GOVERNMENT AND LAW IN MEDIEVAL MOLDAVIA, TRANSYLVANIA AND WALLACHIA

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Edited by

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Acknowledgments

The International Medieval Congress, held at Leeds in 2012, was remarkable on account of the large number of mainly younger Romanian scholars who participated. This volume contains a selection of their papers, together with several others, which have been collected together under the broad theme of Government and Law in Medieval Moldavia, Transylvania and Wallachia. The majority of the contributors come from Transylvania and the Banat, and this preponderance is reflected in the topics that they address. The present collection of essays provides, nevertheless, not only an introduction to some of the themes of medieval Romanian history but also an indication of current trends in Romanian historiography and of the accomplishments of a new generation of historians.

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Martyn Rady
Alexandru Simon

August 2013

From Custom to Written Law: *Ius Valachicum* in the Banat

Adrian Magina

During the course of the fourteenth century, the expression appears in documents issued in Hungary, *ius, lex* or *more valachicum* or *valachorum*, referring to a type of law followed by the Romanian population in the kingdom. The presence of this term aroused at an early stage the interest of Romanian historians, and it rapidly became one of the most investigated topics in the medieval history of the Romanians in Hungary.

Sources of Romanian law

In the medieval Hungarian kingdom, unwritten law—custom or customary law (*consuetudo*)—coexisted with the written law (as communicated in royal decrees), had the same authority, and was accordingly applied in the courts. The classic exposition was given in Stephen Werbőczy's *Tripartitum*, published in 1517. This systematised the legal customs of the kingdom and, influenced to a degree by Bartolus of Sassoferrato, it recognised the importance of custom alongside the written law. In reality, unwritten, customary law had even more impact on legal practice than the written laws of the kingdom, a circumstance that continued beyond the Middle Ages.[1] Romanian legal and historical writing was particularly interested in the issue of the old law used by the Romanian population of medieval Hungarian kingdom. A Romanian jurist from the inter-war period defined customary law as a legal norm that was not a part of the written law, being orally transmitted, but obeyed by all the inhabitants of an area and recognised by them as normative. This type of law consisted of a system of rules of conduct and social life that were intended to provide a framework for social organisation.[2] In its essence, Romanian customary law was passed on orally. In respect, therefore, of the Romanians living in the Hungarian kingdom, it necessarily follows that no corpus or collection of legal texts may be found. It was only in the seventeenth century that the first law codes were printed in Wallachia and Moldavia, but these were modelled on South Slavonic and Byzantine legislation. The only information on the content of the *ius valachicum* comes from documents issued by various authorities of the kingdom, which state that a particular issue was resolved by the principles of Romanian law.

1 For Werbőczy's Tripartitum, see *The Customary Law of the Renowned Kingdom of Hungary: a work in three parts, Tripartitum*, ed. & trans. János M. Bak, Péter Banyó & Martyn Rady, Idyllwild, CA, & Budapest, 2005 (=DRMH 5). For the impact of Werbőczy's work, see *Custom and Law in Central Europe*, ed. Martyn Rady, with an introduction by János M. Bak, Cambridge, 2003.

2 Quoted by Ştefan Pascu, *Voievodatul Transilvaniei* (The Voivodate of Transylvania), 4, Cluj-Napoca, 1989, p. 135.

It is on the basis of these stray references that legal historians have attempted to establish the content of the *ius valachicum* and its contribution to the development of Romanian society in the Hungarian kingdom. Romanian law, although not integrated into Hungarian law, was admitted in legal practice and acknowledged in the courts. Certain cases where Romanians were directly involved were thus judged 'according to the ancient and recognised law of Romanians' (*iuxta antiquam et aprobatam legem valachorum*), which is an indication that the *ius valachicum* was seen as constituting a set of normative rules. An older Romanian historiography over-exaggerated the importance and salience of these rules in order to demonstrate the endurance of Romanian legal autonomy in the kingdom. This trend was exemplified by Ştefan Pascu in his book, *Voievodatul Transilvaniei (The Voivodeship of Transylvania)*.[3] The most complete presentation of customary law came, however, from the legal scholar, Vladimir Hanga. In his book, published in the late 1980's, Hanga systematised and synthesised all aspects of customary practice, using mostly documents relating to Wallachia and Moldavia.[4]

The spread of Romanian customary law

References to Romanian law occur in both Moldavia and Wallachia, as well as among the Romanian population of the Hungarian kingdom. Cases adjudicated according to the *ius valachicum* are more common in the marginal areas of the kingdom: Transylvania, Maramureş, the Banat and Zarand, which were also those parts of Hungary where the Romanian population was most dense. Romanian customary law is connected to the presence of the so-called Romanian districts (*districta Valachorum*). Districts themselves are not specific to a Romanian population, being encountered throughout the kingdom, although the term differed in its meaning, depending upon context. For the most part, however, Romanian historians have been content to itemise the districts rather than investigate their institutional content. Nevertheless, it can be said that Romanian districts were those areas that had some sort of legal autonomy, where people might use Romanian customs and customary law. The first Romanian districts are mentioned in the fourteenth century, after which they become more visible in the extent record. Many were, however, given away to members of the Hungarian elite or absorbed into the counties, thereby losing their self-governing status and legal exceptionalism.[5] By the sixteenth century, the only area where they survived and were able to preserve their rights was in the Banat.

On the outskirts of the kingdom: the Banat region

The Banat covers an area of approximately 28,500 km^2, which is geographically situated between the River Mureş to the north, the Tisa on the west, the Danube in the south, and the Carpathian Mountains to the east. The area is currently divided between Romania (60%), Serbia (39%) and Hungary (one per cent). In the Middle Ages, the territory lay at the southern limit of the medieval Hungarian kingdom, being administratively divided

3 Ştefan Pascu,*Voievodatul*, 4, pp. l34–148.
4 Vladimir Hanga, *Les institutions du droit coutumier roumain*, Bucharest, 1988.
5 The historiography on the districts is summarised by Stefan Pascu, *Voievodatul*, 4, pp. 13–68.

between Timiş, Torontal and Caraş counties (later Severin), parts of Arad and Cenad counties, and also a structure with military functions, the Banat of Severin (replaced in the sixteenth century by Caransebeş-Lugoj). The Banat exemplifies the use of Romanian law for several reasons. First, the area had a large Romanian population and, secondly, the area south of the Mureş is recorded as having altogether some thirty-three districts. Many of these had an almost anonymous existence, being made up of only a few villages and from early on being taken over by a noble family. Legal autonomy was preserved mainly by those districts that were set on crown estates, on the border of the kingdom, where they were entrusted with a defensive role. As early as 1430 there is reference to the people of these districts having the right to be summoned only before the king.[6] On account of their participation in the anti-Ottoman campaigns, King Ladislas V recognised in 1457 a number of privileges belonging to eight districts in the mountainous area of Banat (Caransebeş, Lugoj, Mehadia, Almaj, Caraşova, Bârzava, Comiat and Ilidia), confirming supposedly older rights. In brief, the act stated that the eight districts would remain together (and not be alienated piecemeal); that the king could not make donations of property in the districts without the approval of the local nobility; that the nobles and knezes (a Romanian elite category, legally assimilated into the nobility) were exempt from of any contributions; that nobles and knezes could only be judged by their lord (*comes, ispán*) and could appeal against sentences directly to the king; and that the execution of these judgements would only be made by Romanian noble judges.[7] By requesting the confirmation of these earlier rights, the Romanian community of Banat was probably trying to organise itself as a single political community or *universitas*, the term that was applied only a little later to the Saxons of Transylvania (1486, *Universitas Saxonum*). It is also from this region that we have the most cases being judged according to the *ius valachicum*. Political autonomy thus went hand in hand with the growth of legal autonomy. In the sixteenth century, a part of the districts were conquered by the Ottomans and the remaining ones were merged with those of Caransebeş and Lugoj, which was in turn overlaid by Severin County. Although the names changed, in respect of functionality Severin County and the district of Caransebeş were one and the same institution. This explains the persistence of *ius valachicum* in the Banat highlands until the middle of the seventeenth century (1658), when the area was conquered and occupied by the Turks.

Judicial procedure

When we speak of Romanian customary law, we have first to take into account the institutions and officials in those regions—the lords (*comites*, *ispán*s) of Timiş, who were holders of the castles in the districts and, often, vice-bans of Severin. It was they

6 The nobility of some districts refused to recognise the authority of Teutonic knight, Nicholas von Redwitz, appointed ban of Severin, arguing that based on custom, only the king had the right to judge them.

7 This charter was published by Pesty Frigyes, *A Szörény vármegyei hajdani oláh kerületek* [The former Romanian districts of Severin County], Budapest, 1876, pp. 73–75. For analysis of the document, see Ioan-Aurel Pop, *Instituţii medievale româneşti. Adunările cneziale şi nobiliare (boiereşti) din Transilvania în secolele XIV–XVI* [Romanian medieval institutions. Knezial and aristocratic assemblies in Transylvania in 14th–16-th centuries], Cluj, 1991, pp. 135–136.

who convened and chaired the assemblies of Romanians that were called to administer the law. Cases went to law in the respective district—*in congregatione nostra generali universitati nobilium kenezyorumque ac alterius status districtus nostri Myhald*, as we may find in a document of 1428 referring to the district of Mehadia, or, from 1439, the *universitas nobilium et kenesiorum districtus Sebes*. The principal assembly was at Caransebeş, called the *sedem scilicet iudiciariam principalem septem sedium nobilium valachicalium* and this heard not only cases from the district but also appeals or matters of particular importance that were moved before it. Assemblies in Caransebeş were possibly held weekly, on Thursdays, to coincide with the market, a practice which remained stable until the sixteenth and seventeenth centuries.[8] The presence of the lord at these assemblies did not affect the type of law followed. As in the Hungarian counties, where justice was administered by the lord or his deputies, local and Romanian law might still be followed.

In investigating this phenomenon, Ioan-Aurel Pop has counted about thirty such assemblies meeting during the fifteenth century, although not all of them judged according to Romanian law. Their membership was usually reserved for the noble elite, but there were many cases when other people of various conditions attended (*alterius status homines*). The members of the assembly elected some of their number (usually six to twelve) as assessors (*probi homines*), who collectively judged the case and passed sentence, with the approval of the assembly. The decision so obtained had complete judicial validity. The system of assessors was not unique to Romanian adjudication, as it is also found in Hungarian judicial practice, from which it may have passed into Romanian use. The oath was decisory in Romanian procedural law, being probative and also employed as a means of reaching a decision. The oath-making ceremony was simple enough. The parties swore, by putting their hands on a cross or on a saint's relics in a church, before the assessors or the assembly, and made their respective oaths.

Parties that were dissatisfied with the outcome could appeal directly to the king, as the 1457 privilege allowed. So, in 1503 two inhabitants of Caran, a small town near Caransebeş, declared themselves dissatisfied with the district's decision and appealed to the king's court.[9] But such instances were rare, most parties abiding by the decision of the *ius valachicum*. The role of the king was in the main confined to confirming judgements or hearing cases transmitted directly to his court on account of their special features.

Cases judged by ius valachicum

Cases within the scope of the *ius valachicum* were of two types, criminal and civil, although the distinction between these categories does not coincide with modern norms. Generally, representatives of district meetings tried to resolve differences peacefully. They noted the testimonies of those involved, and the evidence of the witnesses brought

8 Pop, *Instituţii*, pp. 127–163. The practice survived because it is mentioned in 1581 that the trial proceedings in Severin county were on a Thursday: *szek Napian czeterteökön* (Magyar Országos Levéltár [Hungarian National Archive], Gyulafehérvári Káptalan Országos Levéltára, F 2 Protocolla, vol. I, p. 52).

9 Frigyes Pesty, *A Szörényi Bánság és Szörény vármegye története* [History of Severin Banat and Severin County], vol. 3, Budapest, 1878, pp. 144–148.

at the assessors' behest. The procedure involved took into account the nature of the case and the seriousness of the deed.

Criminal cases.[10] The first mention of the *ius valachicum* in the Banat is from the late fourteenth century (around 1390–1392), when Nicholas Perényi, ban of Severin, asked the noble Ştefan Himfy about a man from Bogdan's estate (Bogdan was a knez in the district of Cuieşti), who had been accused of a crime and who should be judged according to Romanian law (*iuxta legem olachorum*). We do not know what happened in this instance, but during the fifteenth century the *ius* or *more valachorum* formula became increasingly frequent, determining the procedures used. In 1477, for instance, the assembly of Caransebeş district had to debate a criminal case, namely the arson of a mill. The accused, George Gaman of Bizere, a noble of Romanian origin, did not acknowledge the crime, so the assembly referred to the old law as recognised within all the Romanian districts (*iuxta antiquam et aprobatam legem districtum Volachicalium universorum*), asking him to take an oath together with twelve compurgators who were to certify his innocence. After the oaths had been made, the assembly declared Gaman not guilty. In a further example, from 1494, the noble John Porkolab accused the residents of Caran of having fished in his ponds, hunted on his land and killed his watchman, causing a loss to him of 200 florins. The noble lost the case because the people of Caran swore that they had not committed the acts of which they were accused and the witnesses brought by him to swear were declared unsatisfactory by the assembly. It is was undoubtedly a rough and ready system, based only on oral testimony, without recourse to written proof or inquests, but probably the only one that could work in a society that had largely developed its norms on the basis of tradition and custom. Another example comes from 1503, when the people of Caran (again!) came into conflict with the noble Nicholas Măcicaş. The inhabitants were accused of entering the nobleman's estates and causing damage there as well as serious injuries. Eight judges were elected to settle the dispute but the citizens of Caran did not agree with their decision and appealed to the royal court. Other cases coming before the assemblies included murder and wounding. The aim of the proceedings was less to impose punishments or sanctions as to reach a negotiated solution. Penalties were usually only financial.

Civil cases.[11] Examples of this type survive only from the end of the fifteenth century. One of the most common issues encountered in cases judged by Romanian law related to inheritance or the sale of properties, and mostly concerned the right of inheritance in the female line. In 1499, some nobles of Zorlenţ village (situated between Caransebeş and Resiţa, today in Caraş-Severin County) came before the district court in Caransebeş. They had been sued by Dorothy (Doroteea), the daughter of one of their relatives, who demanded her dowry and wedding gifts, due from her father's estate, which her kinsmen had retained after his death. The two sides were reconciled by means of arbitration, with the nobles agreeing to pay, following Romanian tradition (*iuxta ritum Volachie*), twenty

10 All examples are taken from Gheorghe Ciulei & Gheorghe G. Ciulei, *Dreptul românesc în Banatul medieval* [Romanian Law in the medieval B.], Reşiţa, 1997, pp. 57–87.

11 Ibid, pp. 30–56.

gold florins. As the nobles did not have the necessary sum, they pledged to Dorothy the land that they had inherited from her father's estate. An almost identical case occurred in 1500 in respect of an unpaid dowry and wedding gifts. In this case, the important Romanian nobles of the Bizere-Gaman family were involved. The amount that was due was sixty gold florins, which they paid on the spot in the court's presence.

These two cases may be put in the larger context of Hungarian law, which stipulated that girls could inherit a quarter of their fathers' estates, the so-called *quarta puellaris*. The quarter was, however, to be discharged in cash and *mobilia*, not in land. In Romanian law, however, the percentage taken by the daughters was often greater, and it could reach a third or even a half of the father's estate—but only given in cash and *mobilia*, since land went exclusively through the male line. It may be that the origins of the two schemes, which otherwise seem so close, have different roots. The Hungarian scheme of female inheritance may have had its origin in the *lex Falcidia*, mediated by canon law, while the Romanian custom derived from Novella XVIII of Justinian's *Corpus*, as transmitted through vulgar Byzantine law.[12] Whatever the distant sources of the two practices, in the Banat the *ius valachicum* clearly retained its pre-eminence.

A further civil case arose in 1500, when the same George Gaman, whom we have seen before being charged with burning down a mill, was accused by his relatives of having appropriated muskets (*pixides*) from their castle. As neither the accusers nor the accused could bring proof as to how the weapons changed hands, the case was judged by Romanian law (*iure Volachie requirente*). George Gaman won his case because he made an oath in front of the assembly that he had honestly bought the arms, while his accusers refused to take the oath. These illustrations demonstrate Werbőczy's assertion that where the written law provided no solution, customary practices might prevail.[13] In analysing the *ius* or *ritum Volachie*, Ioan-Aurel Pop has noted that the legal institutions of the Romanians were explained not by reference to the Banat or Wallachia but instead generically, as the type of law that Romanians followed, irrespective of where they lived.[14]

Pledging and selling.[15] In terms of the pledging and sale of land, Romanian law did not differ much from the legal traditions of the Hungarian kingdom. Under the influence of the larger *ius commune*, whether in its Romano-canonical or vulgar Byzantine forms, the *ius valachicum* adopted the *protimissis* system of pre-emption. Sellers had first to ask their relatives and neighbours; if they refused to buy, the estate could be sold to others. In this way, estates remained in the family or in the community. An interesting case was brought to court in 1489. Nobles of the Măcicaş family had given a belt or girdle to one of George Gaman's peasant tenants, as security on a loan. The peasant had

12 Martyn Rady, *Nobility, Land and Service in Medieval Hungary*, London, 2000, pp. 103–107; Ioan Aurel Pop, 'Judecăţi după dreptul "Ţării Româneşti" în Banat în jurul anului 1500' [Judgments using Wallachian law in the Banat around 1500], in *Vilaietul Timişoarei (450 de ani de la întemeierea paşalâcului) 1552–2002* [The vilayet of T.: 450 years after the founding of the pashalik], Timişoara, 2002, p. 31.

13 *Tripartitum*, Prologue, 10, (DRMH 5, pp. 30–31): *consuetudo est ius quoddam moribus institutum, quod pro lege suscipitur cum deficit lex*.

14 Pop, *Judecăţi*, p. 31–33.

15 Ciulei & Ciulei, *Dreptul românesc*, p. 88–163.

died without heir and his belongings, including the belt, came into possession of his master, who asked the Măcicaş family to return the money in exchange for the belt. After three judgment meetings (*in tribus sedibus iudiciariis*), the Măcicaş family agreed that the pledge should remain permanently in the possession of George Gaman. A similar situation occurred in 1503 when a petty nobleman showed his neighbours and kinsmen the judgements of three assemblies that permitted him, in accordance with Romanian custom (*in tribus sedibus iudiciariis, iuxta ritum Volachie*), to pledge some of his estates in Comiat district and the Banat of Severin. Reference to three assemblies conveying an authority for sale or pledge continued in the Banat highlands until the late seventeenth century. So, even if a legal contract was acknowledged by the judicial authorities in Caransebeş, Lugoj or Severin district, it had nonetheless to go before three assemblies (*in tribus sedibus nostrorum*), and be approved by these, in order to obtain a complete legal authority. Later documents mention that proceedings followed the tradition in that region (*regy dicziretes zokassa zerinth*), but that the final decision was only taken after the presentation of the matter before three courts, where those involved either appeared in person or were represented through agents.[16] In order, thus, for the unwritten *ius valachicum* to be effective, it needed the acknowledgement of the courts, and for their decisions to be fastened in written form.

In conclusion, the *ius valachicum* was a type of 'common law', used by the Romanian population in the late medieval Hungarian kingdom, but also cognate with the law used in the other Romanian lands. Until the late seventeenth century, the Banat highlands preserved specific legal practices that were accepted and recognised by officials of the kingdom and, subsequently, by the autonomous Principality of Transylvania. Having its roots in both the Romano-Byzantine legal tradition and influenced by the Hungarian customary law, the *ius valachicum* demonstrates a self-generating and pragmatic form of law, as well as one that borrowed from larger legal traditions.

16 See, for example, the action between Margaret Gaman and Sigismund Fiat in 1628 (Serviciul Judeţean al Arhivelor Naţionale Cluj [Romanian National Archive, Cluj branch], fond Macskási of Tincova, Box 8, no. 812) or the one between the authorities of Caransebeş and the former mayor of the town (in Costin Feneşan, *Documente medievale bănăţene 1440–1653* [Medieval documents from Banat 1440–1653], pp. 135–141).