



ORIGINAL PAPER

Foreign Influences in Romanian Legal Terminology

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Abstract

The foreign influences that we notice in Romanian terminology can mirror the foreign influences manifested over time in our political history, our culture and hence the legal field. The Roman influence is virtually the mark of our nation. In the legal field it is obvious during the ancient period after the conquest of Dacia and its transformation into a Roman province. The second stage starts in the 15th century, witnessing the transition from customary law to written law through the Codes of the Church. The third stage, resorting to the old Roman encodings, represents the modernization of the Romanian legal system. After the Roman influence, the most important is the Slavic one. The Slavic peoples, in their turn, surrounded our territory like a belt. It was hard to dispel intrusions and, as Ioan Bogdan pointed out: “the influence of the Slavic element in the emergence of our nationality is so obvious that, without exaggerating, we cannot speak about a Romanian people before the absorption of Slavic elements by the Roman local population during the 6th-10th centuries”. The Hungarian-German influence in Transylvania and the Turkish influence in Wallachia and Moldavia were also manifest during the Middle Ages. I. Condurachi wrote about the Hungarian-German influence, considering that the organization of the cities, the pre-emption right, the witnesses and gender equality upon inheritance followed the German model. Later, after the establishment of the Romanian medieval states, one can notice, according to I. Peretz, a Turkish influence exerted only in the field of public law and legal language (*agă, divan, caimacam, sinet, adet*). The modern and contemporary period turns the Romanian society towards the West and influences come from this side. We thus make reference to the French influence, foreshadowed during the Phanariot period, and the English influence as an effect of globalization.

Keywords: *foreign influences, Romanian legal terminology, Middle Ages, modern period, contemporary period*

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Foreign Influences in Romanian Legal Terminology

The foreign influences that we notice in Romanian terminology can express how principles, norms and institutions of other legal systems were reflected in Romanian law over time. The Roman influence is virtually the mark of our nation. In the legal field it has three main stages: the ancient period after the conquest of Dacia and its transformation into a Roman province; the second stage, which begins in the 15th century, witnessing the transition from customary law to written law through the Codes of the Church; the third stage, resorting to the old Roman encodings and representing the modernization of the Romanian legal system. After the Roman influence, the most important is the Slavic one. The Slavic peoples, in their turn, surrounded our territory like a belt. It was hard to dispel intrusions and, as Ioan Bogdan points out that the influence of the Slavic element in the emergence of our nationality is so obvious that, without exaggerating, we cannot speak about a Romanian people before the absorption of Slavic elements by the Roman local population during the 6th-10th centuries. The Hungarian-German influence in Transylvania and the Turkish influence in Wallachia and Moldavia were also present during the Middle Ages. I. Condurachi wrote about the Hungarian-German influence, considering that the organization of the cities, the pre-emption right, the witnesses and gender equality upon inheritance followed the German model. Later, after the establishment of the Romanian medieval states, one can notice, according to I. Peretz, a Turkish influence exerted only in the field of public law and legal language (*agă*/ 'police prefect', *divan*/ 'divan', *caimacam*/ 'deputy of a Turkish dignitary', *sinet*/ 'document', *adet*/ 'tax'). The modern and contemporary period turns the Romanian society towards the West and influences come from this direction. We thus make reference to the French influence, foreshadowed during the Phanariot period, and the English influence as an effect of globalization.

The Roman influence

The idea of the Roman origin of our people, language, culture has been deeply rooted in our consciousness. Our Romance origin triggered the construction of a literature, of a whole cultural edifice. There were moments in which Romanian historiography wiped the period before the Roman conquest. There is a tendency that we see even today. In the current dictionaries of the Romanian language there is no word of Geto-Dacian etymology, even though we know that it has such an etymology. For example, the word *zestre*/ 'dowry' about which we know it has a Geto-Dacian origin, is listed in the dictionary with a Latin etymology: "dextrae", meaning "solemn promise". All the other words about which there are indications that they have an ancient, Daco-Thracian etymology, occur in dictionaries with Albanian etymology or unknown origin. The theory of the Roman origin of the Romanian people and language starts from early historians. Grigore Ureche wrote in *Letopisețul Țării Moldovei*/ 'The Chronicle of Moldavia', that: "The Romanians living in the Hungarian Country and Ardeal and Maramureș, have the same origin as the Moldavians and they all come from Rome". Miron Costin mentioned in *De neamul moldovenilor*/ 'On the Moldavian People', the country of their ancestors, that: "The beginning of these countries and the Moldavian and Wallachian people and those living in the Hungarian countries and bearing this name even today ..." "... they are all one people and the same origin" ... starting from "Trajan, the Emperor of Rome, a few hundred years over one thousand...".

The same theory was obstinately supported by the representatives of the Transylvanian School and the Latinist trend. Samuil Micu, Gheorghe Șincai and Petru Maior, willing to prove that the Romanians should not be considered "a tolerated nation" removed our Geto-Dacian ancestors from history. Later, in Wallachia and Moldavia such

an opinion was developed by the followers of the Latinist trend. August Treboniu Laurian, in the *History of the Romanians*, started from the founding of Rome, because our history was but a natural continuation of the history of the Roman Empire, and we were simply the descendants of the Romans. Ioan Peretz, in his course on the history of Romanian law, presents in the first part the norms of classical Roman law on the ground that they are “the Roman stock of our law”. This Roman stock present in the Romanian customary law system has been analyzed by both Romanian historians and jurists. Andrei Rădulescu tries to make a comparative study on the basis of which he indicates similarities regarding the institution of the family (organization, the rights of the father over his children, the power of a man over his wife, the situation of the husband’s wealth, adoption, disinheritance, etc.); the regime of the property (ownership, usufruct, easements); obligations and contracts (mutual agreement, transfer by delivery, agreement by shaking hands, earnest money, resolutive clause, emphyteusis); serfdom (colonate); successions (oral testament, equality between heirs of blood); trial proceedings (summoning, avoidance of judgment in absentia). (Rădulescu, 1939). It should be noted however that during the period of the Roman conquest there was a duality of enforcement of legal rules: the Roman legal rules were enforced, and so was the domestic legal system. Ștefan Longinescu showed that, following the conquest, the customs of the land did not disappear and therefore the customs of the land, those of the settlers and the new rules of Roman law influenced each other.

After the Aurelian withdrawal, as Dimitrie Cantemir noted in *Descrierea Moldovei/ ‘The description of Moldavia’*, “Roman laws began to decline and to be changed by the Dacians”. There is a return to old customs and laws of the Geto-Dacians supplemented, of course, by the rules of Roman law. The latter were adapted to the conditions existing in Dacia, as demonstrated by the Triptychs of Transylvania and triptychs or waxed slates discovered at Roșia Montană. The link between Romanian law and Roman law was preserved after the establishment of Romanian medieval states. It is a link determined by the political and spiritual affiliation of the Romanians to the Eastern Roman Empire. Therefore, the Codes of the Church, which make the transition to written law, used as a source of inspiration the statutes of Byzantine emperors. These statutes were in turn inspired from classical Roman law. We can say that the Roman influence on Romanian legal creations is even stronger during this period, because the Codes of the Church merely translate some Byzantine texts, originally into Slavonic and later into Romanian. Further encodings, made by the end of the Phanariot period, keep the rules of Roman law as a source of inspiration, but take into account the local laws and social reality.

In modern times, the Romanian Civil Code of 1864 maintained the relation between Roman law and our law. The connecting element was the French Civil Code, inspired by Justinian’s legislation. Being mostly a translation of the Code of Napoleon, the Romanian Civil Code used the same sources. We thus find that all written or unwritten Romanian legal creations are a continuous intake of Roman law. The attitude of our historians and jurists becomes explicable and therefore, Roman law was one the first disciplines studied in law schools in our country. In Transylvania, at the Academy of Law in Sibiu future lawyers studied Roman law, Civil law and civil procedure, Criminal law and Austrian criminal procedure, Ecclesiastical law, Saxon and Hungarian law, History of Austria, History of Transylvanian law, Science of administration, Commercial law and so on. (**Istoria dreptului românesc, vol. II, 1987: 228-229)

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In Wallachia, the first elements of legal knowledge were introduced at Colegiul Sfântul Sava (the Saint Sava College) in Bucharest. Among the lecturers one could count great jurists of that time such as Constantin Moroiu, Ștefan Ferechide, Alexandru Racoviță, Constantin Brăiloiu or bailiff Nestor, who had contributed to the drafting the Caragea law. Roman law was taught by Constantin Moroiu, who had completed his PhD in law, at the beginning of 1825, in Pisa. (Rădulescu, 1991: 141). His Roman law course was entitled “Brief elements of Roman civil law” and was conceived as a dialogue, Roman law being introduced in comparison with “the laws of the country”, whereas the periodization of Roman legislation was continued by the History of Romanian law.

In Moldova, Iași, law classes were first taught at Academia Mihaileană (the Academy of Mihail), inaugurated on 16 June 1834. Within this academy Damaschin Bojinca was appointed professor of Roman law. Along with Christian Flechtenmacher and Petrache Asachi, he achieved the Romanian version of the Calimach Code. His Roman law course, called “The History of Roman legislation”, is the oldest Romanian course that has been preserved. By 1860, Damaschin Bojinca’s successors at the Department of Roman law were Nicolae Docan, Petre Suciu and Simion Bărnuțiu. The last of them is the author of lithographed courses entitled “Roman private law institutions” and “History of Roman legislation”. The unification of the Principalities and the ascent of Alexandru Ioan Cuza to the throne represented a new stage in the evolution of Romanian legal education. On 25 November 1859, the Faculty of Law became an independent institution, the first dean being Constantin Bosianu, who also lectured on Roman law. From 4 to 16 July 1864, by Decree 765, Alexandru Ioan Cuza approved the establishment of the University of Bucharest, which initially functioned with three faculties: Faculty of Law, Faculty of Sciences and Faculty of Letters and Philosophy. The Faculty of Law in Bucharest initially had six departments: Roman Law, Civil Law, Criminal Law, Commercial Law, Administrative Law and Political Economy, and two additional free courses: State organization and Finances.

In 1860, by a Decree, it was decided to establish the University of Iași, consisting of four faculties at that time: philosophy, law, theology and medicine. In the beginning, the Faculty of Law had two professors, as resulting from a report of the rector of the University, 22 October - 3 November 1862, to the Ministry of Public Education. With the development of Romanian legal education, a new way was open to Roman law by the time allotted to its study, by the professors and their work in this field. Thus, by 1936, the duration of law studies was three years. Roman law was studied for two years and was exceeded in the number of hours only by civil law. Equally, Roman law was a compulsory subject for being awarded the title of PhD in law at the faculties in Bucharest and Iași.

The importance of Roman law was also increased by the rigour and professionalism of the those teaching this course, as well as the quality of studies and research in the field. G. Mârzescu, G. Danielopol, Șt. Longinescu, C. Stoicescu, G. Dimitriu, M. G. Nicolau, V. Al. Georgescu, and more recently, C. Tomulescu, Vl. Hanga, M. V. Jacotă are names that can be seen in history books on the principles and institutions of Roman law. The works of some of them came to be known and appreciated by European Romanists. We thus see a continuous relation between Roman law and Romanian law, as well as a constant highlighting of this relation as reflected in the literature and the interest in the study of Roman law at the faculties of law.

This relation established over time between the Roman legal system and our legal system may be noticed in legal terminology. A brief analysis of the etymology of legal terms and expressions shows that approximately 70% of them are of Latin origin. In legal

language, and even common language, a series of Latin words and phrases are used. A number of principles have also retained unaltered both the wording and applicability.

The field of civil law has retained a great deal of Latin phrases and principles. For example, with regard to the defects affecting the validity of contracts (the so-called vices of consent in Romanian), the error (*error*), the fraud (*dolus*) are similarly classified. The error is: *error iuris* (error of law) regulated in the new Civil Code under art. 1207(3), *error in negotio* (error on the legal nature of the act), *error in corpore* (error on the identity of the object), *error in personam* (error on the identity of the person) and *error in substantiam* (error on the substance). The error is governed by art. 1207 of the new Civil Code. The main classification of fraud remains that of *dolus malus* or serious fraud and *dolus bonus* or admissible, tolerable fraud which was not punished in Roman law. Currently, *dolus bonus* refers to those cunning means admitted in contractual practice, which lack seriousness and are not considered defects affecting the validity of a contract, such as exaggeration, for advertising purposes, regarding the quality of goods offered for sale. (Săuleanu and Rădulețu, 2011: 94-95)

In the case of modalities or fortuitous elements of the civil legal act, we can find the expressions *a quo*, namely the period or time limit (*dies*) or condition (*conditio*) “from which” and *ad quem*, namely the period (*dies*) or condition (*conditio*) “to which”. According to the fulfilment or non-fulfilment of a condition, we have two phrases: *pendente conditione*, representing the time between the moment the legal act is concluded and the moment the condition affecting the act is fulfilled or not, and *eveniente conditione*, referring to the situation where the condition affecting that legal act was fulfilled.

A condition of the object of the legal act is to be *in commercio*, i.e. in the civil circuit, a condition regulated under art. 1229 of the new Civil Code.

The legal act generally has two meanings: that of *negotium iuris*, i.e. the act of will, the legal operation performed with the intent to produce certain legal effects and that of *instrumentum probationis* or evidentiary instrument, document.

The effects of a legal act can occur *ex nunc* or “starting now”, pursuant to art. 15(2) of the Romanian Constitution and art. 1 of the Civil Code which provides that “the law disposes only for the future”. In some cases, the effects of a legal act can also occur *ex tunc* or “starting then”, i.e. retrospectively.

According to the principle of relativity of the civil legal act, its effects are produced *inter partes*, towards the authors of the act, without harming or benefiting third parties. There are exceptions to this principle when, by the will of the parties, the act produces effects towards third parties (*penitus extranei*). The acts transferring property are enforceable *erga omnes*.

The performance of a legal act can take place *uno ictu* (suddenly), which requires a single performance on the part of the debtor or can be successive, involving performance in several stages.

Moving from the legal act to real rights, there are several Latin terms. For example, the elements of possession are *animus* or the intent of the holder to behave like a true owner and *corpus* or all material acts denoting the possession of the thing.

The features of ownership were, in the view of the Roman legislature: *usus*, *fructus* and *abusus*, i.e. the right to use a thing, to collect its fruit and to dispose of that thing. These characteristics have been kept and regulated under art. 555 of the new Civil Code: “private property is the holder’s right to possess, use and dispose of property, exclusively, absolutely and perpetually, within the limits established by law”.

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One of the requirements for the acquisition of ownership by adverse possession is good faith or *bona fides*, which both in the Roman view and in the current one must exist at the time of acquiring possession, as according to a Roman principle, maintained even today, *mala fides superveniens non impedit usucapionem* (subsequent bad faith does not prevent adverse possession). Adverse possession is one of the situations in which the psychological element plays a dominant role. In such a situation we refer to the good faith or erroneous belief of a person in a legal situation which does not exist in reality. Another sense of good faith is that of rule of conduct, where the moral element plays an important role. (Dănișor, 2015: 142-152)

In matters of obligations, there are two quite commonly used expressions: *damnum emergens* and *lucrum cessans*. The failure to perform obligations entails the payment of damages, if the failure was due to the guilt of the debtor. In assessing damage the judge must take into account both the actual loss or *damnum emergens*, and the unrealized gain or *lucrum cessans*.

One of the causes leading to the non-performance of obligations is negligence which, depending on seriousness, is *culpa levis* or slight negligence and *culpa lata* or serious negligence.

As for succession, a distinction has always been made between legal succession or *ab intestat* (without a will) and testamentary succession. Both for the legal succession and the testamentary succession, *de cuius* (the deceased) is the one that leaves the inheritance or *is de cuius successione agitur* (the one whose legacy it is about). Some legal phrases are related to the interpretation of the law, while others have entered the common language. For example, in the case of the logical method of interpretation we find the following arguments: *a fortiori* (all the more); *per a contrario* (an argument that starts from the rule of logic according to which when something is asserted, the contrary is denied: *qui dicit de uno, negat de altero*); *ad absurdum* (reduce to absurdity, i.e. only one solution is admissible, the other is an absurdity); *a pari* (it is an application of the rule: *ubi eadem est ratio, eadem lex esse debet* - where the same considerations exist, the same law or the same solution must be applied). (Beleiu, 1992). In the common language we often hear phrases such as: *ab initio* (from the beginning), *ad hoc* (for this, for this purpose), *modus vivendi* (way of living), *quod erat demonstrandum* (which had to be demonstrated), *status quo* (existing state of affairs), *tabula rasa* (erased slate), *ad litteram* (literally), *verba volant, scripta manent* (spoken words fly away, written words remain), *ad calendas graecas* (on the Greek calends, meaning 'when pigs fly'), etc. The list of phrases and terms that are used today in legal language is not limited. It is not confined to the field of civil law, it continues in procedural law, criminal law, international relations. We will provide several examples of principles that keep the same wording and the same applicability. We will continue with the interpretation of the law which, in addition to the above considerations in the case of the logical method, uses a series of rules, namely: *exceptio est strictissimae interpretationis* (exceptions are strictly interpreted), according to which an exception is considered to exist only if it is expressly regulated by law. The following are subject to this rule: texts containing exhaustive enumerations, texts establishing legal presumptions and texts containing an exception (Săuleanu and Rădulețu, 2011: 110-111); *ubi lex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, we must not distinguish). This rule provides that, if a law is general in wording, then its enforcement will be general, as the interpreter must not make any distinctions if the law does not provide them; *ubi cessat ratio legis, cessat lex* (where the reason of law ceases, the law itself ceases). A law ceases when the reasons for which it was adopted disappear.

Other rules of interpretation concern the determination of the effects of the civil legal act which is done in several stages.

The first step or first stage is the proof of the civil legal act. It is an important stage because, if the existence of the act is not proven, there is no question of establishing its effects: *idem est non esse et non probari* (not to exist and not to be proven are the same). The second stage is the interpretation of the provisions of the act and aims to legally qualify the act, as well as to determine the meaning of a clause in order to correctly establish civil rights and obligations. For the correct qualification of a legal act, it is important to determine its content. Consequently, one has to observe whether it is a named act or a typical act, which requires the application of the specific rules of that act, or it is an unnamed, atypical act, where the applicable rules are those of the closest typical act, as they have a special character and, as well known, *specialia generalibus derogant* and *generalia specialibus non derogant*.

Moving from the qualification of the civil legal act to the interpretation of contractual clauses, the basic rule is that contracts are interpreted in accordance with the common intent of the contracting parties, not the literal meaning of the words. If a clause has two meanings, it is interpreted in the sense that it may take effect, not in the sense that it does not take any effect, in accordance with the rule: *actus interpretandus est potius ut valeat quam ut pereat*. This rule receives legal consecration in art. 1268(3) of the new Civil Code (art. 978 of the Civil Code.). The basis of this rule is the principle of mutual agreement (art. 1169 of the new Civil Code, respectively 969 of the Civil Code) and the presumption of good faith - *bona fides presumitur* (art. 1170 of the new Civil Code). If necessary, these two principles can be supplemented by other rules of interpretation such as *in dubio pro reo* (the doubt benefits the one with the debt - art. 1269 par. 1 of the new Civil Code). The principles governing the effects of the civil legal act are rooted in Latin adages or principles of law. Such a principle is *pacta sunt servanda* or the principle of the binding force, i.e. legal agreements have the force of the law between the parties. This principle also applies to international relations, in the case of agreements and treaties concluded between states. Another principle is that of the relativity of the civil act or *res inter alios acta, aliis neque nocere, neque prodesse potest*, according to which agreements have effect only between the contracting parties.

In matters of nullity of the civil legal act, its effects are expressed in the adage *quod nullum est, nullum producit effectum*, i.e. a void act does not produce any legal effect. Three principles must be applied so that this rule will operate. The first principle is the retroactivity of the effects of the nullity of the legal act, which means that nullity produces both *ex nunc* effects (for the future) and *ex tunc* effects (for the past). The second is the principle of restoring the previous situation (*restitutio in integrum*), according to which whatever was performed under an annulled act, must be returned. There are exceptions to this principle. One of these exceptions is based on the principle *nemo auditur propriam turpitudinem allegans* (nobody is allowed to rely on his own unfairness) which, although the subject of much debate in legal literature, was applied in practice.

The third principle refers to the annulment of the subsequent act following the annulment of the initial act (*resoluto iure dantis, resolvitur ius accipientis*). This principle concerns the effects of nullity against third parties and is a consequence of the two principles mentioned above, but also of another great principle of law, namely: *nemo dat quod non habet* or *nemo plus iuris ad alium transferre potest, quam ipse habet* (no one can transfer more rights than he himself has), meaning that if it turns out that the transferor could not transfer a right because his title was abolished, by the annulment of the act any

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subsequent acquirer could not acquire more (Beleiu, 1992). Consequently, the annulment of the original, primary act entails the annulment of the subsequent one, due to its connection with the first. Specifically, in practice the principle *resoluto iure dantis, resolvitur ius accipientis* applies to “authorized acts”, where the annulment of the administrative authorization, which precedes the civil act, leads to the annulment of the civil act based on that authorization. It also applies in the case of two acts, one of which is principal and the other accessory. The annulment of the principal act entails the annulment of the accessory act, according to the rule: *accessorium sequitur principale* (the accessory follows the principal). The rule *accessorium sequitur principale* has a broad applicability. According to it, the property, contract or right follows the legal fate of the principal property, contract or right. An example is the prescription of the right of action, where the lapse of the right of action regarding a principal right leads to the lapse of the right of action regarding the accessory right. The rule *quod nullum est, nullum producit effectum* is removed from other principles, namely: the principle of the conversion of the legal act, the rule *error communis facit ius* and the principle of tort liability.

Another important legal principle that maintains its applicability and wording concerns exception at the time of the beginning of personality. The rule is that legal personality or a person’s capacity to have rights starts from the moment of his birth. But according to the principle formulated on the basis of a text from Paul this time can be placed in the conception period, i.e. during the period between the three hundredth and one hundred and eightieth day (art. 412 and art. 36 of the new Civil Code). This principle is: *infans conceptus pro nato habetur quotiens de commodis eius agitur* (the child conceived is considered born whenever this is in his interest). We cannot list all the principles of Roman law which can be equally found in practice and in the current literature. What we want to highlight is the durability of Roman legal thinking, the power of the Roman jurists to anticipate and create a legal system that can withstand time and space. We also want to note the extent to which legal language is an argument of the influence of the Roman legal system on the Romanian legal system. We will do the same with the Slavic, German, French and Anglo-Saxon influence.

The Slavic influence

Of all the peoples that crossed or temporarily lived in the present Romanian space and finally settled here and became our neighbours, the Slavs left the deepest marks. Their presence north or south of the Danube, east or west of the Romanian territory has been attested since the sixth century. Characterizing the period between the Aurelian withdrawal and the establishment of Romanian medieval states, H. H. Stahl thought that it might be called the “tributary order”. The explanation could be that: “Overall, their dominance had a nominal character and was exerted especially from a distance - given their settlement in marginal points of the territory inhabited by the native population - alternating sometimes with raids for the purpose of repression and prey. Such domination corresponds to their interest in getting the agricultural products they needed as tribute” (Cernea and Molcuț, 2006). But of all the migrants that crossed the local space, the only ones who settled here were the Slavs to the southwest, south, east and north and the Hungarians to the west. The toponymy of the country and many terms in the political superstructure show that before the native element was dissociated from the Slavic one and before the Slavs settled in the areas mentioned above, one could notice a mixture mentioned in our specialist literature, be it historiography, the linguistic field or the legal one.

Starting from the linguistic similarity, some historians and jurists argued that in old Romanian law the Slavic import was the most important after the Roman one. For example, Paul Negulescu believes that political institutions and certain practices of the old Romanian law are borrowed from the Slavs (Iorga, 1935) and, accordingly, the old law of the Romanians contained Slavic legal borrowings (Oroveanu, 1995). Professor of constitutional law at the Faculty of Law in Bucharest, Constantin Dissescu notes that the Slavic influence was felt until the 19th century, manifested quite strongly on institutions of private law (sworn brotherhood, family community, the pre-emption right, the witnesses, inequality of children upon inheritance) and public law (recruitment of the ruler, the ranks of the boyars, administrative organisation). If the Roman element has been preserved especially in terms of ethnicity, race, language and temperament, the Slavonic one was crucial in the political and legal organization, equally influencing the mores. Arguments would be that “because of the barbarian invasion and the withdrawal of inhabitants from the towns and villages of Dacia to the mountains, the political and legal life based on Roman law faded little by little. Language, habits are transmitted the same, but the political settlements become Slavonic to a great extent. The views and practice of Roman legal customs involved abstractions that people with a pastoral and simplified life no longer understood” (Dissescu, 1915).

The reality is that the Slavic influence cannot be denied, the percentage of words of Slavic origin present in the basic vocabulary of the Romanian language is 20% (Bărbulescu et al., 2003). In earlier research, the share of words of Slavic origin was even 2/3 of the words of the Romanian language. The premise was the use of Slavonic for a long period of time in church, state and even “everyday business of the Romanians” (Bogdan, 1894). Under these circumstances, it has been concluded that certain public and private institutions in the Romanian medieval law have the same origin. But certain similarities are related to language, not the structure of Romanian institutions. For example, the ‘cneaz’ and the ‘voievod’, the Slavic leaders of tribal formations, were the Romanian leaders of territorial formations. The territorial community, which represented for the Romanians the foundation of such formations, had long lost the tribal character.

The Slavic origin of some institutions such as the pre-emption right, the inequality of children upon inheritance, sworn brotherhood or the witnesses is questioned as long as it is also found with the Romans and, with regard to sworn brotherhood, the narrative sources attest its older origin on our territory (Cernea, 1976). In other words, without minimizing the Slavic intake, we cannot assign a Slavonic origin to all the institutions that are similar to the Romanian medieval institutions. Moreover, a comparative analysis can often lead to wrong assumptions, and insufficient evidence make research of this kind quite fragile. Eventually, it is quite difficult to establish, if we consider the evolution of the Romanian institutions, how many of them have a certain origin, a certain influence and how many preserve something of the local character. The legal system of a people receives the dynamics that history inspired and, at the same time, its specific features. At present, we find traces of the Slavic influence in the vocabulary of the Romanian language and in toponymy. But the legal vocabulary contains few terms of Slavic origin which have been preserved, some of them are obsolete. Among the terms that have been preserved we can mention the following: *arendă*/ ‘lease’, *dobândă*/ ‘interest’, *dovadă*/ ‘proof’, *învinit*/ ‘accused’, *jaf*/ ‘robbery’, *pârât*/ ‘defendant’, *plată*/ ‘payment’, *poprire*/ ‘seizure’, *temniță*/ ‘prison’, *vinovăție*/ ‘guilt’.

In the common language, as well as in the legal one we find the following words: *huliganism*/ ‘hooliganism’, *izvor*/ ‘source’, *îmbogățire*/ ‘enrichment’, *obicei*/ ‘custom’,

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rudenie/ 'kinship', *tăinuire*/ 'concealment'. The following terms are outdated: *breaslă* (guild), *cislă* (sum allocated by tax units), *dușegubină* (offense or punishment regulated in the Romanian customary law), *clacă* (days that socmen had to work), *pravilă* (regulation), *zapis* (document), *zalog* (pledge), *cneaz* (free peasant, leader of a territorial formation), *voievod* (military leader, supreme judge). The low number of legal terms of Slavic origin demonstrates that: a) the influence of the Slavic legal system on our legal system was temporary, manifested more in the early medieval period, on customary law; b) in the written law, the Codes of the church, even if they were in Slavonic, could not be applied because the population was not Slavonic-speaking. This language was officially introduced into the royal chancelleries and the church, but in reality very few were those who spoke it. Even the clergy did not all know this language. In fact, the service was held in Romanian. Therefore, starting with the 16th century the statutes of the church were written in Romanian; c) the placement of the Orthodox Church under the authority of the Patriarch of Byzantium and the spiritual and political ties with the Byzantine world involved a series of loans in terms of the organization of the state and the church, via the Slavic language; d) the Codes of the church were nothing but translations of Byzantine statutes, which in turn were inspired by classical Roman law. That is why in the written law, essentially, the influence of Roman law is manifest upon the legal rules and institutions. The Slavic influence goes beyond legal language and ceases when the Romanian principalities turn towards Western civilization.

In conclusion, the medieval period witnessed Slavic legal loans, in the field of customary law and especially public law with regard to the political-administrative organization. The fact that the modernization of the Romanian legal system brought the French influence in particular, this orientation led to the blurring of the Slavic element in the legal field, whether it concerned the form or the content. The Latin intake became dominant in the Romanian culture, despite the permanent tendency of the Slavs, especially the Russians, to maintain the Romanian territory within their sphere of influence.

The Hungarian-German influence

It is an influence that is particularly visible in Transylvania because this Romanian territory was for a long time under Hungarian or Austro-Hungarian domination. In Wallachia and Moldavia, the codifications accomplished in the modern period used Austrian codes as a source of inspiration too. However, differences in mentality, culture, the Orthodox religion and the affiliation to the Patriarchate of Byzantium, not the Vatican, rendered these influences insignificant. As we mentioned in the introduction, the Hungarian-German influence was within the scope of I. Condurachi's concerns. He believed that the organization of the towns, the pre-emption right, the witnesses and gender equality upon inheritance followed the German model. As for the pre-emption right and the witnesses, some authors considered that they had been influenced by Roman law, while others believed that these institutions fell within the Slavic influence. We think these are phenomena of acculturation, where it is difficult to say who influences whom. For example, if we talk about the Saxon "seats", the influences (at least in terms of name) are Romanian, after the old *iudices* or seats of judgment.

Under Germanic influence, we find in the Romanian customary law the institution of "ordeals", in the system of evidence, i.e. testimonials. That involved subjecting witnesses or, in the case of women and children, their representatives, to cruel tests, such as the red-hot iron test or boiling water test. It is an institution known in Transylvania,

Wallachia and Moldavia. In written law the influence is expressed by way of sources used in the drafting of legal codes. Thus, the Calimach Code uses as a source of inspiration the Austrian Civil Code as well, with regard to the systematization of the matter. Some voices argue that this influence is much stronger as Christian Flechtenmacher, of Saxon origin, from Braşov, speaking German and having a Ph.D. in philosophy awarded in Vienna, is said to have taken over many more elements from the Austrian Civil Code. Prince Scarlat Calimach's notes on sources and comments of other authors do not prove this theory. Orientations towards the German culture existed in the modern period, but they cannot overcome the French influence in the same period. The differences can be seen in the legal vocabulary too. The number of terms of French origin is significantly higher than that of terms of German origin. The following words are of German origin: *abilita*/'to empower' (to make someone able to perform a legal act), *accept*/'accept' (in the sense of obligation that the drawee undertakes to pay, on maturity, the amount stipulated in the policy to the beneficiary), *arrest*/'arrest', *bloc*/'block' (in the sense of union, group of parties or countries with common interests), *comasare*/'merging', *procură*/'power of attorney', *faliment*/'bankruptcy', *marcă*/'brand', *comitat*/'county' (this term denoted, in Transylvania, the Hungarian administrative units) (Hanga and Calciu, 2007). We find, therefore, few words of German origin, which demonstrates a similar influence on the Romanian legal system.

The Turkish influence

The long Turkish domination for about 500 years in Wallachia (1391-1877) and 400 years in Moldavia (1511-1877) resulted in the enlargement of the vocabulary of the Romanian language with many words of Turkish origin in various fields, either officially or via the popular language, either at strictly lexical level or by derivation with Turkish suffixes (-*giu*, -*ciu*, -*iu*, -*lăc*, -*man*).

Until the late 6th century, the Romanian language borrowed very few words of Turkish origin, the Ottoman Porte exercising during this period only political domination by "collecting and sending the tribute, gifts in kind and supplies of war", by "courtesy calls of gentlemen and landowners to the Porte", by "sending hostages". (Rosetti and Cazacu, 1961). Thus, we find in the Law of the Country a few Turkish words, having another meaning in Romanian, namely: *baş* (interest charged on money loans, in Turkish meaning 'head, leader, chief'. The Turkish noun *baş* became in Romanian a pseudoprefix that formed the compounds *baş-boier*, *hoş-bătăuș*, *hoş-neghiob*); *haraci* 'tribute' (tax that the Christian states, the vassals of the Ottoman Empire had to pay to the suzerain power annually); *olac* (commissioning of work consisting in providing horses for couriers and messengers. In Turkish, *ulak* meant "official messenger with special authorized powers, entitled to requisition whatever he considered necessary to fulfill his mission, especially animals). (Gemil, 1984); *peşcheş* (gifts for the sultan and his dignitaries); *vadea* (payment time limit). The 17th century represents a new stage in the relations between the Romanian Principalities and the Porte, which is characterized by the deepening of the Ottoman rule in parallel with the first signs of the decline of the Empire towards the end of this century (1680-1700) (Stiles, 1995)

The apogee of the Ottoman rule was reached between the 18th century and early 19th century, during the Phanariot era. The establishment of the Phanariot rule had as a premise the conflict of interest between the Ottoman Empire, the Tsarist Empire and the Hapsburg Empire for determining the sphere of influence in South-Eastern Europe, the Romanian Principalities being in most cases the theatre of wars between the Porte, on the

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one hand, and Russia and Austria, on the other hand. The major upheavals that occurred during this period in the political, social, economic and military life of the Romanians and implicitly, in the field of justice, had the natural consequence of a new wave of Turkish words imposed by numerous Turkish and Greek officials, that the Ottoman Porte permanently had between the two principalities or the use of terms already present in the vocabulary of the Romanian language (Hristea, 1984).

These include: *agă*/'aghas' (chief of police or gendarmerie in Bucharest or Iași. In Turkey, the title held by middle-ranking civil and military officials, as well as some socio-professional leaders in the Empire); *amanet*/'pawn' (valuable thing given to someone as a pledge for the repayment of a debt); *avaet* (feudal tax paid by the person receiving a benefit or office); *bacșiș*/'tip' (money given to a person over the payment due for a service rendered); *berat* (office investiture diploma); *cadiu* (Muslim judge, sometimes with responsibilities within the jurisdiction of the church); *caimacam* (deputy ruler of Moldavia and Wallachia. In the Ottoman Empire, deputy of the grand vizier or a high Ottoman official); *capuchehaie* (representative of the Romanian rulers in Constantinople. In Turkish terminology, official representative of the interests of a high Ottoman official at the Porte); *chirie*/'rent' (amount paid in exchange for the temporary use of property); *divan* (the name given to the Ruler's counsel from the second half of the 16th century. In Turkey, service as the supreme counsellor, and at the same time the supreme court open to all, regardless of religion or social rank); *dragoman* (official interpreter in the Oriental countries. „Mare dragoman”, high officer of the Porte, in charge with the diplomatic relations with European countries); *geiagea* (gift offered to high officials occasioned by promotion to higher office); *geremea* (fine, financial penalty); *hochim* (written order emanating directly from the sultan); *mazil* (ruler in the Romanian Principalities removed from ruling. Boyar without any office, small country landowners forming an intermediate social category between boyars and freeholders. Turkish official in the Ottoman Empire); *mucarer* (annual or triennial confirmation of rule); *telal* (auction crier). Most of these Turkish lexical items became obsolete with the end of the Phanariot rule and, after the declaration of independence of Romania, they even disappeared completely. Therefore, if we were to establish a link between the presence of legal terms of Turkish origin in Romanian and the possibility of an Ottoman influence on Romanian law, we might conclude that such an influence existed only in the vocabulary of our language at that time because today the only Turkish word in legal terminology is *chirie*/'rent'. The other terms, in particular of administrative law, brought no content changes within our legal system.

The French influence

The modernization of the Romanian society brings a completely different orientation, as opposed to the traditional one. The Romanians abandon Byzantine models and move towards Western Europe. A contribution in this respect belongs to the Phanariot rulers coming from rich, but educated families. Knowing foreign languages, good translators and diplomats of the Ottoman Porte, they opened for the Romanian Principalities a way to Western culture, modernization and legal reforms.

The French language was the language of diplomacy at the time. Therefore, the rulers of the Romanian Principalities hired French teachers and secretaries. The Russian officers who had come during the wars in Moldavia and Wallachia, spoke French and brought French customs among the boyars. The libraries of wealthy families contained books in French at that time. French newspapers had begun to circulate and be read by the

Romanians, and on the stages in Iași and Bucharest actors acted in the language of Voltaire (Panaitescu, 1990). Openness to Western culture meant, at the same time, openness to the philosophical and legal doctrine and the socio-political model of the West. The reforms of Constantin Mavrocordat in the social, administrative, fiscal and judicial fields or of Alexandru Ipsilanti in the field of justice, the codes drafted in the second phase of the Turkish-Phanariot regime represented a first step towards a modern society. For example, *Pravilniceasca Condiță*/'Collection of Laws' also used as sources, besides the Romanian custom and the Byzantine statutes, the modern legal doctrine (Montesquieu, Beccaria). The Caragea Law used as source of inspiration, it is true to a lesser extent, the French Civil Code of 1804. The Calimach Code, also called the Civil Code of Moldavia is one of the most modern codes written at that time, which was inspired in a balanced proportion by the Custom of the land, the Byzantine legislation and the western legislation. The French Civil Code and the Austrian Civil Code were the western sources. This was the first step towards French legislation, legal thought and culture. But the decisive step was the French Revolution that opened the door to profound transformations throughout Europe. In our own style and pace we followed the same path, the same model: French society. The two revolutions of the 19th century, the 1821 Revolution and the 1848 Revolution, started from the same ideals: liberty, equality, fraternity and partly pursued the same objectives. Following the 1821 Revolution, the Romanians managed to return to the system involving the rule of native princes and left behind about a hundred years of Phanariot rulers. Most changes in Romanian society were imposed by the 1848 Revolution. Against the background of the Russo-Turkish War, the Romanians achieved two main objectives: the Unification of the Romanian Principalities in 1859 and Romania's Independence on 9 May 1877.

The political revolution equally means a social, economic, cultural revolution. In the legal field, after the Unification of the Principalities and on prince Alexandru Ioan Cuza's initiative there was created a new regulatory framework corresponding to a modern society. The model was mostly French. The four codes drawn up in 1864, coming into force in 1865 were inspired by the French Civil Code of 1804, the French Code of Civil Procedure of 1806, the French Criminal Code of 1810 and the Code of Criminal Instruction of 1808. About the Romanian Civil Code it was said that it was an exact copy of the French Civil Code. Under these circumstances, influences in both form and substance were inevitable. We were at that time a Francophone society, French-speaking and French culture consuming. We left behind the Cyrillic alphabet and the Greek-Levantine influences. The vocabulary of the Romanian language was a page open to the reception of French terms. In legal language this reception can be observed today. After Latin terms (70%), the French language occupies the second place with a percentage of about 20% of words of French origin. The remaining 10% are of Slavic, Greek, German, Hungarian, Turkish and English origin. It is interesting that some of these words are also taken from Latin. Therefore, in the modern period, the influence of Roman law was felt indirectly, via French. The rather large number of French lexical elements leads us to abandon their enumeration. Proven remains that since the 19th century France was a benchmark for our country and that we remain a Francophone country despite the Anglo-American model that today's globalized world imposes.

The English influence

The liberalization of international trade after the Second World War, Romania's accession to a number of international organizations before December 1989, and

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especially afterwards, the release of the strap of the communist regime in December 1989 fostered other loans. This time the borrowed model is the American one, expanded on a global scale, infiltrated even in radicalized societies despite their opposition. For example, Islamist suicide bombers drink Coca-Cola, but they still set fire, whenever they have the occasion, to the American flag and attack Western targets.

As for us, whether we want it or not, we have taken a series of habits whose origin may remain unknown, and we have become English speakers. In such cases the vocabulary is the most sensitive receiver. All these transformations undergone by our society in the 26 years of “Westernization” and in particular after Romania’s accession to the European Union, were felt both in the common language and the language of law. Regarding legal language, most terms are related to international trade relations and intellectual property. Such terms are *cost*, *insurance*, *freight*, abbreviated “CAF” or “CIF” (literally “cost, insurance and freight”, the contractual clause according to which the sale price of a commodity includes its value, cost of transport and insurance risks); *cec* (from the English “check”, the pronunciation is the same in Romanian, only the spelling is different); *copyright* (exclusive rights for use and distribution); *dumping* (exporting products to another country at a price below their normal value, in terms of producing or threatening to cause injury to an existing production or delaying the creation of such a national production in the importer’s country); *know-how* (technical or technological knowledge that can be transferred by contract); *marketing* (actions performed by enterprises producing goods and services for knowledge of market requirements in order to organize production to meet these requirements); *management* (knowledge regarding the organization and administration of enterprises, through the development of programs, methods, techniques designed to increase competitiveness).

There are also many English terms used in the field of transport law: *bill of lading* (a document issued by a carrier to the shipper to acknowledge receipt of cargo); *charter-party* (hire or lease contract between the owner of a vessel and the charterer); *sea waybill* (shipping document acknowledging the receipt of the cargo, which is not a document of title), *time-charter* (transport vessel for a fixed period); *demise-charter* (leasing arrangement in which the use of the vessel and expenses pass on to the lessee); *despatch money* (amount paid by a vessel owner to the charterer); *notice of readiness* (a document issued by a shipmaster for the cargo to be loaded or unloaded); *tramp* (cargo carrying merchant vessel with no fixed schedule or definite route); terms relating to different clauses: *free in and out*, *free in and out stowed*, *free in*, *gross terms* etc. (Stanciu, 2015). Other terms belong to the *UNCITRAL* laws or principles - *Principles of International Commercial Contracts* (international conventions, standard laws, uniform rules, guidelines for drafting contracts adopted through the work of levelling the law of international trade within the UNO) or the *INCOTERMS* rules (the word comes from *terms*, representing common practices and techniques in the field of international sales and comparative law studies in matters of commercial terms), e.g. FCA, meaning ‘Free Carrier’ (when the seller delivers the goods at the seller’s premises or another named place). A good illustration of English terms borrowed after Romania’s accession to the European Union is *infringement* in the phrase ‘procedura de infringement’, which refers to the procedure started by the European Commission against Member States which do not perform their community obligations. The scope of legal terms taken from English seems to be confined to these fields. But the 21st century challenges related to computerization and the global issues that the world faces today regarding environmental pollution and terrorism can expand this sphere. Trying to complete this study, the prevailing idea is that

the influence of Roman law has been constant in the Romanian legal system, especially in the field of private law. The French influence has followed the same route and we are practically speaking of twin legal systems connected by a common source of inspiration. Other influences were temporary and affected the form more than the content, they predominantly occurred in the legal vocabulary, being manifest to a lesser extent in the area of rules, principles or institutions of Romanian law.

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