

## History

# CUSTOMARY LAW OF CENTRAL AND SOUTHEAST EUROPE IN MEDIEVAL AND EARLY MODERN TIMES

## A COMPARATIVE APPROACH AND A FEW SOUTH SLAV, GERMAN, TRANSYLVANIAN SAXON, HUNGARIAN, VLACH AND ROMANIAN ENACTMENTS<sup>1</sup>

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### Abstract

*The study presents a legal historical comparison of various ethnic marked consuetudinary laws from Southeastern and Central Europe during the Middle Ages and early modern history. Such customary laws were enacted in proper codifications specific to the ethnic communities of the South Slavs (Zakon sudnyi ljudem, Serbian and Croatian customary laws”), Germans (Sachsenspiegel, Schwabenspiegel, Magdeburgisches Stadtrecht, Ofner Stadtrecht), Transylvanian Saxons (Codex Altemberger, Eigenlandrecht der Siebenbürger Sachsen), Hungarians (Werbőczy István’s Tripartitum), Vlachs (Jus Valachicum in Croatia, Serbia, Montenegro, Herzegovina) and Romanians (Jus Valachicum in South Transylvania). In each of the illustrated cases we specify the emergence and features of the customary laws specific to various Southeast and Central European ethnic communities, the manuscript editions, variants and copies of the original sources, the languages in which they were written, as well as their spread, importance and influence upon the neighbouring ethnic communities. We show that, in spite of the multiethnic cohabitation in Central Europe and the Balkans, the various ethnic consuetudinary laws had a parallel development, while each of the ethnies, social categories, medieval and modern nations involved kept their own ethno-juridical peculiarities.*

**Keywords:** customary law; enactments; comparative legal history; Central Europe; Southeast Europe.

### Introduction

By means of the following case studies, representing several codifications of the consuetudinary laws specific to the medieval and early modern South Slavs, Germans, Transylvanian Saxons and Hungarians, Vlachs and Romanians, we aim to present a comparative perspective of a legal historical process comprising wide areas of Central and Southeastern Europe, as well as a multi-century time span. Such ethnic marked enactments of customary laws speak about the needs and interests of various ethnic communities (often presented in historical sources as distinct social categories) during the medieval and modern history, as well as of their goal to acquire *via juris* and to preserve for centuries their customary rights and privileges.

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<sup>1</sup> Article History: Received: 06.01.2025. Accepted: 06.02.2025. Published: 15.05.2025. No funding was received either for the research presented in the article or for the creation of the article.

Our comparative approach of legal history regarding the spread and enactments of the customary laws in Southeastern and Central Europe is important and relevant, as it rejects the recurrent stereotype of strictly oral, unwritten, indistinct and loose, somehow underground and ineffective consuetudinary regulations. On the contrary, pragmatical value and specialized functions determined and characterized each of the following case studies. Thus, legal cross-influences could not replace the specific consuetudinary prescriptions adopted by the distinct ethnic communities, but were exerted conjunctively with them.<sup>2</sup>

### 1. Defining Customary law, Traditions and Customs

What is *customary law*? Searching for an answer to this question, we notice that the less formal and more informal definitions of the consuetudinary or customary law generally include ‘a set of laws based on the traditions, customs, or norms of a local community’. Customary law still is applied in many countries, often in parallel with civil, common, and religious legal systems. Its content and features have varied in space and time, according to the changes in local customs. It has been underlined that the use of customary law has been more prevalent in countries with weak formal justice systems. ‘Customary law is often - but not always - unwritten. It is based on long-standing traditions, customs, and rules that a community accepts as binding.’<sup>3</sup>

Over the course of history, the oral prescriptions of customary law were more than once codified in legal documents and codes. Moreover, they were also sanctioned and granted by the official temporal authorities. In such cases we can speak about proper *enactments of customary law*.

The term itself is used especially by the recent English-language scholarship, which offers a strong theoretical conceptualization of legal history and a large comparative perspective of the past and present legal systems. Harold Berman (1983), John Henry Merryman (1985), H. Patrick Glenn (1997, pp. 613-620; 2004; 2004, pp. 7-20) and Alan Watson (2004, pp. 1-6), David Ibbetson (2015, pp. 1-11) a.o. intensively dealt with *comparative law, custom, legal cultures, legal traditions*, but they defined the same concepts in different ways identifying different meanings, as Judit Beke-Martos noted. The latter demonstrated, in her excellent study (2021), the lack of consensus in defining notions like *custom* and *tradition*, but also the conceptual elements common to them both. To her credit, the Hungarian author debates the heated, controversial and ‘ambiguous relationship’ between *custom* and *tradition*, starting and ending with definitions of common sense, however without neglecting the theoretical edifice created by the previously mentioned scholars. In brief, according to Judit Beke-Martos, “*tradition* is normative information, which is transmitted over time horizontally and vertically and that people willingly adhere to, while *custom* is factual information, which members of a given group of society create and maintain and which, if supported by state authority, becomes binding law” (Beke-Martos, pp. 5-25).

Less inclined towards theory, the legal historians preoccupied by customary law systems specific to Central and Southeast Europe have a quite different approach, which is rather inductive not deductive, seldom comparative and often monoethnic, little conceptualized but applied and very concrete, by showing the rich facets of each customary law separately.

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<sup>2</sup> An analysis of the legal cross-influences between ethnic communities of the Romanians and Transylvanian Saxons is detailed in my forthcoming article presenting the *Interferences between the Romanian and German Customary Law in South Transylvania. Case Study: The Romanian-Saxon Peace Convention of Insula Christiana, 13 January 1383*.

<sup>3</sup> *Customary Law, Defining Customary Law – How is Customary Law Different?*, ed. by the Federal Judicial Center (USA), Judiciaries Worldwide. A Resource on Comparative Judicial Practice. Retrieved February 3, 2025, from, <https://judiciariesworldwide.fjc.gov/customary-law>.

Following the historiography dedicated to the medieval and early modern customary law of the South Slavs, Germans and Transylvanian Saxons, Hungarians, Vlachs and Romanians, we see how emphasis is laid on identifying and describing particular legal historical customs and documents, and also codes of law that are specific to certain ethnic communities. Theoretical studies of comparative legal history of Central and Southeast European customary law are quite rare, except for a few relevant research projects completed through publications, reflecting *German Law Books of the Middle Ages* (Ulrich Dieter Oppitz, 1991-1993), *Custom and Law in Central Europe* (ed. Martin Rady, 2003), *The Laws and Customs of Medieval Croatia and Slavonia* (Damir Karbić and Marija Karbić, 2013), *Saxon-Magdeburg Law in Poland, Czechia, Slovakia, Hungary and Romania* (Inge Billy, Gönczi Katalin, Marija Lazar and Wieland Carls, 2012-2020)<sup>4</sup>.

The oldest medieval legal manuscripts are handwritten either on parchment paper sheets or in book form called *codex*. The most significant enactments of customary law are usually named by the title of the manuscript, *codex* or printing (*Sachsenspiegel*, *Schwabenspiegel*, *Tripartitum*), sometimes bearing the name of the manuscript owner (*Codex Altemberger*), a geographical, local or place name (*Meydepurgisches recht* and *dy rechte von der Ygla*, *Statutes of Făgăraș*). Most often enactments of customary law are defined as such even from the title by the ethnic denomination which makes the specific difference (*Liber Sclavorum*, *Zipser Willkhür*, *Statuta jurium municipalium Saxonum in Transilvania* or *Eigenlandrecht der Siebenbürger Sachsen*, *Statuta Valachorum* or *Vlašog zakona*). Yet sometimes several expressions of an ethnic community's enacted customary law are denominated with the ethnic name given by foreigners (*Jus Valachicum*) or with the self-name of the respective ethnic community (*Deutsches Recht*).

That is why, in order to reach a comparative view and synthetical conclusions regarding Central and Southeast European customary law, a descriptive and analytical approach is necessary to begin with, as we will show next

## 2. The Consuetudinary Law of the South Slavs

It is reflected in a range of legal prescriptions. The oldest of them were codified in *Zakón súdnyi liúdem*, possibly written in the second half of the 9<sup>th</sup> century by the Saints Cyril and Methodius and preserved only in later copies from the 13<sup>th</sup>-14<sup>th</sup> centuries. This *Zakón* was largely used over time and space (covering the Balkans and, apparently, Great Moravia). *Liber Sclavorum qui dicitur Methodius*, mentioned in the chronicle *Ljetopis Popa Dukljanina* (after 1150, preserved in translations from 1350-1450), was recently identified as another (yet not discovered) writing of Saint Methodius. Compiled under Byzantine influence of *Nomocananoi*, but adapted to the South Slavic world and adopted by customary use, these codes include regulations of civil and criminal law, forming a mix of secular (*νόμοι*) and ecclesiastical prescriptions (*κανόνες*).

*Zakón súdnyi liúdem* (Law for Judging the People) is the oldest extant Slavic code of laws, composed of 32 articles including prescriptions of civil and criminal law. It was written around the year 850, however it is preserved only in later copies from the 13<sup>th</sup>-14<sup>th</sup> centuries.

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<sup>4</sup> Inge Billy, Wieland Carls, Gönczi Katalin (2012). *Sächsisch-magdeburgisches Recht in Polen. Untersuchungen zur Geschichte des Rechts und seiner Sprache* [Saxon-Magdeburg Law in Poland: Analyses regarding the history of the law and its language]. Berlin: De Gruyter. Gönczi Katalin, Wieland Carls (2014). *Sächsisch-magdeburgisches Recht in Ungarn und Rumänien. Autonomie und Rechtstransfer im Donau- und Karpatenraum* [Saxon-Magdeburg Law in Hungary and Romania: Autonomy and law transfer in the Danube-Carpathian area]. Berlin, Boston: De Gruyter. Inge Billy, Wieland Carls, Gönczi Katalin, Marija Lazar (2020). *Sächsisch-magdeburgisches Recht in Tschechien und in der Slowakei* [Saxon-Magdeburg Law in Czechia and Slovakia]. Berlin: De Gruyter.

Best known is its manuscript from Russia (1280). Burgmann shows that the provenance of the code, which was compiled in the second half of the 9<sup>th</sup> century, is still uncertain (Burgmann, 1998, col. 470).

Based on linguistic arguments, most of the researchers consider Moravia to be its place of origin and the Saints Cyril and Methodius its authors; others support the idea of *Zakón*'s Bulgarian origin, in the time of Tsar Boris I the Christianizer (865), while some historians state that it was used even in Great Moravia (that included South Pannonia), too. In his critical and comparative approach, Marko Petrak proves that *Zakón súdnyi liúdem* mainly contains a translation from *Εκλογή τῶν νόμων* (Selection of laws), "the most important collection of civil law after Justinian" (circa 741), a few prescriptions from the Western Roman law and three articles (on pagan sacrifice, oath and witnesses) from the Old Testament Mosaic law (Petrak, 2018, pp. 213-224). *Zakón* was doubtlessly completed and adapted to the Slavic realities.

*Liber Sclavorum qui dicitur Methodius* (Book of the Slavs called Methodius) is mentioned in a famous chronicle of the South Slavs, *Ljetopis Popa Dukljanina* (Chronicle of the priest of Dioclea), written in Latin, under the title *Regnum Sclavorum* (Reign of Slavs), in the second half of the 12<sup>th</sup> century, either by bishop Gregorius (Grgur) in Dioclea (Duklja), or anonymously in Antivari (Bar, in Montenegro). It was translated into Croatian as *Hrvatska kronika* (Croatian chronicle) between 1350-1450. Chapter 9 of *Regnum Sclavorum* describes the accomplishments of King Svetopelek, ruler of Slavonia (Petrak, 2018, p. 214)<sup>5</sup>, who created institutions, as well as "many laws and good customs" (*multas leges et bonos mores*). In this chapter a "Slavic book called *Methodius*" (*librum Sclavorum qui dicitur Methodius*) is recorded (Petrak, 2018, p. 216). Petrak identifies *Liber Sclavorum* with Saint Methodius's *Nomocanon*, another writing mentioned only in chronicles, whose original was never discovered. In any case, *Liber Sclavorum qui dicitur Methodius* seems to be a genuine work of Saint Methodius, and not the translation of the Byzantine *Nomocanon*<sup>6</sup>, that was made from Greek into Slavonic by the same author of the Cyrillic alphabet (Petrak, 2018, pp. 216-223).

### 3. The Croatian and Dalmatian Municipal Statutes

An astonishing variety of statutes and codes of law is revealed in medieval and early modern Croatia. They were compiled, copied, reworded, sanctioned and reconfirmed during the 13<sup>th</sup>-18<sup>th</sup> centuries.

A lucky situation facilitating the researchers' worldwide access to Croatian historical sources and analyses is, in my opinion, due to several factors: a) ample and complete collections of South Slavic documents from Croatian archives (like the two series of *Monumenta Slavorum Meridionalium*)<sup>7</sup> elaborated at the end of the 19<sup>th</sup> century by Radoslav Lopašić and his successors<sup>8</sup>; b) contemporary historians following the path opened by great legal historian Lujo Margetić in the 20<sup>th</sup> century (see in English precisely: Margetić, 2008, p. 150-165); c) last but not least, plenty of recent studies published in today's *lingua franca*

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<sup>5</sup> Svetopelek's Kingdom of Slavonia comprised a territory formed of: 1. *Maritima*, including *White Croatia* or *Inferior Dalmatia* and *Croatia Rubra* (Red Croatia) or *Superior Dalmatia*; 2. *Transmontana*, made up of Bosnia and Rascia (Raška, Serbia).

<sup>6</sup> A *Nomocanon* was composed of secular laws (*νόμοι*) and of ecclesiastical or canon laws (*κανόνες*).

<sup>7</sup> The first series of *Monumenta Spectantia Historiam Slavorum Meridionalium* (Monuments Pertaining to the History of the South Slavs) was published in 43 volumes between 1868-1918. The second series, which deals precisely with *Monumenta Historico-Juridica Slavorum Meridionalium* (Historical Juridical Monuments of the South Slavs), was published between 1877-1979 in 13 volumes of legal documents concerning the history of Croatia. Both series were edited under the aegis of the South Slavic Academy of Science and Arts.

<sup>8</sup> Radoslav Lopašić (1835-1893), corresponding member of the South Slavic Academy of Science, initiated the scientific editing of Croatia's medieval and early modern sources, in *Spomenici Hrvatske krajine 1478-1780* (Sources Regarding the History of the Croatian Military Border 1478-1780), 3 vol., Zagreb, 1884-1889; *Hrvatski urbani 1436-1700* (Croatian Urbaries 1436-1700), Zagreb, 1894.



(English) by young authors (Birin, 2014, pp. 455-468; Galović, 2019, pp. 869-897; Karbić, 2003, pp. 37-45; Petrak, 2018, pp. 213-224; Ravančić, 2014, pp. 189-207), thus overcoming the language barrier, as well as the isolation and ignorance usually suffered by Southeast-European languages and cultures.

Proper codes of customary laws, written in vernacular Croatian language for the use of the Croatian small and great nobility, are: the *Vinodolski zbornik* (1288), enacting privileges for the military *iobagiones castri*; the statute of Krk or Vrbnik (1388) - both with Glagolitic letters; the *New Statute of Poljice* (1440) - in Bosnian Cyrillic, stressing the juridical autonomy of the noblemen; *Statut lige kotara ninskog* (circa 1460-1490), an acknowledgement of the rights of the rural community (*universitas villarum*) of the Nin district. In Latin were written: the statute of the town of Senj (1388), *Statutum Ligae Zadar* (circa 1450), including privileges for the rural community of the district. Italian language was used for: the compilations of *Vranski zbornik* (1454), that granted rights to the military small noblemen called *feudatari* of the Vrana castle; the 16<sup>th</sup> century legal code of Novigrad (today Novi Vinodolski), apparently a translation of a 15<sup>th</sup> century Latin original, which recorded general customary laws specific to Croatia. A few consuetudinary items were also included in the statutes of several towns from the Dalmatian coast and from Croatian islands of the Adriatic Sea (14<sup>th</sup>-16<sup>th</sup> centuries).

*Vinodolski zbornik* (Collection of Vinodol) represents the oldest Croatian legal code which enacted the privileges of the *iobagiones castri*, a military category of "castle warriors" defending the region. It was written in vernacular Croatian in 1288, during the power transfer from the authority of the Hungarian king to that of the Croatian great nobility (Karbić, 2003, p. 38; Galović, 2019, pp. 869-872). Being of particular importance for the history of Croatia, after the first edition of Antun Mažuranić from 1843 (Mažuranić, 1843, pp. 52-83), it was re-edited several times and translated into Italian, German, English (see: Margetić, 1998). The statute of the island of Krk (Vrbnik) of 1388 is chronologically the second *codex* compiled in vernacular Croatian with Glagolitic script. At the same time (1388), the statute of Senj was written in Latin (Galović, 2019, p. 869).

*Poljički statut*, the law of the Dalmatian Poljica region, although apparently codified in the 14<sup>th</sup> century, is preserved in form of the *New Statute of Poljice* (1440 or 1444). Shortly before the beginning of the Venetian rule, it was written down in vernacular Croatian by the local authorities for the Croatian noblemen, in order to stress the region's juridical autonomy. Until the fall of the Venetian republic (1797), this code of laws was continuously revised and used as the main legal document in the region, sharing a similar reputation as the *Tripartitum* in Hungary and North Croatia (Karbić, 2003, p. 41).

*Vranski zbornik* (Collection of Vrana) from 1454, in Italian, included the statutes of another privileged military category, the so-called *feudatari* of the Vrana castle. They belonged to the small nobility of different origins: Croatian, Italian, even Hungarian, who served in the garrison of Vrana and were rewarded with lands for their military service. In the middle of the 15<sup>th</sup> century, too, *Statutum Ligae Zadar* was compiled in Latin and re-edited a century later. *Ligae* were allied districts in the time when Venetia ruled the districts of the Dalmatian towns and parts of the Croatian counties from the *hinterland* of Zadar. The enactments of Vrana and Zadar reflect a larger process of codifications initiated by Venetia in the Croatian territories it was ruling. *Statut liga kotara ninskog* was elaborated in vernacular Croatian circa 1460-1490, however its original language cannot be determined, as the statute from the town of Nin is preserved only in an 18<sup>th</sup> century copy. The statutes of Zadar and Nin differ from the rest of Croatian customary laws by the fact that they had in view not certain privileged social groups, but entire rural communities (*universitates villarum*) from the districts pertaining to the mentioned towns. Another law code of Novigrad (today Novi Vinodolski), that of Poljica, has a more general character. Made by the small noblemen from the homonym district (part of the

Luka county, which came in 1409 under Venetian domination together with the towns Zadar and Nin, and with the Vrana castle), it aimed to record both the customary laws of Croatia and of the region between Nin and Knin. The extant Italian compilation dating from the 16<sup>th</sup> century seems to have been preceded by a 15<sup>th</sup> century original written in Latin.

A great number of towns situated on the Dalmatian coast or in Adriatic islands created their own legal statutes during the 14<sup>th</sup>-16<sup>th</sup> centuries. Damir Karbić considers that, unlike the 13<sup>th</sup> century code of Vinodol, which is a direct expression of the Croatian consuetudinary law, only elements of Croatian customary can be found in the 14<sup>th</sup> century communal statutes of Krk, Senj, Skradin, Šibenik, Brač and Hvar (Karbić, 2003, p. 40, footnote 18).

Ante Birin takes into account a different chronology of the urban enactments in Croatia, based on the oldest preserved legal codes of the towns Korčula (1265) and Ragusa (1272, today Dubrovnik), followed by the 14<sup>th</sup> century town statutes of Zadar and Brač (1305), Lastovo (1310), Split (1312), Trogir (1322), Šibenik, Skradin, Rab and Kotor (ante 1325), Hvar (1331), Mljet (1345), Poreč (1363), Pag (1372) and Senj (1388). The preserved urban statutes of Novigrad (1402, today Novi Vinodolski), Pula (1431), Budva (1442) are dated in the 15<sup>th</sup> century and those of Umag (1528) and Rijeka (1530) in the 16<sup>th</sup> century (Birin, 2014, pp. 459-460).

In part III of Werbőczy's *Tripartitum* of 1517<sup>9</sup>, the compilers of the Croatian consuetudinary laws reproduced the local customs and juridical practices, used in parallel with older Byzantine legal sources (Justinian, Gratian). Just as parts I and II of *Tripartitum* represented the interests of the Hungarian noblemen, part III supported the prescriptions favorable to the Croatian nobility. Damir Karbić detected some differences between the Hungarian and Croatian customs; for instance, the latter did not admit the institution of the daughter's quarter and preferred dowry to dower, while the legal practice of the two countries was even more distinct, as the cases of 1361, 1375 (confronting the Croatian law with the Sicilian and Hungarian laws) show (Karbić, 2003, pp. 43-45).

The coexistence and complementarity of various customary laws extant in medieval Croatia, and not their hierarchy or competition for priority, is confirmed in the historical geographical survey realised by Damir Karbić and Marija Karbić. *The Laws and Customs of Medieval Croatia and Slavonia* are presented by the mentioned authors according to the distinct regions of present-day Croatia: Dalmatia (15 statutes), Istria (13 statutes), historical Croatia (2 statutes and 5 law codes), Kaverner region (4 statutes and 2 law codes), Slavonia (Zagreb Golden Bull of 1242, a privilege, a brotherhood renewal, a dietal decision). Each enactment is dated, described in its content, explained according to the extant manuscripts and editions, provided with the relevant literature. It is a brief, but very useful and quasi exhaustive *Guide to the Extant Sources*, a good model to be augmented (by Croatian researchers) and followed (by foreigners), as the quoted authors consider (Karbić & Karbić, 2013).

#### 4. The German Town Law

The German town law (*Deutsches Stadtrecht*) was widespread in medieval Central and Eastern Europe by means of several legal codes: *Sachsenspiegel* (Saxon Mirror), the oldest and most important law book of the German Middle Ages, compiled by Eike von Repgow (1220-1235); *Schwabenspiegel* (Swabian Mirror) of 1275; the commercial urban law of *Magdeburgisches Stadtrecht* (1188-1294); the town privileges of the Buda town law (*Ofner Stadtrecht*) from the 14<sup>th</sup>-15<sup>th</sup> centuries (Oppitz, vol. I-II, 1991; Oppitz, vol. III/1-3, 1993).

Metaphorically compared to a mirror, where medieval man could distinguish between good and bad, *Sachsenspiegel* and *Schwabenspiegel* were descriptive, not prescriptive codes,

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<sup>9</sup> See infra about the *Tripartitum* by Werbőczy István.

recording, not imposing certain old laws and juridical practices. They transposed into writing the legal principles established in the vernacular language (and not in Latin, the language of scholars), making a clear division in *Landrecht* and *Lehnrecht* (Droege, 1969; Möhlmann, 2002, pp. 5-7).

So, both *Sachsen-* and *Schwabenspiegel* included collections of prescriptions regarding especially the land law (*Landrecht*) and the feudal law (*Lehnrecht*), which nowadays correspond to common (private) and public law. The *Landrecht*, as the law of the land and of the free peasants (*jus terrae* or *regionis consuetudo*), gradually turned into the territorial and political law of a German Land (*ius provinciae* or *statuta civitatis*).

*Sachsenspiegel*, for instance, comprised three books of German consuetudinary law (*Landrecht*), a book of feudal law (*Lehnrecht*), prescriptions of canonic and Roman law (Bielitz, 1823, p. 4). It enumerated and described: a) the 7 vassalic stages which established the access of the land's people to the class of knights; b) numerous prescriptions regarding the laws of succession (*Erbrecht*) and of family (*familienrechtliche Bestimmungen*); c) the organization of the courts of instance, trials of material criminal law (*materielles Strafrecht*); d) the general law (*allgemeines Recht*), called "land peace" (*Landfrieden*); e) a great number of prescriptions with respect to the highest dignitaries of the medieval German Empire (king, prince, count, etc.), the monarch's right upon the assets with no heirs (*erbloses Gut*), the military conscription (*Heeresaufgebot*) and the colonization law (*Siedlungsrecht*) (Lück, 2013, pp. 239-268).

Since the 13<sup>th</sup>-14<sup>th</sup> centuries for 650 years, there were almost 500 manuscript-copies of the *Sachsenspiegel* in circulation beyond the boundaries of the Holy Roman Empire of German Nation, unto the Netherlands, Livland, Kiev. They had an overwhelming influence upon the further legal codes of *Schwabenspiegel*, *Magdeburgisches Stadtrecht*, *Augsburger Sachsenspiegel*, *Deutschenspiegel* (Eckhardt, 1924). Among the extant 7 original illustrated manuscripts (*codices picturati*, *Bilderhandschriften*, *illuminated manuscripts*), most valuable are those from Dresden, Heidelberg, Oldenburg and Wolfenbüttel (1291-1371).<sup>10</sup>

*Schwabenspiegel* was written by an anonymous Franciscan monk in Augsburg (1275) or (according to more recent opinions) in a monastery of mendicant (beggar) monks in connection with Berthold von Regensburg's sermons (1268-1272). It included the *Landrechtsbuch* (Book of the Land Law), *Lehenrechtsbuch* (Book of Feudal Law), *Kaiserrecht* (Emperor Law), *Kaiser Karls Rechtsbuch* (Book of Law of Emperor Karl), and others.

While *Lehnrecht* was structured in *Schwabenspiegel* the same as in *Sachsenspiegel*, the *Landrechtsbuch* showed, in article 1, that the legal order (*Rechtsordnung*) and justice (*Gerechtigkeit*) were grounded on God's commandments and were aimed to establish the "law on earth" (*irdisches Recht*) by means of "the Pope's spiritual law" (*geistliches Recht des Papstes*), "the Emperor's secular law" (*weltliches Recht des Kaisers*) and the customary law (*Gewohnheitsrecht*). In articles 3-85, it presented "men and their property", touching the law of succession and legal issues related to marriage, origin of free and non-free individuals, tutorage. In articles 86-117, there were recommendations addressed to judges (*Richter*), clerks implementing a sentence (*Fronboten*), orators (*Fürsprecher*), counselors (*Ratgeber*), ushers and tax collectors (*Büttel*), witnesses (*Zeugen*); while articles 118-145 referred to the greatest senior and supreme judge, who was the king, in relation with the empire.

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<sup>10</sup> See [Eike von Repgow, *Sachsenspiegel*,] manuscript copy, Rastede, in Landesbibliothek Oldenburg, CIM I 410, <https://digital.lb-oldenburg.de/ihd/content/pageview/193464>; *Die Dresdner Bilderhandschrift des Sachsenspiegels* [Illustrated manuscript of Dresden of the Saxon Mirror], illustrated copy, circa 1350, in Sächsische Landesbibliothek/Staats- und Universitätsbibliothek Dresden, Mscr. Dresd. M. 32, 92 p. 924 illustrated strips, circa 33,5x26 cm, parchment, <http://digital.slub-dresden.de/werkansicht/dlf/6439/184>.

The second half of *Schwabenspiegel's Landrecht*, in articles 145-377, regulated details regarding everyday life, agriculture, crafts, trade, constructions, position of women, Jews, invalids, registration of legal documents, hunting, circulation on public roads, seniorial monopolies (of currency, boroughs, customs). Today there are over 400 (long, short, normal and systemized) manuscript variants from South Germany (Schwaben, Bayern) and Austria. They had an impact on the legal evolution in North Germany, Schlesien, Bohemia, Transylvania (Derschka, 2002).

*Magdeburgisches Stadrecht*, the urban law of Magdeburg, was also of great importance and spreading. It rooted in the tradesmen's customary commercial privileges and rules decided by the town community (*Willkür*). The secularization and transfer of legal power from the town senior and judge, archbishop Wichmann (1188), to the townsmen, who bought and occupied the functions of *Schultheiß* (equivalent to a *Bürgermeister*, mayor) and *Burggraf* (citadel count) in 1294, was consecrated in the same year by the separation of the council (*Rat*) from the *Schöffenstuhl*, which was the peculiar seat of justice formed of 11 *Schöffen* chosen for life to administer justice.

Namely, the Magdeburg law granted to the townsmen: personal freedom, property right, physical and life integrity, the regulation of economic activities. To the tradesmen it conferred the hospitality right (*Gastrecht*), which stipulated that any litigation ought to be solved in court within a single day, then liability for the goods (*Haftung für die Ware*), various issues concerning bookkeeping, fair competition, association capital.

In the criminal law of Magdeburg, the old Germanic and Barbarian *ius gentium* (*Sippenhaft*) was abolished, so it was exclusively the culpable, and not his family, who was to be punished for personal injury or murder, while the witness test (*Zeugenbeweis*) replaced the law of retaliation (*Blutrache*) and the divine judgement (*Gottesurteil*).

Due to the German colonists settled in Central and Eastern Europe, the use of the so-called "Saxon-Magdeburg law" (*sächsisch-magdeburgisches Recht*) or "German town law" (*deutsches Stadtrecht*) expanded in Hungary and Transylvania (Gönczi & Carls, 2013; Moldt, 2009). The influence of the German law also comprised Livland, Lithuania, Poland, Slovakia, Ukraine, Russia (Eichler, Lück 2008). Within a research grant of the Saxon Academy of Science in Leipzig<sup>11</sup>, several volumes were recently dedicated to the German law in Poland, Hungary, Romania, Czechia and Slovakia (Bily, Carls & Gönczi, 2012; Gönczi & Carls, 2014; Bily, Carls, Gönczi & Lazar, 2020).

*Ofner Stadrecht* (*Buda Város Jogkönyve*) was the German law imposed in Buda and in the towns of Kaschau (Košice, 1347), Bartfeld (Bardejov, 1370), Eperies (1374), being considered the most comprehensive legal source of the medieval towns from the entire Kingdom of Hungary (Mollay, 1959). During the rule of King Sigismund (1413, 1421), the two parts of this code were compiled, to which the annex was added later (1510). The three manuscripts extant today come from Bratislava (1430-1490, 1503), Budapest (circa 1560) and Baia Mare, now in Budapest (1488-1503), but none of them represents the primary source.

The anonymous *Ofner Stadrecht* is a prescriptive law containing norms and punishments of common and public law. It is an urban law, too, written in German and aimed to adapt to Hungary the village and town privileges from *Sachsenspiegel*, *Schwabenspiegel*, *Deutschenspiegel*, *Kaiserrecht* etc. (Relković Néda, 1905). Thus, *Ofner Stadrecht* contains 64

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<sup>11</sup> Research grant of Sächsische Akademie der Wissenschaften (Leipzig), entitled *Das sächsisch-magdeburgische Recht als kulturelles Bindeglied zwischen den Rechtsordnungen Ost- und Mitteleuropas* [The Saxon-Magdeburg Law as an element of cultural connection between the legal systems in Eastern and Central Europe], ended in 2020, <https://www.saw-leipzig.de/de/projekte/das-saechsisch-magdeburgische-recht-als-kulturelles-bindeglied-zwischen-den-rechtsordnungen-ost-und-mittleuropas>.



articles on the city of Buda's governing; 100 articles on the tradesmen, craftsmen, further arts and crafts; 138 articles on the town justice; 38 articles on the relations between the foreign merchants and the city, while the annex includes regulations for grocers (1453), the list of free royal towns (1500), the debate on the right to stop the transit of goods between Buda and Pest (1502-1503) (*Budai jogkönyv*, 1993-2010).

Davori Relković Néda published in 1905 the first interpretation of this law, noting the influences exerted, *via* Transylvania, upon the code of Buda by *Zipser Willkür* (1370) and *Codex Altemberger* of Sibiu (15<sup>th</sup> century). He rendered parallel prescriptions from *Ofner Stadtrecht* and its sources, illustrating: obligations and formulas of the loyalty oaths of the mayor (*biró*), chancelist, scribe when taking over their positions; distinctive signs and restrictions imposed to Jews in clothing and activity; harsh physical punishments and ordeals for various violations and criminal offences: cutting off the tongue for cursing God and the Saints; for calumny, the defamator had to slap his mouth with his own hand and to openly confess his lie, in the public square; the punishment for murder was decapitation, in the cabbage market of Buda; for raping a maiden, the rapist was decapitated or he was thrown and drown in the Danube River; those who broke the oath of marriage by adultery were buried alive in a pit, near the gallows, then they were both impaled (Relković Néda, 1905, pp. 45-46, 64, 74, 76, 78, 83-84, 162). The role of the proofs (in German called *prieß*, in Latin *inquisitor*, in Hungarian *tudó*) increased. However, in spite of the numerous capital punishments prescribed by the law of Buda, the ordeals with red hot iron and boiled water were rejected and replaced by the oath (Relković Néda, 1905, pp. 198, 199).

### 5. The Municipal Laws of the Transylvanian Saxons

They were enacted in *Codex Altemberger* (1360-1481), considered to be "the first legal code of the Saxons from Sibiu" (Ginel Lazăr), and in the so-called "Saxon constitution", *Eigenlandrecht der Siebenbürger Sachsen* (1583).

The original *Codex Altemberger*, kept within Romania's National Museum of History in Bucureşti, was recently published in a critical and anastatical edition realised by Ginel Lazăr and Adinel Dincă (Lazăr, 2019, 516 p.). The outstanding codicologic and diplomatic analyses introduce the facsimile of the beautiful manuscript text and miniatures, opening the path to future studies of legal history dedicated to the enactment from Sibiu.

The manuscript, opened by a register (leafs 1 recto - 25 verso), reproduces the copies of several significant German legal codes: *Schwabenspiegel* (leafs 28r-136v), *Magdeburgisches Stadtrecht* (*Meydepurgisches recht*) including the Jews' oath (leafs 137v-162r), the mining and urban law of Jihlava in Czechia (*dy rechte von der Ygla*, leafs 164r-182r). These transumptis prove, on the one hand, good acquaintance with the stipulations of the German urban and mining privileges, and on the other hand, the use and practice of the German laws in the South Transylvanian town of Sibiu since the second half of the 14<sup>th</sup> century until 1481. In the end (leaf 182v), there is an original item rendered in German language, namely the oath of the Saxon *municipium* officials of Sibiu (*Cibinium, Hermannstadt*), with the town's coat of arms. The Latin colophon on the last page (183r) indicates the name and functions of the *codex*'s owner: Thomas Altemberger (1431-1491), municipal counselor (since 1469), mayor of Sibiu (1472), royal judge (*judex regius, Königsrichter*) in Sibiu (since 1481) and Buda (1486-1491). It also indicates the date when the code was finished: 1481.

In the period of *Codex Altemberger*'s compilation (1360-1481), the town of Sibiu had the ambition, not yet the official quality, to become the capital of the Saxon Land (*Fundus Regius, Sachsenland*), which happened a few years later. The impressive achievement of the royal judge Thomas Altemberger, reflected in *Codex Altemberger*, has surely contributed to the privileged position acquired not only by the town of Sibiu in relation to further Saxon and Transylvanian

*municipia*, but also by the entire *Fundus Regius*, whose prerogatives were sanctioned by King Matthias Corvinus concomitantly with the establishment of the Saxon University (Müller, 1928, pp. 227-424).

The creation of the *Universitas Saxonum* (*Sächsische Nationsuniversität*) in 1486 was followed by the adoption of a proper code law in order to ensure the ethnic and political autonomy of the Saxon medieval nation in the frame of the Transylvanian state. The many written or unwritten rules of law and municipal statutes (of Sibiu, Braşov, Bistriţa etc.), in circulation among the Transylvanian Saxons, were summarized by Thomas Bomel, who was commissioned by the Saxon University to elaborate the *Statuta jurium municipalium civitas Cibiniensis, reliquarumque Civitatum et universorum Saxonum Transilvanicorum* (1560). Matthias Fronius revised Bomel's text and, taking suggestions from Johannes Honterus's works, from the Roman law and the Saxon customary law, he wrote *Statuta jurium municipalium Saxonum in Transilvania* (1570). The form offered by Fronius to this legal code was improved by Lukas Hirscher, Petrus Hirscher and Albert Huet (1570-1582). Then the final text in Latin, followed by the German translation, was sanctioned and promulgated by the prince of Transylvania Stephen Báthory<sup>12</sup> (1583) (Tătar, 2011, p. 361).

Thus, *Statuta jurium municipalium Saxonum in Transilvania* or, in German denomination, *Eigenlandrecht der Siebenbürger Sachsen* (The Transylvanian Saxons' Proper Land Law) was adopted in 1583 for the entire territory under the jurisdiction of the Saxon National University (see *Eigenlandrecht*, 1973; fragments from *Iura Municipalia Univ. Saxonum Transilv.* in Spulber, 1930, pp. 153-155). It remained in force until the Saxon Land was dissolved (1876), shortly after the establishment of the Austro-Hungarian Dual Monarchy (1867) (Teutsch, 1916, 1923, 1924; Bolovan & Bolovan, 2000, pp. 21, 50).

Friedrich Schuler von Libloy published for the first time (1853) the *Statuta jurium municipalium Saxonum in Transilvania*, in the Latin original (1583), followed by the German variant. The *Eigenlandrecht der Siebenbürger Sachsen* contained four books dealing with: I. the juridical order (*Gerichtsordnung*); II. the law of family and succession (*Familien- und Erbrecht*); III. the law of obligations (*Obligationsrecht*); IV. the criminal law (*Strafrecht*) of the Transylvanian Saxons (Schuler von Libloy, 1853, 264 p.).

Later, a Romanian translation of the Transylvanian Saxons' municipal constitution was also rendered by Felix Sutschek (1997), while Julia Derzsi dedicated a consistent chapter to the fourth part of the *Eigenlandrecht* (2022), explaining the specific Saxon prescriptions and procedures of criminal law (Sutschek, 1997; Derzsi, 2022, pp. 88-106).

## 6. Werbőczy's *Tripartitum* and the Transylvanian Hungarian Municipal Statutes

Werbőczy István's *Tripartitum* represents the enactment of the customary law imposed by the Hungarian nobility.

As a matter of fact, following a private initiative, the protonotary of the High Court of Justice in Buda was commissioned with the compilation of the laws of the country. A draft of the *Tripartitum opus iuris consuetudinarii inclyti Regni Hungariae partiumque adnexarum* (Tripartite Work of Consuetudinary Law of the Honoured Kingdom of Hungary and of the Annexed Parts [*Partium*]) was presented by Werbőczy István to the Hungarian diet (1514) and published (1517) (Werbőczy, 1517.).

Although *Tripartitum* was not promulgated by royal decree and didn't receive the royal seal, it was in circulation enjoying a similar rank to that of an official state law. In fact, by

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<sup>12</sup> Báthory István (1533-1586) was voivode of Transylvania (1571-1576), then prince of Transylvania (1576-1586), king of Poland and grand duke of Lithuania (1576-1586).

another private initiative, the manuscript collections of *decreta regni* were published later (1584), in Trnava (Nagyszombat), by bishops Zakariás Mossóczy and Miklós Telegdi.

As shown in the book edited by Martyn Rady and almost completely dedicated to *Tripartitum* (Rady, 2003), in Hungary the legal source of *consuetudo regni* was more forceful than the royal privileges or the laws of the courts of instance, and more vigorous than the royal decrees (*decreta regni*), promulgated by the king with the agreement of the dietal Estates. For Werbőczy (inspired by Bartolus), the custom (*consuetudo*) meant a set of equal rules used for a long time and accepted by tacit consent by the community (of noblemen, in this case).

*Tripartitum* managed to turn custom into “national law” of Hungary (in parts I-II) and Croatia (in part III). For centuries, it was also in force in Transylvania and in the Triune Kingdom (*trojedna kraljevina*) of Croatia, Slavonia and Dalmatia. *Tripartitum*’s popularity in Hungary, as the most edited book after the Bible, is reflected by its 54 editions (László, 2003, pp. 101, 103; Rady, 2003, p. 5).

The special importance of Werbőczy’s collection reveals the juridical force of the Hungarian nobility from Hungary and Transylvania, who succeeded to impose its own customary law (older than its enactment) against the German urban law promoted by a medieval German bourgeoisie. The *Ofner Stadtrecht* - implemented in the 13<sup>th</sup>-14<sup>th</sup> centuries by the German colonists (who had founded the Hungarian capital city) not only here, but in all the towns of the kingdom (Göntzi & Carls, 2014, pp. 126-127) - was thus replaced in the 16<sup>th</sup> century by this enactment of the Hungarian nobility’s ethnic law (Ibbetson, 2003, pp. 13-23).

Several Hungarian medieval towns in Transylvania (Cluj, Baia Mare) - actually founded by the Saxon or Zipser colonists, who were later assimilated and Magyarised -, elaborated special statutes promoting their guilds and corporations, as well as their own municipal rights and privileges. The corpus of municipal statutes of the Hungarian towns, edited by Kolosvári Sándor and Óvári Kelemen (1885), included also statutes of Transylvanian Saxon and Romanian towns or citadels, like the *Statutes of Făgăraș* from 1508. Another *Corpus Iuris Hungarici, 1000-1895* was edited in 1900 by Márkus Dezső (Kolosvári & Óvári, 1885; Márkus, 1900; Derzsi, 2022, p. 19; Vizauer, 2024, pp. 51-75).

In the Principality of Transylvania, the Hungarian noblemen’s consuetudinary law of *Tripartitum* was expanded in *Approbatæ Constitutiones* (1653), collection adopted by the Transylvanian diet which included the dietal decisions of 1541-1653 (*Approbatæ constitutiones regni Transilvaniae et partium Hungariae eidem annexarum*, 1653), and *Compilatae Constitutiones* (1695), collecting the further dietal decisions of 1654-1669 (*Compilatae constitutiones regni Transilvaniae - Partium Hungariae eidem annexarum*, 1695).

Thus, for instance, *Approbatæ* were divided into five parts dealing with: the church law, the law of the state, the law of the privileged class, the trial procedure and special items of administrative law. By means of these Transylvanian constitutions, the Hungarian nobility definitively secured its domination by: a) the system of 4 accepted religions (Roman-Catholic, Calvinist, Unitarian, Lutheran) and 3 medieval nations or privileged Estates (Hungarians, Szekler, Saxons); b) total exclusion from the social, political, juridical, economic life of the Transylvanian Romanians (who formed the demographic majority, but their nation was only tolerated and their Orthodox religion not accepted); c) serfdom imposed to the peasants.

### **7. Jus Valachicum of the South Vlachs**

Special enactments of the customary law called *Jus Valachicum*, extant in Croatia, Serbia, Montenegro, Bosnia and Herzegovina, were attested in several documents dating from the 14<sup>th</sup>-18<sup>th</sup> centuries. A special mention deserves the ethnic distinct law of the Vlachs from the Croatian county of Cetina (1436), that was later followed by *Statuta Valachorum* (1630), issued at the creation of the Austrian military border of the Varaždin generalate.

The *Vlachs' Law from Cetina* in Croatia (18 March 1436) is a privilege published first as a Latin transcription of the Cyrillic original by Radoslav Lopašić (1890), and after a later copy from the 17<sup>th</sup> century, in his famous Berliner *Archiv für slavische Philologie*, by Vatroslav Jagić (1892). The original charter written in vernacular Croatian in Cyrillic script, as well as the 17<sup>th</sup> century copy transcribed in Latin letters are preserved in the archive of the Franciscan convent at the castle Trsat (Tersatto bei Fiume) in Rijeka (Lopašić, 1890, pp. 296-298; Lopašić, 1894, pp. 1-12; Jagić, 1892, pp. 156-157; Karbić, Karbić, 2013, pp. 66-67; Isailović, 2017, pp. 32-34).

The *Vlachs' Law* from Cetina was integrally translated into Romanian and analysed, in 1959, by the undeniable expert in the medieval history of the Vlachs in the Northern Balkan Peninsula and great historian Silviu Dragomir (Șipoș, 2012, pp. 72-76)<sup>13</sup>.

*Haec Contractum seu transactione Joannis de Frangepanibus cum subditis Valachis* (this contract or transaction of Joannes de Frangepanus with the mentioned Vlachs), as the 17<sup>th</sup> century copy specified, issued by ban Hanž Frankapan, counted “28 unnumbered articles” (Karbić & Karbić, pp. 66-67), or 23 articles according to Dragomir (further paragraphs representing the *protocol* and *eschatocol* of the document). This charter regulated: a) the administration of Vlach villages (*katuni*, *cătune*), several *katuni* being ruled by a chief called *katunar*; b) the Vlach warfare performed by the *voivode*, as military commander leading his soldiers (*voinički*); c) the Vlach justice exerted by *knez* and judges (*suçi*); d) the Vlachs' transhumant shepherding; e) the Vlach trade, transit of goods and other economic matters (Dragomir, 2012, pp. 110-136; Cosma, 2023, pp. 294-297).

Due to Neven Isailović's excellent analysis, dedicated to the legislation regarding the Vlachs before and after the Ottoman conquest of the Balkans, current historiography has proved that the enactment of the *Vlachs' Law* of 1436 is preceded by newly examined archive material dated a century earlier and coming from a wider area, that includes not only Croatia, but also nowadays Serbia, Montenegro, Bosnia and Herzegovina. The mentioned Serbian researcher considers that, except for some solitary fragments, the earliest laws on the Vlachs are to be found in three extant charters of the Serbian kings issued for monasteries, namely King Milutin's charter for the Saint Stephen monastery in Banjska (1314-1316), King Dušan's charter who consecrated the Saint Nicholas church in Vranje to the Hilandar monastery on the Holy Athos Mountain (1343-1345), and the charter issued by the same ruler, who meanwhile had become Emperor Dušan, to the Saint Archangels Mihail and Gavril monastery near Prizren (1348-1354). These charters register two types of dependent so-called ‘people of the church’. While the first type, carrying the specific ethnic name of ‘Serbs’, cultivated land for the monastery, having various agrarian obligations, the second type of dependent people were the Vlachs, organized in groups of houses (*katuns*), who paid the so-called ‘small tithe’ related to animal husbandry, especially shepherding and raising horses and cattle. The Vlachs were subdivided in soldiers (who fought), *celators* (who kept the livestock), *pokloniks* (who gave an additional tax in spring and autumn consisting of woven cloth and two barren rams) and *ubogi vlasi* (poor Vlachs, probably indigent or incapacitated). All these groups had to look after horses and cattle. (Isailović, 2017, pp. 29-31).

The same author mentions another law concerning the Vlachs in Serbia, called in Turkish the Despot's Law (*Despot kanunu*) or the Despot's Custom (*Despot uslūbı*), attested

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<sup>13</sup> Silviu Dragomir (1888-1962), minister of national minorities in Great Romania (1937-1940), professor of Romanian and Southeast European medieval and modern history at the University from Cluj (1918-1947), mastering several languages of the documents (Middle Bulgarian Slavonic, Latin, German, Hungarian, Romanian) and their palaeographies, editor of historical documents, author of memorable irreplaceable monographs (unfortunately never translated into foreign languages) about the Northern Balkan Vlachs (1959) or the Romanian revolutionaries of 1848 (*Avram Iancu*, 1965), was arrested and imprisoned by the Stalinist communists (1949-1955), and only posthumously rehabilitated.



in the first half of the 16<sup>th</sup> century in the Ottoman *sanjaks* of Smederevo (Semendire), Kruševac (Alaca Hisār) and in the northern parts of Bosnia (Bosna), that is on the Slavonian side of the *nahiyes* Kobaš, Požega (Pojega) and Syrmia (Srem), where the main tax paid by the Vlach animal breeders was *filuria*. Their land became *filurci* land (according to the main tax they paid), and their possessions, often transformed into proper *baštinas* (patrimonial lands), were protected by the sultan or by the *sanjakbeys*. Such laws concerning the Vlachs of the *sanjaks* of Smederevo, Vidin, Bosnia, Herzegovina, Klis, Zvornik and the *vilayet* of Montenegro (Crna Gora) were transplanted into Ottoman *kanuns* (late 15<sup>th</sup> century - early 16<sup>th</sup> century). These *kanuns* privileged the Vlachs, who were exempted of paying *harac* (tribute), *oşur* or *ispence*, although they gave some amount of grain to support the needs of the *sanjakbey*. The special status of the Vlachs from the *sanjaks* was abolished in the 1530s, since the border moved further to the north, and so they came to live in the *reayas* (provinces properly incorporated by the Ottomans), being forced to pay the much heavier taxes (Isailović, 2017, pp. 34-39).

*Statuta Valachorum* (5 October 1630) were issued by Habsburg Emperor Ferdinand II, king of Hungary and Croatia<sup>14</sup>, especially for the Vlachs from the Croatian Krajina (military border). These statutes regulated the settlement of the Vlach shepherds coming from Turkey, who became *Grenzer* (military border guards) of the Austrian generalate of Varaždin and also free peasants, who were given lots of the Crown land. By means of the *Statuta Valachorum*, they were granted a significant legal autonomy. In Croatia, the colonization of Serbs and Bosnians after 1538 (extensively explained by Vaníček, 1875, pp. 26-28, 81)<sup>15</sup> was concomitant with the colonization of Vlachs (mentioned by Sfera, 2018, Sept. 30).

Lacking armed forces in Austrian Slavonia, after 1570 the Court of Vienna started to colonise a larger number of Vlachs as mercenaries, thus creating the generalates of Karlovac (1579) and Varaždin (1595). During the second Austro-Turkish war (1593-1606), the largest Vlach relocation from Turkish to Habsburg Slavonia took place (Sfera, 2018).<sup>16</sup> Ferdinand II's decree by which the Vlachs were completely exempted from taxes increased the Vlach migration. On 5 October 1630, the Vlachs' statutes were issued for all the Orthodox and Catholic Vlachs from the generalate of Varaždin. Later they were expanded for the Karlovac generalate, too (Moačanin, 1977, pp. 225-232; Kršev, 2011, pp. 129-148; Dragomir, 2012, p. 102; Sfera, 2018, Sept. 22).

These *Statuta Valachorum*, written in Latin, justified and legitimated the imperial policy as being 'a contribution to the expansion and reinforcement of Christianity' among the countries and peoples under imperial authority. Such were the Vlachs, who had settled down in the region between the rivers Sava and Drava under Ferdinand II's predecessors, Rudolf II and Matthias<sup>17</sup>, and who had proven 'loyal service and glorious military heroism'.

Several authors have approached this legal historical document of great importance: Franz Vaníček offered the Latin terms and German explanations (Vaníček, 1875, pp. 50-52,

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<sup>14</sup> Ferdinand II (1578-1637) was Holy Roman Emperor, King of Bohemia, Hungary and Croatia (1619-1637).

<sup>15</sup> Already on 5 September 1538, from Linz, Emperor Ferdinand I granted a privilege to the first wave of thousands of Serbs led by their captains and voivodes (*Capitaneos et Vojvodas Servianos, seu Rascianos*), who came as colonists and border military from Bosnia to Upper Slavonia (*Oberslavonien*). Vaníček (1875, pp. 26-28) reproduced the Latin original and discussed the 5 articles of the Serbs' privilege of 1538. As a result, in the same year (1538) the first 3 Habsburg captaincies (of Koprivnič/Kopreiniz, Križevac/Kreuzer, Ivanič) with 600 Serbian military were created in present-day Croatia.

<sup>16</sup> This largest colonization wave of the Vlachs was determined by the involvement of the quasi-unknown metropolitan bishop Vasilie of Pakrac (1590-1594), according to Sfera (2018, Sept. 22). It happened a century before the great colonization of the Serbs led by archbishop Arsenije III Crnojević of Pécs (1690-1691). Probably neither the colonization led by the future patriarch Arsenije III Crnojević comprised exclusively Serbs, but also many Vlachs, Albanians etc., nor among the Uskoks were there only Vlachs. Pompilju Sfera seems to be right in the first assumption, and wrong in the second.

<sup>17</sup> Rudolf II (1552-1612) was Holy Roman Emperor of German Nation (1576-1612), King of Hungary and Croatia (as Rudolf I, 1572-1608). Matthias (1557-1619) was Holy Roman Emperor (1612-1619), Archduke of Austria (1608-1619), King of Hungary and Croatia (1608-1618).

456-461); Radoslav Lopašić edited several documents in German, Latin and Croatian (Lopašić, 1894, pp. 1-12); Boris N. Kršev accomplished the Serbian translation of the Latin original (Kršev, 2011, pp. 137-147); Pompilju Sfera made the approximate Romanian translation of the *Statuta Valachorum* (Sfera, 2018, Sept. 22).

The 50 articles of these *Vlašskog zakona* (Vlach laws) are structured in five unnumbered chapters: 1. "About representation and governance of the Vlachs", 10 articles; 2. "About legal procedure", 10 articles; 3. "About the right of possession and use", 9 articles; 4. "About private and public criminal law", 10 articles; 5. "About military duties", 11 articles.

Besides the proper enactment of the privileges contained in *Statuta Valachorum* for the *Vojna Krajina* (1630), of an even greater importance is their multiple reconfirmation along the 17<sup>th</sup>-18<sup>th</sup> centuries (1642, 1659, 1667, 1717). It proves that the privileges were in force throughout this period, producing effects for the most relevant demographical category from the respective area and time: the Vlachs. When the Habsburgs revoked the military frontier in 1754, opposition and armed resistance arose, culminating in 1755 with the great uprising of the military border from Severin, where 20,000 armed *Grenzer* participated (Moačanin, 1977, pp. 225-232; Cosma, 2023, pp. 297-301).

### 8. *Jus Valachicum* of the Romanians from South Transylvania

Since 2017, a research team from the Institute of History 'George Barițiu' of the Romanian Academy in Cluj-Napoca has developed an ongoing project dedicated to the legal historical heritage of the South Transylvanian Romanians in medieval and early modern history. A large number of new documents was identified in local archives from Mărginimea Sibiului and edited, while older archive pieces were republished by the historians from Cluj.

By critically editing the legal historical documents of the mountain pastoral communities from Mărginimea Sibiului, as well as the medieval statutes of the Făgăraș Land and citadel, we succeeded to also analyse and systematize prodigious archival data about the Romanian consuetudinary law (*Jus Valachicum*), rendering several relevant case studies of enacted Romanian customary law from 13<sup>th</sup>-19<sup>th</sup> century South Transylvania.

They illustrate and explain the Romanian customary law codified in the legal manuscripts discovered in 2017 in a previously unknown church archive from Rășinari (Mărginimea Sibiului): an extract of a deed of donation to the Saint Paraschiva church from Rășinari (1383), the so-called *cartea ocolniță* (book of the village boundaries, 1488) and *Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem*, 1784. The latter, *Transmissionales*, an impressive legal manuscript of 1,318 pages, includes half a century of trial deeds filed by the Romanian pastoral village against the Saxon Magistrate in Sibiu (1735-1784). It mirrors not only the juridical practice involved in the use of Romanian consuetudinary law, but also the medieval and early modern legal history of Transylvania. Its comprehensive annexes contain all the documents (13<sup>th</sup>-18<sup>th</sup> centuries) that were significant for the history and possessory rights of Rășinari. It also reveals the jurisdiction, levels, activity and powers of the courts on local, provincial and central levels (18<sup>th</sup> century): 1. the court of the first instance: the village judgement seat from Rășinari (*judicatus pagi Rasinar*), observing Romanian customs (*Mores Valachicales*) and consuetudinary law (*Jus Valachicum*); 2. the court of the second instance as the court of appeal: the Saxon Magistrate from Sibiu, exerted by the mayor of the Sibiu city (*consul Cibiniensis*), seldom by the seat judge (*sedis judex*); 3. the third instance: the Transylvanian Gubernium, also seated in Sibiu; 4. the fourth and last, and also the highest court of instance: the Supreme Court of Justice in Vienna, from where the decisions returned to Sibiu and Rășinari, in the form of *Remissionales*, as imperial ordinances and rescripts (Cosma, 2020a-b, pp. 473-523; Cosma, 2022b-c, pp. 27-43 & 77-98; Cosma, 2023a-b, pp. 73-90 & 271-313).

Considered to be ‘a monument of old Romanian legislation’ (Victor Vizauer), the *Statutes of Făgăraș* (1508) were especially and exclusively issued for the Romanian peasants (*Rusticis Walachis*) and boyars (*Boyarones*) from Făgăraș, exposing in 35 articles the Romanian peasants’ and *Boyarones more et lege ipsorum* (the boyars’ custom and their law) (Vizauer, 2024, pp. 51-75; Cosma, 2022, pp. 15-18; Cosma, 2023c, pp. 43-58).

These enactments demonstrate the existence and functionality of *Jus Valachicum* practiced by the South Transylvanian Romanians in Mărginimea Sibiului and in the Făgăraș Land between the 14<sup>th</sup>-18<sup>th</sup> centuries. The specific customary law is connected with the free and privileged social status of the Romanian shepherds (*oieri, ciobani*), armed guards (*plăieși*) on the Carpathian borders between Transylvania and Wallachia, and military small noblemen (*boieri*).

The Romanian institutions of customary law, as reflected in the enactments described above, were exerted by the village judge (called *cnez* in the middle ages, *jude* in early modern and modern history), jurors (*jurați*) and the ‘council of 40 good and old men’ (*sfatul celor 40 de oameni buni și bătrâni*) in Rășinari (44 in Săliște), forming ‘the seat of law’ (*scaunul de lege*) as court of first instance.

‘The importance of the enactments of *Jus Valachicum* is beyond doubt. They abolish the bias of a strictly oral, unwritten, indistinct and loose customary law, with an unknown and somehow mysterious trajectory in a vast time and space.’ (Ela Cosma) It is also worth to notice that the illustrated enactments of Romanian customary law confirm *de iure* the legal situation extant *de facto*, thus proving the long and uninterrupted use of *Jus Valachicum* among the Romanians from South Transylvania during the 14<sup>th</sup>-18<sup>th</sup> centuries (Cosma, 2022, pp. 18-19).

## Conclusions

The examples offered above from the medieval world of the South Slavs, Germans, Transylvanian Saxons and Hungarians confirm the existence of the ethnic customary laws. They were born at the same time with the ethnicities, peoples and social categories who practiced them, but were enacted gradually, according to their access to ecclesiastic and lay power, by means of writing, culture, economy, politics.

In spite of the multiethnic cohabitation in Central Europe and the Balkans, the various ethnic consuetudinary laws had a parallel development, while each of the ethnic communities and nations involved kept their own ethno-juridical peculiarities.

Just like their Slav, German or Hungarian neighbours, the Vlachs from Croatia and Serbia, Bosnia-Herzegovina and Montenegro, as well as the Romanians (our case studies focused on the South Transylvanian Romanians), too, have developed and used from Middle Ages to modern history their own ethnic marked customary law (*Jus Valachicum*), which was widespread and functional during the 14<sup>th</sup>-18<sup>th</sup> centuries, as revealed by several less known enactments presented in this study. It is precisely the pastoral component which imposed the *Jus Valachicum* (specific to the Romanians and South Vlachs) as a different, resilient and long-lasting customary law, distinguishing it from other ethnic-marked consuetudinary law systems.

Our comparative approach of the medieval and early modern customary law systems specific to the South Slavs (*Zakon sudnyi ljudem*), Germans (*Sachsenspiegel*, *Schwabenspiegel*, *Ofner Stadtrecht*), Transylvanian Saxons (*Codex Altemberger*, *Eigenlandrecht der Siebenbürger Sachsen*), and Hungarians (Werbőczy István’s *Tripartitum*) shows that, except for the regulations for the exploitation of underground resources and mining (*Zipser Willkür*), German law had a clearly urban character, just like the municipal statutes of the Transylvanian Saxons, Hungarians and Croatians, whereas certain Serbian and Croatian laws included predominantly agrarian prescriptions. On the contrary, the Romanians and Vlachs’ customary law was codified in proper enactments having a strong pastoral character,

also specifying their significant military obligations and privileges. Meanwhile, the agrarian component of the Romanian customary law was passed down in form of rather unstructured and uncoded oral traditions, preserved until our days, but pertaining more to ethnography than to history.

We may conclude that there were precisely the economic and social functions of the different ethnic marked Southeastern and Central European customary laws (including *Jus Valachicum*), which determined not only their codification and official adoption by the central state authorities, but also their preservation, resilience and importance over time, from the Middle Ages until the dawn of the modern era.

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## Appendix

### 1. Law codes of the South Slavs

- *Zakón súdnyi liúdem*: lost original (circa 850), Russian manuscript (1280), copies (1200-1400);
- *Liber Sclavorum qui dicitur Methodius*, in *Ljetopis Popa Dukljanina* (after 1150), translation as *Hrvatska kronika* (1350-1450).

### 2. Croatian and Dalmatian municipal statutes

- town statute of Korčula (1265);
- town statute of Ragusa (1272);
- *Vinodolski zbornik* (1288);
- town statutes of Zadar and Brač (1305);
- town statute of Lastovo (1310);
- town statute of Split (1312);
- town statute of Trogir (1322);
- town statutes of Šibenik, Skradin, Rab and Kotor (ante 1325);
- town statute of Hvar (1331);
- town statute of Mljet (1345);
- town statute of Poreč (1363);
- town statute of Pag (1372);
- statute of Krk or Vrbnik (1388);
- town statute of Senj (1388);
- town statute of Novi Vinodolski (1402);
- town statute of Pula (1431);
- *Poljički novi statut* (1440 or 1444);
- town statute of Budva (1442);
- *Statutum Ligae Zadar* (circa 1450);
- *Vranski zbornik* (1454);
- *Statut lige kotara ninskog* (circa 1460-1490)
- town statute of Umag (1528);
- town statute of Rijeka (1530).

### 3. German town laws

- *Sachsenspiegel*, compiled by Eike von Repgow (1220-1235), 500 copies (until 1900);
- *Schwabenspiegel* (1275);
- *Magdeburgisches Stadrecht* (1188-1294);
- Buda town law or *Ofner Stadrecht* (1300-1413 and 1421-1510), applied also in Košice (1347), Bardejov (1370), Eperies (1374); 3 extant manuscript copies from Bratislava (1430-1490, 1503), Budapest (circa 1560) and Baia Mare, now in Budapest (1488-1503).

### 4. Transylvanian Saxon municipal laws

- *Codex Altemberger* from Sibiu (1360-1481);
- *Statuta jurium municipalium civitas Cibiniensis, reliquarumque Civitatum et universorum Saxonum Transilvanicorum* of Thomas Bomel (1560); revised by Matthias Fronius in *Statuta jurium municipalium Saxonum in Transilvania* (1570); improved by Lukas Hirscher, Petrus Hirscher and Albert Huet (1570-1582); adopted as *Statuta jurium municipalium Saxonum in Transilvania* or, in German denomination, *Eigenlandrecht der Siebenbürger Sachsen* (1583).

### 5. Hungarian *Tripartitum* and code laws from Transylvania

- *Tripartitum opus iuris consuetudinarii incltyi Regni Hungariae partiumque adnexarum* by Werbőczy István (1514), published (1517);
- *Approbatæ constitutiones regni Transilvaniae et partium Hungariae eidem annexarum* (1653);
- *Compilatae Constitutiones* (1695).

**6. *Jus Valachicum* of the South Vlachs**

- King Milutin's charter for the Saint Stephen monastery in Banjska (1314-1316);
- King Dušan's charter for the consecration of the Saint Nicholas church in Vranje to the Hilandar monastery on the Holy Athos Mountain (1343-1345);
- Emperor Dušan's charter for the Saint Archangels Mihail and Gavril monastery near Prizren (1348-1354);
- *Vlachs' Law from Cetina* in Croatia (1436);
- Ottoman *kanuns* which privileged the Vlachs from Montenegro, Bosnia, Herzegovina, Serbia (1500-1600);
- *Statuta Valachorum* from the Croatian Krajina (1630), reconfirmed (1642, 1659, 1667, 1717).

**7. *Jus Valachicum* of the South Transylvanian Romanians**

- extract of a deed of donation to the Saint Paraschiva church from Rășinari (1383);
- *cartea ocolniță* from Rășinari (1488);
- *Statutes of Făgăraș* for the Romanian *Rustici* and *Boyarones* (1508);
- *Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem* (1784), with document annexes (ante 1300 - post 1800).