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MEDIEVAL MOLDOVAN LAW BETWEEN CUSTOM AND WRITTEN LAW CODES

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Abstract

The Romanian Principalities were formed during the late Middle Ages. The emergence of these new states could not occur outside a legal framework. The existence of multiple international legal systems naturally required the implementation of a domestic legal system that would ensure the proper functioning of the state's institutions. From the very beginning, both Moldavia and Wallachia relied on customary law, otherwise known internally as the "law of the land," while in neighboring regions, Romanian communities used the same customary legal system, referred to there as *Jus Valachicum*. At the same time, some written law codes circulated in the Romanian Principalities, copied and preserved in local monasteries. Over time, the influence of these codes, together with the need to unify the legal system, led to the gradual adoption of written laws, with customary and written law coexisting and being applied in parallel for a period.

Key-words: Romanian Principalities, law, customary law, Jus Valachicum.

The subject concerning the evolution of law in the Romanian Principalities in general, and in the land of Moldova in particular, is of exceptional importance if we take into account the way in which justice here evolved from the early, conventionally called customary law, toward the more developed forms of a fully established state. The legal system is one of the fundamental elements of any state, regardless of the historical period in question.

Since we are dealing with the medieval era, we must consider both the preceding elements and those that led to the formation of a coherent legal system, which would later evolve toward the principles of a genuine rule of law—one based on a well-defined, codified body of laws and framed within the parameters of a modern legal system.

At the dawn of the medieval Moldavian state, its legal system inherited a tradition that, in popular language, became known as *legea pământului* ("the law of the land") or *obiceiul pământului* ("the custom of the land"). Foreigners, on the other hand, referred to this system—or rather, this conglomerate of norms and customs—as *jus valachicum*, meaning "the Romanian law" (Jawor 10-20). But what were the norms that guided the leaders of the entities we now call pre-state formations—norms that would later become a kind of unwritten code of conduct, shaping the traditions and customs of these communities—and how important were these traditions?

The origins of this legal system can be traced back to the popular Roman communities that emerged throughout the entire territory inhabited by the Romanians.The answer to this question, as well as to many others, can be found in the few documents that have come down to us—indeed, very few in number—and which, unfortunately, cannot fully explain all the elements related to this legal phenomenon (Stoicescu 1971).

What is certain is that those popular Roman communities mentioned above possessed a system of norms and customs that ensured their survival in a turbulent world. These communities, besieged from all sides, were able to withstand precisely because of this code of conduct—these norms and customs—that guaranteed their endurance up to the time when the medieval Romanian states began to take shape. With the establishment of political organization south and east of the Carpathians, the proper legal system of the medieval Moldavian state also came into being—this occurring only a few decades after the same process had taken place south of the Carpathians with the formation of Wallachia (Neagoe 23-40).

Justice in Moldavia, like the other political and administrative institutions, initially appeared as weakly developed and rudimentary structures. Naturally, as Moldavian society evolved, there arose a need to adjust the country's legal system as well, so that it could respond to the new challenges the state was facing. We will therefore follow this evolution.

On the internal level, the elements ensuring the functioning of the state and of the political-administrative system became concentrated around the person of the *Domn* (the Ruler) of the country (Sachelarie, Stoicescu). He was assisted by the *Sfatul Domnesc* (the Prince's Council), which later came to be known as the *Divan* (Stoicescu, 1968). The main norms and mechanisms of administration were centered around these two institutions. Initially, all matters requiring legal approval in the country were handled directly by the ruler himself.

On the appointed days at the court, individuals would appear before the ruler to have their urgent problems resolved. At the same time, the ruler dealt with various issues concerning the relationship between himself and his subjects. The question of loyalty to the throne also occupied a position of great importance.

The emergence of the Romanian Principalities in Southeastern Europe in the 14th century represented a turning point in the evolution of the Romanian community within this region. At the same time, it must be

noted that legal concepts were not unique to the Romanian space. The European legal system was already well established when the Romanian Principalities appeared (Pippidi).

It should also be taken into account that, by the 14th century, kingdoms such as Poland and Hungary—formed in earlier centuries—had already become consolidated powers in the region. Moreover, for nearly a millennium, Europe had been under the influence of Byzantine civilization, which had inherited part of the legacy of the Roman Empire and transformed it into a new form suited to the realities of the Middle Ages.

In addition, we must remember the extraordinary importance that Christianity held throughout medieval Europe. The legal codes that emerged in the Byzantine Empire during the reign of Justinian were later supplemented by other local codes of law—some of which combined Byzantine legislation with new interpretations reflecting their own vision of the legal principles by which states should be governed.

By the time the Romanian Principalities emerged, such experience already existed in neighboring states such as Bulgaria—styled, after the Byzantine model, as a *Tsardom* (that is, an Empire)—and Serbia, which under Stefan Dušan in the same 14th century reached its greatest territorial expansion.

From the very beginning, the Romanians embraced the Orthodox faith; therefore, the Byzantine legal tradition naturally extended to include these young states that sought to assert themselves internationally. It is thus no surprise that the Romanian Principalities adopted many political institutions from the Byzantine Empire—for example, the offices of the *Sfatul Domnesc*, headed by the *Marele Logofăt*, or Great Logothete, who functioned much like a chancellor or, in modern terms, a prime minister. Of course, there could be no question of a mechanical adoption of foreign legal norms or political institutions; these were adapted to fit the local social, economic, and political structure, at the head of which stood the ruler of the country (*Ibidem*, 40-52).

The topic concerning the evolution of law in the Romanian Principalities in general, and in the land of Moldavia in particular—from its formation up to the emergence of written law—is a subject of great importance (Toderaşcu, 1988, 100-130). Although there have been some works that have addressed this topic, there still remain many elements and aspects related to jurisprudence that have not yet been fully studied or received the attention of specialists in the field.

In the middle of the 14th century, a new political entity appeared on the map of Europe — the Principality of Moldavia (Gorovei). This political entity, as was only natural, was governed by certain rules of conduct, both in its internal affairs and in its external relations. The legal elements in the Romanian Principalities in general—and what was called *legea pământului* ("the law of the land") in Moldavia in particular—were those that regulated relations among members of the community and maintained order throughout the entire state (Toderaşcu, 1984). The evolution of customary law—that is, unwritten law—began as early as the pre-state period, when small formations grouped around local *kneziates* (valley-based chieftaincies) followed a certain code of customs that was strictly observed. In scholarly literature, this form of law is also referred to as *ius valachicum*, as it appears in documents from neighboring states such as Poland, Hungary, and Bohemia. In these regions, communities that included Romanians—known in the Middle Ages as *Vlachs*—were granted certain privileges by their sovereigns, and on the basis of these privileges they conducted their daily activities within the states to which they belonged (Mototolescu). With the formation of the Principality of Moldavia, these precepts, customs, and norms of conduct were automatically integrated into the new legal system, even though there was no written law to regulate them. All matters were decided by the ruler of the country, advised by the members of the *Sfatul Domnesc* (the Prince's Council). Nevertheless, those norms did exist.

Therefore, the purpose of our study lies in our intention to show how this form of law functioned in its early stages and how it evolved toward written legal codes—in the case of Moldavia, culminating in the *Romanian Book of Learning* (*Cartea românească de învăţătură*), derived from the imperial *pravilas*, or more succinctly, in the *Pravila* of Vasile Lupu from 1646 (Rădulescu). It was, therefore, the result of an evolution in which local development merged with the Byzantine legal tradition. Referring to the latter, once the state and its religious institutions were established, manuscripts began to circulate through monasteries—some of which contained collections of laws. One of the most widespread legal codes was the *Syntagma* of Matthew Blastares.

As we will show in our study, the documentary foundation of our research is represented by the corpus of internal documents that began to be published in recent decades and which now covers the entire period from the emergence of the independent Moldavian state up to the year 1646, when Vasile Lupu issued his *Pravila*. In these documents, we can discern the main elements on which customary law was based during the first centuries of the Moldavian state's existence, and how this body of law gradually evolved toward the need for a clearly defined codification—a written code of laws to serve as the foundation of justice in Moldavia.

The documents published in the *Documenta Romaniae Historica*, Series A: *Moldova*, contain precisely these elements, allowing us to identify the principles on which customary law was founded, the differences between these norms and written law, the means by which such laws could be circumvented, and, in general, the rules according to which legislation functioned in the Principality of Moldavia (DRH). Therefore, the documents in the aforementioned corpus contain norms and principles regarding inheritance, the division of estates, trials concerning estates, punishments applied for certain crimes, the determination of estate boundaries, and so on. Through the elaboration of this work, the principles and norms of a legislation that was not codified but which ensured the functionality of the Moldavian state from its origins until the appearance of written laws will become very clear.

As is natural, issues related to Moldavian justice in the first centuries of the country's existence could not fail to attract the attention of contemporaries, as well as of those who visited the country. A good ruler is one who knows how to judge fairly, impartially, and who knows how to administer justice to his subjects without abuses and without bending justice toward an incorrect decision contrary to what is right. Some rulers are praised for being good judges because they paid great attention to the manner in which trials were conducted. These rulers would remain in the memory of contemporaries and posterity as good sovereigns. Likewise, those rulers who did not know the laws of the country and the customs of the land were reproached. Although the sources do not give us many details regarding these issues over time, we can assume that there must have been reasons that, for example, led Miron Costin to reproach Gaşpar Graţiani in his Chronicle for not knowing the rules of the country. Radu Mihnea, in the same Chronicle by Miron Costin, is praised for the fact that, when judging certain cases, he paid careful attention to each one, and if necessary, postponed the trial to another day (Costin 151-152).

It is also interesting that foreigners who passed through our countries provided a description of our legal system (Holban). What is particularly interesting, in light of our current knowledge, is that all decisions were made according to the will of the ruler, which was expected to be not only divinely guided but also fair and just toward his subjects. Foreign observers sometimes praised Moldavian justice because, as they noted, disputes were resolved quickly and efficiently, unlike in Catholic countries where similar cases could drag on for decades without reaching a final resolution. Thus, on one hand, Moldavia lacked a formal, codified law to apply, yet on the other hand, the functionality of customary law—where the ruler's judgment took precedence—was often admired by outsiders.

Over time, Moldavian society experienced a gradual, though occasionally difficult, evolution, which demanded the development of clearer and more precise rules for resolving disputes. As the population grew, estates became more numerous, and conflicts multiplied, it became increasingly impossible for the ruler to personally hear all cases of injustice across the country. This necessitated the expansion of the judicial apparatus to cover the entire territory. For the legal system to operate effectively, codified laws were eventually required to guide judges in their decisions, reserving direct intervention by the ruler for the most serious cases. This transformation was not abrupt; it was an organic evolution from principles and customs rooted in earlier popular traditions, which over time demanded the creation of a formal codified legal system in which all norms were clearly defined (Costăchel). Models for such a system existed in the neighboring regions of Moldavia. In many Moldavian monasteries, Byzantine law codes were carefully preserved and copied. Consequently, when the time came, a compilation was created that encompassed the main norms of legal conduct for all citizens of the country. Gradually, customary law became history, and what we know of it today can still be found in the proverbs we repeat when we wish to express certain experiences or moral lessons.

Unfortunately, there are very few surviving elements and references regarding the functioning of the judicial system in early Moldavia. Nevertheless, even with limited sources, it is possible to reconstruct an overall picture of how justice operated in the Principality. This justice ensured the country's stable development toward an era in which law would occupy an even more central role, and the fundamental principles of its functioning would lay the foundation for a new type of society—what we today call a modern society.

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