

Legal Particularities in the Medieval Era

Marilena Marin

*Associate Professor, PhD, "Ovidius" University of Constanța, Romania
marilenamarin@yahoo.com*

ABSTRACT: The medieval era was a fascinating time for almost all fields, including the juridical field. The historical and social context of this era marked the legal system by a series of particularities, both in terms of substantive and procedural law, but at the same time, they also left their mark on subsequent eras, to a greater or lesser extent. The analysis proposed in our study concerns, among other things, the way in which the medieval world understood how to regulate social values, establish rules of conduct and organize judicial procedure in relation to social classes and categories, but also the challenges brought about by this historical period.

KEYWORDS: medieval era, feudal era, legal system, substantive law, legal institution, procedural law

1. Introduction

The medieval era and the feudal era are two distinct concepts, even though the feudal era roughly coincided with the medieval period. The feudal era refers to the specific feudal system that dictated social and economic relationships and that revolves around the concept of 'feud'. This system involved relationships of suzerainty and vassalage, through which noble titles and properties were legally passed down through inheritance. The medieval era refers to the period characterized by the Christian religion, medieval thought, and authoritarian forms of governance.

During the medieval period, which spanned approximately from the 5th to the 16th century, daily life exhibited certain peculiarities in the legal domain. These peculiarities had a significant impact on society and subsequent legal evolution. In a world characterized by well-defined social hierarchies and the strong influence of religion and monarchy, the medieval legal system reflected these realities in a variety of ways.

Within the scope of our work, we will present certain particularities of the legal system in the medieval era, relying on qualitative research and observation as methods of scientific inquiry.

2. Landmarks on the sources of law in the Middle Ages

2.1. Sources of medieval law

The civilization of the European Middle Ages encompassed, alongside Latin influence, a series of elements of Byzantine, Germanic, Celtic origin, with Islamic and Christian influences. General principles were not found within customary regulation. The excessive fragmentation of judicial authority, as well as the coexistence of different traditions, led to uncertainty, insecurity, and contradiction. An important role was played by the Enlightenment movement, alongside the emergence of legal codes, as well as the scientific analysis of law (customs, canons/nomocanons, and Roman law).

Medieval law was closely intertwined with religion, moral norms, and traditional customs. Canon law, derived from the laws of the Catholic Church, and secular law, governed by secular authorities, often intersected and could lead to situations of legal conflict. Furthermore, within the context of feudalism, customary law and written law coexisted, and justice was frequently administered at the local level by rulers or landowners.

The substantive law considered legal relationships that could be established within society and were subject, in turn, to rules imposed by law and/or the will of the parties, as the case may be. Procedural law was influenced by the diversity of legislations and judicial practices in different regions and states. In a time when communication and movement were

limited, each community or region developed its own legal norms and procedures, adapted to local needs and particularities.

As sources of medieval law, the documents of the time mention: legal customs/habits, which were passed down from generation to generation and became a source of law for the Germanic peoples; customary law, which was often uncertain, lacking the rigor specific to a legal norm (in the later sense of the term, not the initial one) and referred to detailed factual situations, sometimes appearing as a special rule; general written law and, later on, specialized written law (Dariescu 2008, 28-32). In addition to these aspects, the medieval era also witnessed the first signs of evolution towards a codified legal system, aiming for standardization. Gradually, codes of written laws were developed, attempting to regulate various aspects of social life more clearly and reduce arbitrariness in the administration of justice.

As for medieval Romanian law, the documents of the time mention the following sources of it: custom or customary law, legislation, the document entitled "Syntagma of Matei Vlastarie" (Vasiu 2009, 135-136), several Romanian normative acts, such as: the "Pravila de ispravă"; "Pravila of Lucaci from Putna"; "Pravila aleasă"; some royal decrees and privileges; statutes (which were documents elaborated solely for local applicability or for a specific community); codes and collections of written norms; imperial diplomas/patents (specific to the Transylvania region); normative acts printed in the Romanian language, such as: the "Nomocanon of Ioan Postnicul"; the "Pravila mică" (or "Pravila of Matei Basarab"); "The Seven Sacraments of the Church" (discovered in Iași); the Romanian Book of Learning from imperial "pravile" and from other counties (the first official secular legislation); the "Pravila cea mare"/"Rectification of the Law" (Târgoviște, Matei Basarab, translation from Greek) (Carp, Stanomir and Vlad 2002, 31-35, 43).

2.2. Particularities of the medieval legal system

The historical and legal sources that have reached us from the medieval age reveal the existence of three major legal systems applicable during that era: royal justice, ecclesiastical justice, and feudal justice.

Royal justice emerged during the 13th century in France and absorbed feudal justice in terms of land ownership. This type of justice was also exercised through ordinances. Additionally, in England, the Royal Council was empowered with the functions of the Supreme Court of Justice, and in Germany, royal justice was regulated in true collections of laws, such as the "Saxon Mirror" and the "Swabian Mirror"; "The Constitutio Carolina Criminalis". In Italy, the old medieval forms of justice have been preserved.

Ecclesiastical justice was established by the Church and judged matters other than religious ones, such as adultery, incest, certain types of murder, usury, widows, marriage, will execution, etc. The most important collection of laws for this type of justice was the *Corpus Juris Canonici* (Rotaru 2014, 85).

The third system of medieval justice, feudal justice, was a result of feudal relationships, primarily dealing with cases related to property/land ownership and the nature of obligations. The legal reports of vassalage are the subject of investigation in another study, and the analysis of this report also considers aspects related to citizenship status, affiliation with a specific state, or the possibility to seek the protection of a state in special cases (Brașoveanu 2016, 48-50).

In the Romanian lands, a specific legal source emerged, known as the "Law of the Land" (Legea Țării). The Law of the Land falls under the category of unwritten Romanian law (customary law), which developed over an extensive historical process and had its main source in the social norms existing within the Romanian territory. The oldest known customs and legal norms were formed in relation to land ownership (Vasiu 2009, 73-74). Alongside regulations concerning property, the Law of the Land governed the status and quality of

individuals (natural persons and legal entity), as well as the distinction between locals and foreigners, free or dependent peasants, degrees of kinship, family, inheritances, obligations, especially with regards to civil liability within the vicinal oblast (Dariescu 2008, 28).

3. Medieval civil law

The institutions of civil law known in the medieval era were connected to property, individuals, and family, matters of succession, as well as civil obligations and contracts. We will provide a brief presentation to observe the type of legal relationship applicable to these legal institutions and the context in which regulations from the previous era were maintained, adapted, or ignored, following the evolution of medieval society. Additionally, our research will focus more on the institutions of Romanian law from the medieval period.

Thus, Romanian customary law encompasses institutions of Roman public law and a series of Roman private law institutions, among which the most important is the right of property over land. In this era, in the Romanian lands, customary law based on legal custom ("cutumă") was applied, which had an agrarian-land nature and was referred to as "jus valachicum", "atica lex", "lex antiqua/olahorum" (Romanian law, old law, old Romanian law, law of the Romanians) (Hanga 1993, 41).

3.1. The Institution of Property

In Romanian lands, within the village communities ("obști"), ownership of immovable property was more related to agrarian property (later also introducing the notion of "landed property") and had a dual character. This included individual ownership, which pertained to cultivated lands, and communal ownership, which applied to other lands. Each member of the community was a free person, owning property, including landed property (rom. "proprietate funciară"), which they either inherited or passed down.

The right of property during the feudal period encompassed feudal ownership (complete ownership over means of production in general, and over land in particular, with the original owner benefiting from the so-called "dominium eminens") and the ownership of the direct producer. The direct producer could be either a free peasant who owned land or a dependent peasant who possessed means of production and consumption, having only the use of the land (which they could sublease or subinfeudate). This direct producer benefited from the so-called "dominium utile" (Herlea 1997, 26).

The nobility could collect tithes and impose corvées/burdens, a foreign production process they did not administer. The peasants were dependent on the landlords' land and paid various forms of compensation to them.

In the medieval period, property was classified according to two criteria: by the title of property acquisition and by the holder of the property right. Thus, based on the title of acquisition, feudal property could be: inherited property; donated property; property obtained through various legal acts between individuals; property obtained through succession; property obtained as a result of clearing, cultivating, and improving uncultivated lands.

Based on the holder of the property right, feudal property could be: princely property, property of the feudal lords of the time, namely boyars or clerics, property of free peasants, property of dependent peasants.

3.2. Individuals and Family

In Romanian law, during the medieval period, the concept of a "subject of law" was assimilated, referring to a person who could assume obligations. This encompassed every human being from the moment of their birth and sometimes even from the moment of conception to birth. Limitations to legal capacity and/or usage were recognized based on factors such as age, mental state, marriage, criminal convictions, and more. The capacity for legal usage was recognized for all free individuals, but with variations based on social class.

An interesting issue to analyze pertains to the notions of "social class" and "social category", which can be compared in relation to a person's economic status or material situation, as well as their actual activities within the society they inhabit. Based on these differentiations, the applicable legal category for specific groups of individuals could be determined, along with the extent to which these individuals could influence the legislative organization of their society.

Many works discussing the medieval period mention several social categories (namely, clergy, knights, serfs), each associated with certain roles/occupations, such as "those who pray", "those who fight", and "those who work". The medieval world also included other social categories, including artisans in cities (such as merchants, traders, etc.), "peasants bound to the land" in rural areas (previously referred to as "serfs"), and "free peasants".

Concerning kinship relationships during the medieval period in Romanian lands, these were based on biological connections between individuals (birth, lineage, adoption). Kinship was established patrilineally, and in cases where the father couldn't be identified, it was established matrilineally. Civil and spiritual kinship were both recognized. Marriage could be dissolved through death or divorce, and remarriage was only possible in the absence of minor children. In comparison with the contemporary era, modern Romanian legislation distinguishes between death and divorce as methods of ending legal family relationships between spouses. Thus, the current Romanian Civil Code (2009) and the old Family Code (1954) regulated "termination/cessation of marriage" through the death of one spouse and "dissolution of marriage" through divorce. Each of these legal situations has distinct conditions and legal effects (Dură, Kroczeck and Mititelu 2017, 78-83).

Regarding the traditional medieval Romanian family, it was monogamous, known as the "stump (butuc) family", centered around a nucleus, with children moving to their own dwelling after marriage, except for the youngest child. Marriage was preceded by engagement, which had legal effects on the future spouses and the assets received by them on this occasion. Dowry was recognized for both future spouses, and their families competed in "endowing" their own child.

Parental authority was exercised over legitimate children, although this legal institution no longer had the absolute character it had in antiquity.

3.3. Other civil law institutions

The Institution of Succession/Inheritance: Medieval Romanian law recognized both legal succession through a set of inheritors and testamentary succession (when inheritance was transferred based on a will, a unilateral civil legal act). The succession regime for monks had distinct regulations, specific to the clerical field.

The settlement of an inheritance considered both sides of the estate, such that liquidating the active part of the estate was straightforward, but liquidating the liabilities of the estate could not be done until the deceased's debts were settled. In this context, the status of an heir could be acquired before fulfilling the inheritance duties.

Domain of Civil Obligations: Romanian peasants during the medieval period, who worked the land of their masters, were obligated according to the old Romanian law to provide days of labor/rent in labor, natural produce, transportation services, and other privileges. These were specific obligations characteristic of the early stages of feudal development.

In terms of contracts, expressed consent had to be free from defects; otherwise, the contract would be invalid. Types of contracts included sale, exchange, lease, and loans (both for consumption and use). Personal guarantees (surety) and real guarantees (pledge) could be offered. The medieval period recognized "force majeure" as a circumstance that could exempt the party invoking it from liability in contractual relationships where the assumed obligations could not be fulfilled.

4. Medieval criminal law

4.1. Terminological Delimitations

In the Middle Ages, criminal law was governed by a distinct set of rules and practices, often foreign to the modern legal framework. The specific terminology used in the field of criminal law reflected these significant differences from the current legal system, characterized by rigidity and a profound understanding of religious, social, and feudal concepts. The mindset and social structures of the time were encompassed in the legal terminology used during this period (Peretz 1931, 47). An expression used in the medieval period was "judicial battle" or "judicial duel". This was a procedure through which the accused and accusers could resolve their disputes through direct combat or other forms of physical competition. The belief was that divinity would intervene in favor of the person with a just cause. This type of judgment was often brutal and frequently led to serious injuries or even the death of one of the participants.

Another expression used in the medieval period, within legal terminology, was the "judgment of God" or the "judgment by ordeal". This was a practice where individuals accused of serious crimes such as treason or witchcraft underwent a trial by which, depending on its outcome, the guilt or innocence of the accused was determined. This reflected a strong belief in divine intervention and the influence of the church in criminal proceedings.

One of the forms of evidence encountered in the Middle Ages was known as "ordeal" or "trial by fire and water". This was a test in which the supposed guilt or innocence of a person was established by subjecting them to extreme situations, such as walking the accused over hot coals or submerging them in water. If the person survived or emerged without serious injuries, they were considered innocent, while contrary results were interpreted as evidence of guilt. The "ordeal" underscored the close relationship between justice and religious belief.

The concept of "ostracism" was often used in the context of criminal punishment. This involved excluding an individual from their community, considered a method of moral and social punishment that prevented them from benefiting from the support and resources of the community. Those who committed an act deemed to be criminal, but were declared irresponsible or benefited from this presumption, had a different legal status from what the legislator of today understands to regulate (Topor 2021, 563).

From what has been observed, it can be said that the specific terminology of criminal law in the Middle Ages reflected the mindset and values of that era. The concepts of divine justice, equality in the face of death, and the strong role of the church influenced how crimes were treated and punishments were imposed. These terms not only described the legal system of the time but also reflected the social and religious foundations that supported it.

4.2. Offenses and Punishments

In medieval criminal law, the offense was that dangerous act which was sanctioned by the public authority through a punishment. Between the offense and the punishment, the connection was indissoluble, with medieval criminal law being socially oriented.

In general, punishments in medieval law were characterized by several features, namely: they aimed to intimidate the convicted individual; they were not limited by law, as the ruler could impose sanctions "beyond the rule" (being able to "add to the law", this practice is not allowed by law nowadays); the accumulation of punishments was allowed; punishments were unequal for the same offense, varying according to the social position of the guilty party; most punishments were left "at the judge's discretion"; they brought income to the ruler and officials who judged; blood revenge did not exist as a legal punishment, but traces of "vendetta" were encountered in some cases, allowing for redemption (voluntary composition) (Mitra-Niță 2020, 237-239).

The evolution of criminal regulations in Romanian law during the medieval period can be highlighted in three main aspects:

a. identifying certain categories of acts that by their essence were directed against fundamental human values and posed an increased social danger through their consequences, which acts were considered offenses;

b. the issue of holding individuals criminally liable for committing such acts and the procedure applicable to this judicial activity;

c. the punishments applied for the commission of such acts.

In the realm of criminal law, the medieval era was known for using often harsh and brutal methods, such as torture or corporal punishments. Torture was often used to extract confessions or to determine or induce an individual's guilt. Sanctions were also influenced by the social status of the accused person and the severity of the committed offense. Over the last century, we can observe that some of the investigation methods, as well as some of the sanctions applied during the medieval period, have been used in the investigations of the communist era (Mitra-Niță, Drăghici, 2019, 132).

Public executions, such as hanging, beheading, or burning at the stake, were employed to deter crimes and demonstrate the power of legal authority.

In medieval Romanian countries (Dafinoiu 2014, 98-103), within the context of village communities/vicinal oblasts, the principle of equality among community members was recognized and respected. Conflicts arising among these members were resolved by the "Council of Good and Elderly People", based on principles of kinship solidarity, the law of retaliation, Christian doctrine, punishment composition/individualization, and so forth, as appropriate.

In judicial proceedings, oaths and testimonial evidence (evidence through witnesses) were used as proofs. The evidence was presented by the parties themselves. Alongside these proofs, so-called "ordeals" (that we talked about earlier) were also practiced, which were religious ceremonies of primitive origin. In the Middle Ages, it was believed that invoking divine forces through a procedure would reveal who was right in the respective dispute.

On the territory of the former Roman province of Dacia, the "ordeal of the land" was practiced in boundary-setting (or delimitation) processes. The maximum punishment that could be applied to someone found guilty was expulsion.

5. Conclusions

The medieval legal system is a fascinating window into our past, revealing a complex landscape characterized by distinct features that profoundly influenced the development of society. Within this system, medieval civil law constituted a vital component, with its institutions reflecting the values and social structure of the era. Civil law institutions, such as property, individuals, family, obligations, contracts, and successions, shaped interpersonal relationships and laid the foundations for community development.

Medieval criminal law also highlighted significant traits of that period. The concepts used during that time, specific terminology, and the methods of criminalization and punishment for acts considered offenses unveil the values of medieval society and its priorities regarding public order and justice. Legal proceedings provided an overview of how legal activities were conducted. These procedures were often straightforward, yet employed a variety of evidence, ranging from testimonies to ordeals and other means of proof. The applied punishments were at times extremely severe, reflecting both the desire to maintain social order and the symbols of authority held by medieval powers.

Based on the foregoing, we can conclude that exploring the peculiarities of the medieval legal system reveals a complex picture of life and society in that era. Medieval civil and criminal law, along with their institutions and procedures, reflect not only the will of justice but also the values, hierarchies, and everyday concerns of people from the past. This understanding helps us appreciate the evolution of justice systems and contextualize changes within legal norms and values in modern society.

References

- Braşoveanu, Florica. 2016. "Considerations on the Right to Asylum." *Ovidius University Annals, Economic Sciences Series*, 16(1). Constanta: Ovidius University of Constanta Publishing.
- Carp, Radu, Ioan Stanomir, and Laurenţiu Vlad. 2002. "From 'pravil' to Constitution." Bucharest: Nemira Publishing House.
- Dafinoiu, Cristina. 2014. "The History of Romanian as a Foreign Language: Textbooks and the Contribution of the Academics at Ovidius University in This Field." *Ovidius University Annals, Philology Series* 25 (2): 98-103.
- Dariescu, Cosmin. 2008. *History of the Romanian State and Law from Antiquity to the Great Union*. Bucharest: C.H. Beck Publishing House.
- Dură, Nicolae V., Piotr Kroczeck, and Cătălina Mititelu. 2017. *Marriage from the Roman Catholic and Orthodox points of view*. Krakow: Sciptum Publishing House.
- Hanga, Vladimir. 1993. *History of Romanian law. Customary law*. Iaşi: Chemarea Publishing House.
- Herlea, Alexandru. 1997. *Legal History Studies*. Cluj-Napoca: Dacia Publishing House.
- Mitra-Niţă, Mariana. 2020. "From the History and Evolution of the Death Penalty", Volume of the Introductory Course in the History and Philosophy of Science and Technology, Romanian Committee for the History and Philosophy of Science, CRIFST Constanta Branch, 13th Edition. Constanta: Ex Ponto Publishing House.
- Mitra-Niţă, Mariana and Vasile Drăghici. 2019. "The evolution of the criminal sanctioning system in the last 100 years in Romania I." In *A century since the establishment of Greater Romania, 140 years since the return of Dobrogea to Romania*. Bucharest: Universul Juridic Publishing.
- Peretz, Ion. 1931. *History of Romanian Law Course. The Lordship Books*. Bucharest: Caragiale Printing House. Romanian Civil Code 2009.
- Rotaru, Ioan-Gheorghe. 2014. *Drept bisericesc (Church Law)*. Cluj-Napoca: Risoprint Publishing House.
- Topor, Roxana Elena. 2021. "Judicial prohibition between social perception and protection of the law." *Romanian Journal of Jurisprudence*, no. 3/2021. Bucharest: Universul Juridic Publishing House.
- Vasiu, Ioana. 2009. *History of old Romanian law*. Cluj-Napoca: Albastră Publishing House.