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THE WAGER OF LAW IN THE ECCLESIASTICAL COURTS AND TRIALS

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Abstract

The Church was closely linked to the feudal state and came to occupy a primordial position, becoming an integral part of the state mechanism and exercising its powers through its own governing bodies, including judiciary and military organs, given the large wealth and power it possessed. Trial proceedings in the ecclesiastical court and canonical litigations were no different from the usual proceedings. In what follows, we present a special form of trial, which resorted to an evidentiary means specific to that time: the wager of law.

Keywords: evidentiary means, oath, medieval institutions, instruments, letters

1. Introduction

Our ancestors believed that their connections with the divine powers were governed by *divine laws*, whereas the relations among people unfolded according to *earthly laws*. The explanation behind these rapports was as follows: the almighty Gods had created the divine laws, while their representatives on earth, the *good wise elders*, created the earthly laws and customs. They settled all disputes arising in the community by observing these laws and customs, taking the divine laws into account and leading thus to the birth of tradition or custom. But what is tradition? In ethnology it is considered to be the essential force that ensures the functioning of popular culture.

In popular culture, legal traditions are benchmarks highlighting the contours of the ethnic spirituality of the Romanian people. From the mystical atmosphere generated by the proto-juridical activities of our ancestors, the *law of the land* was born in the first ethnic communities. Under this law, there appeared various institutions used as evidentiary means in the trials of time, in Transylvania, Moldavia and Wallachia, one of these institutions being the wager of law.

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Even though most of these institutions, in particular the wager of law, did not differ from similar institutions existing in other countries, there were certain features that were specific to each geographical area, including on the territory of our country, in terms of their functioning and applicability.

Among the Romanians, the wager of law was an institution providing evidentiary means which, along with other medieval institutions, was governed by the custom of the land. Materialised in the practice of oath swearing and of evidence provided by oath-helpers, it had existed as an ancient autochthonous local institution. The population on the territory of our country was bound to use oaths and oath-helpers as institutions of family solidarity, and then as class-based institutions, grounded on the distinction of wealth among the community members.

There were four categories of oath-helpers, as follows: deed witnesses, attesting witnesses, boundary witnesses and arbitrating witnesses.

Deed witnesses conducted research, examined existing documents, asked questions and then recorded their findings in instruments [1], including deed books, writs of testimony, letters of safe passage, judicial sentences, in as many copies as there were parties to the trial [2, 3].

Attesting witnesses were called to support, under oath, the claims made by the parties, thereby strengthening the oath sworn by the latter. From this point of view, attesting witnesses may also be referred to as co-swearers.

Boundary witnesses pertained to one of the oldest legal traditions of the Romanian people. Since land - the most valuable asset of all time - was the subject of disputes, it was natural that its ownership should be controversial. Before it could be owned, however, it had to be demarcated into land plots, over which ownership rights could be exercised. Following these boundary settings or measurements of land plots, it was either the case that previous boundaries were confirmed by different signs, property deeds, or other boundaries of the land were drawn. In these cases, boundary witnesses were used.

A special category was that of the arbitrating witnesses. Since many trials involved persons with a certain social status, or were part of the same noble family, normally the aim was to settle the dispute amicably, through the reconciliation of the parties. Those who did this were called peacemakers or arbitrators. They took note of the trial and, with the agreement of both parties, mediated the reconciliation.

2. Ecclesiastical courts of justice

In Transylvania, these institutions were of particular importance because all the matters relating to the Church and those which were the subject of what is today is called family law was heard by them.

Originally, ecclesiastical courts of justice consisted of the archpriest and a few priests, but from the eighteenth century on, co-judges and members of the laity were included besides the clergy.

These courts were encountered in almost all the areas of Transylvania, hearing various cases that pertained to or were of a religious nature, as well as special matrimonial cases involving parishioners who violated the ordinances and sacraments of the Church. Thus, there are documents showing the functioning of such an institution in Alba Iulia, in 1687, under the pastorate of Metropolitan Varlaam [4].

In this regard, we shall note the litigation between two peasants from Someş County who, on 4 December 1689, went to court over a *Cazanie* [5], Metropolitan Varlaam, who was on a canonical visitation to the Land of Someş being present there [6].

The functioning of ecclesiastical courts in Maramureş is emphasised by several documents from the years 1689, 1690, 1704.

We shall present the procedure of a priestly trial from the district of Făgăraş, the village of Şinca Veche, from 2 May 1729, in order to show how the wager of law was used in the ecclesiastical courts of justice. Since this document illustrates the trial in its entirety, going through all its phases, we shall present it in full [6]. A number of 29 priests participated in this priestly synod, their names being mentioned. The document begins like this: "We, the synod of the Rumanian priests from the Eparchy of Făgăraş (...) as we have all gathered in Şinca, in Father Aldea's house, for the many lacks and complaints of the clergy, if we carry out our commands (...) we shall also settle the petitions of those who are ordained before us (...). Those who have come before the synod, among others, are Alde Bălanu, a boyar from Şinca, the big plaintiff [the claimant], and boyar Ioan Strâmbu, the small plaintiff [the respondent], and the big plaintiff says: Holy Synod, the reason why I have sought to ordain His Worship the small plaintiff before the Holy Synod is that our people are bushel boyars from the head of the village, having a mountain and a mill and other assets, for which the bushelmen are well known, likewise, in the holy church, a pew where our parents, elders, and ancestors sat, likewise, we too."

The complaint in claimant's word: "When I was this year, the day after Easter, I went to church and sitting in the pew, I went to the holy icons as usual; when I turned back to go once again to the pew from where I had stood up, his worship the small plaintiff, Ioan Strâmbul, was sitting in our pew and as I went there, his worship jumped at me in church and they slew me (beat me up, *our note*) covering me in blood and they pulled my hair and caused me very great shame and grief, for which I demand justice from the Holy Synod."

The defendant's word: "So we cursed each other, I shall not deny that, for it is known that the pew is ours, it is not Yours, for that I did not allow you to sit in it." Again, the claimant's word, in response to the defendant's statement: "But we honoured You, for you were our godparents and we appreciated (honoured, respected) you like our parents and seeing our godparents were old people and we being young, we assumed we would honour you by calling you to our pew every once in a while."

After the two parties stepped down, the priestly synod sought accurate information in order to reach a fair decision. "We were thinking that since we are here, in the village, we should gather the village, both boyars and fools (simple peasants), to see what they have to say and to whom that first pew belongs and whose estate it is and whom the elders found sitting in it and we sent summons to all the village elders and the boyars and the fools and we went to the church and chose 16 people, those who were older and more honest and honourable, who do not steal kinship (relatives) with either party, whose names are given hereinafter (...) and we gave them the synod before them, telling them and showing them that disputed pew, which is Stan Bârsan above and Erca Buzdugan below."

The oath procedure: the archpriest or an older priest addressed the following words to the 16 elders of the village, who had a lit candle, the Holy Gospel and the Cross before them: "Here we are in the Holy Church and your worships with Your souls who are the promised sons of this Holy Church in God's name we command you, as you know more justly, in your souls, to tell us in righteousness, if know whose is this pew from olden days and whom you remember sitting in it?" All the 16 elders of the village, the boyars (...) testified with their souls before the synod thus: "we remember and we have known very well ever since our youth the ancestors of the big plaintiff, after that their parents and we know that it has been theirs since days of yore, that they with the Bârsăneşti have been boyars from the beginning of the village and have had a mill place and mountains and boyar estates, not only here in Şinca, but also in others from the neighbourhood that have prevailed to this day, while their worships, the Strâmbeşti, we do not know when they moved here in Şinca, we see that they have a mountain shard torn off Mount Vadul, and within the boundaries of our Şinca, they have neither waters nor mountains, nor do they have bushels like other bushelmen, likewise they have no business in the pew either, which belongs to the Bălăneşti, as they are the brothers of the Bârsăneşti in all their estates, so in the church too they have had pews one next to the other since the beginning of the village. And now the Holy Synod will judge the squabble and folly created by his worship Zupan Strâmbu."

After all the testimonies were heard, the synod decided: "The small plaintiff, for having started a squabble in the holy church, under the judgment of the holy canons shall pay the fine of 66 florins to the high synod, but seeing his former error, he prayed to the Holy Synod, and the Holy Synod seeing his prayer and poverty, mercifully forgave him of 12 florins, and the pew shall be owned by the big plaintiff, as they confessed it was theirs, the Bălăneşti's, but among them he who is older, as is the custom, and the small plaintiff and others of his kin shall give them good peace..."

3. Oath-helpers in canon law litigations

Given the overwhelming importance the Church had on a social level, the rights it was granted by the rulers of the Romanian countries, the extraordinary

wealth it had amassed, all these gave rise to all manner of disputes, which, as expected, had to be resolved.

The wager of law institution was present in civil and criminal cases, so it was natural for compurgation to also be present in canon law trials. We shall regard as canon law trials the litigations in which the Church was involved.

Thus there were lawsuits between the boyars and the church: on 6 August 1526, Radu of Afumaţi reinforced Clucer Vlaicu's ownership of a Gypsy child, following a trial against Argeş Monastery [7].

On 10 November 1528, Voivode Radu confirmed that Argeş Monastery possessed estates in Domneşti and Corbi, after a trial against Zupan Manea [7, p. 58-59] In this document, there appeared 12 boyars as boundary witnesses: "those 12 heretofore mentioned boyars... found out that there are old boundaries, the rightful estates of the holy monastery called Argeş..."

On 12 February 1533, Voivode Vlad Vintilă strengthened the ownership right of Bistriţa Monastery over a ford of mills for which it had sued Clucer Vlaicu [7, p. 126-128. This ford of mills by the River Doamna had been the subject of several lawsuits. Having been given by Voivode Radu the Young to Bistriţa Monastery, it had been misappropriated by the yeomen of Miceşti. The ford had been recuperated following the oath sworn by 12 compurgators. Later, Zupan Oancea went to trial for the mills, but again 12 boyars swore in favour of the monastery. The last lawsuit, against Clucer Vlaicu, was brought before the prince: "My Lordship gave 12 boyars to look for justice, but there on the scene of the place... They learned that the said ford of mills had been granted... to the holy monastery, so they too gave it to the holy monastery..." From the content of the document we may notice the existence and functioning of deed witnesses, who were *given* by the ruler to go to the scene of the place and investigate the case.

The document of 5 June 1535 shows the use of boundary witnesses: Voivode Vlad Vintilă reconfirmed the ownership right of Cutlumuz Monastery from Athos over the Uibăreşti estate, following the trial against Vornic Neagoe, based on the oath of 12 boyars, "who shall draw the boundaries where the old boundaries were... thus they went... and drew the boundaries and raised poles where the old boundaries had been..." [8]

Deed witnesses also appear in the document of 27 July 1529, where Voivode Moise "... My Lordship has also given 12 boyars to examine the work and the line even better..." in the litigation between Govora Monastery and Deacon Michael over an estate in Plopul [8, p. 137-138]. The oath-helpers, "the above said boyars gave on their souls that the estate should belong to the holy monastery, and Deacon Michael was left without under the law..."

The trials in which both parties were represented by the Church are shed light upon by the following documents. On 24 October 1531, Glavaciogul Monastery, represented by Abbot Kir Sava, was sued by the monks from Nucet Monastery for some vineyards in Topoloveni [8 p. 190-191]. The ruler decided in favour of Glavaciogul Monastery, the monks from Nucet being left without under the law.

On 8 April 1635, Agapia Monastery went to court against Golia Monastery from Iaşi over a mill ford and an apiary place on the border of Chipereşti village [9]. The boundary witnesses appeared in the document of 12 June 1635, whereby Costantin Hăngul gave order for the boundaries of the Mihăileşti estate belonging to Homor Monastery to be drawn up [9, p. 206].

On 16 October 1604, the monks from the Agapia Monastery sued [10] Xeropotam Monastery, allegedly because the latter monastery had been built and placed on the site of Agapia Monastery. Voivode Eremia Movilă tried the case and established the boundaries between the two monasteries, restoring good peace between them. In this case, what can be ascertained is the existence of arbitrators, the two parties being reconciled by mutual agreement.

From the study of the documents presented and many others relating to trials that involved the Church, we may see that all the cases were heard by the voivode. Even if compurgators were used in the trial or the voivode ruled directly, an overwhelming majority of cases where one of the parties was the Church were won by it. From a social point of view, this thing was very clear, the explanation residing in the social position of the Church in society. However, there were also cases when the voivode ruled in favour of the other party [8, p. 200].

We may also notice that almost all ecclesiastical trials heard by the voivode involved civil cases [11]. The other cases, which targeted strictly disputed about ecclesiastical/monastic life, were tried inside the Church by its leaders. A document dated 17 November 1502, issued by Stephen the Great, confirms this view. The voivode decided that all the priests from the villages of Putna Monastery should be judged by Igumen Spiridon without the interference of the Episcopal officials: "and I have given the above said monastery all the priests who are in all the churches, all the villages of that monastery, everywhere, throughout our country, however many this holy monastery may have and however many will be added from now on, they shall all obey the above said monastery and with all their income and the Igumen of Putna shall judge them. And the Episcopal officers shall not have any business with these priests ever..." [11, vol. I, p. 27-28]

In Transylvania, the jurisdiction of the church expanded; besides the internal ecclesiastical cases, the church could also hear the serfs and the people who belonged to it. Thus, on 19 January 1327, King Charles of Hungary stated in a decree: "because the freedom given and destined, since days of yore, by our ancestors to the church or the monastery of the Most Holy King Ladislaus from Oradea and then confirmed by us to the same church claims and demands that none of the judges of our country should hear the serfs of that church in Oradea (...) we command that you shall not dare to hear, under any circumstances, the serfs and men of the said church..." [11, p. 211] Even if the document was customised for the church in Oradea, we do not believe that it was singular, this right belonging to almost all the Catholic churches in Transylvania.

4. Conclusion

Canon law may be said to represent the traditional legislation governing ecclesiastical life. In the past this unfolded, much as it does now, according to well-defined customs and laws, which applied depending on which the parties to a trial were, since such litigations could involve either the Church and the laity or members of the clergy. As we have seen in the examples presented above, most of the lawsuits in which the church was one of the parties were settled in its favour. During the period covered by this study, more specifically during the fifteenth-seventeenth centuries, these trials were quite numerous, as the church representatives disputed their ownership over land, buildings and other assets, in utter contradiction with the Christian morality they professed. Notwithstanding all this, their action was justified by the customs of the period, by diverse mentalities prevailing at that time, by envy even, as well as by the fact that some of the power holders looked favourably upon the endowment of certain places of worship.

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