CONSIDERATIONS REGARDING THE EMERGENCE, EVOLUTION AND DEVELOPMENT OF DACO-ROMAN LAW AND THE LAW OF THE ROMANIAN COUNTRIES UNTIL THE 19TH CENTURY

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Abstract

Romanian law is part of the family of Romano-Germanic law, right from the beginning of its appearance, motivated by a first circumstance according to which the Daco-Roman populations, after the conquest of Dacia by the Roman Empire, applied in parallel both the local legal customs and general principles of Roman law.

During the Roman conquest, an important dimension of public administration in Dacia, a Roman province, was concerned with the legal norms of Roman and local law. Roman law appears in this province in the form of civil law and gentile law, the law applied in Roman Dacia having a statutory character, in the sense that each category of persons had a well-defined legal status.

In the Wallachia, Moldova and Muntenia, a new stage of codification of legal norms appears, the sources of inspiration being especially the French, Italian, Swiss legislations, etc.

Keywords: *Roman Law, The law of the land, Ordinary law*

Introduction

We can definitely speak of a Romanian law, in the classical sense of the notion, once with the formation of the Romanian Principalities. Equally valid is the fact that until the historical moment of great significance for the Romanian nation, the Union of 1859, there were three "Romanian Countries", mostly populated by Romanians and where Romanian traditions and customary rules influenced the evolution and development of these state formations. To cite Fl.Negoiță, and authors A.Tinu and C.Boboc [1], it shows that the law related to the current territory of our country has six stages, as follows: 1) the right of the Dacian monarchy, from the centralization of the Dacian state until the moment of the Roman conquest;2) legal dualism in Dacia, from the Roman conquest to the Aurelian retreat-271/274 A.D.;3) feudal law, from the moment of ruralization of life on the territories of the ancient Roman Dacia of Wallachia and up until the revolutionary

moment of 1821; 4) capitalist law, comprising *in extenso* the period 1821-1947; 5) socialist law and 6) the transitional law, starting in December 1989.

Here it is appropriate to add a new period that began in 2007, with Romania's accession to the European Union. It is essential to follow and analyze Romanian law from this perspective and especially the relationship between national law and EU law, for several reasons. For example, national law gives priority to the rules of European law, with the necessary nuances, then the binding nature of the decisions of the European Court of Human Rights or the procedure referred to as the "referral for a preliminary ruling before the Court of Justice of the European Union", not to mention matters relating to statehood and whereby some of the components of national sovereignty have been voluntarily assigned to a separate subject of international law called the European Union. We specify that the ones described above are the prerogative of all the states that are part of the European Union.

Romanian law is part of the family of Romano-Germanic law [2], right from the beginning of its appearance, motivated by a first circumstance according to which the Daco-Roman populations, after the conquest of Dacia by the Roman Empire, applied in parallel both the local legal customs and general principles of Roman law.

Law in the daco-getaean period

The Daco-Getaeans, our ancestors, who were the northern branch of the Thracians, occupied the Carpatho-Danubian-Pontic space from the Iron Age. It is very well known that the Daco-Getaean tribes populated a much larger area than the one currently occupied by Romania.

The first mentions of this brave people date back to 514 BC, by the historian Herodotus. The apogee of the Daco-Getaean state was reached in Burebista's time, when the Daco-Getaean state stretched from the forested Carpathians to the Haemus Mountains (Balkans) and from the Middle Danube to the Black Sea, the Pontic coast of Olbic (Bug), to Pontic Apollonia (Szopol-Bulgaria). As it „came to be feared by the Romans as well” (Strabo), Burebista intervened in the civil war in the Roman state.[3]

Once with the formation of the Daco-Getaean state, legal norms appeared, some of which replaced the customs of the era of military democracy. Strabo and Jordan

show that the Dacian-Getaean laws were adopted in the time of Burebista, being of divine inspiration. As professors Emil Cernea and Emil Molcuţ pointed out, they have been passed down from generation to generation in written form and have been preserved until the time of Jordan. (6th century BC).[4]

Formal sources of law in the era of the centralized Geto-Dacian State

As author Cosmin Dariescu pointed out, “At this time the formal sources of Geto-Dacian law are”:

The custom, crystallized since the previous era and which continues to be the main legal source;

Written laws (called by the Getae "belagines") which contained legal norms enacted by state authorities.”[5]

Trade in Dacia was extremely developed, being strongly supported by the Greek colonies on the shores of the Black Sea: Tomis, Histria and Callatis. The Roman dinar circulated intensely and therefore, the existence of legal norms on obligations is implied.

As for criminal law, Romanian doctrinaires show that the punishments of the Geto-Dacians were extremely harsh, the main provisions aimed at defending the state and private property, and as punishments, private revenge and judicial duel.[6]

It is obvious that this state was organized and functioned on the basis of strict rules, meant to ensure its stability. Simultaneously with the formation of the Daco-Getaean state[7], legal norms appeared, some customs being taken over and sanctioned by the state. In parallel, corresponding to the new requirements of economic and social life, the state established new legal rules so that, in addition to the unwritten law existing in the form of customs, in the Daco-Getaean state a system of laws was elaborated which although it did not affect us directly, is still remembered by the ancient authors.[8]

The great Daco-Getaean state led by Burebista was also reformed from a legal point of view. Thus, as Jordan states in Getica, in the time of Burebista the laws called ***Belagines*** were elaborated***.*** Unfortunately, the texts of these normative acts were not sent to us. What is important, however, is that with the drafting, these laws became

positive laws, their commands being sanctioned by the state and the conduct described in these rules becoming mandatory.

With the disappearance of Burebista, the Daco-Getaean state suffered a certain decline. None of his successors, including Deceneus, Comosicus, Duras, rose to his performances. An exception, however, existed in the person of King Decebalus, whose state formation, though smaller than that of Burebista, enjoyed the respect and consideration of the Roman rulers.

The expansionist tendencies of Rome could not be eliminated by Decebalus either, so that, following the two fierce wars of 101-102 AD. and 105-106 AD, Dacia was transformed into a Roman province.

The sources of law in Roman Dacia

With the establishment of Roman rule in Dacia, along with local unwritten law, written Roman law was introduced. According to the Roman conception, the local custom could be applied, insofar as it did not contradict the general principles of the Roman law.[9]

It can be concluded that Roman law, in its written form in Latin, in turn paved the way for the formation of the Romanian people with Daco-Roman origins.

As for the Roman nature of our law, it is known that the establishment of Roman rule in Dacia introduced along with unwritten local law, Roman law, the two legal rules, of Dacian and Roman origin, which were applied in parallel – insofar as the local custom did not contradict the general principles of Roman law – so that then, in a process of intertwining and mutual influence, a new system of law, Daco-Roman, may be born, in which the concepts and legal institutions have acquired new functions and new purposes.[10]

During the Roman conquest, an important dimension of public administration in Dacia, a Roman province, looked at the legal norms of Roman and local law. Roman law appears in this province in the form of civil law and Gentile law, the law applied in Roman Dacia having a statutory character, in the sense that each category of persons had a well-defined legal status. Thus, the Roman citizens enjoyed:

- *ius civilae*, the fullness of political and civil rights;

- *ius commercii* (*commercium*), the right to conclude legal acts, according to Roman civil law;
- *ius cannubii* (*cannubium*), the right to marry, according to Roman law;
- *ius militiae*, the right to enlist in the Roman legions;
- *ius sufragii*, the right to choose;
- *ius honorum*, the right to run for a magistracy in the colonies.[11]

As we have shown, the Dacian state, a strong military democracy, was governed by rules that enjoyed the respect of the native population. Of course, in case of non-compliance, the coercive force of the state intervened. At first, immediately after the occupation of Dacia, the two legal regulations worked in parallel, but over time, the two systems merged and the Daco-Roman law system emerged. According to this system, in Roman Dacia there were several forms of property, namely:

- provincial property, which was exercised by the natives on the lands distributed from the "*ager publicus*" (the public field);
- quiritary ownership was exercised by the Roman citizens who, in order to benefit of this ownership created *ius italicum*, a special right, by virtue of which, the land belonging to some colonies in the provinces was assimilated with that in Italy and was exempt from taxes;
- pilgrim property, exercised by pilgrims.[12]

The marriage and family of Roman citizens were governed by Roman regulations. The marriage and family of the Geto-Dacians continue to be governed by Geto-Dacian customs [13], and *ius connubii* or *connubium* it was the right to enter into a marriage valid under Roman law.[14]

In the Roman province of Dacia, the trade was flourishing, and a proof in this sense is given by the "Transylvanian triptychs". These are wax tablets dating from the 2nd century AD discovered in the gold mines near Roşia Montană. Twenty-five pieces have been discovered, of which fourteen are legible, and indeed twelve of them are of interest for the present paper, as they relate to certain contracts.

The twelve tablets on the contracts indicate the application of classical Roman law, but in simplified forms. In loan agreements, the parties use a single stipulation for

both the borrowed amount and the interest, although classical law required two stipulations. In the employment contract, the parties establish that the risk of force majeure falls on the worker and not on the employer (as in classical law).[15]

The formal sources of law in the Romanian State formations

In the specialized works, it is specified that the peaceful withdrawal of the "provincial" officials and of the legions meant for Dacia the end of the Roman imperial domination, without it being replaced by another political power. The destruction of the state apparatus and the legislative system established by Rome in Dacia put in front of the Romanized Dacian natives the need to remedy this political and legislative gap. Both objectives were achieved simultaneously in the conditions of socio-political transformations during the 3rd-6th centuries and under the influence of the great processes that resulted in the ethnogenesis of the Romanians, their Christianization and the formation of the Romanian language.[16]

Regarding the ***Romanian State*** and its appearance, as well as the customs and legal norms of Romanians, we will make brief clarifications by consulting the historical sources. Professor Florin Constantiniu shows that according to the "*Gesta hungarorum*" (The deeds of the Hungarians) the Hungarian population met in the ninth century AD three formations of Romanians, led by Knyaz-voivodes, as follows:

- Menumorut whose residence was in the "Byhor" fortress, as such "Ţara Crişurilor";
- Gelou whose voivodeship is established in the aforementioned document under the name "*Terra Ultrasilvana*", professor Constantiniu placing it in the Transylvanian Plateau;
- Glad with residence in Keve, the Serbian Banat.[17]

Regarding this historical source, the great scientist Nicolae Iorga states that "nothing can be preserved from this story except that at the entrance to the parts beyond the Tisza, the Hungarians found a native Romanian-Slavic or Romanian population following the Slavs, with voivodes at their head, even Knyazes:"[18]

The old legal organizations of the Romanians are of two categories: unwritten and written.

Thus, we speak of the Romanian customary law as an elaboration of the mentality of a Society of diffuse tradition, which we find subject to the mechanisms of the collective subconscious, and which from this condition must be understood as an organic, integrated process of peasant life as a whole, a product whose manifestation cannot be separated from the spiritual, economic or political activities of the peasant community... customary law is a non-specialized cultural gear of provisions and norms that bring, bind and hold together in the geographical, biological, psychological and historical frameworks of peasant culture, all the daily spiritual, economic, legal and political manifestations of peasant culture. It includes, for example, both the rules applied in the case of a transfer of ownership, an obligation or a contract, the rules necessary in the case of trial and punishment of a crime, but also the domestic rules to be followed in relations in family, the rules of the calendar of agricultural and pastoral work, the norms, the habits of association in work, the rules of the meetings of the village communes, the rules of magical and religious practices, etc.[19]

Written legislation is formed by rules and laws, these words correspond to the Greek word "*nomakanon*". The rules respond precisely to the notion of *kanones*, that is, church laws, and the law to the word *nomos*, social-civil law.

The doctrine states that the usual legal norms that crystallized during the early feudalism formed a unitary ensemble that was called by the Romanians the Law of the land, in the legal sense of a politically organized society in countries. In the era of developed feudalism, the Law of the land was the main source of law, but at the same time, written law was applied in the form of church and secular rules or the codification of legal customs.[20]

The most important church rules are those from 1578 – the Putna Monastery, 1618 – the Suceava Metropolitanate and 1636 – the Bistriţa Monastery.

The law of the country is the name that has become widespread since the period of early feudalism for all legal norms within public unions – the "countries" of Romanians – without any geographical or ethnic territorial determinant, which denotes the unitary nature of these rules. Just as the name of country continued to apply to the Romanian feudal states after their establishment, so the law of the country continued to uphold all the rules of law applied in the legal life of these states. It is the name consecrated and

used in all social strata and which appears in all documents written in Romanian. Moreover, in a text written in Greek, the author, Matei al Mirelor, transcribes with Greek characters the Romanian words *the Law of the land.*[21]

Therefore, the ordinary right of Romanians also proves the idea of our unity of spirit and nation and which could not be removed despite the territorial separations.

As the author Elena Paraschiv points out, the most important sources of our written law from the era of feudalism were "Cartea românească de învăţătură" and „Îndreptarea legii". We find other sources of written law in the history of the Romanian provinces, as follows:

- Matei Basarab's Small Code (1640);
- Vasile Lupu's Code (1646);
- Matei Basarab's Code (1652);
- Unio Trium Nationum (1540) foundation of public law in Transylvania, a discriminatory act against the majority Romanian population and through which the representatives of this ethnic group were excluded from the activities of the administration.

Also in the Phanariot period, from Moldova and Wallachia), ample codes of laws appeared, systematized and anchored in the needs of the time. Thus, during Alexandru Ipsilanti's period, in Wallachia „Pravilniceasca Condică" appeared, considered by C.G. Dissescu to be a "civil code". But the first law manual in Romanian was made by Andronache Donici, a famous jurisconsult. This abbreviated collection of royal laws, printed in Iasi (1814), is a kind of repertoire of jurisprudence, with references to the laws of the Basilicas and Roman law.[22]

The political-administrative organization of the Transylvanian voivodship gradually took shape, reaching its full form at the beginning of the 14th century ... the Romanians had their own administrative, judicial, military organizations, some of which – principalities and voivodeships – were old local institutions… these organizations provided Romanian communities with local autonomy, wider or narrower, variable by time and place. In their internal organization, the districts were governed according to ancient customs, according to Romanian law [23]

In 1818, in Wallachia, under the reign of the voivode Caradja, the Caradja Law Code appeared, which we can qualify as a general code, because it included four specialized codes, namely:

- Civil (parts I-IV: Cheeks, Things, Bargains, Gifts);
- Criminal (part V Guilts);
- Criminal Procedure (part VI of judgments);
- Civil Procedure (part VI of judgments).

Certain provisions of the Caragea Code were applied until 1943 by the Court of Cassation.

In Moldavia, in 1817, Callimachi-Voda's Code of Laws was published. As C.G. Dissescu shows, the boyars in a public assembly found a way to gather the most useful parts from the royal books, which would unite with the custom of the land, in order to form an improved set of laws. This code of laws, which appeared at the request of the ruler Scarlat Callimachi, had the following sources of inspiration:

a) The Romanian custom;
b) Byzantine law;
c) The French civil code (1804);
d) The Austrian civil code (1811).

The Calimach Code uses as its main model of inspiration, the Austrian Civil Code, the second edition of 1811, without being a translation of it, being characterized by the great jurist Zachariae von Lengenthal a simple legislation faithful to Byzantine law.[24]

In 1825, in Moldavia, under the reign of Ionita Sturdza, the Criminal Code of Moldavia was published.

Starting with 1821 and on the territory of Wallachia we witness the process of the decomposition of feudalism, simultaneously with the beginning of capitalism. Obviously, this transition period highlighted other needs of society that were regulated by special laws and new codes. Also, as certain common rules still corresponded to social needs, legislators ordered their consecration in writing. Other habits that no longer corresponded to the needs were removed.

In the Wallachia, Moldova and Muntenia, a new stage of codification of legal norms appears, the sources of inspiration being especially the French, Italian, Swiss legislations, etc..

In 1859, with the unification of Moldavia and Wallachia under the rule of Alexandru Ioan Cuza, with the formation of the modern national state, the great legislative work began. Under the rule of this great ruler, the Civil Code, the Criminal Code and the Codes of Civil and Criminal Procedure were elaborated. The Civil Code was enacted in 1865. The Romanian civil code, although taken entirely from a foreign people and not adapted to the Romanian mentality and needs, was nevertheless assimilated by us and most of its institutions acquired the character of native institutions.[25]

- The Code of Civil Procedure was inspired by the Code of the of Geneva-Switzerland canton and was promulgated in 1865;
- The penal code is enacted in 1864;
- The Code of Criminal Procedure is enacted in 1865,
- The commercial code of 1887 had as an important source of inspiration the Italian Commercial Code. It should be noted that, prior to this, in Romania there was a code entitled “Condica de Comerciu” with its annexes. It entered into force in 1841 and was inspired by the French code.

After the reign of Alexandru Ioan Cuza, Romania went through a new flourishing stage, until the establishment of the communist regime. Testimonies in this sense are the Constitutions of 1866, 1923, 1938, fundamental laws deeply democratic and highly appreciated by legal specialists in the civilized world. Regarding the Constitution of 1938, in the recent Romanian doctrine, although the primacy granted to the social by this fundamental law is recognized, it is noted that due to the obvious tendencies of concentration of powers in the hands of the monarch, it is inferior to the previous Constitution of 1923. This Constitution was, in fact, suspended in the summer of 1940.[26]

Conclusions

This paper proves that the territories inhabited by Romanians have been permanently influenced by the idea of law and justice. Starting from the Daco-Getae era where we meet the local customs but also the written norms, *the belagines,* and until the age of the great written laws (the codes of the 19th century), we notice the concern of Romanians with having a life organized and governed by laws that steer their social relations.

We note that the ordinary law in Wallachia, although obviously not rooted in the degree of precision specific to modern legal norms, is ultimately a collective product adapted to the socio-economic needs of the community. The written laws of the Romanian formations represent in their beginnings a form of codification of the old customs combined initially with norms of Roman inspiration and later with the sources of modern inspiration, for example Napoleon Code or the codes of laws originating from the Germanic spaces of Europe.

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