

Some Aspects of Custom, Written Law and Pravila seen as Sources of Medieval Romanian Law

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ABSTRACT: The concept of "source of law" is the starting point of social relations, as it provides the foundation for rules of conduct, the behavior of parties, and the concept of legal order. It is said that 'in the beginning was the word', meaning that legal customs provided the basis for social relations, which later became known as legal relations. As society evolved, so did the evolution of law, leading to the emergence of non-specialized written law, and later, specialized written law. This evolution can also be observed in Romanian law.

KEYWORDS: source of law, custom, legal custom, written law, pravil, non-specialized written law

Introduction

Following the thread of history, especially the thread of the history of law, we trace the concept of the source of law from its origin and then over time in its evolution. And because we start from the unwritten law or custom, we will make a presentation of it, as we find it in Romanian law in the medieval period. Then, with the evolution of society, we find unspecialized written law, and pravila, sources of medieval Romanian law. We have chosen to talk about these sources of law in the following, in order to bring to the attention of those interested in some landmarks of medieval Romanian law.

1. Romanian Customs in the Medieval Period

The notion of "custom," "legal custom" or "unwritten law" had the same name both in Wallachia and Moldova, namely "prava". In Transylvania, cutuma was designated by the word "ritus," "lex" or "lex olahorum," depending on the documents in which this legal norm appeared or on the social classes that used this notion (Condurachi 1935, 33). The name "custom of the land" was attributed to Romanian customary law because it was first analyzed in terms of its agrarian character. Therefore, in the studies of the history of Romanian law, the idea that the "law of the land" or "custom of the land" is, in fact, a local form of agrarian law is found.

Undeniably, the legal relationships that involved the institution of property, and especially those concerning land, were of legal importance and significance, but they could not be limited to Romanian customary law in the agrarian or land domain. Romanian customary law also regulated other areas, such as those relating to the family, and those relating to basic occupations such as shepherding, hunting, pottery, etc. In fact, these concerns, which we find among the Romanian population in the medieval period, were also present in earlier times, among the Geto-Dacians.

Until the end of the medieval period, the cutuma was the only source of Romanian feudal law with a representative character and specific peculiarities of each medieval Romanian state, with a number of similar or even common elements. The common elements of ancient Romanian law are found alongside ethnic and socio-economic aspects (Dariescu 2008, 17-22).

The emergence of written law under the overwhelming influence of Byzantium has often been described as being in conflict with the custom of the land, but the "pravila" was not a "law of occupation" intended to replace the custom of the land. On the contrary, since it

could not be considered a foreign and inimical right, the *pravila* began to apply at the same time as local law, in many cases even having the same content. At the beginning of the 19th century, a new stage of change in Romanian law was reached. In this phase, customary law and written law come to coexist and intertwine. As a result, Romanian countries develop a dual system of law, with customary law taking precedence over written law. This represents a transitional phase that links up to a system of law based predominantly on written regulations.

Another influence that the Romanian legal system experienced was the Hungarian-German influence, especially in Transylvania and areas where there was Austro-Hungarian dependence. Some authors argue that the influence of Hungarian law on Romanian customs can only be discussed after the birth of royal law. This law was intended to establish the relationship between the person who worked the land and the person who owned it, thus complementing Romanian customary law (Hanga 1993, 29). Hungarian customary law is not to be found among the legal customs of the Romanian Lands, but in Romanian written law there are regulations of Hungarian law which have been indirectly transmitted with the help of general principles of law.

The influence of German origin on Romanian law, which was in full formation, could be recognized in areas such as: town organization, the form of acts issued by the chancellery, terms referring to property such as "border", the custom of "aldămaş", etc.

2. Romanian law in the medieval period

2.1. The "Law of the Land," a specifically Romanian legal institution

The notion of "law" can be seen from several perspectives, namely: a broad meaning, encompassing the norm of conduct in general, but also a narrow meaning. In the latter sense, the Romanian medieval world understands the notion of "law" as a written legal norm.

At the same time, the historical sources bring to our attention the meanings that the concept of law had in the medieval period, namely: unwritten law, which represented all the traditional rules according to which the village communities functioned; written law, which represented the legal norms of the category of written law and imposed on communities by the coercive force of political power; Christian law, which represented the rules of conduct contained in the collections of orthodox church descriptions.

The concept called Law of the Land belongs to the category of unwritten (customary) Romanian law that was formed during a long historical process and that had as its main source the social norms existing on the Romanian territory. The earliest known customs and legal norms were formed in connection with land ownership (Marin 2015, 47-48).

Thus, as a result of the expansion of land areas through clearing and deforestation, there is an increase in personal property. Most of the land is being developed through the work of a single family, which is seeking to remove these properties from the regime of land-use regulation. In place of the rules which firmly forbade members of the community to alienate parts of the community's territory, a very important change was made to the right of preference (In Romanian *protimis*) (in the case of alienation of parts of the community's territory, the relatives of the alienator and the other members of the community were given preference in the purchase) (Herlea 1997, 38, 46).

Alongside the rules on property, the Law of the Land regulates the status and quality of persons (natural and legal persons, as well as the difference between landowners and foreigners, free or dependent peasants, degrees of kinship, family, inheritance, matters of obligations, especially in terms of civil liability within the community).

With the advent of the serfs, from the 11th century onwards, legal rules appear establishing their privileges, rights and duties. In the field of justice, the traditional legal rules concerning the institution of good and old men, as well as the evidentiary system with jurors, witnesses and the oath with furrow are maintained (Marin 2015, 47-48).

The Law of the Land was the same in each of the Romanian countries, regardless of their names, speaking the same language, reflecting the ethnocultural and institutional unity of all Romanians. The Law of the Land is a Romanian creation, the historical product of the ancestors' way of life under the conditions of their organization into village communities and then into feudal political formations.

It is important to mention that until the end of the 14th century, the Law of the Land was the only source of law in Romanian countries. From the 15th century onwards, written laws were adopted, represented by church pravileles. This was due to the fact that the rule was supported by the church, as part of its policy of centralization and consolidation of power.

2.2. Written law in Medieval Romanian countries

The written law represented the legal norms of the category of written law and imposed on collectivities by the coercive force of political power. Written law in medieval Romanian countries was one of the most important components of the system of government of that period and was based on principles specific to that period, including the division of rights and obligations between the nobility and the population. The notion of "written law" has been used to define social relations and set the limits of rights and obligations. Written law was used by the nobility to maintain their position and reinforce their authority. It was also used to establish the rules and regulations of conduct that the population had to follow.

3. Pravileas applicable in Romanian countries in the medieval period

The notion of "pravil" takes us back to the beginning of this paper, when we mentioned the name given to the custom in Wallachia and Moldova, in the medieval period ("prava"), but it also brings us to discuss the categories of pravulas applicable in Romanian countries in the same period, namely: ecclesiastical pravillas and secular pravillas.

3.1. Church Pravils

The religious factor influenced most areas of medieval life, so that legal regulations suffered the same fate. The first layer of religious terminology is Latin. However, in the age of feudalism, Slavic states were formed south of the Danube. This explains the Christian influence of Byzantium exerted through the Slavic line.

Simultaneously with the beginning of the medieval Romanian states, the rule was established according to which all the regulations of the Orthodox Church had to be modelled on the Byzantine nomocanons. These were represented by collections of Byzantine imperial laws and decisions of the synods of the Orthodox Church of Constantinople. The rulers of the Romanian countries understood to respect this rule, but they did not take over the Byzantine nomocanons directly, but with the help of the Slavic states. In this way, the language of the royal chancellery and religious worship was the Slavonic language. (Carp et al. 2002, 23, 45). Thus, the first church pravils were written in Slavonic, even though the population and not even all the high priests knew this language.

The Romanian language began to be used in the writing of church pravils in the mid-16th century. Initially, manuscripts were used for the reproduction of church prayers written in Slavonic and Romanian, and later, from the 17th century onwards, printing was used.

Historical sources also speak of the pravile written in Slavonic. The Targoviste Pravila is the oldest pravila written in Slavonic. It was written in 1452 by the grammarian Dragomir at the behest of Vladislav. In 1474 the hieromonk Ghervasie wrote the Pravila of the Monastery of Neamt. These were followed in 1512 by the Pravila of Bisericani (in the county of Neamt), in 1557 by the second Pravila of the Monastery of Neamt, in 1581 by the Pravila of Putna, in 1618 by the Pravila of the Monastery of Bistrita of Moldavia and in 1636 by the Pravila of the Monastery of Bistrita of Oltenia.

Because they are based on the same sources, these pravils, written in Slavonic, are characterized by unity of content. The sources consisted of the texts of Byzantine laws, the works of the church fathers, provisions referring to the hierarchical organization of the Orthodox Church and the alphabetical syntagma of Matthew Vlastares. The latter was drawn up in 1335 in Thessaloniki and consisted of a series of rules of conduct in society as well as rules of law. It was widely circulated and highly appreciated among the Orthodox (Peretz 1928, 48-52).

The Pravileas were written using the Romanian language. The first church pravil written in Romanian appeared in the mid-16th century. These were the following:

- "Pravila of the Holy Apostles" (In Romanian „*Pravila Sfinților Apostoli*”), written and printed in Brasov by Deacon Coresi between 1560 and 1580, also called Pravila of Ieud, because a fragment of this pravila was discovered in 1921, at Ieud, in Maramureș;

- The "Pravila of the Saints according to the teaching of the great Basil" (In Romanian „*Pravila Sfinților după învățătura marelui Vasile*”), written in Moldavia at the beginning of the 17th century, whose content is almost identical to that of the "Pravila of Ieud";

- The "Chosen Pravila" (In Romanian „*Pravila aleasă*”), was written in 1632 by the logophile Dragoș Eustrație in Moldavia.

- The "Pravila de la Govora" (In Romanian „*Pravila de la Govora*”), also known as the "Little Pravila", was written in 1640 by order of Matthew Basarab.

With the advent of church pravils written in Romanian, written law gained greater importance and its scope of application increased. Church pravils written in Romanian have a unified content, because they used common sources and were addressed to the same population. The pravile circulated and were applied in all three Romanian countries.

All church pravils, both those written in Slavonic and those written in Romanian, contain legal norms, but also non-canonical provisions, which referred to the history of synods, church fathers, fragments of chronicles, tables used to calculate time and forms related to the drafting of official acts. The legal rules are not organized by subject matter, so that civil law regulations alternate with criminal law or procedural law, while canon law provisions alternate with secular ones.

Most legal texts refer to persons, family organization, betrothal, marriage, divorce and kinship. It can be seen that the rules on contracts are similar to those of Byzantine law.

The rules of criminal law are strongly influenced by the Church's understanding of crime and punishment. Thus, in the Church's view, offences are considered sins and punishments are considered to be applied in order to atone for sins. For example, homicide is called the sin of murder. The punishments prescribed in these prayers were either physical - beating, mutilation and capital punishment - or spiritual - matins, prayers and fasts (Mitra-Niță 2015, 237).

With the elaboration of the church pravileas, the second layer of the influence of Romanian law is received. However, unlike the Law of the Land, which received the Romanian influence directly, in the church pravile the Romanian influence was exerted indirectly through Byzantine channels, primarily through the nomocanons and the emperor's laws, which adapted the provisions of Romanian law to the feudal realities of Byzantine society (Peretz 1931, 31).

3.2. Lay Pravils

In the middle of the 17th century, secular pravils were adopted. Two of the most important works that were known as lay pravils were the "Romanian Book of Teaching" (In Romanian "Cartea românească de învățătură") and "The Correcting of the Law" (In Romanian "Îndreptarea legii") (Rotaru 2016, 649-682). The first lay pravila in the history of Romanian law was the work entitled "The Romanian Book of Learning", which was drafted by the logophile Dragoș Eustrație by order of the ruler Vasile Lupu and printed in 1646 at the printing house of the Trei Ierarhi Monastery in Iași.

The sources of this law were the following earlier legal documents: the Law of the Land, the basilicas (the Emperor's laws), the Byzantine agrarian law, and the modern treatise on criminal law and criminal procedure drawn up by Prosper Farinnaci in the 17th century, which was particularly famous in Europe at the time.

Some authors have erroneously claimed that this legislation had a didactic role, as they misinterpreted the word "teaching". In reality, the term 'teaching' was used with the meaning of a legal norm. In fact, the Eustration logophor states in the introduction that all those who do not follow those teachings will be struck by the royal curse (Vasiu 2009, 79-80).

In 1652 the work entitled "The Correction of the Law" (In Romanian "Îndreptarea legii"), also called "The Great Pravila", was printed in Targoviste. The work was printed at the behest of the ruler Matei Basarab (the author of this law was the monk Daniil Panoneanu, later to become Metropolitan of Ardeal). "The Correction of the Law" (In Romanian "Îndreptarea legii"), is essentially a version of the *Romanian Book of Teaching* (In Romanian "Cartea românească de învățătură"), but also includes some translations and reworkings of Byzantine nomocanons. Both laws have a similar structure, their provisions being arranged in chapters (referred to as 'pricini'), sections (referred to as 'glave') and articles (referred to as 'zaciae').

Provisions in laws can be classified into two categories, namely provisions relating to agricultural relations and provisions of civil, criminal and procedural law. The rules on agricultural relations stipulated the binding of peasants to the land they worked or the right of landlords to pursue runaway peasants and return them to their estates.

Civil law provisions cover institutions such as property, persons, family, obligations and succession.

In property matters, goods are classified into movable and immovable property, with immovable property having a higher value and thus being better protected. There is also a classification of goods into movable and immovable. Myrenetic goods belonged to the laity, while sanctified goods belonged to the church. It is specified that the action for reclaiming the property is imprescriptible, which means that the action could be brought at any time.

In the matter of persons, they are divided according to social status into free and enslaved people. The free were further divided into landlords, peasants and paupers. Landlords who held certain lordships were called lords, and landlords who did not hold lordships were called good, chosen kinsmen, useful to the country. Peasants were referred to by terms such as 'thick peasant', 'unwise' and 'man of gios'. The serfs were assimilated to the things and constituted property included in the master's patrimony. Over a slave, the master had a very extensive right of correction. A serf could obtain freedom by disrobing or by denouncing the master who committed certain offences.

The age of maturity was set at 25, while the age of liability for one's own actions was 18. The provisions on the organisation of the family are based on rules taken from the previous pravileas.

Marriage continues to be a religious act. It ended in front of the priest in church. The betrothal produces certain legal effects. The husband exercised parental power over his offspring and marital power over his wife, including a very broad right of correction. Dissolution of the marriage could be done by the church or by repudiation for acts expressly stated in the pravile, such as adultery, witchcraft, kinship and excessive beating. As for beating beyond measure, the practice was not to break the stick.

In the area of obligations, it is specified that debts and claims may arise from contracts and torts. Any contract may be concluded either by the parties or by their representatives. Contracts of sale, hire, loan and gift are provided for in the pravile. Personal guarantees (chezășia) and real guarantees (zalogul) are also mentioned.

In matters of succession, both intestate and testate inheritance have been established. The written will was called a *zapis*. Those convicted of crimes against morality, known as nevolnici, as well as murderers of those to be inherited, could not inherit.

Legal heirs were classified as descendants and collateral. It was specified which was the inheritance reserve that could only be acquired by family members and which was the available share, which could be acquired by non-family members.

In the field of criminal law, we find the most evolved regulations of the two laws, because their inspiration was Prosper Farinnaci's treatise, considered to be the most legally evolved of criminal law at the time. The word 'vini' was used to designate offences. Serious offences were called "vini mari" and less dangerous offences were called "vini piccoli".

In order to assess the social danger of the criminal offence, the intentional aspect, the place and time of the offence and its flagrante delicto nature were analysed. Modern criminal law concepts such as attempt, conspiracy, complicity and recidivism were used for the first time. The facts that remove criminal liability (insanity, self-defence, age under seven and superior's order) are shown, as well as the facts that reduce criminal liability: ignorance, anger, passion, sleepwalking and mistake without deceit.

The punishments envisaged were physical (beheading, hanging, impaling, burning with fire and mutilation), custodial (hanging, dungeon and banishment to a monastery), fines, exposure of the offender to public opprobrium (such as wearing through the fair), application in certain cases of the law of retaliation, called soul for soul, religious punishments (such as: apurisy, fasts, matins and prayers) (Vasiu 2009, 77).

Among the offences regulated in those two laws are: hicienia, calpuzania (counterfeiting of money, originated from a Turkish term), murder, theft, false testimony, abduction of a virgin or a woman, incest, bigamy, adultery, hieratia, hierosilia (the scope of the offence of hierosilia is widened to include sexual intercourse with a nun or sexual intercourse in church, punishable by death).

Instead of conclusions

In the evolution of Romanian law, we start from the customary stage which began with the formation of the Romanian people and had as its limit the period of the first pravile, in the early 17th century. During this period, customs, written law, and pravil (also known as "God's gift") were prevalent, as were the teachings of the sages. And on this basis, if we start from the idea that 'in the beginning was the word', which can be likened to custom/custom, we find on the road of the evolution of social relations in the medieval period and the need for the evolution of law, i.e. the transition to written law.

When the pravileas appeared, based on Roman law, which had penetrated mainly by Byzantine means, rules from the old legal customs, which bore the stamp of Roman legal rationalism, were also inserted. Thus customary law, transmitted orally, was, together with Byzantine law, a powerful source of inspiration for those who drew up the first written laws called pravile (Rotaru 2014, 93-132).

We note from the above that the medieval Romanian world, like that of other peoples, knew and recognized as legal sources the custom, written law and pravila. However, there are particularities, aspects specific to the medieval Romanian countries, which were determined by the social relations existing at that time, economic and cultural influences, etc.

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