

THE IMPACT ON JUDICIAL SYSTEM IN BASARABIA IN 1812

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Introduction

In 2012 we celebrated 200 years of the end of the Bucharest peace treaty by which the territory between the Prut and Dniester Moldavian Principality was annexed to the Russian Empire. By this treaty the Russian Empire annexes lands that did not ever belong. Annexation of Basarabia to the Russian Empire in 1812 was a tragic event not only for the Basarabian Romanians, but also for future generations.

Historical development of legal culture, the law in various countries showed that every nation has produced and developed its own legal system in accordance with national traditions, processes that were partially (to a greater or lesser extent - the from case to case) influenced the legislation of other states, this influence is determined by various factors.

Throughout its history, the Romanian people had many foreign influences, under which national law system was impeded to some changes. Most influences occurred about foreign occupations, so Roman rule interrupted the natural development of legal institutions and the Geto-Dacian law, become a new development, resulting finally a organic synthesis, forming a Daco-Roman law system. Ottoman rule almost did not influenced on the law system, the Ottoman Empire limited to economic exploitation of the Romanian Principalities. Both domination were established as a result of wars against our ancestors.

Domination of Russian Empire in Basarabia was established as a result of the Russo-Turkish War of 1806-1812, led by the Russian Empire under the pretext issue of Orthodox Christians from the Ottoman yoke.

Tsarist domination established between the Prut and Dniester territory of the Principality of Moldova, has left its mark on the national system of law. The illegal act of 1812 the population was deprived of many basic elements of national being, including those related to the organization of courts and court proceedings.

It is true, however, that Tsarism pursued a skillful policy and this denationalization process passed slowly. Tsarist authorities initially camouflaged colonial exploitation methods of Basarabia under cover formal autonomy that lasted less than calm and did not pursue local spirits, troubled by the new situation dictated by the Treaty of May 16, 1812.

As we know, history has not the conjunctive mode, however, a comparative analysis of the judicial organization from Basarabia - part of the Russian Empire and one in Moldova during the same period, may shed light on certain legal aspects of the same people, unwillingly separated

into two distinct parts. Tsarism tendency to maintain and deepen the artificial separation of Romanians it is clear from research sources time, including the archive, which is amplified by the fact that the Russian Empire was powerless and the state of affairs in the Romanian Principalities.

As a result of research will become clear Bessarabian territory and population consequences of incorporation into the Russian Empire both in national and in the political judicial.

Judicial organization in Basarabia after annexation to the Russian Empire

The *Regulamentul privind instituirea administrației provizorii în Basarabia* (Regulation on the establishment of provisional administration in Basarabia) of July 23, 1812 justice has to be exercised under the old rules, with a population of entire Moldova (so and Basarabia) was normal.

Judicial function of the court was performed by the civil administration department I established in the province. [1]

Department consisted of three colleges:

- College for civil litigation, including four councilors among local landowners;
- College for research and criminal consists of four councilors (three from local landowners and one - the Russian senior officers);
- College for municipal police and provincial administration led by a Russian officer.

In the consideration of civil and criminal cases colleges took account of local customs and laws.

The law established a preponderance of the judiciary local boyars, the correlation between Moldovan and Russian advisers being 7:2. Judicial deliberations were made in two languages: Russian and Romanian - the last Tsarist authorities called it „Moldovan”.

In the provinces, judicial functions were performed by the stewards. Civil disputes were examined by stewards in accordance with customary law.

In criminal matters, the power is reduced to judgment steward of minor offenses, they were deprived of the right to judge crimes such as murder, robbery, theft etc. In such cases stewards were only the first investigation. [2]

By *Așezământul înființării oblastei Basarabia* of 29 April 1818 were regulated more courts and judicial proceedings. According the settlement of 1818 justice was done by three instances:

- Courts of Region;
- Provincial Civil Court and Criminal Court;
- Supreme Council with administrative and judicial mixed character, being the supreme judicial court.

Besides the above-mentioned courts operate and a special jurisdiction for hotărnicii (landed location) - their Office opened on 10 February 1819, his first being elected President Iordache Donici. [3]

The first instance was the court of region, which was composed of a judge and two members elected from the nobility and confirmed by Governor Plenipotentiary of Podolia. It judges all civil cases and criminal offenses except the nobles and officials, who were to be examined by the Supreme Council. The Court held only have jurisdiction within that province. If civil action included several subject lands, conflict of jurisdiction was settled by the provincial Civil Court.

As courts of appeal were Civil Court and Criminal Court of Basarabia. The Civil Court's jurisdiction in the court examination held various civil actions, plaintiffs are both individuals and institutions. From its composition consisted of a chairman and four councilors. The President was appointed by Governor Plenipotentiary Crown Podolia, a counselor was also called the Crown, and the remaining members of the nobility were elected for a term of three years with Governor Plenipotentiary. According to the Establishment from 1818 Civil Court in disputes "will be guided by Moldovan customs rights and express them in Moldovan language". [4] However, when examining state actions, it had to comply with Russian laws on the order of procedure. For further examination of State Civil Court action was to present text of the judgment translated into Russian. The Civil Court did not resolve tax disputes because after all, but emit only an advisory opinion under statutes Russian regional government send it. Since 1828 trials began to be made only in Russian.

Courts of region until 1828 and the Civil Court met some functions of authentication of documents, contracts, policies, etc. By judgment of 18 December 1828 the regional government these powers were sent to the competence of notaries. [5]

Criminal Court judges the appeals against first instance criminal sentences (sentences issued by courts of Region). This consisted of chairman appointed by the Crown, three counselors and assessors. A counselor was appointed by the Crown, the remaining councilors and assessor were elected.

Criminal Court judges criminal cases under statutes Russian. Sentence shall be passed by majority vote. It became enforceable only after it was approved by the Civil Governor. [6]

Decisions and judgments Civil and Criminal Court could be appealed in the Supreme Council, which was the third court of Basarabia. Decisions were taken by majority vote. Very soon, however Tsarist authorities began to limit judicial power of the Supreme Council, recognizing the appeal of its decisions.

According to the Establishment from 1818 decisions made in resolving cases in which noblemen and officials were involved, were submitted by the Department of Justice civil governor or attorney general for approval by the State Council or the Emperor.

The settlement founded in 1818 established the institution of prosecution [7] that did not exist before in Basarabia. Besides the proposal for the introduction of this

institution in Basarabia belongs to local boyars that by introducing this function was intended to curb the abuses of Harting governor. But this problem was solved only in 1818. Prosecution institution was modeled after the Russian model with some modifications in the order appointing prosecutors, changes that correspond to specific autonomous development of Basarabia. Basarabian provincial procurator was appointed by the Crown, after approval king, which probably led to the monarch's desire to enhance attachment prosecutor Empire interests in Basarabia (in other Russian gubernias they were appointed by the Senate). County procurators were appointed by the Crown, the provincial prosecutor's proposal and the approval of the Supreme Council (the rest were appointed by the Department of Russian gubernias gubernias, the proposal prosecutor gubernias). The name was changed somewhat and instead of Basarabia prosecutor named procurator. Procurators supervising compliance with the legislation in force Basarabian institutions by ensuring that institutions should not exceed the given jurisdiction. Procurators were supervising the work of the courts.

Prosecutors did not participate in civil cases, except the particular processes where the plaintiff or defendant was the State or minors. In criminal trials, the prosecutor was coordinating the activity performed by law enforcement officials in order to detect crime. Prosecutors supervising and execution of sentences, including prison controlled activity.

Analyzing the institution of prosecution, we find that it does not perform his duties as an autonomous body within the judiciary system, but was subject to administrative authorities, especially Governor Plenipotentiary.

With such a status, regional prosecutor existed in Basarabia until 1869, it means until the implementation of judicial reform, the district court was held in Chisinau, prosecutors are attached to the district court and the Court of Appeal.

Therefore, in the region of Basarabia, by the settlement of 1818, it was a decisive step in the imperial institutionalization, following the introduction of the courts of Russian origin, as in Bessarabia gradually be introduced full judicial organization Russian model.

On 15 April 1824, by resolution adopted by the Committee of Ministers, the offenses committed by the nobles and officials were sent to Basarabia Senate jurisdiction. [8]

By „ukaz” of August 3, 1825 the Supreme Council of Basarabia and retired judicial functions, and thus removed one of the most important components of the autonomy of Bessarabia - Legal self.

In addition to the three types of court settlement stipulated in Basarabia work and other courts.

At the proposal of Izmail stock company was founded by imperial decree in Reni, on 1 April 1819, the region of Basarabia Commercial Court, judicial body which was not provided by facility. It was organized on the same principles and criteria by which was established on 10 March 1808, Odessa Commercial Court. [9] Its jurisdiction extends throughout Basarabia. [10] As President he was appointed Persian state councilor. [11]

Commercial Court members were chosen from merchants in the cities Reni, Izmail, Akerman and Chila.

Candidates for judge were to meet certain requirements to take residence in these cities, property or real estate to deal with foreign trade, possess a foreign language, can write and read in Russian and Moldovan. [12]

Commercial Court resolved commercial disputes between merchants. It was competent to examine not only disputes native merchants but also of foreign merchants, whether in commercial contracts concluded by them there was a clause stipulating that fact. [13] Court authenticated leases of buildings intended for trade, acts of sale - purchase of estates and other real estate, conduct assessments for houses and other properties to be deposited as collateral, and other operations related to real assets in unlimited amounts, organize auctions for the sale of real estate. Also confirms scholarship documents prepared by agencies on commercial vessels, various tools available to the applicant, record keeping, which at the end of each year, the court had sent for storage in the archive. [14] In some regions of Bessarabia, the commercial disputes, the parties could resort to arbitration judges, who were appointed judges of compromise. In Basarabia, Hotin they had the name „treteischii sud” [15] and in other counties, for example Orhei - judges compromise. [16]

Arbitration courts (compromise), the institutionalized form of commercial litigation, was one of the oldest forms of alternative dispute resolution in which the conflicting parties could appeal. [17] These courts consisted of three elected members: one member selected by each party and one superarbitru chosen by both parties. In case of difficulty in solving of the case each party had the right to choose another one arbitrator.

Arbitration court members would have a reputation both civic and moral reproach. [18] They must be impartial, to correctly apply the law to resolve the dispute within small and have a dignified demeanor, inspiring respect and trust both parties to self, and to the court. [19]

Being formed on the basis of voluntary agreement of the parties, the arbitration courts examine only actions brought by individuals. Dispute resolution is based on existing standards and practices in commercial practice. In case of occurrence of difficulties, the parties could submit action in ordinary courts. [20]

Arbitration courts sought reconciliation, the very decisions issued by them called compromise decision, [21] is equal to decisions issued by state courts. In cases where the parties were not satisfied with the decision issued they had the right to appeal to ordinary court.

In villages were organized peasant judges. They were composed of head of „volostei”, „staroste” (a person from native village of the accused or defendant and ten peasants in good faith, who enjoyed respect among the villagers. They were elected annually by villagers in „voloste”. Peasant courts in the first instance crimes of theft, the value of which does not exceed 8 lei, fights and quarrels among villagers.

But peasant courts were not competent to hear disputes between peasants and landowners.

Peasant court decisions were final and could not be appealed. Only in the case the court competence parties had the right to file a complaint in court of zemstvo.

The judicial power (limited) was endowed and congregation in Chisinau, judging such offenses such as fornication, [22] fourth marriage, [23] adultery etc. [24] Diacastery judge the crimes committed by clergymen. [25] One of the most frequent sentence imposed by the congregation was - anathema. [26]

In Basarabia was established and the Court of Conscience, which was composed of a judge and six elected members, two from each social status: two members of the nobility and the two traders and peasants. Nobility select five candidates from among whom the judge called the governor general.

The main tasks of the Court of Conscience were:

- Civil cases (including property disputes between relatives) [27], the purpose of reconciliation of the parties;
- Examination of criminal cases such as crimes committed by juveniles, those without discernment, witchcraft, illegal detention in prison;
- Offenses related to breach of parental rights;
- Offenses committed by accident or circumstances after a heavy competition. [28]

Consciousness tribunal could base their decisions not only on laws but on natural justice. [29] Parties dissatisfied with the decisions of these courts could address the court (judge) common.

A. Boldur scientist believes that the Court was meant to help those who had «suffered an unfortunate happenings». [30] The National Archive of the Republic of Moldova materials that for the Court of Conscience you and offenses committed by minors, insane, witchcraft, defalcation of public funds. [31] in civil court judge business disputes between parents and [32] In cities they had judicial powers magistracy. They judged the case townspeople and merchants. Chisinau magistracy was established in 1819 and was liquidated in 1866 [33] Balti judiciary functioned during the years 1828-1837, and the Bender - 1828-1869.

Orphans Court is chaired by the head of the city. The composition of the orphans court and two members of the judiciary entered the city. In Bessarabia were also organized and operated judges in cities Chisinau, Akerman, Reni, Izmail and Hotin. [34]

Verbal commercial courts were composed of a judge especially the urban and „starosta” and were subordinated to magistracy and „ratoşelor” to which they were established. They settle disputes between merchants that do not exceed 500 rubles and 150 rubles asignaţii silver, litigation and actions that did not require additional information and evidence, policy disputes on accounts. [35] Verbal commercial courts could not examine the case more eight days. Commercial litigations disputes were resolved by commercial courts.

The Act of February 29, 1828 *Instituţie pentru conducerea regiunii Basarabia* (Institution for leading Basarabia region) established in the Basarabia same judicial bodies as well as in Russia. In accordance with this law, the region functioned Civil Court, Criminal Court and the Court of Conscience. Article 58 of the Civil Court and Criminal Law Basarabian put under the authority of the Senate. Regional Council of Besarabia had no judicial powers.

Conclusions

In conclusion we mention that evolution Bassarabian judiciary by way of the organization was one poor, hampered by constant temptation to enter the imperial authorities in Basarabia judicial organization after the Russian model. By adopting *Așezământului înființării oblastei Basarabia din 1818* Bessarabia judicial organization of the Russian Empire took into account traditional forms of organizing them, but promising, progressive character of the first laws governing the declaration on keeping in Basarabia national judiciary was temporary dictated by the need to prepare the conditions for transition to Russian judicial organization model. The settlement of 1818 entered Basarabia in gear Russian institutions, judicial organization in the region lost their local character.

In Basarabia courts do not operate independently, yet depending largely administrative bodies (governor right to interfere in judicial affairs, to confirm judicial decisions, to appoint judicial functions and so on).

Preserved medieval principle of the state courts. There was general court and courts to judge certain categories of persons (eg offenses committed by nobles and officials were examined by the Supreme Council, the townspeople and merchants - the judiciary, the judges were rural peasants and offenses committed by Dicasterial clergymen came to power in Chisinau. Moreover, courts are divided and the categories of offenses which examined: witchcraft, failure parental rights crimes following adverse events were considered by the Court of Conscience, offenses against family as adultery, incest, birth of a child of an unmarried woman, fornication and so on - by the church courts and some criminal cases such as theft on a small scale, forgery, etc. infliction light injuries. were within the competence of the court of zemstvo).

In conclusion we can say the following: judicial organization introduced by the Russian Empire in Basarabia, Moldova was inferior because it kept the medieval principle of the state courts, the right to interfere in the administration of court business. It was provided advocacy institution known at this time in the Principality of Moldava.

The settlement *Așezământului înființării oblastei Basarabia din 1818*, act of February 29, 1828 *Instituție pentru conducerea regiunii Basarabia* and subsequent laws introduced in Basarabia judicial institutions of Russian origin, modernizing justice is hardly done more than half a century the judicial reforms in the second half of the nineteenth century.

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