

Enacted “*Jus Valachicum*” in South Transylvania (14th-18th Centuries)

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Abstract: *Enacted “Jus Valachicum” in South Transylvania (14th-18th Centuries)*. The case studies presented in our approach analyse from the perspective of legal history several medieval and premodern historical documents. They reflect enactments of the *Jus Valachicum* in South Transylvania among the Romanians living on the Saxon Land, in Mărginimea Sibiului, and in its vicinity, in the citadel and Land of Făgăraş. Illustrations and prescriptions of enacted Romanian customary law are included in: the Romanian-Saxon peace convention of Cristian (13 January 1383); the protocol of the seat of Sălişte (16th-18th centuries); *Constitutio gremialis Sedis Szeliste* (1585); *Cartea ocolniță* from Răşinari (22 May 1488); *Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem* (1784); the *Jura* (Rights) of Răşinari (15th-18th centuries); the *Statutes of Făgăraş* (15 May 1508). These enactments of *Jus Valachicum* abolish the bias of a strictly oral, unwritten and unstructured Romanian customary law. They also confirm *de iure* the legal situation extant *de facto*, thus proving the long uninterrupted use of *Jus Valachicum* among the South-Transylvanian Romanians during the 14th-18th centuries.

Keywords: *Jus Valachicum*, enactments of Romanian customary law, South Transylvania, Mărginimea Sibiului, Țara Făgăraşului, 14th-18th centuries

Rezumat: *Codificări ale lui “Jus Valachicum” în sudul Transilvaniei (secolele XIV-XVIII)*. Studiile de caz prezentate în demersul nostru analizează din perspectiva istoriei dreptului câteva izvoare istorice medievale și premoderne. Acestea reflectă codificări ale lui *Jus Valachicum* în sudul Transilvaniei, la românii locuitori ai Pământului Săsesc, în Mărginimea Sibiului, și în vecinătatea acestuia, în cetatea și în Țara Făgăraşului. Ilustrările și prescripțiile acestor codificări ale legii cutumiare românești sunt cuprinse în: convenția de pace româno-

săsească de la Cristian (13 ianuarie 1383); protocolul scaunului de lege din Săliște (secolele XVI-XVIII); *Constitutio gremialis Sedis Szeliste* (1585); *Cartea ocolniță* din Rășinari (22 mai 1488); *Transmissionales in causa Possesionis Resinar contra Liberam Regiamque Civitatem Cibiniensem* (1784); *Jura* (drepturile) satului Rășinari (secolele XV-XVIII); *Statutele Făgărașului* (15 mai 1508). Exemplificarea codificărilor lui *Jus Valachicum* abolește ideea preconceptută a unui drept obișnuielnic românesc exclusiv oral, nescris și nestructurat. Totodată este confirmată *de iure* situația juridică existentă *de facto*, atestând astfel uzul îndelungat și neîntrerupt al lui *Jus Valachicum* la românii din sudul Transilvaniei de-a lungul secolelor XIV-XVIII.

Cuvinte-cheie: *Jus Valachicum*, codificări ale dreptului cutumiar românesc, sudul Transilvaniei, Mărginimea Sibiului, Țara Făgărașului, secolele XIV-XVIII

Initial considerations

Codifications of *Jus Valachicum* among South Transylvanian Romanians are, as a matter of fact, abundant in historical sources from Mărginimea Sibiului and Țara Făgărașului (14th-18th centuries). These Romanian lands (regions), lying at the foot of the Southern Carpathians¹, inhabited by the richest Romanian transhumant shepherds (*mărgineni*, *mocani*, *bârsani*), were situated inside or in vicinity of the Saxon Land (*Fundus Regius*), a territory granted to the Teutonic Order and Saxon colonists by King Andrew's Golden Bull (*Andreanum*, 1222).² Possibly influenced by the Transylvanian Saxons' propensity for regulations and enactments (which ensured them the transition from *usufructus* to *usurpatio* in their new homeland), the South Transylvanian Romanian inhabitants of the wealthy mountain villages soon learned to make full use of legal procedures, in order to preserve their customary laws and to regain their usurped mountains, boundaries and rights.

The following case studies reflect prescriptions and proper codifications of enacted Romanian customary law. They were provided with detailed analyses and critical comments from the perspective of legal history.

¹ *Carpații Meridionali* (Southern Carpathians) are the highest mountain group of the Romanian Carpathians, with the highest peaks in the Făgăraș Mountains (Moldoveanu, 2544 m, and Negoiu, 2535 m).

² On the Romanian historical and juridical heritage from Mărginimea Sibiului, see the latest monograph with critical edition of documents, *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului (Rășinari, Săliște)*, coordinated by Ela Cosma, authors and editors Mircea-Gheorghe Abrudan, Marius Boromiz, Alexandru Bucur, Ela Cosma, Daniela Deteșan, Livia Magina, Tatiana Onilov, Vasile Rus, Victor C. Vizauer, Cluj-Napoca/Gatineau, Argonaut/Symphologic Publishing, 2020, 870 p.

The Romanian-Saxon peace convention of Cristian (13 January 1383)

Written in Latin language, it aimed to ensure the perpetual peace and tranquility (*statuimus pacis tranquillitate in perpetuum conservandos*) among the Saxon inhabitants of the Sibiu seat and the Romanians living in the highland pastoral villages situated between Tălmaciu (*Tolmacz*) in the east and Săliște (*Magna villa Walachikalis*) in the west.

The 6 articles which compose the peace convention of Cristian stipulated:

1. reconciliation by mutual annulment of the "pacification fines/taxes" (*emenda reconciliationis, onera emendationum*), that were to be paid by Saxons (for killing a man and a woman from Wallachia) and by the Romanians with their descendants (*Walachi suprascripti cum suis posteris nunc et in futurum*), for murders assigned to Vladimir and all his Romanians living beneath (and guarding) the citadel (*Fladmeros et omnes ceteri Walachi morantes sub castro*);

2. the Romanians made the promise never more to graze their sheep and cattle on pastures of the Saxon territory (*in territorio Theutunicorum*) without the Saxons' full approval;

3. the Romanians promised to serve as guards in all the high mountains (*assumpserunt ipsi Walachi custodiam servandam in omnibus alpibus*) stretching from Tălmaciu to Săliște;

4. they also accepted to be punished, being burned together with the killer or arsonist whom they would host or hide;

5. any one (Romanian or Saxon), who was proven by the sworn testimony of seven witnesses called "seven oaths" (*septem iuramenta*), that he had only threatened to set fire or had actually committed a theft, robbery, arson, was to be burned together with the perpetrator;

6. the Romanians made a commitment neither to handle nor to wear a bow (*nullus arcum regere vel portare*) unless required by necessity and utility (*nisi necessitas et utilitas requireret*), or else to be submitted to financial penalties and corporal punishments (*in rebus et corpore sit puniendus*).

Written on the advice of the Transylvanian bishop Goblin, the agreement was announced by the chiefs (*villici*) of the Saxon urban and rural communities from the entire seat of Sibiu, and it was elaborated in the presence of the Romanians living at the citadel (*ad castrum*) - led by mentioned Vladimir, around the city of Sibiu - led by knez Căndeia (*Kende Knez*), and in the mixed Romanian-Saxon village of Cisnădie (*Helta*), on the one hand, and on the other hand, in the presence of the Saxon judges and jurors from the seat and city of Sibiu.³

³ First published in Latin in *Urkundenbuch zur Geschichte der Deutschen in Siebenbürgen*, vol. II. 1342-1390, editor Franz Zimmermann, Sibiu, Verlag bei Michaelis, 1897, p. 564-566, doc. 1170;

The document was made *coram iudicibus civibus iuratis senioribus et [ex] communitati civitatis et sedis Cybiniensis*, that is in front of the so-called “legal judges [and] city jurors”, who were elected from among the senators of the Sibiu city and seat community.

It is the earliest mention, in 1383, of these special Saxon legal inspectors, who were later called *iudices ordinarii sedis szelistiensis* (before 1618-1709). Two of them were always sent from Sibiu to supervise the filial law seat of Săliște.⁴

The peace agreement of Cristian (1383), barely mentioned by researchers⁵, is a mixed application in practice of both German and Romanian customary laws. Criminal procedures and ordeals from *Sachsenspiegel* (1220-1235)⁶, *Schwabenspiegel* (1275)⁷, *Ofner Recht* (14th-15th centuries)⁸ are found in articles 4-5, stipulating the perpetrators and accomplices’ death penalty by burning, as well as the sworn testimony of seven witnesses and the immediate burning of the individuals that were

Latin original republished and joined by Romanian translation in *Documenta Romaniae Historica. C. Transilvania*, vol. XVI. 1381-1385, editors Susana Andea, Lidia Gross, Adinel-Ciprian Dincă, București, Editura Academiei Române, 2014, p. 276-278, doc. 226. The original document, written on parchment, provided with three pendant seals of the nobleman (*nobilis virum*) Johann von Scharffenek, of the city mayor (*consul*) and of the seat (*sedis*) of Sibiu (*Cibinium*), is preserved at the National Archives in Sibiu.

⁴ Nicolae Iorga, *Sate și preoți din Ardeal*, București, Institutul de Arte Grafice Carol Göbl, 1902, p. 120.

⁵ Dirk Moldt, *Deutsche Stadtrechte im mittelalterlichen Siebenbürgen*, Köln/Weimar/Wien, Böhlau Verlag, 2009, p. 65-67, about the German influences on the convention of Cristian; *Istoria dreptului românesc*, vol. I, coordinated by Vladimir Hanga, scientific and technical editor Liviu P. Marcu, authors Gheorghe Cronț, Ioan Floca, Valentin Al. Georgescu, Nicolae Grigoraș, Vladimir Hanga, Alexandru Herlea, Liviu P. Marcu, Ioan Matei, Damaschin Mioc, Ovid Sachelarie, Nicolae Stoicescu, Petre Strihan, Valeriu Șotropa, Romulus Vulcănescu, București, Editura Academiei Republicii Socialiste România, 1980, p. 143, 155, about civil contraventions (theft, burglary, robbery) and the corresponding punishments stipulated by *Jus Valachicum*, as well as on its criminal law as a public law, with nonexistent ordeals (specific to the Barbarian customary laws).

⁶ *Sachsenspiegel* (Saxon Mirror), compiled between 1220-1235 by Eike von Repgow, is considered the oldest and most important book of laws of the German middle ages. Descriptive, not prescriptive, this code recorded but did not impose certain legal practices. It was metaphorically compared to a mirror, where the medieval man could distinguish between good and bad.

⁷ *Schwabenspiegel* (Swabians’ Mirror), inspired by *Sachsenspiegel*, is another book of laws written by a Franciscan monk from Augsburg around 1275.

⁸ *Ofner Stadrecht* (Town Law of Buda) was granted since the 14th century to the towns Košice/Kaschau (1347), Bartfeld (1370), Eperies (1374). It was considered the most comprising medieval (and even modern) legal source not only of Hungary’s capital city, but also of the other Hungarian free royal cities. This source is recorded in merely three manuscripts: the first from Bratislava (1430-1490, with an appendix from 1503), the second from Budapest (circa 1560), the third from Baia Mare, today preserved in Budapest (1488-1503). Even if the manuscript from Bratislava is the oldest extant document, it does not represent the primary source.

found guilty. By means of the example offered exactly by the Cristian convention, Dirk Moldt states and illustrates the use of the German town laws (*Deutsches Stadtrecht*) among the Saxons from the seat of Sibiu. The German researcher concludes that, at the beginning, the Transylvanian Romanians had lived according to their own laws, but then the Saxon colonists, getting in touch with the Wallachians, imposed them their German laws.⁹

Our applied case study infirms Moldt's conclusion, that overlooks and simply ignores the existence and practice of the Romanian customary law on the Saxon Land (*Fundus Regius*). In fact, the other four convention articles of 1383 reflect the *Jus Valachicum*. It was more lenient (than the German town law) in matters of criminal law: prescribing mere fines (*emenda*) for murder and cancelling them entirely in this case (article 1), yet stressing the privileges derived from the Romanians' occupations, as shepherds (article 2 on the pastures and grazing right) and mountain guards (article 3 on the military service, article 6 on the Romanians' right to arm themselves).

The document confirms as head of communities (*communitates*) the specific institutions of the Saxon *villicus* and Romanian *cnez/knes*, helped by jurors (*iurati*) and old men (*seniores*).

The protocol of the seat of Săliște (16th-18th centuries)

Since the 15th century, the "Great Romanian Village" of Săliște was the "spiritual capital" of Mărginimea Sibiului and the center of the filial seat of Săliște, which belonged to the Saxon seat of Sibiu (as part of the Saxon National University founded on the Saxon Land in 1486). The trials of first instance were filed in the regular seat of law from Săliște.

The National Archives in Sibiu preserve several volumes comprising the protocol of the Săliște seat (*Protocolum sedis Selistensis*).¹⁰ Registered since 1585, it was written in German with Romanian inserts (in German script), Latin and Hungarian inserts (in Latin script).

The protocol describes the activity of the two Saxon judicial inspectors (*iudices*), who limited the jurisdiction exerted by the Romanian village judge (*jude*) of Săliște, joined by the judges of the Romanian villages

⁹ Dirk Moldt, *op. cit.*, p. 65-67.

¹⁰ Nicolae Iorga, *op. cit.*, p. 119-126; Ioan Moga, *Din trecutul economic și administrativ al Săliștei în secolul al XVI-XVIII-lea*, in Ioan Moga, *Scrieri istorice*, edited by Mihail Dan and Aurel Răduțiu, Cluj, Editura Dacia, p. 113-129; Livia Magina, *Lumea rurală transilvăneană la finalul secolului al XVI-lea, reflectată în protocolul de la Săliște*, in "Patrimoniul istorico-juridic românesc din Mărginimea Sibiului (Rășinari, Săliște)", coordinated by Ela Cosma, Cluj-Napoca/Gatineau, Argonaut/Symphologic Publishing, 2020, p. 571-580.

belonging to the filial seat (Galeș, Vale, Sibiel, Cacova, Tilișca). Around 1500, in 1617 and 1649, the judge of Săliște was elected by the 44 old men (as each of the 4 administrative circumscriptions of Săliște sent 11 men). The *Burger* or *pârgari* were executive organs of the village judge and of the council composed of the old men. The *plăieși*, armed guards of the highland *plai*, led by their *vătafi*, formed a special institution created by the inhabitants from Mărginime (*mărgineni*) for the watch of the southern mountain border.¹¹

“Constitutio gremialis” of the law seat from Săliște (1585)

Constitutio gremialis Sedis Szeliste (1585), a statute included in the protocol of the Săliște, was discovered and analysed by Ioan Moga.¹² It comprises the following 10 articles:

1. as agreed by the two Saxon *iudices*, the seat of Săliște had to pay until each Christmas a sheep rent (*dare pentru oi*) of 100 florins;
2. the same stands for the swine tax (*dare pentru porci*) of 12 florins;
3. it was forbidden to the Romanian village judge (*jude sătesc*) - but allowed to the Saxon judges - to “take any oath” (*să nu primească nici un jurământ*) and to judge the more or less important thefts (*furturi*), otherwise he paid a fine of 1 silver mark;
4. he who filed a trial and missed the first appearance, would pay 25 dinars; the minor causes (of less than 1 florin) were judged for free in the first instance (in Săliște), but could not be submitted to the court of appeal, as second instance;
5. in all the external trials outside the filial seat of law, the villagers of Săliște could keep their old custom (*vechea datină*);
6. the decision of the mediator (*mijlocitor*), called by free will to reconcile both litigant parts, was immutable, above the law (*lege*) and the custom (*datină*);
7. the punishment for he who stole a girl and lived with her in concubinage without betrothal and wedding, was to be tied to the pole (*legare la stâlp*) and to pay a fine of 12 florins; the penalty for the judge hiding such a case was of 1 mark;
8. he who fished in a forbidden river of the reign (*râu domnesc*) or hid such a deed, had to pay 5 florins;

¹¹ The toponym *Mărginimea Sibiului* is derived from *margine* (Romanian), meaning the “margin” or “border” near Sibiu. *Mărgineni* were the inhabitants of the mountain border between Transylvania and Wallachia. Ioan Moga, *op. cit.*, p. 115.

¹² Ioan Moga, *op. cit.*, p. 117-118.

9. any sale was forbidden to anyone who wanted to move from the seat territory (belonging to the Saxon Land) to that of the (Hungarian) counties; if he moved, his estate (*moșia*) remained to the village judge, who sold it to the villager who assumed to pay the taxes;

10. whenever the two Saxon seat judges came to Săliște, each of the judges from the five belonging villages had to fetch them a cart of firewood.

Besides this *Constitutio gremialis*, Ioan Moga indicates for Săliște in Mărginimea Sibiului another *Statutum* (1691), elaborated by the Saxon *iudices*, in order to stop the flight of the Romanian inhabitants burdened with onerous rents.¹³

These enactments of *Jus Valachicum* show the interference, control and greedy exploitation exerted by the Saxon inspectors from Sibiu (as representatives of the seat and city Magistrate) upon the seat of law from Săliște in questions of local justice, administration and taxation (articles 3, 8, 10). However the local customs and institutions were acknowledged in the civil law prescriptions regarding marriage, succession, legal practice, ban on alienation of land by sale (articles 4-5, 7, 9). Interesting is the institution (mentioned in article 6) of the mediator (*mijlocitor*, in 16th century Săliște, later called *moderator*, in 18th century Rășinari), whose powers and role were quite similar to those of the mediator nowadays and whose decisions in economic questions of civil law were placed above both the official and the customary law. The Romanian shepherds of the Săliște seat preferred to pay the huge sheep rent (article 1) and the lower swine rent (article 2), than to lose their privileges as "honourable free men" (*providi libertini*) and to become *inquilini* (*jeleri*, tied to the ground) or, even worse, serfs (*iobagi, jobbagiones*).

It should be noticed that *Constitutio gremialis Sedis Szeliste* of 1585, enacting legal prescriptions regarding the Romanians living on the Saxon Land, was issued only two years after the codification in 1583 of *Iura Municipalia Universitatis Saxonum Transilvaniae* or *Eigenlandrecht der Siebenbürger Sachsen*¹⁴, which represented the very constitution of the Transylvanian Saxons, namely (as its title explained): *The Transylvanian Saxons' Proper Land Law*.

¹³ *Ibidem*, p. 121.

¹⁴ Friedrich Schuler von Libloy, *Statuta jurium municipalium Saxonum in Transsilvania. Eigenlandrecht der Siebenbürger Sachsen vom Jahre 1853 bearbeitet nach seiner legalen Ausbildung als Grundriß für akademische Vorlesungen, Sibiu, Verlag Josef Drotleff, 1853; Das Eigenlandrecht der Siebenbürger Sachsen*, edited by Arbeitskreis für Siebenbürgische Landeskunde, introduction by Adolf Laufs, glossary by Wolfgang Bühner, München, Meschendorfer Verlag, 1973. Fragments from *Iura Municipalia Univ. Saxonum Transilv.* in Constantin Spulber, *Latină juridică clasică și medievală. Texte alese din legi, formule, documente, scriitori, pentru uzul studenților în drept*, Cernăuți, Tipografia Mitropolitul Silvestru, 1930, p. 153-155.

The extract of the deed of donation from Rășinari (7 January 1383)

Rășinari, the greatest pastoral village in Mărginimea Sibiului and the fierce competitor of Săliște, had its own institutions and enactments of *Jus Valachicum*.

A special medieval legal document, actually containing two property documents from Rășinari, namely *cartea ocolniță*, that is a *book of the village boundaries* (1488), and an extract of a deed of donation (1383), was discovered at the National Archives in Sibiu.¹⁵ The paper containing the documents from 1488 and 1383 was an 18th century copy, compiled by the scribe Petru Cazan, priest in Rășinari and notary of the church synod. Old and new approaches identified more copies in circulation, even if the original documents have not been found up to the present moment.¹⁶

The *extract of the deed of donation* (7 January 1383) is a short authentic document written in old Romanian with Cyrillic script. Radu Vodă Negru (Voivode Radu the Black) of Wallachia (identified with Radu I, 1377-1383), herceg of the Land of Amlaș and Făgăraș, donated to the Saint Paraschiva Church, the oldest (wooden) ecclesiastical edifice in Rășinari, three estates (*moșii*), the fourth being given by his son Mircea Vodă Basarab (Voivode Mircea the Elder, 1386-1418).¹⁷

The book of the village boundaries from Rășinari (22 May 1488)

Cartea ocolniță or the *book of the village boundaries* (22 May 1488), also written in Romanian with Cyrillic script, reflected the period when, for the settlement of the conflict between the “small neighbours” from

¹⁵ Arhivele Naționale (National Archives) in Sibiu, Colecția de acte fasciculate, Seria V. Localități, no. 66, f. 1.

¹⁶ Nicolae Iorga, *Despre actele rășinărene*, in Nicolae Iorga, “Scrisori și inscripții ardelenne și maramureșene, I, București, Atelierele Grafice Socer & Comp., 1906, p. XXXII-XXXIV; Victor Păcală, *Monografia satului Rășinari*, Sibiu, Tipografia Arhidiecezană, 1925, p. 42-46; Ela Cosma, *The Bishops’ House in the Romanian Pastoral Village of Rășinari (Mărginimea Sibiului) and Its Hidden Treasures: Book of Boundaries & Deed of Donation (1488, 1383) and Transmissionales in Causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem (1784)*, manuscript in evaluation process for “Eikón/Imago Scientific Journal”, vol. “*Imago, ius, religio*. Religious Images in Illustrated Legal Manuscripts and Printed Books (9th-20th centuries)”, editors Maria Alessandra Bilotta, Gianluca del Monaco, Madrid, 2023; Tatiana Onilov, *Documente din Rășinari. Copiile româno-chirilice de secol XVIII ale Cărții Ocolnița (1488) și a extrasului actului de danie (1383)*, in “*Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*”, coordinated by Ela Cosma, Cluj-Napoca/Gatineau, Argonaut/Symphologic Publishing, 2020, p. 269-284; Vasile Rus, *Documente din Rășinari (sec. XIV-XVIII). Traducerea în latină (după 1761) a cărții ocolniță (1488) și a extrasului actului de danie (1383)*, in “*Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*”, coordinated by Ela Cosma, Cluj-Napoca/Gatineau, Argonaut/Symphologic Publishing, 2020, p. 285-395.

¹⁷ See the Cyrillic and Latin transcriptions of the original document in Tatiana Onilov, *op. cit.*, p. 278, 282.

Rășinari and the "big neighbours" (*vecinii cei mari*) from Cisnădie, a revision of boundaries (*metalis reambulatio*) was carried out. This perambulation put an end to the territorial litigation, by regulating the boundaries which separated the two villages.

Under the rule of Matthias Corvinus, king of Hungary (1458-1490), in 1488 *cartea ocolniță* was not made, but "remade" (*prefăcut*) and "renewed" (*preînnoit*), as a result of the exhortations and entreaties expressed by the "honourable 40 old men" (*cinștiți 40 de bătrâni*) forming "the seat of law" (*scaunul de lege*) from Rășinari.

The reason for the renewal of this *littera metales Valachales* (Romanian boundary letter) was for everybody "to know and to keep the margins of our boundaries of Rășinari" (*ca să se știe și să se păzască pe unde merg marginile hotarului nostru a[l] Rășinariului*), all around. The boundaries between Rășinari and Cisnădie were marked with earth risings or mounds (called *hialmuri*), following the border with Wallachia, that led to the peak Buceciu.

Apparently this mountain had belonged to the great herceg Radu Vodă Negru in the year 1232 (respectively 6740 from the making of the world). But the date 1232 connected with Radu Negru in *cartea ocolniță* preceded with 150 years the mentioned deed of donation made in 1383 by the real voivode Radu to the Saint Paraschiva Church. The disparity shows that, although both documents were copied on the same paper during the 18th century, they were not written at the same time, otherwise the two pieces of information concerning Radu Negru's regnal years had also been congruent.

The perambulation of 1488 continued on the ridge of the mountains Clăbucet, Neagoe Ivan or Negovanul Mare (Great Negovan) and Țicu Înalt (High Țicu), on the border with Wallachia, finally returning to the valley. The boundary lines of Rășinari, as described in the document, are confirmed by the Josephine map of 1781, *Mappa iconographica-topographica Pagi Liberi Resinar* (Iconographic Topographic Map of the Free Village of Rășinari), including the caption *Metalium explicatio* (Boundary Explanation).¹⁸

The document concluded that Rășinari's boundary enclosed the confines (*ocol*) of the village, defined as a "Romanian land" (*pământ rumânesc*), a free territory which "nobody can command" (*n-are nimeni a-l porunci*), insubordinate to any foreign jurisdiction and "paying obedience to no one" (*nimăruî înduplecat*). That is why, the Saxons from Cisnădie could make no claim for the earth and its fruits. The wealth of Rășinari's 30 mountains and several forests also included, aside from the clear mountain

¹⁸ Victor Păcală, *op. cit.*, p. 40-41.

water, the oak forests (for acorns), beech forests (for beechnuts) and hazel, needful for the feeding of swine on a large scale.

The last part of this medieval document (*eschatocol*) enumerated the names of the four priests who provided pastor services at Saint Paraschiva's "Upper Church" (*Biserica din sus*) and of the other two priests in Rășinari. The village judge held the office as *knes* (*cnez*) and *sindie*, too. Among the 40 so-called "good old men" (*oameni buni și bătrâni*), the document itemized 3+12 men, while the last mentioned was the church miller (*morarul bisericii*).

Cartea ocolniță is a monument of old Romanian language and a significant legal document defending the possessionary rights of a Romanian pastoral village from Mărginimea Sibiului. If one day the original document of the *book of boundaries* from Rășinari were found, then it would become the first *known* document written in Romanian language. It would precede the letter of 1521 by 33 years, addressed by Neacșu from Câmpulung to Hans Benckner, the city judge of Brașov.¹⁹

Yet, the lack of the original *book of boundaries* does not turn it into a fake. On the contrary, authenticity and veracity of the 15th century *cartea ocolniță* are suggested exactly by its recently discovered and analysed several variants, copies and Latin translations (Ela Cosma, Tatiana Onilov, Vasile Rus).²⁰

"Transmissionales" in the cause of the Romanian village of Rășinari against the Saxon city of Sibiu (1784)

Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem (1784), a volume of 1318 pages including the trial deeds of the village of Rășinari against the Sibiu Magistrate, preserved at the Bishops' House in Rășinari, is a legal mirror reflecting not only the juridical practice involved in the use of the Romanian consuetudinary law, but also the medieval and premodern legal history of Transylvania. Its comprehensive annexes contain all the documents (13th-18th centuries), that were significant for the history and possessory rights of Rășinari.

Transmissionales reveals the jurisdiction, levels, activity and powers of the courts on local, provincial and central level (18th century):

¹⁹ The latter is the oldest preserved original document in Romanian language.

²⁰ Ela Cosma, *Istoricul unei controverse. Cartea ocolniță din Rășinari (1488) și extrasul actului de danie (1383), originale pierdute și copii târzii sau falsuri de secol XVIII?*, in "Patrimoniul istorico-juridic românesc din Mărginimea Sibiului", coordinated by Ela Cosma, Cluj-Napoca/Gatineau, Argonaut/Symphologic Publishing, 2020, p. 249-268; eadem, *The Bishops' House in the Romanian Pastoral Village of Rășinari (Mărginimea Sibiului) and Its Hidden Treasures*; Tatiana Onilov, *op. cit.*, p. 269-284; Vasile Rus, *op. cit.*, p. 285-395.

1. the court of first instance was the village judgement seat from Răşinari (*judicatus pagi Rasinar, judicatus pagensis, judecata sătească*), where the judgement was exerted, according to the Romanian customs (*Mores Valachicales*) and consuetudinary law (*Jus Valachicum*), by the judge (*Judex, jude*), the jurors (*Jurati, jurați*) and the council of 40 old men (*Quadragesima Seniorum Viratum, sfatul celor patruzeci de bătrâni*);

2. the court of the second instance, as the court of appeal, functioned in the Saxon Magistrate House from Sibiu, often represented by the mayor or consul of the Sibiu city (*consul Cibiniensis*) and seldom by the seat judge (*sedis judex, jude scăunal, Stuhlsrichter*) of the Sibiu seat;

3. unsolved legal documents were transmitted to the next stage, the third instance, that was the provincial *forum* of the Transylvanian Gubernium, also seated in Sibiu;

4. the fourth and last, and also the highest court of instance was the Supreme Court of Justice from Vienna, from where the decisions returned to Sibiu and Răşinari, in the form of *Remissionales*, as imperial ordinances and rescripts.²¹

Rights and privileges of Răşinari (15th-18th centuries)

The following *rights and privileges of Răşinari* were "granted to the community and inhabitants of this free imperial village situated on Saxon Land and in the Sibiu seat" (*ceu Communitatis Liberae Villae Regalis in Fundo Regio Sedeque Cibiniensi existentis et ejus Incolarum*), according to *Transmissionales*²²:

1. *Jus primae instantiae* (the right of the villagers to have a local court of first instance exerted by the judge from Răşinari, who was directly subordinated to the seat judge of Sibiu);

2. *Jus utendi boni* (the right to use the common assets and lands belonging to the community of Răşinari according to its village boundaries);

3. *Jus honorum* (the villagers' right to have their own local civil and ecclesiastical offices, services and tasks in public interest);

4. *Jus commerciorum* (their right to trade inside the village and at fairs);

²¹ Ela Cosma, *Din practicile juridice de la Răşinari: Jus Valachicum în două ascultări de martori (1738 și 1776-1777)*, in "Patrimoniul istorico-juridic românesc din Mărginimea Sibiului", coordinated by Ela Cosma, Cluj-Napoca/Gatineau, Argonaut/Symphologic Publishing, 2020, p. 80.

²² *Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem 1784*, manuscript volume, Răşinari, Church Museum in the Bishops's House, 1784, p. 56-60.

5. *Jus superiorem et inferiorem jurisdictionatum magistratum habendi* (Rășinari's right, in fact obligation, to consider the Sibiu Magistrate as superior jurisdiction and to have inferior jurisdiction);

6. *Jus localem parochialem ecclesiam cum scholis et coemeterio habendi* (the right for Rășinari to have its own parish church with confessional school and cemetery);

7. *Jus libertatis* (the right granted to the inhabitants of Rășinari to be free from any corvees and subjection to the landlord's power, *ab Dominica postate servitiisque liberi sunt*, their status being opposed, *contradistinguuntur*, to that of the *jobbagionis* and *inquilinis*);

8. *Jus civitatis* (the right awarded to the judge, jurors and 40 old men representing Rășinari, as well as the rest of the Romanian free villages extant on Saxon Land, to receive in their community foreigners, as fellow-citizens, *conciues*, enjoying personal freedom and willing to settle down, in order to have a stable dwelling, to practice shepherding and cattle herding, to pay the corresponding rents and taxes);

9. *Jus tribus* (the right of the Rășinari community to distribute the villagers in certain classes, and to establish mediators for regulating economic civil customs and activities, *morum actionumque civilium oeconomicarum Moderatores constituendi*);

10. *Jus tributorum* (the right to divide the sum previously allocated for the entire community's contributions to the community's contributors, according to their wealth and material possibilities);

11. *Jus census* (the right to give land on the village's common territory to those settlers paying the required tax, *census*);

12. *Jus magistratus* (the right of the inhabitants from Rășinari to freely choose from among themselves their judge - *Judicem seu Villicum*, jurors - *Juratos*, and 40 men - *40 Viratum*, whose elections were to be confirmed by the Sibiu Magistrate and who would take over the court trials judging injuries, losses, damages, and other economic affairs of the community);

13. *Jus fororum* (the right to organise one day per week a victual fair, *Annonaria*);

14. *Jus locales constitutiones morales et oeconomicales faciendi* (the right to make "local constitutions", as statutes and further legal documents, concerning the village boundaries and households);

15. *Jus divisionis*;

16. *Jus restitutionem petendi in integrum* (the right granted to the villagers from Rășinari to claim in justice the entire restitution, *restitutio in integrum*, of their ancient privileges which were usurped by the Saxon inhabitants, later arrived on the *Fundus Regius*);

17. *Jus privatum fisci* (the private fiscal right stipulating that the immovables owned by disabled individuals, *deficientes*, devolved upon the Rășinari community, and not upon the imperial treasury, *Fiscum*);

18. *Jus connubiorum* (the right to have a marriage office);

19. *Jus condendi testamenta* (the right to make authorised legal wills);

20. *Jus patriae potestatis* (the right of the father's unlimited power upon the person and property of his biological or adopted children);

21. *Jus ordinis et praecedentiae* (the right to establish ranks and primacy);

22. *Jus legitimum dominii* (the right to legal property);

23. *Jus gladii* (the right of the sword, granted to the free village, *Libera Villa*, of Rășinari by power of King Sigismund's decree no. 2 from the decrees' extract no. 99 apparently issued in 1404, *ut Libera Villa vi Decreti 2 Sigismundi iuxta annexum Extractum Decretorum anno 1404 emanatorum sub numero 99*).²³

In 1786 Rășinari was declared an imperial free village (*slobod sat crăiesc*) by Emperor Joseph II, who liberated the Romanian villagers from the false pretences of dominance claimed by the Saxon city of Sibiu. From now on, the inhabitants from Rășinari disclaimed and refuted any other landlord except for the prince of Transylvania, who was concomitantly the Austrian emperor himself.

The Statutes of Făgăraș (15 May 1508)

They were edited for the first time in 1885²⁴ and afterwards republished and commented. Lately they were reviewed by Victor Vizauer, who approached the elements of Romanian customary law in their contents.²⁵ Vizauer's dense study is accompanied by the critical edition of the Făgăraș statutes, including the first Romanian translation of the Latin text realised by Vasile Rus.

It should be mentioned that certain economic, social and historical features distinguished the *Jus Valachicum* of the Făgăraș Land (*Țara Făgărașului*) from that of Mărginimea Sibiului. In the first place, the Făgăraș

²³ See also Victor Păcală, *op. cit.*, p. 46-47; Vasile Rus, *op. cit.*, p. 285-395. I am grateful to Vasile Rus, who assumed the difficult mission to accurately translate into Romanian the baroque legal manuscript of *Transmissionales* (1784).

²⁴ *Magyarországi jogtörténeti emlékek. A magyar törvényhatóságok jogszabályainak gyűjteménye. I. Kötet. Az Erdélyi törvényhatóságok jogszabályai / Monumenta Hungariae juridico-historica. Corpus statutorum Hungariae municipalium. Tomus I. Statuta et constitutiones municipiorum Transsylvaniae ab antiquissimis temporibus usque ad finem seculi XVIII*, editors Kolozsvári Sándor, Ovári Kelemen, Budapest, Hungarian Academy of Science, 1885, p. 169-175.

²⁵ Victor Vizauer, *Elemente de "Ius Valachicum" în Statutele Făgărașului din 1508*, will appear in "Anuarul Institutului de Istorie "George Barițiu" din Cluj-Napoca, "Series Historica", tome LXI, 2022.

Romanians (*făgărășeni*) weren't shepherds (like the *mărgineni*), but farmers and cartmen (*cărăuși*), while those living in the citadel of Făgăraș were craftsmen.²⁶ Their occupations were reflected by the prescriptions of this customary law.

Secondly, there was a more pronounced difference (recorded by the statutes) between the social categories of the Romanian peasants (*rustici*) and the boyars (*boieri*, *Boyarones*) from Făgăraș. The latter formed a military small nobility of Romanian origins with strong (even blood) ties across the Carpathians, in the Principality of Wallachia. Vizauer considers that the main motivation for King Matthias Corvinus to issue the *Statutes of Făgăraș* was to calm down the rebellious Romanians. After the death of the last Romanian lord of the Făgăraș citadel and land, boyar Udriște (1469), the inhabitants from Făgăraș (*făgărășeni*) had repeatedly rejected both royal and aristocratic rulers, causing so much trouble and damage to the Saxon patricians during their rebellions of 1471 and 1482, that the Hungarian king ordered the Romanians to be executed and even eradicated if they did not obey to the Transylvanian voivode sent by the king to suppress the revolt.²⁷

Thirdly, unlike Mărginimea Sibiului, the Făgăraș Land was ruled for a longer time period (circa 1350-1500) by the Wallachian voivodes, who included among their titles those of *dux de Fogaras* (Vlaicu, 1369) or "herceg of the Land of Amlaș and Făgăraș" (Radu I, circa 1377-1383; Mircea the Elder, 1386-1418). *Țara Făgărașului*, donated by the Hungarian kings to Wallachia's ruling princes in exchange for their vassal oath²⁸, became the pivot of the relations between the Romanians from Transylvania and those from the Principalities of Wallachia and Moldavia, and apparently (together with Brașov) the irradiation center of the so-called "old Romanian language" (16th century).

A third of the 35 articles²⁹ of the statutes from Făgăraș approach matters of criminal law. They include fines for murder (*homagium*, *in homagio hominis iudicialiter convicti fuerint*³⁰) and bloodshed (*effusione sanguinis*), in articles 1-2, 4-5. Death penalties were also used, for example

²⁶ Nicolae Iorga, *Sate și preoți din Ardeal*, p. 147-157.

²⁷ Victor Vizauer, *op. cit.*

²⁸ *Ibidem*.

²⁹ The document has 38 paragraphs, namely an introductory paragraph (*protocol*) followed by 35 unnumbered articles and ended with 2 paragraphs of the *eschatocol*. For the sake of text criticism, I considered and counted paragraphs 2-36 of the Făgăraș statutes as articles 1-35.

³⁰ *Homagium* (Latin), 1. homage of the vassal to his feudal lord; 2. price/compensation paid for killing a man, equivalent to the German *Wergeld*; 3. fine, emend paid in order to redeem a man's head, murder, wounding, guilt, price that was often equal to that paid for murder. *Homicidium* is synonymous to *homagium* (in the senses 2-3). *Glosar de termeni și expresii din documentele latine privind istoria medie a României*, edited by the Collective of Medieval History from the Institute of History from Cluj, București, 1965, p. 84-85.

the decapitation or beheading (*capite priventur*), in cases of treason (article 3), housebreaking (article 32), rebellion and uprising (article 33). The perpetrators who were guilty of heresy, counterfeiting money, arson, incest and bestiality - so those who oppressed or violated their relatives up to the third degree of kinship, as well as animals (*consanguineos usque ad tertium gradum opprimentes vel violantes sive etiam cum brutis vel aliter qualitercumque haeretica pravitate se defoedentes sine misericordia*) - were burned at the stake (*ignis incendio comburantur*) (articles 16-17).

The *Statutes of Făgăraș* also included matters of civil law regarding property and fines to be paid for abusive occupation of the house, yard, garden, fields, cornfields, pastures (article 6), for restoration of dependencies (*pro restauratione pertinentiarum*) and for destruction of property (articles 7-8). Further money penalties were stipulated for insults, heavy words (*verba dehonestatoria*) and "redemption of the tongue" (*redemptiones linguae*), for slander, defamation, false declaration (articles 23-24, 26), for robbery, burglary (articles 27-28), for illegal sale of cattle and other goods (article 29), but also for perjury (article 30).

Detailed civil prescriptions described the binding fines to be paid when marriages were concluded after the maiden's abduction, either by mutual agreement or as a result of rape (articles 9-11), in cases of repudiation of the wife (articles 12-13) and adultery (article 14). The voluntary and consensual abduction of the virgin, either a peasant girl or a boyar girl, was usual in the Land of Făgăraș and in Mărginimea Sibiului (as in Săliște's *Constitutio gremialis*, 1585), but it was also a general Romanian custom. It survived until today, being known as "the stealing of the bride" (*furtul miresei*) during the wedding.

It should be noticed that the capital punishment and/or the financial penalties for the same crime and malpractice differed depending on the perpetrator's social class. The Romanian peasants (*Rustici Valachi/Walachi*) always paid the half or less of the fines imposed to the Romanian boyars (*Boyarones*). Special regulations for peasants are to be found in articles 2, 4, 6-8, 13-14, 19, 34. In article 31, for example, the *rustici*, called *coloni*³¹, were given the right of pannage, that is the *beneficium* of feeding their sows (*scrophis*) and swine with acorns (*glandinatio*).

On the other hand, the articles 1, 5, 12, 14-15 presented general prescriptions related to the boyars, while articles 18, 20-25 imposed to this social category of Romanian military noblemen from Făgăraș specific obligations and duties, like the saddled horse and the spear which the

³¹ *Colonus, coloni* (Latin), serf, serfs. *Colonus*, "serf peasant", in *Glosar de termeni și expresii din documentele latine privind istoria medie a României*, p. 32. But, in historical practice, neither the *coloni* identified themselves with the *iobaggiones*, nor the Romanian peasants from Făgăraș were serfs.

castellan was to receive from a boyar after his death (article 15), the fines to be paid for defiance of public authority, when a boyar summoned by subpoena disregarded the seal of the castellan (article 25), the compulsory two carts of firewood that a boyar had to fetch to the citadel of Făgăraș each Christmas and on the eve of the Saint Michael feast (article 18) etc.

Genuine solutions for the law of succession were found by the boyars interested to transmit their properties (lands) *in integrum* to their sole daughter or, in case of extant male heirs, to enforce the widespread daughter's quarter (*quarta filialis*)³² in order to endow their female heirs (article 21). Nevertheless, the surviving widow received only a third of the heirless boyar's movables, while the other two thirds were taken by the landlord, as a penalty for the wife's sterility (article 20).

Unique seems to be article 22 stipulating that: "If a boyar would wish to change his daughter into a male heir of his hereditary assets, at first he had to get a sealed certificate from his landlord and then from the jurors, thus such a heritage could be transmitted by succession to the [boyar's daughter in her capacity as a] male heir." (*Si quis filiam vel filias optans in rebus hereditariis prefacere heredem masculinum, extunc primum a Domino Terrestri et tandem a Iuratis habeat litteras efficaces sigillo munitas et sic tandem huiusmodi hereditates ad talem tanquam virum masculinum succedant*).³³

Final considerations

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. As a matter of fact, codifications of *Jus Valachicum* were never a priority for scientific research, even if, as seen above, historical sources are extremely generous in this respect.

As regards the specific terminology, the Latin phrases *Jus Valachicum* (Romanian law) and *Mores Valachicales* (customs of the Wallachians/Romanians), which occur in legal documents of the 18th century from Mărginimea Sibiului, make a difference between the

³² The medieval daughter's quarter (*quarta filialis*) was spread in Transylvania, Hungary, Croatia. See Demir Karbić, *Hungarian and Croatian Customary Law: Some Contrasts and Comparisons*, in "Custom and Law in Central Europe", editor Martyn Rady, Center for European Legal Studies, Occasional Paper no. 6, Loughborough/Leics, Faculty of Law, University of Cambridge, 2003, p. 45, and detailed in Maria Frînc, "*Quarta filialis*" și familia nobiliară de Geoagiu - un proces pentru moștenirea feminină la începutul secolului al XV-lea, in "Anuarul Institutului de Istorie "George Barițiu" din Cluj-Napoca. Series Historica", tome LVIII/Supplement, 2019, p. 229-240.

³³ See Victor Vizauer's study and Latin transcription, joined by Vasile Rus's translation into Romanian, in Victor Vizauer, *op. cit.*

customary law of the Romanians, the municipal constitution of the Saxons and the imperial constitution of the Habsburg Crown. On the Saxon Land (*Fundus Regius*), justice was exerted in Romanian language only by the village judgement seat assembled in the court of first instance, while the Saxon courts of second and third instance from Sibiu used Latin and German, just like the highest court of justice from Vienna.³⁴

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 the land and citadel of Făgăraș. Yet the missing phrase *Jus Valachicum* was replaced by terms like *ius* (law, justice), *mos, mores* (custom, customs), *lex, leges* (law, laws), for example in the expression *Boyarones more et lege ipsorum* (the boyars' custom and their law).³⁵

The presented case studies demonstrate the existence and functionality of *Jus Valachicum* practiced by the South Transylvanian Romanians in Mărginimea Sibiului and in the Făgăraș Land between the 14th-18th centuries. The Romanian 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 premodern and modern history), jurors (*jurați*) and the "council of 40 good and old men" (*șfatul 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.

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 14th-18th centuries.

³⁴ Ela Cosma, *Din practicile juridice de la Rășinari: "Jus Valachicum" în două ascultări de martori (1738 și 1776-1777)*, p. 473-523.

³⁵ Victor Vizauer, *op. cit.*

