

**LEX SITUS OR THE LAW OF THE LAND IN EARLY  
FEUDALISM**

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**ABSTRACT:** *The current paper aims to analyze the judicial regulations known under the generic name of „Law of the land” which is specific to the time when the Romanian states were formed and became countries. The ancient origin of many regulations was determined by the factor which was the stability element in a society, the village community, which helped this system assume the legal custom and adapt it to the new factor which configured law, but in an unwritten, oral manner. The appearance of written legal regulations, the codes of law of the 17th century, made a clear distinction between written law and unwritten law, which will be called a „custom”.*

**KEY WORDS:** *regulation, custom, law of the land, code of laws, feudalism*

**JEL CODE:** *K19*

**1. INTRODUCTORY NOTES**

The process of forming and centralizing the feudal state on the territory of the Romania took place at a slow pace, as a result of internal and external causes. The Moldavian chronicler Grigore Ureche acknowledged that given the hardships of those times, as the country was permanently in the path of enemies, our ancestors were unable to form a great and strong state from the earliest of times. (Giurăscu, Giurăscu, 1975) However, the unification of village communities led to the formation of bigger political organizations which had different names – țară<sup>1</sup>, câmpulung<sup>2</sup>, cneaz<sup>3</sup> sau voievodat<sup>4</sup>

By the unification of several principalities, voivodeships were formed, led by a voivode, who, according to a certain literary source „could lead his people to war”. (Giurăscu, Giurăscu, 1975) The term ”voivod” is of Slavic origin and is similar to that of „leader of the army”.

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<sup>1</sup>ancient name of a region

<sup>2</sup>type of political organisation

<sup>3</sup>type political organization, based on the authority of a leader called „cneaz”

<sup>4</sup>territory under the authority of a leader, called „voievod”

The voivodeship will last over centuries in people's mentality, especially in regard to its noble meaning, thus the leaders of Moldavia and the Romanian Country would be called great voivodes, even if they were leaders; even after Transylvania was under Hungarian occupation, the leader would still be called by using the Romanian title of voivode.

A distinctive trait of those times was the similar development of the Romanian territorial formations, both in regard to those in Transylvania as well as those from Moldavia or the Romanian Country, future states which will later form as a result of strong accumulation within the Romanian society.

Starting from the ninth century, society enters a new phase of development in which, along with traditional structures (village communities), new forms of manifestations of some political-judicial structures would appear, which were known under the generic name of countries.

During the 10th century, some countries are mentioned – Country of Crisana, led by the voivode Menumorut; Country of Glad in Banat; Country of Gelu inside the Carpathian Mountains, as well as some countries which still had geographical names – Maramures Country, Hateg Country, Fagaras Country or Barsa Country. In the 13th century, in the Moldavian Country, countries like Bolohovenilor Country and Brodnicilor Country (brodnic was the slavish term for inhabitants) are noted.

## 2. THE LAW OF THE LAND IN EARLY FEUDALISM

Ascertaining the role and importance of the territorial community, a series of regulations were drafted, regulations which were meant to organize production and the functioning of these territorial structures as well as the awarding of tasks between the members of that certain community.

The passage from territorial community to pre-state political formations, which had an early form of state organization, appearance proper legal provisions which were to be enforced by constraint.

These regulations were drawn up as a result of the division of the social community, a phenomenon which is discussed in the 1247 Diploma of the Joannites, which mentions a feudal aristocracy by using the term "maiores terrae" (the greatest of the land), or potentes "illarum partium", also mentioned in Moldavia in the papal<sup>5</sup> document of 1332. The Great mass was formed of the free peasants; as a result of the subordination relations specific to feudalism they became committed peasants.

There were also people without legal capacity, slaves, which were considered to be similar to goods. „This new type of relations would develop slowly due to the strength of the community structures, the late development of urban centers and the existence of a large mass of free peasants; however, the process of turning them into slaves will have multiple forms until the 16th century when they will be all committed and turned into slaves.”(Saon, 2000)

A specific characteristic which defines the evolution of pre state organizations which existed south, north and east of the Carpathian Mountains was the fact that they went through a ~~unified~~ integrated development which resulted in having the same legal

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<sup>5</sup> Pope John XXII

regulations, which will later be known as “the law of the land”. It is thought that all these legal provisions, some from previous time and some newly regulated as a result of states opposition will form a system of law which is specific to all Romanians.

This system of law was called by the scholar N. Iorga “the law of Romanians” or “the people’s law”, thus pointing out that this law was formed at a time when the Roman domination was gone and there was still no principle who led the country be addressing to Roman or Byzantine law (...) we might say that from this old branch the legal regulations leaked out just like resin leaks from an old tree, little by little until it became more and more stable” (Iorga, 1935)

According to doctrine “in general, modern day history qualifies the law of the land and the custom or the custom of the land as equals, by opposing the codes of law, namely the byzantine law. We believe that this is a rigid delimitation. Surely the codes of law are opposed to the old law, as it represents imperial law and *ius gentium*, a new law which is enforced (received) for the very first time. But (...) the byzantine law is a custom process (traditional) and many of its results are similar to customs and the law of the land, by the traditional manner of not always mentioning the origin of a certain rule or institution”. (Georgescu, 1980)

The ancient origin of many regulations is determined by the factor which was the stability element of society, namely the village community, who caused this system of law to assume legal customs and adapt it to the new factor which configured law, but in an oral, unwritten manner. The term of law was established in the collective mentality and in its technical meaning, thus when written regulations appeared, when the codes of laws were drawn up in the 12th century, the distinction between written law and unwritten law, later called a “custom”, became necessary.

The appearance of Christianity north of the Danube would produce important religious consequences as well as important changes in morals and behavior of the people who practiced this cult.

Christianity will accompany the process of Romanian ethno genesis and will use his provisions to influence the behavior of people by providing spiritual and ethical meaning, thus creating a true „code” known as „Christian law” based on the Christian orthodox faith. The religious ideology will be the main form of manifestation of the social-political belief reflected in the actions which governed the organization and functioning of society throughout the entire middle ages. The system of regulations which concerned the orthodox church seriously influenced by the byzantine church, resulted in *Nomo canons* – thus pointing out the so called „law of God”.

During those times, the legal regulations are profoundly moral, similar to those imposed by the Orthodox Church, as they were meant to ensure a climate which guarantees general good. The early forms of trial and the organization of courts meant to administer justice within village communities – see the good and old people’s council – started from these regulations with profound ethical and religious character.

The appearance of countries, *kenazates* and *voivodeships* resulted in the creation of new legal regulations which were necessary given the new realities, the changing or the completion of old regulations in order to be applied at those certain times.

The new regulations would put the institution of *kenazate* and the *voivodeship* at the center, thus these were the first public law regulations. The appointment and the duties of

the knez evolved based on the passage from territorial community to unified community and later, voivodeship.

Members of the community would chose their leader, the knez or judge based on democratic regulations.

In case of the unified community, the knez who would lead the new formation called a kenazate would be chosen among several people. The appearance of private property, the increase of these leaders' powers and their tendency to keep their positions within their family would lead to changes in regard to the procedure for occupying this position; firstly, it was based on election, later it became hereditary, a situation which will cause the change of legal regulations.

The formation of the voivodship by unifying several kenazates would contribute to the rearrangement of the subordination relations, as the chosen knez would chose the voivod to whom they will be faithful.

The institution of voivodeship in Transylvania is connected to he relation which will develop between Romanians in this area and the Hungarian Crown. Thus, if the first leader who was mentioned in the times' documents was called a prince in 1103, we notice the old title of voivode will be imposed as a result of the Romanian people's fighting in 1176- "Leusladius voivoda". Until the second half of the 15th century, all Transylvanian leaders will be known by that name; during the ottoman sovereignty, the term will be that of „prince" (Giurăscu, Giurăscu, 1975)

The appointment of voivodes became elective thus combining the election-hereditary system and considering the interests of the great family of voivodes to keep this position.

The crystallization of feudal production relations will bring upon changes in regard to the institution of property. Within territorial communities, personal property increases as opposed to common property, as a result of using large areas of terrain which was cleaned of trees, plants of rocks. Given all these, the community continues to keep its superior right over the family who cleaned it by their own work.

As a novelty, the preference right appears, in case some portions of land would be sold, also known as „protimis right", meaning that when a portion of land was to be sold, the relatives and the neighboring owners would be preferred. Thus, the community would continue to be unified and prevent the entrance of strangers inside the community. The right to own land would become personal to every member of the community for certain areas of land which were no longer common property – with the agreement of the community- when the owner would improve the quality of the land by his own work: by cleaning the land of plants or trees, thus these lands became personal property added to the previously owned land". (Saon, 2000)

The appearance of private property and the division of society in social categories with opposing interests would generate changes in regard to people's capacity to own land as opposed to the post Roman age when people were equal in rights.

The favorable economical situation, its increase of economy is documented as a result of archeological discoveries. The Diploma of the Joannites discusses the income and the benefits of the Hungarian Crown, namely the Joannite Knights, income which came from the people of Oltenia and Muntenia. (Giurăscu, Giurăscu, 1975) Amounts of money were desired, thus the war compensation paid in 1330 by Basarab the first to King Carol Robert in the amount of 7000 marks was the equivalent of 1447 kilograms of silver.

This proves that money circulation is at its highest which determines an increase in commercial operations, thus an increased dynamics in regard to contracts. The appearance of markets, the development of certain crafts, these are elements which prove the formation of internal markets, thus resulting in some commercial law regulations.

The newly created regulations of those times will last throughout feudalism as they came from the specifics of the area and the Romanian traditions, as a „historic given” which N. Iorga resembles to a branch from where legal regulations leaked out and little by little stated to have stable forms; thus, the people’s right had new perspectives of developing.

The law of the land would become an element of unity between all Romanians, even if some of them were outside the borders of the country or under foreign ruling.

### 3. CONCLUSIONS

One of the characteristics of the evolution of pre state formations found south, north or east of the Carpathian Mountains was the fact that they had a unified development, which generated the same legal regulations, known under the general name of „law of the land”. The legal regulations of those times will form a system of law specific to all Romanians, called by N. Iorga „the Romanian right” or „the people’s right”. A characteristic of this system of law is that it assumed the legal custom by adapting it to the new factors which configured law, in an oral manner.

The distinction between written law and unwritten law („custom”) is apparent once the codes of laws of the 17th century appear – the first written legal regulations.

We must also note that the creation of countries, kenazates, voivodeships generated the creation of new legal regulations or the change of the old ones in order to apply within the new context..

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