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Integration of Transylvania into Romania from the Perspective of Private Law (1918–1945)

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Abstract. In the following study, we present the legal history of Transylvania following the unification of this territory with Romania at the end of the First World War, and until the installation in Romania of the Soviet-type dictatorship. The heterogeneity of the Romanian legal system resulting from the country's territorial gains is discussed as well as the various attempts at integrating Transylvanian law into the nascent legal order of Greater Romania. We also present the short interregnum in which Hungarian private law was again applied between 1940 and 1944. The Romanian legislator, facing the imperative necessity of creating a unified national legal order, had the choice of two paths: extend the already outdated laws of the Old Kingdom of Romania to the newly acquired territories or adopt new unitary laws. Both paths were taken depending on the field of law and the historical period concerned, as presented. Finally, the legislator opted for the extension of the laws of the Old Kingdom at the end of the Second World War, even in fields where better-quality norms were enacted during the reign of King Carol II but were never implemented.

Keywords: Romania, unification, Transylvania, private law, codification, King Carol II

1. Overview: The Development of Romanian Private Law until 1918 and Beyond

Following the formation of the Romanian Principalities, as a result of the union between Wallachia and Moldavia (1859), the need for the modernization of Romanian law arose immediately. As early as 1864, at the initiative of Prince Alexandru Ioan Cuza, the country's first Civil Code was adopted, and a year later the first Code of Civil Procedure as well.

The Civil Code was drafted in six weeks based on the model constituted by the *Code Civil* of France (the *Code Napoléon*), on the draft Civil Code of Italy, on the Belgian Mortgage Law, and on old Romanian law. It came into force in 1865 and was used – regarding the norms of substantive law contained within it – until 1 October 2011 (the date of the entry into force of the 'new' Civil Code, Act 287 of 2009), while for certain norms of civil procedure it remained valid up until 15 February 2013 (the date of the entry into force of the 'new' Code of Civil Procedure). Obviously, the duration for the elaboration of the Civil Code, of only 6 weeks, had a relative character because the reception of French law into the legal system of Romania had been ongoing by the time its development began.

In the Romanian state which became a kingdom in 1881, economic development led to the need to recodify private commercial law. Although in Wallachia a Code of Commerce (*Kondika de Komerciu*) was introduced in 1840 based on the French model, and its effects were extended to the territory of the United Principalities in 1863, it was decided to adopt a new, modern code. The 'new' Code of Commerce (*Codul comercial*), which came into effect in 1887, was developed using Italian law as a source of inspiration: the model was constituted by the Italian Commercial Code (*Codice di Commercio*), but elements of German, Belgian, and French law may also be detected in its text.

In addition to the two codes already mentioned, many other special norms constituted the body of Romanian law in 1918, when the country acquired significant new territories as a result of the political efforts which led to the end of the First World War and the resulting international reconfiguration from which Greater Romania was born.

Following the integration of Transylvania into Romania in the sense of public law, enshrined in the Treaty of Trianon (1920), the need to unify the territory of Greater Romania from the point of view of private law arose immediately. All the more so as at the moment of integration, from the perspective of public law, various particular rules of private law remained in force on the territory of Romania. Just as integration in the field of public law, integration from the perspective of private law was a basic objective of the Romanian state, but its realization proved to be more difficult and to require further efforts due to the normative diversity in the field of private law relations. In Greater Romania, *six different regimes of private law* came to coexist, each with its own particularities. On the territory of the Old Kingdom of Romania (also called the *Regat* or 'Kingdom' using the traditional term), the Romanian Civil Code – developed on the basis of the Napoleonic Code – remained in force. In Dobrogea and in the so-called Cadrilater (a territory acquired from Bulgaria, literally 'the Square'), the law of the Old Kingdom of Romania was in force for the most part, but with significant derogations applicable to Muslims. In Bessarabia, in addition to Russian law, the Hexabiblos of Constantine Harmenopoulos (1345) was still in force, but since

1921, apart from negligible matters, the transition to the law of the Old Kingdom had been gradually taking place. In Bucovina, the Civil Code of Austria from 1811 (the ABGB) and its various amendments up to November 1918 was preserved in force. This code was also in force on the territory of Transylvania, but with the amendments put in place by Hungarian laws since 1867. Finally, in the regions of Banat and Crişana, the rules of Hungarian private law adopted before 1 December 1918 were in force, as was the case also in Maramureş.[1]

2. Partial Unification of Law

Due to the difficulties encountered in applying the law that arose owing to the parallel existence of several legal systems, each with its own peculiarities but also resulting from the political purpose of unification of the law, an ample process of legal integration was initiated following the formation of Greater Romania. As a first step, however, Ordinance no I of the Governing Council of Transylvania, Banat, and the Romanian Lands of Hungary maintained with temporary effects the law in force in Transylvania. A similar provision was included in Art. 137 of the Constitution of 1923.

Legal unification could only be accomplished by unifying the whole country, as a territory, subject to a single normative regime. This solution could be implemented with any measure of speed only by extending the laws of the Old Kingdom over Transylvania. This was the proposal of Minister of Justice Constantin Hamangiu (1869–1932), who as of 1 January 1932 would have wanted to see the law of the Old Kingdom in force in Transylvania, except for a few areas where the implementation of Romanian law would have meant a significant regression in the evolution of regulation (especially in what concerned the age of adulthood for women, matrimonial law, guardianship, the land books, or the inheritance rights of the surviving spouse). The proposed solution resulted in vehement protests. For example, the Bar Association of Cluj considered the extension of the laws of the Old Kingdom over Transylvania to be no less than catastrophic and called on fellow bar associations to formulate positions in a similar wording.[2] Because of this reluctance and the death of Minister Hamangiu, this plan was doomed to failure. The immediate and total introduction of the law of the Old Kingdom to Transylvania was also considered by Romanian scholars of Transylvanian law as being contrary to the interests of Transylvanian Romanians.[3]

Another way of the complete unification of law was the development of new normative acts and new codes with valences in the field of private law.

1 Ujlaki 1936. 7–8; Balás 1982. 156–157.
2 See: *Budapesti Hírlap* 8 July 1931, no 152. 8.
3 Negrea 1943. 6.

This process began after the territorial unification but was the longest-running solution for unifying the law.

The unification of the law could be achieved in part, i.e. by the temporary unification of the rules governing a narrower circle of social relations until complete unification took place. Partial unification was seen as a measure imposed by necessity, a component part of the final unification process. Partial unification, in turn, could be achieved by extending the law of the Old Kingdom on the one hand – as happened, for example, in the case of the Romanian Forestry Code of 1910, the applicability of which was extended in 1923 throughout the territory of Greater Romania. The other, much more common way of going about the partial unification of law was the drafting of new laws that regulated certain domains identically. The partial unification of the law was a continuous process until the outbreak of World War II. Such laws of partial unification were, among others, contained in the following acts, to highlight only the most significant ones: The Act on Literary and Artistic Property of 1923; The Act for the General Regime Applicable to Cults of 1928; The Civil Status Act of 1928; The Act on the Sale on Credit of Industrial and Agricultural Machinery and Motor Vehicles of 1929; The Mining Act of 1924[4] (known at that time as the 'Tancred Constantinescu Act') and then the Mining Act of 1929; The Labour Contracts Act of 1929;[5] The Act on the Prevention Concordat of 1929;[6] The Act on Bills of Exchange and Promissory Notes of 1934;[7] The Check Act of 1934; The Act for the Unification of the Provisions Concerning the Land Books of 1938 (entered into force only in 1947), etc.[8]

> The partial unification of the law, by the very nature of the enterprise, is a process that always takes place gradually, the results of which appear as the pieces of a mosaic in the various fields of law, intertwining repeatedly the legal regimes that previously governed these domains with norms equally in force in all domains…[9]

Following the partial unification of the law, the system of sources of law as still in force in Transylvania was structured as follows:[10]

1. Hungarian legal norms adopted before 1 December 1918 (laws, ordinances, customary law, and judicial practice), including the ABGB;

4 Letső–Domokos 1924.
5 Rozván 1933.
6 See Fenichel–Weisz 1929.
7 Kormoss 1934, Szeghő 1934.
8 For details on this topic, see Ujlaki 1934.
9 Ujlaki 1936. 12. [Translation by the author. Unless otherwise specified in the footnotes, all translations are by the author.]
10 Ujlaki 1936. 11–12.

2. Romanian laws and ordinances that amended the Hungarian norms adopted before 1 December 1918, which were maintained in force on a temporary basis;

3. the laws initially in force only in the territory of the Old Kingdom which were later extended to the entire territory of the country;

4. legal norms born after the formation of Greater Romania and which were in force throughout the country.

The partial unification of the law led to the gradual repeal of norms of law previously adopted and applicable in Transylvania.

Teaching and applying Hungarian legal rules in the Romanian language began immediately. This process was facilitated by the editing of several legal dictionaries,[11] while under the auspices of Ferdinand I University of Cluj numerous university courses of civil law were published in Romanian, based on the ABGB. An important role was played by University Professor *Camil Negrea* (1882–1956) in teaching of the ABGB in Romanian.

3. Agrarian Reform and Mining Laws

The agrarian reform (land reform) was carried out by the expropriation of large estates (by the Decree with the Effect of Law of 12 September 1919 for Agrarian Reform in Transylvania and the Act of 30 July 1921 for Agrarian Reform in Transylvania, Banat, Crişana, and Maramureş).[12] The expropriation was carried out in exchange for compensations, but the compensation paid in the Old Kingdom was more consistent than the amounts paid in the newly acquired territories (40 times the amount of rent applicable to the land area in the Old Kingdom as opposed to only 20 times the amount of rent in Transylvania). The lands thus expropriated were to be sold to peasants, but this proved to be a slow and arduous process. Until 1934, the peasants came to own just 60% of the land expropriated. Areas of agricultural land acquired from the state through such a purchase could not be sold or encumbered by mortgage until the moment of extinguishment of the existing claim of the state against the buyer consisting of the sale price. The agrarian reform of the year 1921 was evaluated as follows:

> although it did not solve the agrarian question, it had a positive effect in terms of economic and social life because it improved the situation of the peasantry and gave a new impetus to the development of capitalism

11 For example: Gerasim 1920, Pop 1921.

12 For details, see: Az erdélyi agrártörvény (Törvény az erdélyi, bánáti, körösvidéki és máramarosi agrárreformról). 1921; Erdélyre, Bánátra, Körösvidékre és Máramarosra vonatkozó földbirtokreform törvény 1921; Az agrár-reform törvény végrehajtási rendelete Erdély-, Bánát-, Körösvölgy- és Máramarosra vonatkozólag 1921; Móricz 1932.

in the agricultural sector, but at the same time seriously affected former landowners, reducing their economic power and political influence.[13]

The Act of 19 March 1921 abolished the pledge as a guarantee over immovables in the parts of the Old Kingdom where it was still practised.[14]

By the act adopted on 20 August 1929 for the Free Movement of Agricultural Property, prohibitions on alienation of land acquired as a result of the agrarian reform were practically abolished.[15] This was a normative act adopted as a result of the Great Depression (1929–1933), its purpose being to defend the interests of creditors as it opened the possibility of enforcement over the lands acquired as a result of the agrarian reform with the purpose of forced sale for extinguishing of claims. Almost simultaneously, however, the interest of debtor relief became imperative.

In 1924, the Mining Act was adopted, which – in accordance with the policy of the National Liberal Party – favoured Romanian indigenous capital in the procedures for granting mining concessions.[16] Concessions could be acquired exclusively by companies registered in Romania (Art. 32), having exclusively shares registered to the name of the shareholder. The shares could not be transferred to foreigners without the consent of the board of directors (Art. 33). A percentage of 60% of the company's capital had to be owned by Romanian citizens, and two-thirds of the members of the board of directors, of the audit committee, and the chairman of the board of directors had to hold Romanian citizenship. Previously granted mining concessions were maintained through the new law but only if foreign investors had obliged themselves to achieve a ratio of 60%–40% between Romanian and foreign capital within the corporation in a period of 10 years and to ensure with immediate effect that the majority of the members of all collective management bodies and the executive director of the enterprise were Romanian citizens.

The law had been widely criticized by foreign investors (especially in the oil sector, at that time of European significance), including through the exertion of diplomatic pressure. As a result of these tactics, the mandatory quota of Romanian capital was reduced to 50.1%. After the National Peasant Party had come to power, a new Mining Act was adopted (in 1929), implementing an open policy and repealing the provisions that had benefited local capital.[17] This change was due, inter alia, to the need to contract external loans with the purpose of

13 Cernea–Molcuț 1996. 260.

14 Balás 1982. 158–159.

15 Oberding 1932.

16 Legea minelor adnotată cuprinzând: Legea minelor din 4 iulie 1924, observațiuni, jurisprudență, dezbateri parlamentare, rapoartele de la Cameră şi Senat, expunerile de motive, deciziuni ministeriale, index alfabetic de Grigore Zamfirescu şi Constantin Zamfirescu 1927. Regarding the opposition against this act in other countries, see: Buzatu 1998. 215–216.

17 Legea minelor din 1929, însoțită de expunerea de motive a domnului ministru V. Madgearu, avizul Consiliului legislativ, rapoartele de la Senat şi Cameră 1929.

stabilizing the Romanian economy in order to be able to counteract the effects of the Great Depression, the creditors requesting the abolition of restrictions in exchange for encouraging lending. The Mining Act adopted in 1937 during the rule of the National Liberal Party was the third such law.[18] It partly reintroduced norms that favoured indigenous capital.

4. Company Law

In the field of company law, several different legal regimes coexisted in parallel: in the Old Kingdom, the Commercial Code of 1887 remained in force, while in Transylvania the Trade Act (Act XXXVII of 1875) was still applied.

In 1924, the Act on the Marketing and Control of Economic Enterprises[19] was adopted, which, with regard to companies owned by the state, introduced unitary regulation in the spirit of the protectionist economic policy of the National Liberal Party, similar to the Mining Act of 1924. The rule divided state-owned companies into two groups: companies that contribute to the achievement of a public interest and companies with a purely economic purpose. The companies that contribute to the pursuit of a public interest functioned as state monopolies, but companies with a purely economic purpose could operate with the participation of foreign capital, even up to a maximum of 40%. So that the shares would not be sold to foreigners, such companies were allowed to issue shares registered exclusively to the name of the owner, and the assignment of the shares was linked to the assent of the board of directors. At least one third of the members of the governing bodies, the president of the board of directors, and the executive director had to hold Romanian citizenship. In a period of seven years, the proportion of Romanian citizens in the workforce had to reach the quota of 75% both in terms of the number of employees and in terms of salaries according to the payroll. This norm was in force until 1929, when, following the accession to power of the National Peasant Party, the Act on the Organization and Administration on a Commercial Basis of Enterprises and Public Wealth was adopted.[20] This new rule repealed the threshold of 40%, allowed the issuance of bearer shares, and abolished restrictions applicable to members of management bodies in the regard of citizenship. In the context of the Great Depression, however, long-awaited foreign investment has not materialized.

18 Legea minelor, adnotată de Mihail Ciocâlteu, cu jurisprudența instanțelor judecătorești și însoțită de expunerea de motive, avizul Consiliului legislativ și raportul Comisiunii Camerii 1937.

19 Legea privitoare la comercializarea și controlul întreprinderilor economice, însoțită de expunerea de motive 1924.

20 Legea pentru organizarea și administrarea pe baze comerciale a întreprinderilor și avuțiilor publice 1929.

5. Reform of the Regulation Regarding Legal Persons

According to Act 21 of 1924 on Legal Persons, legal entities under public law could be established exclusively by an act of legislation and legal persons of private law in the form of associations and foundations, in the forms established by the Commercial Code or by other special laws. Legal entities already in existence were obliged to present evidence within 6 months from the entry into force of the act regarding the legal personality they had enjoyed until then (to submit their statutes), having to request re-registration in the registers of legal persons held by the courts based on their statutes. New associations and foundations could be established by decisions admitting their incorporation issued by the courts. To set up an association, at least 20 members had to join it. The state exercised a right of supervision and control over all legal persons under private law.[21]

The cooperative movement played a significant role in the survival of the Hungarian community in Transylvania and in realizing its economic potential, in complementing the deficient services of the state. Act 35 of 1929[22] on the Organization of Cooperation modernized the law of cooperatives, and the persistent situation of legal uncertainty due to the lack of proper regulation ceased.

> The Romanian law of cooperation of 1929 ensured – with certain limitations – the possibility of free economic organization by members of the Hungarian minority and recognized the cooperative movement of Hungarians as being under the control of its own centres – the Alliance of Hungarian Economic and Credit Cooperatives and the 'Hangya' ['ant' in Hungarian – *note by the author*] Consumer Cooperative Centre – as a national cooperative movement.'[23]

The law granted 10 years for bringing the statutes of Hungarian cooperatives into compliance with the requirements of Romanian laws on cooperation. The Act on Cooperation of 1935 did not modify the original concept, but the 1938 Act on Cooperation adopted during the Carlist dictatorship assigned central control of the cooperative movement to the National Institute of Cooperation (INCOOP), thus winding up a vital pillar of the independent cooperative movement.[24]

21 Balás 1982. 157.
22 See Borbély 1935.
23 Nádas 1940. 591.
24 For details, see: Nádas 1940. 591–592; Hunyadi 2002. 65–76.

6. The Consequences of the Great Depression

The Great Depression, which began in 1929 and that has already been mentioned, had as an effect the intervention of the legislator in the legal relations of private law. Both the means of civil law and those specific to criminal law were employed against usury (see the Act against Usury no 61 of 1931). The interest permitted could not exceed by more than 6 percentage points the (interest rate) set by the National Bank. The legal interest rate was 1 percentage point higher than the interest rate of the National Bank in civil (non-commercial) cases and by 2 percentage points in commercial ones.

In December 1931, a law was enacted on the suspension of enforcement proceedings. Between 1932 and 1934, the parliament has passed several laws on the payment of claims. The first law, in 1932, aimed to absolve smallholders farming on a maximum lot of 10 hectares or 20 acres from the payment of 50% of the debt due. According to the norm, the second half of the claim was to be borne by the state, to be repaid by the debtor over a period of 30 years and at a reduced interest rate of only 4%.[25] For those who held lots larger than 20 acres, the rule would have granted a preferential reduction in interest, reducing the amount of interest due by 10% for debts newer than 5 years and by 50% for debts older than 5 years. Credit institutions protested against the proposed rules, the promised measures for their support not yet having been introduced. The Act for the Liquidation of Agricultural and Urban Debts of 1934 was finally adopted, which reduced agricultural debts by half and granted an extended repayment period of 17 years for the repayment of the remainder, with an annual interest rate set at 3%.[26] Urban debts were reduced by 20%, a repayment term of 10 years, with an annual interest rate of 6% being provided. Credit institutions' losses were partially offset by the state, but as a result of the measure many small banks ceased operations, and lending to the population stopped, banks not wanting to assume its risk.[27] The state also intervened in housing leases, in the interest of protecting tenants.

7. Attempts to Recodify Private Law during the Reign of King Carol II of Romania

Taking into account the failure to extend the civil law of the Old Kingdom to Greater Romania, unification of private law was considered possible by developing new codes. Therefore, the elaboration of the bills of the two codes of private law was initiated, these being the Civil Code and the Commercial Code.

25 Act for the Liquidation of Agricultural Debt. See Gáspár–Váradi 1932.
26 Scurtu 2012. 96.
27 Constantinescu 1943. 251.

The press reported in 1936 the success of these efforts in connection with the elaboration of the draft Commercial Code:

> In the course of the autumn, the draft unitary Commercial Code will be proposed for debate in parliament. The work of the commission which received the task of unifying commercial law is at such an advanced stage that the draft of the new Code may be submitted to the [plenary session of] parliament in the course of the autumn. Multiple laws in force were included in the bill which are closely related with industry and trade. Thus, for example, the Act on the Trade Register and the Act against Unfair Competition were introduced in full in the new bill. This draft introduces throughout the country the institution of companies with limited liability. This corporate form existed until now only in Bucovina. The main purpose of the company with limited liability – as we know – is replacing joint-stock companies. In connection with the regulation of joint-stock companies, the new Code introduces an increased liability of board members.[28]

In reality, the process took much longer.

The draft Civil Code and Commercial Code as well as the Code of Civil Procedure were adopted during the dictatorship of King Carol II of Romania.

The new Civil Code was published in the Official Gazette on 8 November 1939, the entry into force being expected to take place on 1 March 1940. The then Minister of Justice declared that he had to express the greatest gratitude and reverence to His Majesty King Carol II, at whose high instructions and initiative – concerned exclusively with the prosperity of the homeland – this work of truly extraordinary scale had been achieved.[29] The Commercial Code was adopted in 1938 and amended in 1940, and the rules on general meetings of joint-stock companies (articles 208–234) entered into force as early as 7 October 1939.

The full entry into force of all three codes was set for 15 September 1940, subsequently postponed to 1 January 1941, but, finally, on 31 December 1940, the date of their entry into force was again postponed, this time indefinitely. The reason was constituted, among others, by the territorial losses suffered by Greater Romania: Bessarabia was to be ceded to the Soviet Union (in June of 1940), and in the sense of the Second Vienna Award the north of Transylvania had to be ceded to Hungary (on 30 August 1940).

The three codes were considered to be works of great significance of Romanian legal thinking.[30] The territorial losses of Romania, the abdication and forced exile of King Carol II, the events of World War II, and the rise of the Soviet-

28 See *Keleti Újság* 7 August 1936, no 180.

29 See *Keleti Újság* 10 November 1939, no 259.

30 Negrea 1943. 22–23.

style dictatorship prevented the entry into force of the three codes, and thus the unification of private law by new codification could not be achieved.

8. Consequences of the Annexation of Northern Transylvania to Hungary in the Field of Private Law

The annexation of Northern Transylvania to Hungary by the Second Vienna Award (1940) also raised the issue of the need for the reorganization of private law. Through Act XXVI of 1940 (paragraph 3), the Hungarian legislator empowered the government to take all measures considered necessary in order to reconnect the system of private law of the re-annexed territories to the legal system in force in the rest of the country. The Hungarian government would have preferred the full integration of Northern Transylvania when it came to the regulation of private law. However, this process was not without difficulties. The purpose of integration could be achieved only by repealing the ABGB and (re-)implementing Hungarian private law – largely based on customary law. The laws of Hungary, however, especially in the fields of family law and inheritance law, presented fundamental differences from the ABGB, the rules of which had already gained the status of legal custom in Transylvania.[31]

The community of jurists in Transylvania would have preferred to maintain the ABGB in force until the entry into force of the Code of Private Law of Hungary. (The draft Code of Private Law of Hungary was completed in 1928, but it could not be adopted, among other things, precisely because the political élite of the time considered it would jeopardize the revisionist objectives of the time if Hungary and the territories it lost after World War I – the recovery of which was much desired – evolved divergently from a legal standpoint.) The ABGB is indeed a foreign law – according to the argument of Hungarian jurists of the time –, but it cannot be ignored that it was in force for several generations, and as a consequence Transylvanian lawyers had become accustomed to this law to such an extent that they no longer noticed its foreign character.[32]

The objections to the extension of Hungarian law were recapitulated by the Bar Association of Târgu-Mureş through an address.[33] Here we would like to highlight three groups of objections.[34] The first objection showed that the rules contained in the ABGB regarding matrimonial law and the law of succession were

31 For details, see: Burián 2014. 69–81; Szászy 1942. 29–61.

32 Schuster 1940. Rudolf Schuster (Mediaş, 1860 – Budapest, 1941) obtained his diploma at the Faculty of Law in Cluj and later became an attorney-at-law and then judge at the Royal Court of Appeals at Târgu-Mureş, justice of the Curia and patent judge. He was an author of legal literature.

33 See *Erdélyi Jogélet* 1942.

34 Túry 1942. 9–11.

congruent with both the sentiment and the patrimonial and economic relations of the Transylvanian population during the seven decades that the ABGB was in force, and in Transylvania the pertinent norms of Hungarian law therefore seemed foreign. According to the second objection, Hungarian private law was not codified in written form, so it would have been excessively difficult to have its rules made accessible to the population of Transylvania. The third objection, in turn, referred to the fact that statutory law would have been replaced by customary law: thus, the stable framework established by the ABGB would have been replaced by a system of customary law, which is much more fluid by its very nature.

> About customary law, theory teaches us that it is that norm in accordance with the feeling of justice among the people which exists in public perception and which derives its mandatory strength from this very general perception, which is characterized by the fact that it arises not by a single act of the legislature, through the usual forms of legislation, but through its continuous exercise. If this is how things are indeed, then the possibility of extending to the territory of Transylvania by an ordinance of the government of a normative complex of customary law that, in principle, does not live in the public conscience of the Transylvanian people, which is not even in concordance with the legal sentiment of this people and which was not used here for decades or maybe ever, is a little doubtful.[35]

The resistance was not against the unification of law in general but against customary law in particular. This was assessed as an effect of the accommodation of legal thinking in Transylvania to the current and widespread perspective in the second half of the 19th century, which considered legal norms not necessarily from the perspective of national culture but from the perspective of their usefulness and practicality.[36]

The government did not accept these arguments and decided in favour of the unification of the law, with the consequence of repealing the ABGB. Thus, the unification of the law applicable in the eastern territories and in the parts of Transylvania which were re-annexed to Hungary was completed and the system of private law rules of Hungary generalized, the ABGB being definitively repealed from among the sources of positive private law. The most important means of unification of law were as follows: in matters of real property law – the Order of the Prime Minister no 1440 of 1941; in the field of the law applicable to persons and family law – the Order of the Prime Minister no 1600 of 1941; in matters relating to the law of obligations and credit – the Order of the Prime Minister no 5460. The unification process was completed by the Order of the Prime Minister

35 Túry 1942. 11–12.
36 Túry 1942. 13.

no 740 of 1942 on the extension of the norms regarding the defence of possession, matrimonial law, inheritance law, and rights of the author (copyright) and by the provision with general validity that ordered the extension of the norms of private law over the territories annexed by Hungary. The point of view was formulated in the literature according to which, by repealing the ABGB, a legislative vacuum formed in Northern Transylvania because the transplantation of customary law had formally taken place, but the content of the law thus brought into force was not known. Hungarian customary law, formally in force, now had in fact to be created by its very application by the Transylvanian judge.[37]

The foreign law character of the ABGB, imposed on Transylvania by external force, was perceived as favourable to the unification of law in the sense of compatibility of customary law with the legal consciousness of the population of Transylvania, but the main reason remained that of a desire for restoring the unity of the legal system of the territories recently re-annexed with that of the mother country.[38] It was also argued that Hungarian law 'has a content established by custom, but the basis of its application on the territory of Transylvania is no longer provided by any custom but by the indirect manifestation (by reference) of the legislator'.[39]

The solution implemented by the Second Vienna Award was, however, quashed by the conditions prevalent at the end of the Second World War (the outcome being affected by the fact that the basis of the Vienna Award was a decision ultimately made by Hitler and Mussolini, by the successful realignment of Romania following King Michael's Coup, which resulted in an early exit from the alliance with Germany, by Stalin's attitude to the Transylvanian question, etc.). The Romanian legislator extended Romanian private law consisting in the Civil Code of 1864 to Southern Transylvania as early as 1943 and following the 1945 restitution (by Act no 260 of 1945) of Northern Transylvania – in this case, with lightning speed –, overwriting the substantiated scientific plan for the gradual integration of private law, which characterized the period before the Second World War.

References

BALÁS, G. 1982. *Erdély jókora jogtörténete 1849–1947 közötti korra*. Budapest.

BALÁS, P. E. 1942. A magyar szerzői jog szabályainak kiterjesztése a felszabadult keletmagyarországi és erdélyi országrészekre. *Universitas Francisco Josephina Acta Juridico Politica* 6.

BORBÉLY, L. 1935. *Az Új szövetkezeti törvény*. Oradea.

37 Balás 1942. 66–69.

38 For details, see: Túry 1942. 10–12, 17.

39 Túry 1942. 17.

BURIÁN, L. 2014. Szokásjog versus kodifikált jog a magyar magánjog történetében, különös tekintettel a magyar magánjog bevezetésére Észak-Erdélyben. In: *Quaerendo et Creando. Ünnepi kötet Tattay Levente 70. születésnapja alkalmából*. Budapest.

BUZATU, G. 1998. *O istorie a petrolului românesc*. Bucharest.

CERNEA, E.–MOLCUȚ, E. 1996. *Istoria statului şi dreptului românesc*. Bucharest.

CONSTANTINESCU, M. 1943. *Politică economică aplicată 2*. Bucharest.

FENICHEL J.–WEISZ J. 1929. *Az előzetes kényszeregyezségi törvény a miniszteri indokolással*. Deva.

GÁSPÁR, Gy.–VÁRADI, Ö. 1932. *A mezőgazdasági adósságok orvoslásáról szóló (konverziós) törvény népszerű ismertetése*. Oradea.

GERASIM, A. 1921. *Dicționar practic (maghiar–român) al terminilor juridici şi al altor expresiuni şi cuvinte proprii pentru introducerea limbei române în materie de drept civil, procedura civilă, drept comercial, cambial, falimentar şi al altor legi corelative – întocmit în urmarea codurilor române. – (Magyar–román) gyakorlati szótára a román nyelvnek magánjogi, polg. perrendtartási, kereskedelmi váltó- és csődjogi, valamint más ezekkel vonatkozásban levő anyagban való bevezetésre alkalmas jogi műkifejezések, más kifejezésmódok és szavaknak a román törvénykönyvek nyomán összeállítva*. Sibiu.

HUNYADI, A. 2002. A kisebbségi magyar szövetkezeti intézmény a két világháború között. *Korunk* 4.

KORMOSS, E. 1934. *Az új váltótörvény magyarázata a törvény teljes magyar szövegével*. Sibiu 1934.

LETSŐ, L.–DOMOKOS, S. 1924. *Az új román bányatörvény*. Cluj.

MÓRICZ, M. 1932. *Az erdélyi föld sorsa. Az 1921. évi román földreform*. Budapest.

NÁDAS, R. 1940. Szövetkezetek Erdélyben. *Közgazdasági Szemle* 9.

NEGREA, C. 1943. *Evoluția legislației în Transilvania de la 1918 până astăzi*. Sibiu.

OBERDING, J. Gy. 1932. *A mezőgazdasági hitelkérdés rendezésére irányuló törekvések a román törvényhozásban*. Cluj.

ROZVÁN, J. 1933. *Munkaszerződések: Törvény a tisztviselők és munkások jogviszonyairól. A munkaszerződésekről szóló, 1929. évi április 5-iki törvény és végrehajtási rendeletének teljes szövege magyarázattal és joggyakorlattal*. Oradea.

SCHUSTER, R. 1940. Erdély és a magánjog. *Magyar Jogi Szemle* 17.

SCURTU, I. 2012. *Istoria civilizației româneşti. Perioada interbelică (1918–1940)*. Bucharest.

SZÁSZY, I. 1942. Magánjogunk egységesítése az öröklési jog terén. *Universitas Francisco Josephina Acta Juridico Politica* 6.

SZEGHŐ, I. 1934. *Az egységes román váltótörvény*. Cluj.

TÚRY, S. K. 1942. Magánjogunk egységesítésének befejezése, különös tekintettel annak jogforrástani vonatkozásaira. *Universitas Francisco Josephina Acta Juridico Politica* 6.

UJLAKI, M. 1934. *A magyar magánjog módosulásai Romániában*. Budapest.

1936. *Az utódállamok jogegységesítő törekvései és a magyar magánjog*. Szeged.

*** *Az agrár-reform törvény végrehajtási rendelete Erdély-, Bánát-, Körösvölgy- és Máramarosra vonatkozólag. Translated and annotated by Imre Bárdos, Miklós Czeglédy, Predoviciu I.* 1921. Oradea.

*** *Az előzetes kényszeregyezségi eljárásról szóló törvény. A szenátus és a kamara által 1929. évi július 11-én megszavazott szöveg teljes magyar fordítása*. 1929. Arad.

*** *Az erdélyi agrártörvény (Törvény az erdélyi, bánáti, körösvidéki és máramarosi agrárreformról)*. 1921. Braşov.

*** *Budapesti Hírlap* 9 July 1931, no 152.

*** *Erdélyi Jogélet* 1–2. 1942.

*** *Erdélyi sorskérdések*. 1935. Cluj.

*** *Erdélyre, Bánátra, Körösvidékre és Máramarosra vonatkozó földbirtokreform törvény*. 1921. Cluj.

*** *Keleti Újság* 7 August 1936, no 180.

*** *Keleti Újság* 10 November 1939, no 259.

*** *Legea minelor adnotată cuprinzând: Legea minelor din 4 iulie 1924, observaţiuni, jurisprudenţă, dezbateri parlamentare, rapoartele de la Cameră şi Senat, expunerile de motive, deciziuni ministeriale, index alfabetic de Grigore Zamfirescu şi Constantin Zamfirescu*. 1927. Bucharest.

*** *Legea minelor din 1929, însoţită de expunerea de motive a domnului ministru V. Madgearu, avizul Consiliului legislativ, rapoartele de la Senat şi Cameră*. 1929. Bucharest.

*** *Legea minelor, adnotată de Mihail Ciocâlteu, cu jurisprudenţa instanţelor judecătoreşti şi însoţită de expunerea de motive, avizul Consiliului legislativ şi raportul Comisiunii Camerii*. 1937. Bucharest.

*** *Legea pentru organizarea şi administrarea pe baze comerciale a întreprinderilor şi avuţiilor publice*. 1929. Bucharest.

*** *Legea privitoare la comercializarea şi controlul intreprinderilor economice, însoţită de expunerea de motive*. 1924. Bucharest.