

THE JUSTICE OF TERRITORIAL VILLAGE COMMUNITY

CORDOS ANA MARIA

Junior Teaching Assistant

“1 DECEMBRIE 1918” UNIVERSITY OF ALBA IULIA

THE FACULTY OF LAW AND SOCIAL SCIENCES

Abstract: *Contrary to the tribal community based on the blood relation, the territorial community was based on the common possession of the group’s territory. The community’s territory was designed for traditional purposes: agriculture, beef breeding, hunting and fishing, therefore the community appears to be a working group.*

Hence, the internal structure of the territorial village community was conceived so as to serve this purpose, as well as to solve all problems occurring inside and outside the group.

The leading structures were: the Community’s Assembly composed of legal age members, taking decisions related to group’s possessions, to agricultural works, to family relations, to conflict settlement and to group’s defense, the Old and Good People who were elected by the Community’s Assembly in order to settle judiciary problems and the Judges who were responsible with ensuring the internal order.

Key-words: *justice, law, judgement, State organization, proceedings, legal customs.*

At that time, justice included all the organs and activities aimed at dispensing justice.

The term justice appears in the Romanian language in the 19th century. In the 18th century, in Romanian documents the following terms are also used: law, justice and judgement – meaning the court activity or without conceptualization they said “to search” or “to inquire” the subject being inherent.

In previous centuries, the expressions “to take” (“to give”) law (act) meant the traditional way of enforcing the law, of dispensing justice.

In the feudal system, justice was exercised by the following bodies:

- a. The Lord, the Divan (from the second half of the 18th century) and Departments¹.
- b. Some central or local high officials, within their functions or by delegation given by the Lord.
- c. Certain city’s governing bodies and the city guild (city justice).
- d. The feudal pole (secular or ecclesiastical), in terms of the people under his power.
- e. Churls or good and old people (free community’s justice).
- f. Clergy (ecclesiastical justice).

¹ J. CARPENTIER, Fr. LEBRUN, *Istoria Europei*, Humanitas Publishing House, Bucharest, 1997.

g. The Church's judgment² (without the rigorous removal of the Lord's judgement) of criminal and civil cases between civilians, if there was some connection with the Church's dogmas and canons (the civil jurisdiction of the church, marriage, divorce, civil acts, testament, beneficence, oath, anathema, perjury, kidnapping virgins, guilt against morality, mixing blood, etc.).

The community was first a working community established on the basis of kinship. The breaking of tribal relations has led to the weakening of family ties, which made this important factor in determining the membership of the group of people gathered in communities go on second plan.

Now, the primary place goes to territorial criteria under which the members of the community are only those who govern a part of the common territory of the community, by the will of the whole group.

Comparing the territorial community with the State we can notice that they have a common feature, namely both groups are formed based on territorial groups and not based on family relations.

But also, they are essentially different because only the State has a public force institutionalized with coercive bodies that stand above society, while the community is free of such a device and keeps an archaic form of leadership achieved by the participation of all its members.

The community is the first step towards State organization³ because of the territorial criteria as establishment foundation, for which the village community is the first social group of free men, unbound by blood ties.

The management of the community is made by a chief chosen in an initial stage, later become hereditary, and helped by a small council, consisting of village elders and, in special cases, by the whole community, the village lot.

Judicial techniques have a universal and seigniorial character, because they refer to joint legal regulations, rural and seigniorial, accepted as such in the relations between these two social classes. In their essence, these old judicial techniques reveal the types of legal obligations, violations and penalties, real or possible, predetermined or usual, and also the types of institutions enforcing them.

The community was hierarchically organized, as a pyramid⁴. On the top of the pyramid there were the elderly, also called the good people, then were the worthy people, then the young people (also called fellows) and then the mass of villagers (village crowd or mob).

By delegation, each group usually accomplished a specific role: the elderly were the preservers of old traditions, customs and legal traditions. This group was the community's supreme governing body. No one dared to overrule their decrees and ordinances, no neighbourhood, no landowner, and what is more significant, neither the Lord of the country.

Of the elders group, the most agile and haughty men were chosen to discuss with seigniorial authorities about the disagreements arose between communities and seigniorial administration, often invoking the right of reparative internal autonomy in spirit of the country's old law.

² VL. HANGA, *Istoria dreptului românesc*, Chemarea Foundation Publishig House, Iasi, 1993.

³ M. T. OROVEANU, *Istoria dreptului romanesc si evolutia institutiilor constitutionale*, Cerna Publishing House, Bucharest, 1992.

⁴ E. CERNEA, *Istoria statului și dreptului român*, Bucharest, 1976

The group of worthy people was composed of people in their age power, capable of working and with a common sense. By delegation, it was a part of the village's court, following the execution of sanctions given by the good people and even by them.

The group of young men or fellows was made up of the village's youth. It was also fulfilling its duties by delegation. The young men prepared the village opinion for the trial of good people or of worthy people, proclaiming the place and time of the trial, as well as the people involved in the trial.

At the same time, they were also the satiric judges of the village's public opinion, they oversaw the legal easier sentences (drudges, admonitions) and, in parallel, they performed order paramilitary activities in times of trouble.

In the legal activity of community groups (good people, worthy and young people) an active role was played by the public opinion of the village mobilized by the young people through their callings in the village and across the village.

In this period, the courts were: communitarian and non-communitarian. The communitarian ones were met in communities, were organized on groups and correspond to the hierarchical structure: the court of the old or good people who judged the very serious violations, the court of worthy people who judged the regular deviations, and the court of the young people who judged, in a satirical way, the moral deviations according to the village's public opinion.

The court of the group of old people consisted in: the trial of abuttals and the chairs of trial, the court of worthy people consisted in the shepherds' trial, the ploughmen's trial, and the court of young men consisted in the callings across the village. The trial of abuttals, which was maintained until the 18th century in the north of the Danube, is basically a tabooistic juridical custom.

Deviations from the country's law⁵, by the various laws of occupations in the village, were followed after their gravity, first by the ethical and legal prevention bodies, by callings in the village, then by trials that could result in an appeal, in the trial of abuttals or chairs of trial.

These last two types of proceedings were conclusive. They qualify as passing rites of folk magic, as in the rites of divine judgement, because in the latter case they resorted to a kind of ordeal (the tree of justice). They have an ancient content of ethical and legal customs deriving from magical and mythological traditions.

The abuttals and the Church thresholds were considered sacred and justice done at them belonged to the ancient rites of making justice.

The penalties stipulated or allowed⁶ in the feudal practice of criminal law are:

- a. Corporal punishments⁷ (*death penalty* – hanging, decapitation, empaling, burning alive, drowning, burying alive, strangulation; *mutilation*; *stigmatization*; *the beating* (simple, with the rod, with the twig or the whip; on the streets, at the fair: on the feet, with mace or axe).
- b. A confinement sentences (salt mine, dungeon, quod, arrest, exile).
- c. Pecuniary sentences (atonement; sequester, fine).
- d. Complementary sentences (torture, civic degradation, beard shaving).

There was a regulation of the criminal procedure within the village community and it had power and judicial law bodies, and criminal and civil facts. Legal rules by which the

⁵ D.C.CIURESCU, *Istoria românilor*, 2nd edition, Albatros Publishing House, Bucharest, 1975

⁶ **** - *Instituții feudale din țările Române* – Dictionary.

⁷ **** - *Istoria dreptului românesc*, The Academy's Publishing House, 3 volumes.

criminal trial develops within the community are mostly unwritten being established by traditions.

The trial procedure was public, but not everyone could participate.

Generally, the dominant class adopted those rules that ensured a minimum of equity totally necessary at the foundation of any law system, *ius aequum et bonum*, and maintenance of the exploratory status.

The recognition as judicial body of good and old people was just a tribute to an institution that was based on the perfect concordance between law and justice⁸, between fact and common agreement.

BIBLIOGRAPHY

1. J. CARPENTIER, Fr. LEBRUN, *Istoria Europei*, Humanitas Publishing House, Bucharest, 1997.
2. E. CERNEA, E. MOLCUT, *Istoria statului si dreptului romanesc*, Sansa Publishing House, Bucharest, 1996.
3. C.C. GIURESCU, *Istoria romanilor din cele mai vechi timpuri pana astazi*, Albatros Publishing House, Bucharest, 1974.
4. M. T. OROVEANU, *Istoria dreptului romanesc si evolutia institutiilor constitutionale*, Cerna Publishing House, Bucharest, 1992.
5. St. PASCU, *Crestomația pentru studiul istoriei statului și dreptului R.S.R.*, Bucharest, 1955.
6. VL. HANGA, *Istoria dreptului românesc*, Chemarea Foundation Publishig House, Iasi, 1993.
7. VL. HANGA, *Istoria statului și dreptului român*, vol. I.
8. D.V. FIROIU, *Istoria dreptului românesc*, Bucharest, 1977.
9. E. CERNEA, *Istoria statului și dreptului român*, Bucharest, 1976.
10. E. CERNEA, R. MOLCU, *Istoria statului și dreptului român*, Bucharest, 1991.
11. **** - *Istoria dreptului românesc*, The Academy's Publishing House, 3 volumes.
12. **** - *Instituții feudale din țările Române* – Dictionary.
13. D.C.CIURESCU, *Istoria românilor*, 2nd edition, Albatros Publishing House, Bucharest, 1975.
14. G. FOTINO, *Pagini din istoria dreptului românesc*, The Academy's Publishing House.
15. L. P. MARCU, *Istoria dreptului românesc*, Bucharest, 1997.
16. E. CERNEA, E. MOLCUT, *Istoria dreptului românesc*, Universul Juridic Publishing House, 2006.
17. Gh. BONCIU, *Istoria dreptului românesc*, Cartea Universitară Publishing House, 2004.
18. I. VASIU, *Istoria vechiului drept românesc*, Albastra Publishing House, 2005
19. C. DARIESCU, *Istoria statului și dreptului românesc din antichitate și până la Marea Unire*, C. H. Beck Publishing House, 2008.

⁸ E. CERNEA, E. MOLCUT, *Istoria dreptului românesc*, Universul Juridic Publishing House, 2006.