

# GAIUS, HADZIC AND *OCCUPATIO* OF WILD ANIMALS – CLASSICAL ROMAN LAW IN THE SERBIAN CIVIL CODE

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## 1. Jovan Hadzic and the Serbian Civil Code

The Civil Code for the Principedom of Serbia or, to use the abbreviated name, the Serbian Civil Code, was issued in 1844 while Serbia was still formally under Ottoman rule and was a semi-independent country. The great Serbian national leader Milos Obrenovic, who succeeded in obtaining partial autonomy for Serbia, decided to create a new legal system for the state *in statu nascendi*. He wanted to enact new Serbian laws to replace the Turkish ones that were applied together with national customary law. After a series of unsuccessful attempts to have the French Civil Code translated and implemented, Prince Milos invited educated lawyers from abroad to help create a new legal system. They were intellectuals from Austria and Hungary, mainly of Serbian origin, some of them living just on the other side of the Rivers Sava and Danube in Vojvodina, which was part of the Austrian Empire at the time. In 1836 Jovan Hadzic, a lawyer educated in Pest and Vienna who was a city senator from Novi Sad as well as a writer and linguist, was invited and became the person responsible for the civil codification. Hadzic wanted to model the Serbian Civil Code on the Austrian one because Austria had a historical background similar to that of Serbia rather than that of France, and also had closer ties with Austria. He had a difficult task: on the one hand, he had a highly developed code as a model; on the other, he had the Serbian conservative and patriarchal legal tradition of unwritten law<sup>1</sup>. At the same time, he had to fulfil Prince Milos' wish and draft a clear, concise codification.

1 It leaned, however, upon the rich heritage of Roman-Byzantine law developed in the Serbian medieval state. For more details see S. Avramovic, "The Serbian Civil Code of 1844: A Battleground of Legal Traditions", in Th. Simon (ed.), *Konflikt und Koexistenz. Die Rechtsordnungen im 19. und 20. Jahrhundert*, Bd. II – *Serbien und Bosnien-Herzegowina* (Frankfurt-am-Main, 2013) (in print).

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As soon as the Code appeared, it was severely criticised for several reasons, one of them being that it was a summary of the Austrian Allgemeines Bürgerliches Gesetzbuch, (Austrian Civil Code), and essentially an unsuccessful copy. The compiler, Jovan Hadzic, was criticised for being only a well-educated copyist without initiative. This assessment is unduly harsh yet basically superficial. The Serbian codification is certainly highly influenced by the Austrian Civil Code but also involves many other different elements; Serbian customary law, church law, some traces of the Ottoman shariah law and also genuine Roman law, which can be proved by an analysis of its provisions relating to the *occupatio* of wild animals.

## 2. Occupatio of wild animals in Roman law

Things not belonging to anyone – *res nullius* – may be the subject of *occupatio* and may become the property of the person who first acquires possession of them. In Roman law, *occupatio* relates to wild beasts. The classical Roman *responsum* and related casuistic method have here acquired a special importance. A series of well-known cases, reflecting dilemmas and controversies among Roman lawyers, have retained their interest up until today for both didactic and academic reasons, and some have even been cited in judgments<sup>2</sup>. It suffices to mention the controversy between Trebatius and the majority of lawyers over the acquisition of possession of a wounded wild animal<sup>3</sup>; Proculus' case involving a wild boar caught in a trap<sup>4</sup>; or Pomponius' case involving a shepherd who rescued a pig, snatching it from the jaws of a wolf<sup>5</sup>.

The initial source is the Institutes of Gaius<sup>6</sup>, but his later work *Res cottidianae* provided even more detail. Practically everything that the compilers introduced into the Digest concerning the *occupatio* of wild animals was taken over from the *Res cottidianae*. This text can be found practically unchanged in the second part of Justinian's Institutes under the title *De rerum divisione* (2.1.12-16).

According to Gaius (D. 41.1.1), it is ownership of wild animals (*ferae bestiae*), birds and fish that can be acquired by *occupatio*. He provides no examples of *occupatio* of wild animals, but it is clear from the text that Gaius has restricted the term "wild beast" to wild land animals, as opposed to fish and birds that are also wild but live in the water and the air, respectively:

2 *Pierson v. Post*, Supreme Court of New York (1805): see Ch. Donahue, "Noodt, Titius, and the Natural Law School: The Occupation of Wild Animals and the Intersection of Property and Tort", in J.A. Ankum *et al.* (eds.), *Satura Robert Feenstra* (Fribourg, 1985) at 609-629; H. Hausmaninger, *Casebook zum römischen Sachenrecht*<sup>7</sup> (Wien, 1993) at 28-29; R. Knütel, "Von schwimmenden Inseln, wandern den Bäumen, flüchtenden Tieren und verborgenen Schätzen (zu den Grundlagen einzelner Tatbestände originären Eigentumsverwerbs)", in Reinhard Zimmerman *et al.* (eds.), *Rechtsgeschichte und Privatrechtsdogmatik* (Heidelberg, 1999) at 566.

3 D. 41.1.5.1 (Gai. 2 *rerum cottidianarum sive aureorum*) = Just. Inst. 2.1.13.

4 D. 41.1.55 (Proc. 2 *epistularum*).

5 D. 41.1.44 (Ulp. 19 *ad edictum*).

6 Gai. Inst. 2.67-68.

*Omnia igitur animalia, quae terra mari caelo capiuntur, id est ferae bestiae et volucres pisces, capientium fiunt.* (So all animals taken on land, sea, or in the air, that is, wild beasts, birds, and fish, become the property of those who take them.)<sup>7</sup>

Ownership in this sense is acquired when these animals are caught on land, in the water or in the air and come under the control and supervision of the person who has caught them. Gaius refers to such supervision or control as *custodia*, which actually coincides with the acquisition of physical power over the animal – *possessio*.

D. 41.1.3.2: *Quidquid autem eorum ceperimus, eo usque nostrum esse intellegitur; donec nostra custodia coercetur: cum vero evaserit custodiam nostram et in naturalem libertatem se receperit, nostrum esse desinit et rursus occupantis fit.* (Any of these things which we take, however, are regarded as ours for so long as they are governed by our control. But when they escape from our custody and return to their natural state of freedom, they cease to be ours and are again open to the first taker.)

Ownership of such an animal continues while there is physical power and supervision over it, but is lost once the animal escapes and regains its natural freedom. According to Gaius, this happens when the animal is no longer in sight or when it becomes obvious that it can no longer be caught (D. 41.1.5.pr). From that moment on, the animal is once again considered to be *res nullius* and will belong to the person who captures it. The legal rule that Gaius expounds is clear: acquisition of ownership through *occupatio* coincides with the acquisition of possession, and ownership is likewise lost the moment possession of the animal is lost.

Gaius goes on to discuss a particular category of animals, including pigeons, bees and deer that are not constantly subject to their owners' control. They are in the habit of leaving and returning, having the so-called *animus revertendi*. A rule was introduced that ownership was lost, not the moment they wandered off and escaped their owners' control, but only when they no longer had the intention or habit of returning. This does not change the basic rule concerning wild animals, but is a loss of possession in a broader sense. While physical control over a wild animal has to be direct and constant, this is not so in the case of the animals having *animus revertendi*.

Still, there are obvious inconsistencies in the texts, which create confusion, for example with reference to bees.

Gaius is explicit on the wild nature of bees (D. 41.1.5.2-4)<sup>8</sup>:

2. *Apium quoque natura fera est: itaque quae in arbore nostra consederint, antequam a nobis alveo concludantur, non magis nostrae esse intelleguntur quam volucres, quae in nostra arbore nidum fecerint. Ideo si alius eas incluserit, earum dominus erit.*  
 3. *Favos quoque si quos hae fecerint, sine furto quilibet possidere potest: sed ut supra quoque diximus, qui in alienum fundum ingreditur, potest a domino, si is providerit, iure prohiberi ne ingrederetur.* 4. *Examen, quod ex alveo nostro evolaverit, eo usque nostrum*

7 Translation ed. by A. Watson (Philadelphia, 1998). The translations are based on the same edition.

8 The nature of bees was and still is a great problem. For Pliny they are neither wild nor tamed, while Varro considered some bees to be wild and some tamed. G. McLeod, "Wild and Tame Animals and Birds in Roman Law", in Peter Birks (ed.), *New Perspectives in the Roman Law of Property, Essays for Barry Nicholas* (Oxford, 1989) at 176.

*esse intellegitur, donec in conspectu nostro est nec difficilis eius persecutio est: alioquin occupantis fit.* (2. Bees, again, are wild by nature and so those which swarm in our tree are, until housed by us in our hives, no more regarded as ours than birds which make a nest in our tree. Hence, if another should house or hive them, he will be their owner. 3. Again, honeycombs which they make can be taken by anyone with no question of theft though, as said earlier, one entering upon another's land can be lawfully barred by the owner who becomes aware of it. 4. A swarm which flies away from our hive is deemed still to be ours so long as we have it in sight and its recovery is not difficult; otherwise, it is open to the first taker.)

Possession and ownership of the bees and of birds are acquired in the same manner. Even their landing on our tree does not make them ours; they continue to be *res nullius*. For ownership to be acquired they have to be enclosed in a beehive, so that the owner has control, supervision and physical power over them. When it comes to the loss of possession and/or ownership, there is no difference between bees and other wild beasts, fish and birds, as is evident from the text D. 41.1.5.4. As long as they are in our sight, they are ours, and when we lose sight of them, they again become *res nullius* and the property of the person occupying them.

However, D. 41.1.5.5 which discusses mainly peacocks and pigeons, involves certain ambiguities as well as illogicality:

*Pavonum et columbarum fera natura est nec ad rem pertinet, quod ex consuetudine avolare et revolare solent: nam et apes idem faciunt, quarum constat feram esse naturam: cervos quoque ita quidam mansuetos habent, ut in silvas eant et redeant, quorum et ipsorum feram esse naturam nemo negat. In his autem animalibus, quae consuetudine abire et redire solent, talis regula comprobata est, ut eo usque nostra esse intellegantur, donec revertendi animum habeant, quod si desierint revertendi animum habere, desinant nostra esse et fiant occupantium. Intelleguntur autem desisse revertendi animum habere tunc, cum revertendi consuetudinem deseruerint.* (The wild nature of peacocks and doves is of no comment because it is their custom to fly away and to return; bees, whose wild nature is universally admitted, do the same; and there are those who have tame deer which go into and come back from the woods but whose wild nature has never been denied. In the case of these animals which habitually go and return, the accepted rule is that they are held to be ours so long as they have the instinct of returning; but if they lose that instinct, they cease to be ours and are open to the first taker. They are deemed to have lost that instinct when they abandon the habit of returning.)

Thus bees are classified here, together with peacocks and pigeons, and also tame deer, as a special subcategory of wild animals having the habit of leaving and coming back, thus having the so-called *animus revertendi*. Consequently they are subject to special rules on the loss of possession, rather than to the general rules applicable to other wild animals and birds. Possession and ownership of the bees are not lost the instant they leave, for example when they fly away, provided they return.

The background to this inconsistency may be sought in the controversy between Proculus and Celsus, dating back to before Gaius' time<sup>9</sup>.

Paragraph 6 relates to wild and domestic animals:

*Gallarum et anserum non est fera natura: palam est enim alias esse feras gallinas et alios feros anseres. Itaque si quolibet modo anseres mei et gallinae meae turbati turbatae adeo longius evolaverint, ut ignoremus ubi sint, tamen nihilo minus in nostro dominio tenentur. Qua de causa furti nobis tenebitur, qui quid eorum lucrandi animo adprehenderit.* (6. Poultry and geese are not wild by nature; for there obviously exist other species which are wild fowl and wild geese. Hence, if my geese or chickens be disturbed and fly so far away that I do not know where they are, nonetheless they remain my property so that anyone who takes them with a view to gain will be liable to me for theft.)

Here, Gaius refers to chickens and geese as examples of domestic animals, emphasising that there are also wild variants subject to different rules<sup>10</sup>. It seems that Gaius used these examples based on the principle of association. Thus having previously discussed peacocks, pigeons and bees, in this instance he speaks of the same type of domestic animals. As regards domestic animals, the fact that they have wandered away, thus escaping the owner's control and supervision, does not affect his ownership. Ownership of domestic animals is not lost if possession is lost, as it would be in the case of wild animals.

## 2.1 D.41.1.44: a pig, a wolf and a shepherd

*D.41.1.44 (Ulpianus libro 19 ad edictum): Pomponius tractat: cum pastori meo lupi porcos eriperent, hos vicinae villae colonus cum robustis canibus et fortibus, quos pecoris sui gratia pasebat, consecutus lupis eripuit aut canes extorserunt: et cum pastor meus*

9 Collatio, 12.7.10 (Ulp. 18 ad ed.): Item Celsus libro XXVII digestorum scribit: si, cum apes meae ad tuas advolassent, tu eas exusseris, quosdam negare competere legis Aquiliae actionem, inter quos et Proculum, quasi apes domini mei non fuerint. Sed id falsum esse Celsus ait, cum apes revenire soleant et fructui mihi sint. Sed Proculus eo movetur, quod nec mansuetae nec ita clausae fuerint. Ipse autem Celsus ait nihil inter has et columbas interesse, quae, si manum refugiant, domi tamen fugiunt. (= D. 9.2.27.12). The question was raised with reference to the application of the Aquilian law in a situation where the bees had flown away to land belonging to someone else, who eventually destroyed them. Is the owner of the land who set the bees on fire after they had flown to his land, liable for the damage in accordance with the Aquilian law? Proculus' answer is in the negative, for the reason that the plaintiff no longer owns the bees that have flown away. Celsus had a different opinion, referring to the fact that the bees are a special category of animals that have the habit of returning. In addition, they also bring profit to the owner; and strict application of the formal law would mean that the bee owners could not claim them while they were flying. Celsus' opinion became generally accepted to the point that only his opinion was included in the Digest, without any reference to the controversy that had evidently been settled. For more on this see David Daube, "Doves and Bees", in *Mélanges Henry Lévy-Bruhl* (Paris, 1959) at 63-75 = in D. Cohen & D. Simon (eds.), *Collected Studies in Roman Law II* (Frankfurt-am-Main, 1991) at 899-913; B.W. Frier, "Bees and Lawyers", (1982/1983) *78 Classical Journal* at 105-114; B.W. Frier, "Why Did the Jurists Change Roman Law? Bees and Lawyers Revisited", (1991) *Index* at 135-146.

10 See, further, on the difficulty of classifying animals and birds in general, G. McLeod (n. 8) at 169-176.

*peteret porcos, quaerebatur, utrum eius facti sint porci, qui eripuit, an nostri maneant: nam genere quodam venandi id erant nanci ...* . (The following case is discussed by Pomponius: When wolves were carrying off pigs from my swineherd, a farmer on a neighbouring estate, with some strong and powerful dogs which he kept to protect his own herd, pursued the wolves and snatched the pigs away from them; that or the dogs tore them away; but when my swineherd claimed the pigs, the question arose whether the pigs had become the property of their rescuer or remained mine; for, in a way, the dogs got them by hunting ... .)

This specific case presented by Pomponius is to be found in Ulpian's text. It raises the issue of the loss of ownership of a domestic animal (in this case, a pig) that was dragged away by a wild animal (in this case, a wolf)<sup>11</sup>. It is evident that the case may be viewed from various perspectives, and that Pomponius did so. One of the possible solutions is to treat the pig as an accessory of the wolf. In terms of this solution, it is possible to claim that a pig that ends in the jaws of a wolf becomes *res nullius*, just like the wolf itself, and therefore subject to *occupatio*. However, the prevailing opinion was that, in accordance with the general rule, a person did not lose ownership of a domestic animal after losing possession of it. As a result, the owner had the right to recapture the snatched animal. (*Et sane melius est dicere et quod a lupo eripitur, nostrum manere, quamdiu recipi possit id quod ereptum est.*) Ownership cannot be lost as long as the thing that has been taken away, in this case a domestic animal, exists.

A particularly interesting issue is the problem of the legal status of the rescuer. In the given example, a farmer rescued the pig from the jaws of the wolf. The solution given in that case is rather harsh from the point of view of the rescuer and is evidently one-sided, focusing as it does exclusively on protecting the owner. The rescuer is obliged to return the thing he has rescued. Otherwise, he is considered to have perpetrated theft. This rule is not an ideal example of equity.

### 3. The Serbian Civil Code

#### 3.1 *Prima facie* test

Paragraphs 235-241 of the Serbian Civil Code refer *stricto sensu* to the acquisition of ownership by the appropriation of wild animals. Thus the Code contains far more regulations on the subject than does the Austrian Civil Code, in which there are only two relevant articles (paragraphs 383 and 384)<sup>12</sup>. A comparison of the total number of paragraphs in the Austrian Civil Code (1502) with the 950 paragraphs in total in the Serbian Civil Code clearly shows that no copying could be involved.

11 For more details see R. Lambertini, "Erepta a bestiis e occupazione", (1984) 30(2) *Labeo* at 191-202; H. Hausmaninger (n. 2) at 142; Th. Finkenauer, "Fall 4. D.41.1.44: Das Schwein im Wolfsmaul", in U. Falk *et al.* (eds.), *Juristische Fall- Lösungen* (München, 2008) at 45-61.

12 D. Knezic-Popovic, "Udeo izvornog rimskog prava u Srpskom gradjanskom zakoniku", in M. Jovicic (ed.), *Sto pedeset godina od donosenja Srpskog gradjanskog zakonika (1844-1994)* (Belgrade, 1996) at 74.

In the Austrian Civil Code, the section is entitled “The acquisition of ownership by occupation” (von der Erwerbung des Eigentumes durch Zueigung). The Serbian Civil Code approximates more closely to Roman law on the subject of acquisition of things by *occupatio*<sup>13</sup>.

Paragraph 235 lists the animals considered to be wild:

§ 235. Дивје зверје шумско, као медведи, курјаци (вуци), зецови, дивји вепрови итд. онога су, ко их ухвати или убије; а тако и дивје птице, биле оне за јело или не, онога су, ко их увати или убије. Кад и где није слободно ловити, определиће се особитом уредбом. (Wild animals of the woods, such as bears, wolves, rabbits and wild boars, are the property of the one who catches or kills them. Also wild birds, no matter whether for eating or not, are the property of their catcher or their killer. A special law shall regulate when and where hunting is forbidden.)

This text is certainly in the manner of Roman texts. Strangely enough, Gaius’ texts referring to *occupatio* do not include such examples, even though he applied this methodology in certain other writings<sup>14</sup>. As a result, Hadzic’s text is clearer and more comprehensive than that of Gaius.

Apart from beasts of the woods and beasts of the land, as in Gaius birds and fish are singled out as animals that may be subject to *occupatio*. Hadzic’s statement that the rules refer only to wild birds was probably inspired by Gaius’ comment in D. 41.1.5.6 that there are wild and domestic species of birds. When Hadzic states further that it is irrelevant whether the wild birds are meant to be eaten or not, his approach is once again similar to that of the Roman lawyers in reducing the norm from an abstract level to an everyday one, thus adding a note of warmth and even good humour to the law.

There is no such provision in the Austrian Civil Code. The casuistic manner is alien to the spirit of the natural law school.

### 3.2 *Regula iuris* and paragraph 236

§ 236. Дивљач уваћена или припитомљена донде је наша, докле се у нашој власти налази; како пак природу дивљачине на себе узме, и испод власти наше изише, престаје бити наша, и припада ономе, који је први увати или убије. (Game that has been caught or tamed shall belong to us as long as it is under our custody; however, when it recovers its wild nature by escaping from our custody it ceases to be ours and becomes the property of the one who first catches or kills it.)

This paragraph reflects the Roman-law rule that the acquisition and loss of ownership of a wild animal coincides with the acquisition and loss of possession of that animal.

This rule is not included in the Austrian Civil Code. Apart from this, the Austrian Civil Code places tamed animals in the same category as domestic animals.

13 A. Malenica, “Rimska pravna tradicija u srpskom pravu”, (2004) 38(2) vol. I, *Zbornik Pravnog fakulteta u Novom Sadu* at 132-133.

14 For example D. 9.2.2.2 (Gai. 7 *ad ed. prov*).

### 3.3 Wild and domestic animals and paragraph 238

§ 238. Животиња питома, као коњи, волови, итд. гуске, патке, кокоши, ћурке итд. ако и испод наше власти изиђу, опет остају наше, и право нам припада на повраћај, и сваки је дужан издати. (Domestic animals, like horses, oxen etc., geese, ducks, chickens, turkeys etc., even if they escape from our custody, remain ours, and we are entitled to claim their recovery and everybody is obliged to return them.)

As in Gaius' texts, wild and domestic animals are treated differently. A person does not cease to own a domestic animal on losing possession of it. However, Hadzic cited examples of more domestic animals than Gaius did. In addition to Gaius' fowls (chicken and geese), he also lists cattle, which is appropriate and improves the quality of the rule.

### 3.4 Bees and pigeons, paragraphs 239-241

§ 239. Ројеви домаћи и голубови наши су тако, као и друга питома животиња. (Domestic swarms of bees and flocks of doves are our property, like other domestic animals.)

§ 240. Рој од твога преседа твој је; и ти имаш власт устопце вијати га, и где год нађеш, узети га. Но ако ти њега за 24 сахата вијати пренебрегнеш, престаје бити твој, и припада као и друга дивјач онеме, који га увати. (The swarm of bees from your beehive is yours; and you have a right to pursue it continuously and take it wherever you find it. However, if you stop searching for it for twenty-four hours, it is no longer yours and it belongs to the person who catches it, like any other wild animal.)

§ 241. Рој шумски у грму сматра се као ствар ничија, и припада онеме, који га први нађе и грм закрети. (A swarm in the woods is considered to be nobody's property, and belongs to the one who first finds and captures it.)

Bees are an important subject, which, having been problematic to Roman lawyers as well as the authors of the Austrian Civil Code and the Serbian Civil Code, are discussed in detail. The Austrian Civil Code does not discuss pigeons, whereas Gaius and Hadzic do so. Hadzic classified pigeons among domestic animals. We have seen that this issue was a problem for Roman lawyers and that pigeons, as tamed animals, were treated as a category of wild animals. Gaius contends that bees are undoubtedly wild, whereas Hadzic divides them into two kinds; domestic and wild. Paragraph 240 of the Serbian Civil Code states that the owner of domestic bees has the right to look for the bees and pursue them, but that if he stops doing so for an uninterrupted period of twenty-four hours, the bees are considered to be wild and subject to *occupatio*. There is an evident link here with animals having the so-called *animus revertendi*. Nevertheless, Hadzic seems to have come up with a similar solution to that of the Roman lawyers, despite having taken a slightly different path.

The Austrian Civil Code, unlike Roman law, applies the same basic rule to domestic bees, other domestic animals and tamed animals, according to which domestic and

tamed animals are placed in the same category. They are not subject to *occupatio*, and ownership is not lost when possession is lost (§ 384).

The Austrian Civil Code, like the Serbian Code, reflects a strong Roman-law influence and, especially, the Roman lawyers' uncertainty about the classification of animals, particularly bees and tamed animals. However, Hadzic did not follow the solutions provided by the Austrian Civil Code in this case either.

### 3.5 Sheep and wolves in paragraph 256

§ 256. Овца моја, коју ти од вука отнеш, није твоја, но моја, ако ти труд наплатим и штету, коју си претрпео, накнадим; које неможе више изнети од вредности овце. (My sheep that you rescue from a wolf is not yours but mine if I repay you the effort and compensation for damage you suffered and it cannot exceed the value of the sheep.)

The formulation of this norm is reminiscent of the case, discussed by Pomponius, of the pig that was snatched by a wolf and later rescued by a farmer, the leaseholder of neighbouring land. We can find a norm with a similar purport, although formulated in an abstract manner, in the Austrian Civil Code (§ 403).

It is hard to believe that Hadzic did not have the opportunity to read that impressive Roman case. Still, the solution he devised improves on the strictly formalistic and essentially inequitable Roman solution, which focused only on the protection of property, without considering the need to reward the brave rescuer. There are provisions on the rescuer's right to a reward in the Austrian Civil Code, and some of them were included in the Serbian Civil Code.

## 4. Conclusions

There is no doubt that the Austrian Civil Code had a great influence on Hadzic and on the Serbian Civil Code. But it is not true that Hadzic simply translated and indiscriminately borrowed from the Austrian Code. In respect of *occupatio* of wild animals he preferred the direct reception of Roman law.

As we have seen, the relevant provisions are neither shorter nor fewer, as one might expect, considering the total number of paragraphs in both codifications. On the contrary, they are much more elaborate and extensive than those in the Austrian Civil Code.

Hadzic used techniques characteristic of Roman lawyers. His provisions are not abstract and impersonal as modern codifications are, but rather characterised by the use of examples. He also very often resorts to direct speech in order to get closer to the common reader. Thus he carried out a very important educational mission in a country where the legal culture and legal terminology were poorly developed.

Hadzic showed his admiration for and knowledge of Roman law. His language is very similar to that of Gaius. Since he was a writer and linguist himself it is no wonder that he was obviously impressed by Gaius' clear and understandable language and style. Nevertheless, he did not copy Roman texts indiscriminately. In some respects, he even improved on Gaius' texts.

**Abstract**

Jovan Hadzic, the drafter of the Serbian Civil Code issued in 1844 neither translated nor borrowed the provisions of the Austrian Civil Code on the *occupatio* of wild animals. He applied techniques typical of Roman lawyers – giving examples and cases such as the one in D. 41.1.44, using direct speech. Hadzic was obviously impressed by Gaius and his clear, comprehensible language and style. His language is very similar to that of Gaius (D. 41.1.1-6). Drawing on ancient Roman law and its casuistry, Hadzic drafted provisions which were down to earth and close to common people. His work was of great educational importance to ordinary readers, whose legal culture was at a low level after a long period of Ottoman rule.