

OLD LEGAL INSTITUTIONS THE VOUCHES

Florin Iosif MOLDOVAN*

ABSTRACT: *One of the main institutions of the old law, beside the institution of judges, witnesses, etc., the vouches shows how contracts were concluded in the past. With influences in both civil and criminal law, the vouches was a legal institution which belonged and which was usually used by a certain social class. The existing documents certify this aspect.*

KEYWORDS: *the vouches, the voucher, witness, laws, bargain.*

JEL CLASSIFICATION: *K11*

The vouches means to vouch (guarantee) for someone with something, to set up a guaranty for doing something. *The voucher* is the person who assumes the responsibility for someone or something¹.

It is frequently used between private persons and in their relations with the state, from ancient times until present.

We encounter the vouches for the first time in the waxed tablets discovered at *Alburnus Major* (Rosia Montana), the tablets dating from 139 – 160 A.D.². A contract from the 16th of May 142 has as the object of sale a slave named Apalaustus. The buyer, Dasius Breucus, buys him for the sum of 600 dinars from his owner, Bellicus. The seller declares that the slave is free of any hidden vice, for this and for any possible eviction, and promises by a contract stipulation (*fide promissio*), a sum which is double from the loss which could be caused (*quantum id erit quod ita ex eo evictum fuerit, tantam pecuniam duplam*). The voucher for the fulfillment of the obligations assumed by the seller is Vibius Longus³.

* Lecturer Univ. PhD., `Vasile Goldis` Western University, Arad, The Faculty of Juridical Sciences, ROMANIA.

¹ Dimitrie Macrea, *Dicționarul limbii române moderne*, București, Ed. Academiei R.P.R., 1958, p. 138.

² *Istoria dreptului românesc*, vol. I, București, Ed. Academiei R.S.R., 1980, pp. 108-109.

³ *Ibid.*

Another contract from the 4th of October 160, shows another slave sale, concluded between Claudius Iulianul and Claudius Philetus, where also, in order to guarantee the seller's obligations, Alexander of Antipater appears as a voucher⁴.

The acts of sale concluded with all forms prescribed by the law, including with the presence of at least five witnesses, were considered evidence acts and were kept by the buyer.

We must try to assimilate the vouchers who assumed the liability in a settlement with testifying witnesses, which is another old legal institution, a form of probation in the old Romanian Law. They guaranteed by their word, by their goods and even by their lives, that the one for whom they vouched shall fulfill his assumed obligation. Otherwise, they lost everything. If we consider the witnesses in general, we see that in case of perjury, they were punished either by physical punishments: *'...cutting their beards, ..., shaving their heads, ..., etc'*, or by *fines* (takeover of the witness' wealth by the prince/ruler) *'... the ruler himself took over my cattle ...'*. The same thing happened to the vouchers also. The single difference was that they knew from the beginning for what they vouched, and also by what they vouched, while the testifying witnesses guaranteed for a fact already spent. Nevertheless, both parts were vouching for the credibility of the third person.

The vouche was used in all the three Romanian countries. The vouchers had to have legal capacity, a good material and social status, to be known and appreciated in the community, to be credible, to have the labor force. By vouche was also guaranteed a certain behavior of a person.

The institution, being most frequently used in Transylvania, represented a means of guaranty and by this, of ensurance for the fulfillment of the obligations that were assumed by the ones for whom the vouche was made, but we also find it in the documents of Romanian Land⁵ and Moldova⁶. The usage of the institution is attested since the first written documents. The documents show its essential sides: *in civil law* – the purpose of maintaining the buyer in the possession of the bought thing, the transmission of the obligation to the descendents of the seller, the buyer's obligation to call the seller in vouche in case he is sued by a third person who claims back the bought good; *in criminal law* – the vouche for the person's credibility, that he/she shall fulfill his/her promise, that he/she shall present to the trial, that he/she shall pay the punishment received from the court of law.

In archives, especially in the personal or family funds and collections, we encounter many documents of this type. In order to demonstrate the importance of the

⁴ *Ibid.*

⁵ *D.R.H.*, B. Țara Românească, vol. XI, doc. 83, p. 112 (*vouchers to some people ...*); vol. XXII, doc. 2, p. 2; doc. 41, p. 77 (*Lupul the voucher...*); vol. XXIV, doc. 179, pp. 237-240 (*voucher a landowner ...*), doc. 266, p. 358 (*it is ordered to the vouchers to sell the estates, the mills and the vineyards of Pardas, the one for whom they have vowed and for whom they have vouched...*), doc. 302, p. 402 (*more villagers are vouches for Gheirghe the treasurer...*), doc. 298, p. 397 (*Otesani village is a vouche to Berbul for another village, Cernegesti*); vol. XXV, doc. 293, p. 326 (*three people are vouchers for an estate ...*); vol. XXX, doc. 276, p. 322, doc. 304, p. 342 (*the villagers from Tătarul enter as vouchers to Borcei the headman of the village and for Tudor the High Steward, that they shall pay their quitrents ...*); vol. XXXI, doc. 114, p. 129, doc. 351, p. 376 (*Ivascu the headman of the village is voucher for a debt*); vol. XXXII, doc. 36, 74, 94; vol. XXXV, doc. 81, 203.

⁶ *D.R.H.*, A. Moldova, vol. I, doc. 48, p. 70 (*the landowners of Moldova are vouchers that Alexander ruler and voivode shall accomplish the written ones...*); vol. XXIII, doc. 124, p.160, doc. 512, p. 566; vol. XXIV, doc. 436, p. 414 (*six vouchers for a money debt*); vol. XXV, doc. 189, p. 198 (*vouchers for three villagers who run away*).

vouche I have studied several family funds, some of them belonging to some of the most well-known feudal families from Transylvania. Hence, in Alvinczi family fund⁷, from the total of 930 existing parts, 64 make reference to vouche acts. Berzenczei family fund⁸ presents a number of 393 vouche acts from the XVII-XIXth centuries. The archive of Wass de Tağa family⁹ preserves 8526 documents and family acts from the period 1230-1896, of which an important part refers to vouches. Also, in the Kemeny¹⁰, Barcsay¹¹, Kornis¹² family funds there can be found documents concerning vouches.

Each of these documents represent vouches assumed by vouchers that the person for whom they guaranteed shall not run away from the estate (in the case of serfs), that the person shall present to the trial within the established term, that the person shall not run away from the country or from the estate, that the person shall execute the compulsory working days (collective work), guarantees for the loans, for serfs' release from the prison, etc.

The vouchers were in a different number for each case. On the 9th of June 1670, five serfs have taken a vouche with 40 florins for another serf called Ioan Rîci, who was taken by his mistress Catherine Fejer from Senereus, to prison for insubordination. The five ones have vouched for Rîci that if he shall be released, then he will be obedient and dutiful to his masters¹³. On the 9th of February 1675, the following: Gavril Harsa, Andrei Harsa, Ioan Harsa – serfs of Sigismund Haranglobi, Petru Câmpean – serf of Nicolae Toroczkai, Blaj Paideni – serf of Ioan Toldalagi, Simion Mihai – serf of Sigismund Szolontari, Costin Pop and Ioan Petru - serfs of Martin Toroczkai, were vouchers for Teodor Pușcaș and his two sons Mihai and Ioan from Banica, that they shall not run away from their mistress¹⁴. The vouche in the case of money loan is shown by a document¹⁵ from 1692: Simion Tripon, serf of Gabriel Pekri from Bănica has borrowed the sum of 60 florins from his master, and for their refund have vouched four serfs, all of them from the sale village. Petru Csotlos, Petre Nistor, Costin Tripon and Florea Bonca have obliged themselves that in case Simion Tripon will run away, they shall bring him back in 15 days, if not, they shall each pay 40 florins or they shall be sent to prison.

On the 4th of September 1597, Marcu Acs' widow and his two children, are forever tied as serfs to Stefan Hossznaszo from Bolduț, obliging to bring with themselves all animals and agricultural tools left over from her husband and their father. Nicolae Moldovan, Nicolae Giula, Simion Buda, Precup Rebia, Dumitru Buda, Sava Cioba, Ioan Hadup have also been vouchers. They have all tied willingly each with 40 florins, that the

⁷ The Direction of the National Archives of Cluj County, *Alvinczi family fund*, no. inv. 16-41.

⁸ *Ibid.*, *Berzenczei family fund*, box no. 25, inv. 2246-2326, fasc. 70, no. 1; box no. 9, inv. 770-968, fasc. 91, no. 1-235; box no. 32, inv. 2918-2969; box no. 59, fasc. 23, no. 1.

⁹ *Ibid.*, *Wass de Tağa family*, fasc. LII - LVIII, no. 1-4; 1-7; 1-5; 1-6; 1-2; 1-3; 1-22; quotation 3691-3718; quotation 5256-5312.

¹⁰ *Ibid.*, *Kemeny family fund*, quotation I, no. 49.

¹¹ *Ibid.*, *Barcsay family fund*, quotation VII, no. 320.

¹² *Ibid.*, *Kornis family fund*, inv. 31, drawer 6, fasc. 1 – the vouche acts from Geaca estate (1720-1769); inv. 34, drawer 6, fasc. IV, no. 114-142 – the vouche acts from Sinmartin estate (1682-1766).

¹³ Liviu Moldovan, *Colecția documentelor feudale a Bibliotecii Teleki-Bolyai din Târgu-Mureș*, in *Revista Arhivelor*, year XLVIII, vol. XXXIII, 1971, no. 1, p. 76.

¹⁴ *Ibid.*, p. 77.

¹⁵ *Ibid.*

widow and her children will not run away, and in case they did, if they could not bring them back in 15 days, they shall each pay 40 florins¹⁶.

As we see, the vouche is the form through which someone testifies, vouches with his goods or even with his life that another person shall do or not pre-established. In the case of the vouche, the punishment was predetermined, while in the case of the witnesses it came after the trial.

The vouchers, by the guarantee of their word and their fortune, testified that the one in discussion shall comply with the conditions to which he obliged. In case of a trial, the vouchers vow along with the defendant, confirming what he said. We can see, in this case the document¹⁷ emitted at Oradea on the 9th of September 1349, through which the chapter from Oradea confirms that, according to the decision of Nicolae the palatine, Toma de Biry had vowed with three vouchers and twelve nobles, confirming against Emeric, son of Simion, that his serfs from Kallo have paid the tribute and that they must also pay him now. A document dated with the 7th of June 1636, given at Orhei, by Stately Peter the primeval, shows how he judged the case of Rusul from Măcicăuți with Roman, who had been a voucher for a Turkish horse, with its saddle: `... namely Rusul from Măcicăuți has countered Roman from that place for a Turkish horse, along with its saddle, which were stolen from him, and Roman was a voucher for that horse, but Roman has denied. This is why, Rusul has said that all the village can testify for him, and the villagers have come and all Măcicăuți village before us and have testified, with all their souls, that Roman is a voucher for that horse. So, we have examined Rusul and all people from Măcicăuți who have received my law, and they have vowed at the Saint Church, and Rusul was left on Roman's...`¹⁸.

The institution of the vouche can be found in the past laws, at a distinct chapter, with specific attributions concerning its organization and functioning. Hence, we find it in the Ypsilanti Code (*Pravalniceasca Condică*) 1780-1817, in the chapter `For Vouche`. The regulations from the code stipulate that someone who is a good payer voucher should not be sued but after the vouched person is judged, and all forms through which she could be obliged to pay the due amount have been spent. Only then they could sue the voucher. Given that the borrowed one is very poor and he does not in fact have from where to refund the sum of money, the voucher is liable and under the obligation to pay the borrowed amount. If the borrowed person is missing, the voucher is liable before the court, only after a certain term in which the borrowed person is obliged to present himself and to refund the money¹⁹.

Caragea Law, known under the naming of Caragea Code, applied between 1818-1864, also contains provisions concerning the vouche. The XIIth Chapter entitled `For the vouche` defines the vouche in the 1st Article as being `the bargain and the deed of the voucher`.

¹⁶ *Ibid.*, p. 78.

¹⁷ *D.I.R.*, C. Transilvania, vol. XIV, București, Ed. Academiei, 1955, doc. 729, p. 500.

¹⁸ *D.R.H.*, A. Moldova, vol. XXIII (1635-1636), București, Ed. Academiei, 1996, doc. 429, pp. 492-493.

¹⁹ C. Hamangiu, *Codul general al României: (codurile, legile și regulamentele uzuale în vigoare): întocmit după textele oficiale*, Leon Alcalay & Viața Românească, București, 1907, p. 17.