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The Peace Courts in the Romanian Judicial System

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Abstract: Reconciliation, as a way of solving disputes between the members of the Romanian communities, has ancestral origins and obviously a long tradition. Firstly known in the old customary law (the Law of the country or Jus Valahicum or Jus Valahorum) the peace was taken over by modern law, creating specialized courts (peace courts, the district courts, the traveling judges), or the public entities (the peace commissions, the judiciary commissions) that contributed to the simplification and speed of the act of justice, but also to educate the population and to create a correct attitude towards the law and its compliance. Currently, although some legal institutions and a legislative framework have been created as an alternative in the litigation confrontation in court, the role of reconciliation is quite blurred. The present paper highlights the experience gained in the field of reference and some ways of re-evaluating and reusing it.

Keywords: Reconciliation; peace courts; litigation;

1. Introduction

Reconciliation - placation, conciliation, the action of restoring peace through non-contentious means, a way of solving disputes between members of Romanian communities has ancient origins and a long tradition in customary law, but also in written law, before and after the establishment and consolidation of the modern Romanian state.

Present in the old Romanian law (Country Law, Jus Valachicum, Jus Valachorum) reconciliation was taken over by the written legislations, creating specialized courts (justices of the peace, schools, itinerant judges) or public entities (reconciliation commissions, judging commissions, judging councils) which have contributed to the simplification and speed of justice in civil, commercial and criminal cases of little importance and involving a minimum volume of activities. At the same time, and just as important, the reconciliation courts have been a remarkable factor in forming and perpetuating a correct attitude towards the law and the institutions called upon to ensure its observance.

The territorial communes, successors of the gentile, family ones, kept and transmitted the "custom of the land" (Colective, 1980, p. 146), including the village courts that judged the cases according to the old usual traditions, the priority way of solving being the reconciliation of the parties[2]. Even the strongest pressures from the "performing" legal systems of the time (Roman and Byzantine law) did not affect

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[2] In general, the system of the old Romanian law was characterized by moderation, in serious criminal cases the maximum punishment was not death, but the expulsion of the culprit from the community. In this way, the public opinion exercises a permanent control and rooting over those who do not respect the rules of coexistence. (Colective, 1980, p. 143)

the original Romanian, traditional conception (Fotino, 1972, pp. 74-75). While neighboring states, such as Bulgaria or Serbia, have adopted foreign models, Romanian countries "have sprung from a national tradition." (Fotino, 1972, pp. 74-75). And in this tradition, reconciliation has been passed down to the present day.

2. Historical Landmarks

The attempts to modernize the judiciary organization in the Romanian Principalities undertaken until the Organic Regulations (1831 in Wallachia; 1932 in Moldova) failed to definitively remove the medieval aspects, mainly in terms of separating the judiciary from the executive power. (Collective, 1984, p. 174 and the next)

The Russian occupation during and especially after the Russo-Turkish War of 1828-1829, completed by the Peace Treaty of Adrianople (now Edirne) of September 14, 1829, sought to restrict the Ottoman rule in the area, including by limiting the old capitulations through a legislative reform, materialized by the Organic Regulations. An important chapter was the judicial organization. According to their provisions, village and reconciliation courts were part of the judiciary organization. These courts consisted of the village priest and three jurors with an annual mandate, chosen from the villagers known as "thrifty people", believers, in the fear of God. The function of clerk was exercised by the local notary. They had jurisdiction over disputes between peasants in the amount of 10-15 lei in Moldova and 15 lei in Wallachia. If the parties did not reconcile, they could go to the county court. The conciliation procedure was mandatory. Disputes between peasants and boyars did not fall within the jurisdiction of these courts. (Collective, 1984, p. 175)

Through the Paris Convention of August 7/19, 1858, a new perspective was opened in the evolution of the organization of the Romanian Principalities, the union of Moldavia with Wallachia on January 24, 1859 being the concretization of this opportunity and also the beginning of the modern Romanian state.

The Central Commission of Focsani, which functioned between 1859-1862, drafted the *Constitution Project of the United Principalities of Moldavia and Wallachia*, containing provisions on the judiciary organization (in Chapter VI - On the judiciary power). The project, however, was never voted on, its provisions being of only historical interest.

On June 16/28, 1864, the first constitution of Romania came into force, known as the *Developing Statute of the Convention of August 7/9, 1858 in Paris*. Under this constitution, *the Law on the Judiciary Organization* of 1965 was adopted, which abolished *village reconciliation courts*, but they were re-established by a law of 1879.

By the *Law of communal peace and school courts* of June 1, 1894, reconciliation was given to the competence of communal courts. The law was amended and supplemented in 1896, the reconciliation provisions remaining in force. On May 1, 1908, the *Law for School Courts* of October 31, 1907, came into force. It repealed the old communal justices of the peace laws of 1879, 1894, and 1896. The law was amended and supplemented in 1913, 1919, and 1921. Although the institution reconciliation was no longer explicitly mentioned in the texts of this law, it was maintained through the so-called *court ambulance* according to which the district judge was obliged to travel to rural communes in the district to judge disputes between peasants at the mayor's office. In those with low value, reconcilation was the solution.

After the First World War, the priority objective of the Romanian legislator was to unify and standardize the legislation of Greater Romania, as a result of the integration of the country by annexing Transylvania

and Bessarabia. In 1923 a new Constitution was drafted under which the *Law on Judiciary Organization of 1924* was promulgated, amended and supplemented in 1925. According to the provisions of this law, the courts were of three categories: urban, rural and mixed, their jurisdiction being established by the *Law of Courts of peace*, reconciliation being maintained among the attributions of the rural courts, applicable in the small cases between the peasants.

In 1938, King Caril II established a new Constitution which, in Title III - "On the powers of the state", Chapter V - "The judiciary power", regulated the Romanian judicial system. By the *Law for the judiciary organization* of August 27, 1938, this system consisted of: the High Court of Cassation and Justice, the courts of appeal, the courts and tribunals. The courts were communal and the justices of the peace. Magistrates' courts operated in cities and some rural communes, with, among other responsibilities, the supervision and control of communal courts.

Communal courts functioned in rural communes where a justice of the peace did not reside. These courts judged in panels composed of: the mayor of the commune - as president and two members appointed by the justice of the peace at the beginning of each judicial year from former civil servants, priests, teachers or doctors domiciled in the commune. The function of clerk was exercised by the notary of the commune. The members of the communal courts were not part of the magistrates' body and the notary of the commune was not considered a judicial official either.

These communal judges had jurisdiction over disputes between the inhabitants of the commune regarding claims, movable claims and obligations, whose object had a value of up to 500 lei inclusive. Their decisions were without appeal. They also had jurisdiction[1] over the contraventions found by the administrative authorities, for which the sanction provided was the penalty of a fine from 50 to 500 lei. Judgments in such cases were called *court books* and could be appealed to the justice of the peace.

During the Second World War, the legal framework regarding the Romanian judicial system was represented by *Law no. 726/1943* of *judicial organization*. According to it, the courts remained the same as before, namely the High Court of Cassation and Justice, the courts of appeal, the courts and tribunals (urban, rural and mixed). The rural courts did not function in all communes, so that in those without such an institution, located at a distance of more than 15 km from the next court, a panel from there traveled to the locality once a week and held a judgment hearing. Although the conciliation was not expressly repealed, it was not found in the regulations of the new law.

On August 23, 1944, the Constitution of 1923 was restored and, implicitly, the judicial system provided by it. By *Law no. 640/1944 for the establishment of a transitional regime of judicial organization*[2], Law no. 726/194 and the Law on Judicial Organization of 1924 was re-entered into force. This law had a short existence (as the name shows), being replaced by *Law no. 34/1945 and Law no. 492/1945 on the judiciary organization*. None of these laws made substantial changes to the existing system. *Reconciliation Councils* were set up advising the parties for reconciliation, with responsibilities in criminal (offenses such as hitting, threatening, slandering, insulting, disturbing possession, degrading another's property, relocating and moving landmarks), civil and commercial matters (litigations between the inhabitants of the commune regarding receivables, goods or obligations to make, up to the value of 50,000 lei, exclusively penalties for delay and court costs).

On December 30, 1947, the Romanian state proclaimed itself a republic (Romanian People's Republic), and on April 13, 1948, a new Constitution entered into force. Title VII of this contained regulations

[1] According to the Criminal Code of 1936, contraventions were a criminal offense. The crimes were: crimes, misdemeanors and contraventions.
[2] Entered into force on 01.01.1945, it was a "copy" of the Law on the Judiciary Organization of 1924.

regarding "Judicial bodies and the prosecutor's office," the courts being: the Supreme Court, the courts, tribunals and people's courts. The judicial organization was regulated by *Decree no. 132/1949* which repealed Law no. 341/1947. None of these normative acts made any reference to the *Councils for Reconciliation*, which may lead to the conclusion that they have fallen into disuse and all the more so as the respective historical period was marked by profound political transformations. Certainly, in that politico-social climate, the issue of "reconciliation" in case of litigation seemed a derisory issue.

It followed, in chronological order, *Law no. 5/1952 on the judiciary organization*, in force from 01.08.1952 to 30.07.1958. Decree 132/1949 was repealed, the judicial system established by this law had in its structure the Supreme Court, the RPR Capital Court, regional courts, popular district, city and city district courts. Also, special courts have been created such as: military courts, people's railway courts, people's maritime and river courts. Even on the occasion of the adoption of this law, the old tradition of reconciliation was not revived in any way.

Only by *Decree no. 132/1957* for the amendment of the Code of Criminal Procedure and the establishment of reconciliation commissions, this authentic Romanian form of solving some disputes between the members of the communities was returned. Of course, the return was made according to the specifics of the ideology of the time, but the spirit of the reconciliation procedure remained unchanged. Thus, this decree established, in addition to the executive committees of the popular communal, city and district councils, one or more *reconciliation commissions*. They consisted of two deputies and a teacher appointed by the executive committee of the popular council, one of the deputies being the chairman, the executive committee having the task of appointing the secretary of the commission.

The competence was limited to the criminal matter, the commissions being invested with *the attribution to try to reconcile the parties in the cases referring to the crimes shown in art. 280[2], para. 2 of the Code of Criminal Procedure*[1]. These were crimes with known perpetrators, for which the initiation of criminal proceedings took place upon the prior complaint of the injured person. The law required the injured party to notify the conciliation commission, through the secretary of the executive committee, orally or in writing, before addressing the competent court. The Commission preferably worked on Sundays or other days off. If the reconciliation did not take place, the injured person went to court. The conciliation procedure had to be carried out within 3 days from the notification, otherwise, the injured person having opened the way to sue.

On July 21, 1958, the *Decree no. 320/1958 on the boards of judges of enterprises and institutions*. The councils established by this normative act consisted of employees of the enterprises or institutions in which they were established, elected by the employee groups and functioned in full by three members, one of them having the quality of president. These councils had the competence to solve labor disputes between employees and the employer if their object did not exceed the value of 5,000 lei or was invaluable in money. They were also competent to settle disputes concerning certain claims relating to the performance and termination of the employment contract. The decisions of these councils could be challenged in the courts.

On December 26, 1968, Law no. 59/1968 regarding the court commissions, entered into force on 01.01.1969, which reunited and perfected the provisions of Decrees no. 132/1957 and no. 320/1958 which were obviously repealed. Judicial commissions were set up, as public bodies of influence and jurisdiction, in enterprises, institutions, other state organizations, in cooperative organizations and other

[1] We reffer to the Code of Criminal Procedure of 1936.

public organizations and in addition to the executive committees of the municipal, city popular councils, the sectors of Bucharest and communes.

The commissions consisted of 5 members elected for a term of 2 years and judged in full of 3 members, one being the chairman. They had jurisdiction and conciliation in criminal, civil and some labor disputes. In criminal matters, they tried cases in case of deviations from the rules of social coexistence[1] and tried to reconcile the parties in case of crimes such as: hitting or other violence that caused injuries, bodily injury at fault, abuse of trust when the value of the damage was higher than 500 lei.

In civil matters, they tried to reconcile the parties in patrimonial litigations whose value did not exceed 30,000 lei, and if the parties did not reconcile and agreed that the trial should be done by commissions, they judged the respective litigations.

The labor disputes within the jurisdiction of the court commissions referred to the problems that arose regarding the conclusion and execution of the employment contracts, as well as to the claims arising from the termination of the employment contracts.

The commissions could order measures of public influence in criminal matters, respectively reprimand with warning or fine from 50 lei to 2,000 lei. Their decisions could be appealed to the court within 15 days of the ruling.

3. The Current Situation

Law no. 59/1968 was repealed on 01.10.1992 by *Law no. 104/1992 for the amendment and completion of the Code of Criminal Procedure and other laws, as well as for the abrogation of Law no. 59/1968 regarding the court commissions and the Decree no. 218/1977 regarding some transitional measures regarding the sanctioning and re-education through work of some persons who have committed deeds provided by the criminal law*, the reconciliation thus disappearing from the Romanian legislative landscape. For this, the provisions of art. 126 para. (1) of the Constitution according to which justice is administered by the High Court of Cassation and Justice and by the other courts established by law. The argument, advanced by doctrine, is quite shaky, given that, by law, according to the constitutional text, "reconciliation courts" can be set up. The Constitution does not prohibit such a legislative approach.

Instead, the Romanian legislator, giving up the reconciliation courts, chose an "alternative" way of solving some cases or disputes, respectively "mediation". Therefore, a traditional form of justice has been abandoned, the viability of which has been certified over time, with an imported "mechanism" being preferred. It was adopted by *Law no. 192 / 16.05.2006 on mediation and the organization of the mediator profession*, amended and supplemented several times, which the specialists considered to be a transposition into domestic law of EU directives, in order to integrate Romania into this body. At its meeting in Tampere, Finland, on 15 and 16 October 1999, the Council of Europe called for the establishment of an alternative, out-of-court procedures for the settlement of civil and commercial disputes by the Member States. Then, in 2002, the European Commission presented a Green Paper on alternative methods of solving these disputes. Romania has taken over these models and created the law on mediation. Subsequently, this law was supplemented with the provisions of *Directive no. 52/2008 /*

[1] They constituted deviations within the meaning of Law no. 59/1969: hitting or other violence that did not cause injuries, theft and abuse of trust, if the value of the damage did not exceed 500 lei, negligence in the service, if the damage did not exceed 1,000 lei, etc.

EC of the European Parliament and of the Council of Europe on certain aspects of mediation in civil and commercial matters.

According to Romanian law and European norms, mediation is an out-of-court way of solving conflicts amicably, with the help of a third party specialized as a mediator. It was imposed on the background of the inefficiency proved by the courts in carrying out the act of justice, mainly due to their overburdening, costs, complicated procedure and sometimes biased attitude. All these dysfunctions revealed by the promoters of mediation could be overcome by creating modern reconciliation courts, using the rich experience gained by the Romanian judiciary. These courts did not affect in any way the method of mediation, imported for harmonization with the EU, as they would have been courts, therefore structures of the judiciary and not extrajudicial alternatives. Ultimately, mediation could coexist with conciliation courts, the latter not affecting the parties' option to use the services of a mediator.

4. Conclusions

Reconciliation has over time been a structure of the Romanian judicial system. It has proven its viability in all the historical stages of the Romanian people. It was exercised by both community members and magistrates. In the modern period, when reconciliation was practiced by people without specialized training (teachers, professors, doctors, priests, officials, etc.) they were trained and supervised by judges from the nearest courts. The decisions of the reconciliation courts could acquire the authority of res judicata under the law and could be enforced.

The current situation of the Romanian judicial system, overcrowded, the costs generated by the various procedures, lack of space, low speed, etc. in our view calls for a rigorous assessment of the experience and tradition of the reconciliation courts and for their return, in a modernized way, to the other judicial structures.

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