

THE CUSTOMARY LAW OF THE SAXONS FROM ARDEAL

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Abstract: *The Germans who settled in Transylvania as a result of the Hungarian kings' colonization policy introduced into this area behavioral and social rules representative for the Western society of their origin. Thus, old Roman law elements were adapted to customary law and subsequently transformed into a legal framework guiding the conduct of this population. Its provisions can be traced back to documents like city statutes or municipal codes, guilds' documents or the regulation establishing the University of the Saxons, all of which were enforced in the areas where the Saxons benefitted from autonomous jurisdiction or in the Romanian-Saxon mixed communities. The customary law was so powerful within these groups that it directed social norms and behavior to be observed/enacted at various events like balls, neighborhood gatherings and other ceremonies. Moreover, clerks and priests played an important role in making sure this law was observed. Children attending German schools were trained in the spirit of these behavioral norms that were passed on from generation to generation.*

Keywords: *colonization, trial courts, city statute, family law, behavioral norms, punishments, lèse majesté.*

1. SAXON HISTORY: AN OVERVIEW

The colonization of the German population in the Center and East of Europe during the High Middle Ages led, first of all, to an economic homogeneity of these geographical areas and, later, to their socio-political development.

At the time, by comparison, the West of Europe was more developed, but it was also subject to problems typical of the period: a steep rise in the exertion of central power by German princes, increased dependency of the population on the priests and feudal officials, growing poverty among peasants and small craftsmen. All this contributed to the movement of a large number of people to the East areas of Europe that seemed to promise a more prosperous life.

The kings of the newly formed Hungarian state that had a two-century history in the Great Hungarian Plain tried to conquer new territories in order to consolidate their power and influence. Since in West Europe there were already powerful states, the most feasible and achievable alternative was to expand to the Eastern areas of Europe.

One of the initial intentions of the Hungarian kings was to populate the Great Hungarian Plain, Moravia, the Meridional area of Poland, the west of Vistula and Transylvania with the so called *hospites* (i.e. colonists) and to establish a flourishing economic area. The colonization was the main goal of the policies pursued by the Hungarian Kings Geza II and Andrew II and, as a result, they offered the German population willing to colonize these areas a lot of benefits.

1.1 The initiative of the Hungarian kings

Starting with the 9th century, the Hungarian kingdom pursued a colonization policy in the territory that nowadays is known as Hungary, and in the areas that it conquered.

At the time, the Hungarian state was characterized by a stable political environment. Hence, the causes underlying such an initiative were not military grounded, but rather economically justified.

In this respect, one of the goals of the initiative was the development of cities, a phenomenon characteristic of the whole Medieval Europe.

The German colonization of Hungary took place in stages:

- during the reign of St. Stephen and his wife Gizella (around the year 1000) the German population was established in the Great Hungarian Field and in the North of Hungary in the Zips area;

- King Ladislau (1077-1096) invites more German *guests*;

- Geza II (1142-1161) is the king who grants the German population most of its rights and his policy is furthered by King Andrew II.

- after 1242- during the reign of Bela IV the Tatar invasion leaves behind disastrous effects.

The German population settled on Hungarian territory benefitted from certain economic and autonomy rights and their presence in the area yielded a number of positive effects both in economic (i.e. the development of cities and fairs) and demographic terms.

The German population established in nowadays' Hungary was organised in counties, that is administrative structures characteristic of the Middle Ages. These were to be found in the South-West, in Öldenburgen and Gisenburg, in the North-West of Hungary, namely the Bars, Hart and Kograd counties, and in the Zips area where the autonomous organization of the colonists resembled the one of the Saxons from Transylvania.

1.2. The German population in the Zips area

According to linguists, both the Saxons from Transylvania and the Germans from the Zips area "came from the same regions: the South of Düsseldorf, Luxembourg and the West of the Rhine and talked the same language"[1]. They were called by the Hungarian King, Geza II between 1142-1162.

In 1173 they got organized in a Diocese and a provostship by the name of "Zipser Probster" and were under the responsibility of a count.

The first document confirming their presence in the Zips area is dated 1209 and it is in the name of a colonist, Adolf, and his sister. The Hungarian King, Stephen V, acknowledges their right to autonomous organization. In 1317 and 1370 some of the privileges initially granted are renewed.

Their most important document is **Constitution of Zips (*Willkür*)** dated 1370.

In the 14th century *Universitas Saxonum de Seeps* is established. In addition, there are "documents confirming 43 German settlements – parishes and towns- in Zips"[2].

According to their Constitution, the German colonists could organize their own gatherings and were entitled to have and run their own trial courts.

The towns had their own seal and had to fulfill some obligations with the Hungarian royal court: to pay annual taxes, to send certain amounts of products, cattle and wine to the court and to do military service.

Apparently, some of the German colonists settled in the North of Maramureş and in the North of Bucovina.

Some of them were assimilated by the population in these areas, but "there was also a tight-knit group of colonists who spoke a language similar to modern German and that was different from the language spoken by the Hutsuls and Ukrainians"[3].

In the 15th century the Northern part of the Zips area was under the control of the Polish and after the death of Matthew Corvin the territory was sold to the noble Emmeric of Zapolya. During the next century the area was claimed by several Hungarian nobles.

Thus, in 1604 it was under the rule of the Transylvanian Prince, Stephen Bocskay.

In the 16th century most of the German population in Zips was Protestant. Therefore, they started having conflicts with the Hungarian nobility.

In the 18th century, Zips got under Habsburgic rule and the reforms of Maria Theresa succeeded in renewing the German spirit. Her policy was continued by her son, Joseph II. The population in the area played an active role in the events of 1848, Artur Görgey being a representative figure for their fight against Habsburg absolutism.

After 1867, Zips was under Hungarian administration and, as a result of a large scale assimilation policy on behalf of the two-hatted government, the Germans underwent an intense magyarization process.

After 1914, the people in the Zips area massively emigrated to the USA and, as a result of the Treaty of Versailles, the area became part of Czechoslovakia.

1.3. The settlement of the German population in Transylvania

The German colonists were brought to Transylvania during the rule of Geza II when the policy of the Hungarian royal crown was to keep this territory under control.

The colonization started from the North-West of Transylvania and continued to the South-West of the Carpathian basin in several stages and it culminated with the establishment of the provostship and of the Sibiu Province.

At the same time, upon the initiative of the Hungarian royal crown and the Pope, the Teutonic Knights were allowed to settle in Tara Barsei. However, several years later, they were banished from the area due to their independence tendencies.

"Fundus regius", a territory inhabited by the Saxons, was established afterwards and acknowledged through the *Golden Bull* granted by the Hungarian King, Andrew II, in 1224.

Their initial privileges were maintained and extended with the foundation of the University of the Saxons in the 15th century.

The Saxons had to fulfill the following obligations to the Hungarian royal court:

- a tax – *Martinzins*. The local authorities divided the tax by groups of ten households called *Dica*;

- war related obligations that were very demanding in the centuries that are under the scrutiny of this article and that included activities like fortress consolidation or military service;

- contributions in money and products in times of war;

In exchange for all of the above, the Saxons were granted the right to administrative control and autonomous organization (districts and seats), and the cities were acknowledged as administrative entities by the the royal crown.

They were ruled by a county chair from Sibiu, and by royal representatives and seat chairs running the administrative units.

The Saxons were entitled to be first tried by their own trial court. Hence, most penal cases were settled by the Saxons' committees and by the University of the Saxons.

The guilds-organizations of the craftsmen from the cities and rural areas- also had their own statute and were acknowledged by the University of the Saxons.

They were a landmark for the prosperous economic life in Transylvania. The involvement of the church, especially the Evangelical one, in community life mainly concerned the preservation of healthy moral principles.

The development of schools is a sign that the Saxon community was a homogenous one. In addition, the associations of "the boys and the girls from administrative units first recorded in 1370 in the Sibiu Province" [4] are evidence of the constant care for the youth and for their education and development in accordance with moral principles.

2. TRIAL COURTS AND THE STATUTES OF THE CITIES

Once they were granted the right to autonomous administration, the Saxons from Transylvania established their own trial courts that, at first, worked based on the customary law of the Saxons that was based on elements inherited from the German law and the Roman law.

The customary law preserved the identity of the Saxon communities from Transylvania and regulated their culture and administrative organization, the administration of the lands they were provided by the Hungarian kings, their political and administrative representation, schools and church organization.

Hence, it is obvious that the customary law was an integral part of the legal framework in effect at the time in Transylvania.

The organizational forms established by the customary law contributed to preserving the civic order.

As a result, the civic and moral rules had been in effect before any trial court was formally established and they were part of the Codices or county codes.

As far as the Saxon law is concerned, the work of the great Transylvanian humanist, Johannes Honterus, dated 1544 and known by the name of *Compendium juris civilis in usum Civitatum ac Sedium saxonicalium Transylvania colectum* (A Brief Overview of Civil Law for the Needs of the Transylvanian Citizens and Saxon Seats) is a landmark in the field.

Another important figure for the Saxon law is Matthias Fronius, a member of the Senate of Braşov city.

The latter, "starting from the work of Honterus improved the Saxon customary law by introducing elements belonging to the Roman law and thus, in 1570, *Statuta jurium municipalium Saxonum in Transylvania* was issued[5]."

Consequently, the customary law was adapted to the profile of the Saxon community from Transylvania. As a result, "The statutes are representative for the German county law ...and their elements are highly heterogeneous since they can be identified both within the canonic law, and in the German and Hungarian legal frameworks."

Their validity is based on three factors: the privileges mentioned in Andreamum(1224), the confirmation of the statutes of 1583 by Stephen Bathory, and "subsequent documents signed by this ruler that reconfirmed the rights of the Saxons from Transylvania". [6].

2.1. The trial courts on the land under within the rule of the Hungarian kings

The first trial courts of the Saxons were communal and they were headed by the village ruler along with the most important male figures of the community. "Within the free villages the disputes among the inhabitants were mediated by the community head and the good and old people in accordance with customary laws"[7].

The appeal court, higher in power than the trial court, was represented by the local nobility (also called "greavi") who would pronounce the sentence.

Besides the aforementioned types of trial courts, the Saxon community had other courts whose activities were conducted in accordance with written laws:

-the court of the royal judge (who was a representative of the Sibiu committee and acted as the highest legal authority for the seats and districts);

-the higher assembly of the seven seats from Sibiu (that would meet 2-3 times a year in Sibiu);

-the court of the University of the Saxons (established in the 15th century after the number of Saxons' privileges granted by the Hungarian King, Matthew Corvin, was extended);

-the Prince's court (the Prince's Curia) and the imperial office as the highest legal entities enabled to judge a trial.

2.2. The trial procedure

The trial procedure was stipulated in the county codes of the Saxon cities, as well as in those of the church issued by synods and deans.

These codes contained provisions concerning behavior and civic rules to be observed within cities.

The church codes referred to the moral and Christian principles that were to be followed. An example, in this respect, is the Statute of the Sighişoara city that clearly mentioned that the right to buy houses was exclusively granted to the German colonists, whereas the newcomers could only settle in the lower area of the city (a sort of subsidiary area), as well as the procedure for the city's officials' election (who also acted as judges) and the priest's role who, besides taking care of church businesses, also had to ensure the proper conduct of school activities and the prohibition of weapon use within the citadel.

The same codes establish the roles of clerks like the royal judge, the seat judge and the lawyer. At first, the former carried out their job related tasks in their own dwellings, in a room specially assigned to fulfilling their official roles.

Later on, the seat and district authorities provided them with their own place to conduct their activities.

There were two days a week allocated for trials to unfold. A trial started with witness hearing, then the documents were checked and a sentence was pronounced.

The judge had to solve economic disputes concerning property rights, and also the private issues occurring among the inhabitants of the city.

Old documents were as valuable as the evidence provided by witnesses: "he who makes a complaint about having been the victim of a crime can bring witnesses under oath to support it" [8].

The lawyer was hired by the parties involved in a trial. The sentence came into effect by mutual agreement or, if one of the parties was dissatisfied could appeal to the University of the Saxons in Sibiu.

The latter would investigate the complaints and send a team into the territory to check the properties under dispute (in case of property related disputes) or to hear the witnesses (if these were too many or could not get to Sibiu to testify).

More often than not, the sentence pronounced by the University was accepted and no further appeals were made. However, should there have been such appeals, these were forwarded to the Prince's office and, later, to the Transylvanian government or to the imperial Curia.

2.3. Family law

The information sources concerning family law are the city statutes or county codes.

According to these, men had political rights and, depending on their birth rights, were entitled to a certain position within the community. It was only those benefitting from these rights that could run for public office, act as craftsman and be part of a guild.

Young people could only marry to someone of German origin (mixed marriages were forbidden) and with parents' approval. Their engagement was a public event and unfolded in the presence of witnesses, which made the event be both a ceremony and a formal agreement.

The prenuptial agreement was signed before the wedding. It mentioned all the goods brought into the marriage by the two spouses who would preserve their rights over these and use them as personal property. The wife took the husband's name and benefitted from his position within the community, as well as from everything that her new status involved.

Taking care of the household and of the children's education were her main tasks. Divorce was an exception within the Saxon community.

The marital disputes were mediated by the priest and by the judge. The two spouses were kept in an isolated room for a week and had to share a single cutlery and dish item. Most often the isolation period made spouses settle their disagreements.

When the husband was found guilty and convicted, the wife would also be a scapegoat and was removed from neighbours' associations. Moreover, she had to take care of her children on her own and/or with the help of her own family.

2.4. Penal court trials

Penal trials were open to the public by the model of the Roman law in order to set an example for all community members.

Political betrayal, adultery, prostitution and witchcraft were penal crimes and the punishment for them was death in the public square. Harsh sentences like tongue or finger cutting were pronounced for theft or perjury.

Those who forged documents were severely punished by having all their rights removed and by being banished from their community. Theft (defined as the wrongful taking of somebody else's good and pledging it to get a loan or other goods) was also strictly punished in accordance with the old German law.

Putting counterfeit money into circulation was also a penal crime. Therefore, in every fair there was a pair of scales to weigh up coins and anyone discovered to have counterfeited money was executed. Murder was also punished by death and the type of execution: hanging, burning or drowning depended on the type of offence.

3. CONCLUSIONS

The information presented by this article refers to the Medieval law. This evolved from the Roman, as well as from the ancient and Medieval German law into a legal framework characteristic of the Middle Ages.

The customary law was an important part of and regulated people's behavior. Most of its provisions were orally passed on, but starting with the 15th century they were included in the statutes and codes of the cities and counties inhabited by the Saxons.

Whether recorded in the oral tradition or in writing, the customary law actually preserved a previous state of affairs and imposed the observance of a set of rules on the German population.

Both the civil law stipulating the rights of the spouses, the procedures for gaining an inheritance or other goods, and the penal law unveil a world governed by moral values. The latter were preserved and passed on within the community through institutions like the church, the school, the University of the Saxons and the trial courts of the Transylvanian Saxons.

By observing the moral provisions of the customary law, as well as the clauses within the legal framework, this world made valuable material contributions.

REFERENCES

1. Kaindl Raimund. (1921) *Geschichte der Deutscher in Ungarn*, Gotha, p. 38.
2. Hoensch Jörg (1995) *Die Zipser. Ein Überblick*, in „Die Deutscher in Ostmittel und Südeuropa“, Band I, München, p. 145.
3. Stephani Calus (1992) *Die Zipser Nord Rümäniens und ihre Beziehungen zu anderen Bevölkerungsgruppen, dargestellt anhand der Volkszählung*, in „Jahrbuch für ostdeutsche Volkskunde“, Band 35, p. 339.
4. Kaindl Raimund, *op. cit.*, p. 339.
5. Sutschek Felix (1997), *Statutele municipale ale saşilor din Transilvania*, Stuttgart, p. 18.
6. Ibidem, p. 19.
7. Ştefan Pascu (1985), *Voievodatul Transilvaniei*, vol. IV, Editura Dacia, Cluj-Napoca, p. 180.
8. *Bamberger Statrecht* (1821), art. 345, Sachsenspiegel II, 1,2, și II 18.