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DOCTORAL SCHOOL OF HISTORY, CIVILIZATION, CULTURE

TESTAMENTUL ÎN TRANSILVANIA ÎN SEC. XVI-XVIII. ASPECTE JURIDICE ȘI DISCURS ASUPRA MORȚII.

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SUMMARY

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Our journey in the world of wills started as a curiosity trying to capture the elements regarding death and the death ceremony seen through these final acts of willpower. What can a will pass on? A few years ago we would have answered that it passes on assets that a person leaves to his/her descendants as many of us maybe still do. After the analysis of wills from the sixteenth and twentieth centuries from Transylvania we can state that aside from these belongings the will can pass on a lot of other information. Perceived from a legal point of view, we believe that it offers information about succession forwarding within a family but from a historical point of view it passes on information about: the testator (age, the number of wills he/she wrote until that moment), the reason for writing the will (illness, going on a journey, old age etc.), types of assets (movable, immovable), the relationships within the family and with other people (the number of children the testator had, the number of times he/she was married) etc.

Why the wills from Transylvania from the sixteenth and eighteenth centuries? After a short research into the necessary bibliography for a subject that analyses wills, we noticed that there is "a gap" in the research of this subject, represented by precisely these two centuries. Maria Lupescu in her doctoral thesis *The Noble Society and Material Culture in Medieval Transylvania: Noble Wills from Transylvania until 1540* analyses the Calvinist wills from the nineteenth century and the attitudes towards death in Transylvania in the nineteenth century. Basically, the period between the sixteenth and the eighteenth centuries wasn't analysed from the point of view of the wills. Starting from the attitude towards death we managed to make a general analysis from a legal point of view, especially regarding the succession process during the analysed period and also the death discourse.

In the case of our paper, the theme of the wills is very complex from many points of view. We had to take into account in our endeavour, among other things, the following aspects:

1. The historical context surrounding the drafting of these wills: the changes of the political regime that took place in Transylvania in the studied period;
2. The legal transformations that took place in this period;
3. The religious character that influenced greatly the way in which the wills were drafted;
4. The social status and the manner in which this one influences the content of the wills;

Taking into account the aspects mentioned above, we managed to get a complex perspective of the world in which the ones who drafted the wills lived. Meanwhile, from the point of view of religious sensitivity, these ones offer us the perspective that testators had on the "the afterlife". Through the will, the dying man or the one who was drafting the will, confessed his true faith, acknowledged his sins and "atoned for them through a public act". The church, in exchange for a part of the inheritance or of a donation, made sure that the sinner would enter that process of reconciliation with oneself and God. The content of the wills revealed information about the assets, the way in which they were divided within the family, the concern of the testator regarding the future of his/her descendants and the manner in which through this last act of willpower the future of the heir was organized (in some cases the inheritance was conditioned by certain aspects such as attending certain schools, in the case of children, or in the case of widows the prohibition to remarry; not respecting these requirements led to the loss of the inherited assets).

Regarding the manner and the conditions of drafting the wills, we cannot speak of a unified legislation in Transylvania. As for the legislative norms regarding the drafting and the

shape of the will and the testamentary succession, due to the fact that in Transylvania we have more nationalities, we can notice the influence of the Church. Towards the end of the eighteenth century and the beginning of the nineteenth century, along with the introduction of the Austrian Code, a clarification concerning the testamentary succession can be noticed. The will, with all its local forms and extensive regulation, and the laws regarding the inheritance fall within the contemporary European norms, based on the same source of law, the Roman law. The law regarding succession in Transylvania of the sixteenth and eighteenth century went through an extensive regulation and had a complex structure, related to the customary norms and the written legislation. The legislation was not a unified one, relevant for all social categories. It was different according to the privileges of the towns, guilds and nationalities. Both the written law and the customs contributed to the establishment of these criteria, both categories of sources operating at the same time. The legislative law can be found in decrees, codices, patents, but also in other legal acts.

The first part of the paper presents the reason for choosing this research topic and offers a short overview of the structure. The second chapter, “Historiographical and Methodological Preliminaries”, offers a short presentation of international and national historiography that analyses attitudes towards death, and of the papers that analyse the wills form the Romanian territory. After the research of relevant literature, we determined that the study of death in the Romanian area started to expand only after 1990. Until that moment there were rather few studies that analysed the subject although on the French territory the drafting of studies in this field started ten years before.

The third chapter, “Transylvania of the Sixteenth and Seventeenth Centuries. “The Keystone” of the Central Eastern European Balance and the Religious Reform” presents the religious and political situation from Transylvania in order to sketch the framework in which the wills were drafted. For Transylvania, and not only, the sixteenth century was the century

of major changes both from a political, and a social point of view. The occurrence of this "unrest" in the European religious life generated effects in the Transylvanian area too. Until the Reform, Catholicism represented the privileged religion in Transylvania, and it was recognised as the official religion that had three episcopates in Alba Iulia, Oradea and Cenad. The decisions of the National Assembly from 1544 and 1556 led to the end of the activity of these episcopates, bishoprics and monasteries. Ecclesiastical officials and people were thrown out of the country and the church assets were secularized[1]. The Christian world gave rise to different protestant cults because it lost its unity. Meanwhile, the Christian world from the centre of the continent was facing the Turkish conquest. The first who "escaped" and embraced one of the new religions were the Transylvanian Saxons. They join Lutheranism. There can be many explanations for this, but the main reasons were the tight connections with Germany, the problems they had with the local Catholic bishops, but also the reinforcement of the Saxon University from a political point of view. All these changes lead to effects on the mentality of those who were drafting their wills. Not only changing the religion but also the religious and military conflicts sped up the drafting of the wills and also determined the writing of more than one will during one's lifetime.

The fourth chapter, "Institutions and Court Management", represents a short overview of the main institutions from Transylvania during the analysed period because these ones had an important role in the drafting of the wills from a legal point of view. During the sixteenth and eighteenth centuries the institutions from the legal system from Transylvania went through transformations closely connected to the evolution of intern and neighbouring politics. If the laws and the customs according to which they were applied kept their content, the fora that enforced them suffered some changes. The fora at the level of the community

[1] Avram Andea, „Biserica românilor transilvăneni în secolul al XVII-lea şi Unirea cu Roma", in *Istoria Românilor,* vol. V, coord. Acad. Virgil Cândea, Editura Enciclopedică, Bucureşti, 2003, p. 777.

went through minor changes, sometimes none at all (the case of the village judge). The most important changes occurred in the manner of instituting the Appeal fora.

In the fifth chapter, “General Aspects of Law Regarding the Drafting of the Wills in the Sixteenth and Eighteenth Century in the Transylvanian Area”, we conduct a presentation of the Roman will which is the basis of the legislation regarding the drafting of medieval wills. In the sixteenth and eighteenth centuries we cannot speak of a unified legislation in what the drafting of the wills is concerned. “The doctrine regarding the drafting of the wills in the sixteenth and the eighteenth centuries in the Transylvanian area” studies this legislation applied to the analysed wills.

In the sixth chapter, “The Death Discourse from the Transylvanian Wills in the Sixteenth and Eighteenth Centuries”, we present some perspectives on death, the way in which it was and is perceived by certain civilizations, the fear of death and the way we die, but also the preparations surrounding the end of the life specific to the Transylvanian area in the sixteenth and eighteenth centuries from the point of the wills, analysing the testamentary provisions related to the planning of the funeral, the memorial services etc.

The last chapter offers an analysis of the will from the point of view of its structure, but also of its importance as a research source. Considered a life synthesis, it connects generations, and when analysed it can offer information about those who appointed, about their drafting, about those who wished to write this type of document, about the ethnic origin of those drafting it and even information about the perspectives regarding these documents that belonged to the Church and the power of the times. Although the will is generally considered to be subjective, paradoxically, for the historian it is one of the most objective documents. Drafted during the last moments of one’s life, or even during the circumstances

that precede the agony, it offers sincere information, *because nobody cheats his own death*[2]. From the point of view of its structure, wills follow the rule of the documents of the era and have three important parts: the introduction (that included the entitlement, followed by a recommendation), the content and the end. The beginning contains the reason for drafting the will, the name of the testator, his/her health status, *invocatio* (his request to the divinity), the marital status and sometimes the date of the drafting.

The Transylvanian wills from the sixteenth and eighteenth centuries revealed a dynamic society connected to the changes that were taking place at the European level both from a religious and a political point of view. The drafting of the documents containing one's last wishes represented conducting an "inventory" of all the actions and inactions up to the moment when the will was drafted. This "mirror" of every person offers us political, social, and personal information, but generates effects on the descendants, on the beneficiaries. Some of the documents of final willpower drafted in the premodern period in Transylvania present the whole life of the testator endowing the wills with a certain specificity. With due regard to the general legislation in order to be validated, they contain quite a few personal elements that offer the researcher the possibility to obtain information regarding the whole family of the testator. Upon the legal standardization (the nineteenth century) of the will the personal information starts to disappear, the will becoming a template document that offers just data about the movable and immovable assets of every person who wants to draft this type of document.

[2] Toader Nicoară, *Clio în orizontul mileniului trei,* Vol.I, Editura Accent, Cluj-Napoca, 2002, p. 155.