsinformationssystem des Bundes* [online]. [2024-01-06]. Available at: <<https://www.faz.net/aktuell/rhein-main/muslimische-maenner-versprechen-brautgeschenke-13869523.html>>.

⁵⁰ Such promise would be invalid, possibly rendering invalid the entire contract it formed part of. See BREZINA, P. Úvaha o právu a absolutnu [Essay on law and absolute]. In: František Cvrček – Helena Jermanová (eds.). *Meta-morfózy práva ve střední Evropě 2020: Právo a krize*. Plzeň: ZČU, 2020, pp. 77–87.

CONCLUSION

The morning gift can be characterized as a unique legal institute of family or, more precisely, marital law, historically not applied equally neither in terms of time nor territory. However, it is always related in some way to the personal status (sacrifice of virginity) or property security of the woman entering marriage. Its usage and application were stronger in the continental legal systems (mainly in German territories), while it was (with the exception of the earliest Anglo-Saxon law, as described in the paper) virtually never applied in the later Anglo-Saxon world. It is also easy to understand that it still survives in the system of Islamic law, where especially the areas of family law draw mainly from tradition. The morning gift penetrated Czech law from German law and was widespread in the Czech lands both in land law and municipal law. It was enshrined in civil law from the 19th century, and it was valid until 1950.