

CLAIM FORM BETWEEN THE PAST AND THE PRESENT. THE ELABORATION OF THE CLAIM IN TRANSYLVANIA (18TH CENTURY - FIRST HALF OF THE 19TH CENTURY)¹

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ABSTRACT: *Ladislau Vajda (1780 - 1834), is the descendent of a family that came from the Old Kingdom in Transylvania. He graduated Philosophy and Law at Cluj, and worked there as a public servant. Beginning with 1817 he was a Professor of Criminal Law at Cluj. His writings are considered a sequel of the Transylvanian School of Thought, as it is reflected in his adnotations on a Cossimelli poem, „Reflexiones ad Poemation de secunda legione valachica”. In his book, Az erdélyi polgári magános törvényekkel való esmeretségek három könyve, The three books about the knowledge on the Transylvanian Private Law, he presents aspects regarding the civil procedure in Transylvania, among which he approaches the issue of the. In that time, this procedural act was highly formal, having certain predetermined mandatory parts, and generally it had to provide the answer for „Quis, quid, coram quo, quo jure petatur, et a quo. - Recte compositus, quisque Libellus habet”.(who, what, before whom, for which right, and from whom is claiming – elements that ought to be presented by any well drafted Diploma (summons).*

KEYWORDS: claim form, history, law, probation, reasoning of the claim

JEL CLASSIFICATION: *K41, K10*

1. SHORT BIOGRAPHY OF LADISLAU VAJDA²

- was born in the 1870, village of Glod, county of Cluj;
- his family came to Transylvania from the old kingdom, his family members became nobles and provided him with properties by the Gabriel Bethlen prince;

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² Biographical data about the Romanian jurist were recorded by: Vasile Bichigean, *Poemation de secunda legione Valachica sub Carole barone Enzembergio* in “Arhiva Someşană” nr.2/1925, p. 16; Iuliu Moisil, *The Biography of the Captain Anton Cosimelli and his work Poemation de secunda Legione Valachica*, Arhiva Someşană nr.25/1939, p.451-452 and Vasile Lechinţan, *Dictionary. Romanian State Officials from Transylvania (1368-1918)*, Ed. Argonaut, Cluj-Napoca, 2003, p. 350.

- he attended the high school in Baia Mare, philosophy and legal studies in Cluj;
- in 1801 begins his career in public functions being: chancellor to the royal government from Transylvania, registrar to the tax directorate and later a concept partisan;
- in 1817 becomes professor of criminal law history in Cluj³;
- in 1821 marries with Iosefina Meheși, daughter of Vasile Meheși “a good Romanian and author of some valuable writings and of several petitions⁴”;
- in 1824 publishes the courses: “The notion of law and of private civil laws from Transylvania”, “History of Transylvanian law”;
- in 1829 was named secretary to the Transylvanian royal government, while he acted as the right hand of both Romanian bishops in the political and religious causes;
- in 1830 publishes to Oradea „Poemation” together with his Adnotations (Reflexiones IX);
- in 1833 his wife dies, death that greatly affects him;
- in 1834 dies, “one of the few supporters and defenders of the right cause of the Romanian people from Transylvania”. It was told that at his official funerals the bishop Ioan Lemeni, one of the assistants exclaimed: “Died the Christ of Vlach”⁵.

2. THE WORK OF LADISLAU VAJDA

Ladislau Vajda stands on the one hand as a successor of Transylvanian School, his arguments in this direction being known through the Annotations of Cosimelli Poemations, „*Reflexiones ad Poemation de secunda legione valachica*”. These annotations (reflexions) contribute to the knowledge of Transylvanian realities from the ancient times up to the 1830, but also to the knowledge of the second Nasaud border regiment history⁶.

Regarding his judicial work, Ladislau Vajda stands through his paper: *Az erdély polgári magános törvényekkel való esmeretségek három könyve*- *The three books of the knowledge about the private civil laws from Transylvania*.

In the 3rd part of the paper *Az erdély polgári magános törvényekkel való esmeretségek három könyve*⁷ - *The three books of the knowledge about the private civil laws from Transylvania*, Vajda presents issues of procedural law applicable in Transylvania in the period of the 18th century and the beginning of the 19th century, making reference to the main regulations: Aprobate, Compilate, Werboczi Tripartite. The paper is structured as a course with questions and answers related to the way of drafting the claim for the court, to the court competence, exceptions arose during the trial, but also to the legal means of appeal against a court decision. In this sense, in the content of the

³ According to another point of view, the discipline thought by Vasile Vaida at the Piarist Academic College from Cluj was *Country Law*, Vasile Lechințan, *Dictionary. Romanian State Officials from Transylvania (1368-1918)*, p. 350.

⁴ Vasile Bichigean, *Poemation de secunda legione Valachica sub Carole barone Enzembergio* in “Arhiva Someșană” nr. 2/1925, p. 16.

⁵ Ibidem.

⁶ According to the historian Valeriu Șotropa „the first author who was interested in the history of the Nasaud regiment, was the jurist Vasile Vaida”, Valeriu Șotropa, *Nasaud Frontier District*, Ed. Dacia, Cluj-Napoca, p. 14.

⁷ The paper was printed to Cluj, in 1830.

paper, the Romanian jurist formulates a set of questions to which he tries to give an answer in the paper, together with the students to whom this course is addressed:

“Chapter I

About the case (General Aspects regarding the cases)

1. *Q. (Question). How many meanings has the term of legal claim and about which meaning we will discuss here? Pg.3-4*
2. *Q. The second meaning of the term of legal claim and how it is named?Pg.4*
3. *Q. What is called the document through which the action is brought before the judge? How many types of claims are? Pg.4-5.*
4. *Q. Which elements (coordinates) should be taken into consideration, in elaborating the application? Pg.4-5*
5. *Q. How many parts the claim form has?Pg.6*
6. *Q. What we mean by Facti-speciessum, namely by Description of facts, and what kind of rules should be followed in elaborating this? Pg.6-7.*
7. *Q. What is probation or the Proof, its forms, and how these two are prepared? Pg.7-8.*
8. *Q. What is The claim (The claim reasoning) and what we mention about her? Pg.8-10*

Regarding the claim form, and its elements we observe that the notions are not different from the present time, what surprise you pleasantly is the simple way of defining and transmitting of some notions.

In his paper, Vajda defines the claim form both from the applicant viewpoint and from the judge viewpoint:

“The claim form ...is the way in which the Applicant brings before de Judge the injury (the violation) suffered by him in his rights, with the scope of Recovery; and for the Judge is that legal document through which the party whose rights were disregarded, brings his claims before de judge, with the scope of obliging the defendant to compensations. His action is also called Causa or the cause because the defendant accused by his own act gives a reason (a cause) for the applicant to introduce the application, due to the fact that: the ground of each trial is a human deed through which the applicant rights are violated, and the scope of the trial is the recovery of the violations which results from such deeds”⁸.

Currently, in the doctrine the claim form is defined as “the procedural document through which the applicant, filing the civil claim and meanwhile, usually, proving that the court is competent to judge the case, he/she states his/her claims towards the respondent, asking the Court to bring its contribution in order to solve the claim.”⁹

⁸ *Az erdély polgári magános törvényekkel való esmeretségek három könyve - The three books of the knowledge about the private civil laws from Transylvania*, p. 5.

⁹ Ion Deleanu, *Treaty of Civil Procedure*, Ed. All Beck, București, 2005, vol. I., p. 245

The substantive elements of each claim, according to Vajda acknowledge, are almost the same with the ones provided in present time by art. 112 from the Romanian Code of Civil Procedure:

1. Name, domicile or residence of the parties or, for the legal entities, name and their headquarters, as well as, if the case, registration number from the registry of commerce or from the register of legal entities, fiscal code, bank account. If the applicant lives abroad, he/she will indicate the chosen domicile from Romania, where will be send all the communications regarding the trial.

2. Name and quality of the person who represents the party in the case, and in case of representation by a lawyer, his name and the address of his office;

3. The claim object and its value, based on the applicant appreciation, when this appreciation is possible. For the identification of the immovable, will be shown the village and the county, the street and the number, and, in their absence, the vicinities, the floor and the apartment, or, when the property is registered in the cadastral book, the registration number and the topographic number;

4 Showing *de facto* and *de jure* arguments on which the claim is based;

5. Showing the proofs which support each submission. When the proof is made through documents, these will be attached to the claim form in as many copies as defendants are, moreover o copy of each documents will be attached for the court; the copies will be certified by the applicant that are as the original ones. It will be possible that only a part of the documents to be attached to the claim form, following that the court to ask, if necessary, the entire document. If the documents are written in a foreign language or with ancient letters, translations or copies with Latin letters, certified by the parties will be also submitted. When the applicant wants to prove his claim or any of the submissions, by questioning the defendant, he/she will ask for his presence in person. When the evidence of witnesses is asked, then will be shown the name and the address of the witnesses;

6. Signature.

The same coordinates (elements) of the claim form are included in Vajda's paper *„in elaborating the Claim...we shall have in view the following: „Quis, quid, coram quo, quo jure petatur, et a quo.- Recte compositus, quisque Libellus habet”*.

This means: who, what, in front of who, for which right, and from who asks – these should be stated in any well done Diplomna (claim).

In order for all these to be fully clarified, it should be known that the claim form is composed of three main parts:

a) From facti speciens, namely from a short description of the facts;

b) From Probatio, namely from Probation;

c) And in the end from Demands (claim).

a) Through Facti speciens we understand the short and clear description of the facts on which the claim is based (action); in elaborating this part we should take care of the following: 1) that the facts to be presented in their natural order, with all their necessary circumstances and in such a manner as to all the arising circumstances to be presented in their order, because from the circumstances that precede the fact, the deed is projected and from this flow the consequences; 2. If the are more circumstances, then these should be listed in different paragraphs, separated with letters or numbers, and in

their presentation the unnecessary circumstances to be omitted because this affects the clearness of the fact and causes monotony to the Judge.

b) Probation is that part of the claim which presents the reality of the fact and its circumstances, or that part which asks for the suitability of the Fact with the Law, or if desires to prove the deed it is called Fact probation and if the facts are suitable with de law it is called legal probation. The probation of the facts is usually accomplished by two methods: or the fact is described together with all its circumstances, and in the probation document they are numbered, or each circumstance is described separately and the documents which support these circumstances are attached, numbered with letters or numbers and the hallmarks are included on the left part which is not completed so that the reader to find them.

Further, if the probation document is only one and it serves to prove more circumstances, it is necessary to mention the pages where the probation is made through that document, in order for the Judge to find immediately the probation.

Regarding the legal probation, this is performed by presenting the Laws of our country related to the probation object.

c) The submission (petition) is that part of the claim through which the Applicant by showing the relevant fact and Laws wishes to obtain the law from the accused one. Referring to this part we should mention the following: a) According to Juris Regula Actio regulat tam partes, quam Judicium, the Claim (Petition) governs and obliges both the parties and the Judge, which means that neither the parties in their subsequent documents and nor the Judge in his decision cannot go beyond to what was asked, that is why the Party who asks shall expose the submission in a well defined way and in its entirety, because if his justice would be greater than the sky, the Judge, who shall take into consideration the extent of the Petition, cannot go beyond it through his decision, and in this way the imprudent Party causes to himself an effort and a double expense; from these reasons: b) he shall take care that the claim to include not only the main submissions but also those submissions which derives from the main ones, thus in the example mentioned above besides the main submission, which refers to those two pledged lands, in case of non releasing it, is required also the loss of the pledge amount and the payment of the amounts related to the losses, expenses, as subsidiaries to the main submission; c) In the criminal proceedings (trials) initiated by the public Applicant on behalf of his position, the situation is different because it refers to circumstances that increase, diminish or change the nature of the incriminated facts, due to this the public Applicant cannot file the Petition in a such manner as the Judge in his decision, to not deviate from this; because the circumstances that precede and follow such sinful deeds are revealed along the proceedings from the probation documents submitted by the Parties, because the Judge has the obligation to establish the extent of the punishment taking into consideration these circumstances; d) It is also possible that in the civil proceedings the Applicant to ask something which is contrary to the Legal Truth, and because the Judge is obliged to grant justice to the litigating Parties according to the Law, this is why the Judge cannot adjudge everything it is required.

For this reason, we can conclude that the Applicant in elaborating the Petition shall be very careful in elaborating the parts of the petition; this should be clear and precise, without any ambiguities, so that the inaccurate submission not to give the

Respondent the opportunity to invoke all sorts of exceptions and to cause unnecessary work for the Judge and by this to facilitate the loss of the trial¹⁰.

In this respect several remarks are necessary to be made:

- Are considered fundamental elements of any claim: facts description; probation and object of the claim.
- The facts description finds its correspondent in the *de facto* arguments of the claim (art.112 of the Civil Procedure Code);
- Regarding the probation it can be observed a double meaning. On one hand, this element refers to the use of some means of probation in proving some allegations (*Facti probatio*), and on the other hand it refers to the legal ground of the required issues namely the *de jure* arguments of the claim (art.112 of the Civil Procedure Code);
- The claim object, shall be precise, the civil proceedings being governed by the principle of willingness;

But where are the other elements of the claim: the name, surname of the applicant, of the respondent, and court indication?

In this regard, we can observe that some of them, as well as the indication of the competent court (*Titulus*) are considered adjacent elements of the claim:

“The adjacent parts of the claim are the following: Influxus, Nexus, et Titulus.

Influxus is that introductory part of the Claim, which gradually introduces the description of the facts.

Nexus is that part which links the main submission of the claim, and which ensures the transition from a main submission to another with the help of some connectors.

Titulus is of two kinds, internal and external, the internal one refers to the form of addressing to the court in the extraordinary claims. In this sense, is good to know that: the form of addressing to be compatible with the Court or the Judge honour to which it addresses. (e.g.)”

Regarding the parties name and surname and their quality, these elements referred more to the shape of the claim. Thus *„After mentioning the addressee the claim is wrapped on the top to the bottom and then in the middle from left to the right and on the bottom is mentioned the addressee respective the exterior name, the name from the interior will be joined by the accusative “hez” – to him (to), if the claim is addressed to His Majesty in Latin the form of addressing is like: Ad Sacratissimum Caesareo Regium et Apostolicam Maiestatem, this means To the holy Imperial Majesty and Royal Apostolic Majesty.*

After mentioning these addressing formula, immediately under them, on the left side should be mentioned the nature of the claim: “the humble claim or request”, and near to this exterior title, on the top right side, it is mentioned the name of the applicant and of the respondent, usually as following: for example Nagy Kali Lajosas applicant against Pusztas Sz. Miklosi Gaspar Peter, as defendant. After this, just below is mentioned

¹⁰ *Az erdélyi polgári magános törvényekkel való ismerettségek három könyve - The three books of the knowledge about the private civil laws from Transylvania, p. 10.*

also the object of the claim as following: *Restitution of a land occupied by the defendant to the Puszta Sz Miklos.*

Number of the submitted proving documents is mentioned after the claim object as following: Accl. Fr.3. sub.A.B.C¹¹.

In conclusions it can be observed the excessive formalism (the claim will be submitted only after it was wrapped in a specific manner), and as for a claim to be considered complete, it must fulfil these conditions. In the general framework of the beginning of the 19th century, and especially in Transylvania, there are a small number of persons capable to elaborate such a claim.

¹¹ *Az erdélyi polgári magános törvényekkel való ismeretséget három könyve - The three books of the knowledge about the private civil laws from Transylvania, p. 15.*