

THE CONTINUITY IN THE WORK OF VAIDA LADISLAU ON PRINCIPLES OF LAW¹

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ABSTRACT: *In this paper the authors have tried to capture some of the main ideas of the work of one of the most appreciated Transylvanian jurists – Vaida Ladislau – mainly those ideas that have correspondent in actuality. Thus, Ladislau Vaida’s ideas and theories about the nation, its foundation, legality, social contract and power-sharing, the rules of criminal law and the procedure of judgment regarding the criminal trials, justice and legal truth prove Ladislau Vaida’s qualities of subtle connoisseur and also the qualities of a visionary scientist. Ladislau Vaida’s approach on the issues mentioned above proved to be above times and is characterized by a surprising present.*

KEYWORDS: *Ladislau Vaida, principles of law, legality, separation of powers;*
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Defining and widening the concept of nation

Defining the nation and the expansion of this concept are ideas that can be found in the work of Vaida Ladislau. The evolution of this concept is achieved in many stages, achieving the transition from the feudal concept “*nation*” as an assembly of those privileged, endowed with the right to participate in the State leadership, to the modern concept of *nation* in the sense of including all the human beings that have the same origin, language, historical traditions, habits of life, common interests, regardless of the social background and denomination which they belong to. Today, the nation is defined by the Romanian doctrine as being *that homogeneous, enduring human community, distinct from other communities, resulting from a long and complex historical process that is based on*

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*the community of ethnic origin, language, culture, religion, psychic nature, life, traditions and ideals, plus one common historical past and, especially, the desire to be together*².

In this context, Ladislau Vaida's contribution to shaping the concept of nation is more relevant.

In the Annotations of Cosimelli's Poemation³ (Adnotarile la Poemationul lui Cosimelli) one may notice Vaida's intention of defining the concept of a nation on other bases. Vaida, in the spirit of the national movement, confers great importance to the Romanian nobility and their rights. The existence, and its weight as well as the fact that the Romanian nobles held important public positions in the past are important arguments in supporting the rights initially held by the Romanians and lost due to the estranging of the Romanian noble family from their lineage and belief because of the inconveniences brought to the Orthodox people in their accession to the public office.

In the Note 9⁴ of the Poemation, Vasile Vaida describes the religious evolution of the Romanian people and explains the confusion between nations, insisting on the quality of noble as a consequence of the religious affiliation to the Western Church, respectively tolerated as a consequence of the affiliation to the Eastern Church. "*The Romanian nobles united with the other nobles of hunnish origin and were equal with them in their liberties*".

In other words, the Western church followers were considered noble (Hungarians)⁵, and the Eastern church followers – schismatic, tolerated (Romanians) regardless of the German, Hungarian origin "*many families of Hunnish, Hungarian or German origin were considered as belonging to the Romanians, attached to them by the Orthodox religion born firstly in this region...*"⁶. This fusion, confusion between nations rooted in the religious affiliation is highlighted by Vaida, who emphasizes: "*Moreover it should not be seen as a paradox by anyone if I state that many families of Hunnish, Hungarian and German origin were numbered among the Romanian only because they followed the Greek ritual*"⁷.

The mile stone of generalizing the concept of nation for the Romanian movement is represented by the way and degree of comprising the peasantry, which represents the vast majority of the Romanian people in Transylvania and whose strength is the only one capable of giving consistency to aspirations for national and social emancipation⁸. The interest in the fate of the peasantry, the sympathy for its emancipation and integration into the modern concept of nation represented an early concern, these ideas being encountered

² Ion Deleanu, *Instituții și proceduri constituționale – în dreptul comparat și în dreptul român*, Servo Sat Publishing House, Arad, 2003, p. 263.

³ *Reflexiones IX* The nine annotations of Cosimelli's „Poemation” are achieved by the Transylvanian jurist Vasile Vaida and they are concluded next to the Poemation in the most acknowledged edition, the edition of 1830 from Oradea.

⁴ Trying to construct a table of contents regarding the *Annotation to Poemation*, we consider it would have the following structure: Recommendations for readers; *Note 1, Description of the Transylvanian population*; *Note 2, The motives of Poemation*; *Note 3, Description of the Rodnei Valley*; *Note 4, The Someș*; *Note 5, The riches of Rodnei Valley*; *Note 6, The administrative organization of the border regiment*; *Note 7, The Military Institute of Năsăud*; *Note 8, The Military campaigns of the second border regiment*; *Note 9, Personal Considerations*.

⁵ Vasile Bichigean, *Poemation de secunda legione Valachica sub Carole barone Enzembergio* in „Arhiva Someșană” nr. 4/1926, p.73 „...all those who are gifted with noble prerogatives shall be considered Hungarians”.

⁶ Vasile Vaida offers a series of examples of orthodox Hungarians, the orthodox religion firstly born in Transylvania: Gyula – the duke of Transylvania, Mihai, the brother of duke Geiza, Saint Ștefan established an elegant monastery of Greek rite, marriages between the Hungarian kings and princesses of Oriental rite. Vasile Bichigean, *art.cit.*, p.71.

⁷ *Ibidem*, p.72.

⁸ Ladislau Gyemant, *Mișcarea națională a românilor din Transilvania 1790-1848*, București, Ed. Științifică și Enciclopedică, 1986., p.475.

in Inocenție Micu's claims. Subsequently, the representatives of the Transylvanian School reproduced this issue, combated the origins of serfs and sought solutions to eliminate unfair and unjust situations. Vasile Vaida falls into the same direction by enlarging the concept of nation and by considering that peasants as well as the Romanian nobles should not be despised for their fate "*but neither the ordinary people who lack rights for the fate that one or the other has... can not be considered neither as a virtue nor as a vice, but neither can be imputed*".

Interesting is the attempt to define the nation according to Vaida who starts from the confusion between the co-inhabiting nations, confusion generated by the religious "shield" religious. Vaida remarks this confusion and concludes that by identifying a nation with a particular religion nation it would come to the fact that the Hungarians and Germans were considered Romanians only because of their affiliation to Orthodoxy. Therefore, Vaida, starting from this confusion, respecting the principle of legality, proposes to eliminate the ethnic discrimination, "*in establishing the nations the origin of blood will not be taken into consideration (doubtful if it is taken individually)*" and sets the criteria for participation to public affairs, according to Article VI of 1744 and with the response of the systematic deputation in 1791 "*the right to own a property*".⁹ It may be noted, that in his attempt to define the *nation*, Vaida recalls the confusion between nations carried over centuries by hiding under a religious garment and proposes as a criterion of definition *the compliance with certain legal provisions*.

The historical law as regarded by Vaida Ladislau

Within the Transylvanian School, the historical argumentation regarding the Rights of the Romanian nation was the focus of any work. Starting with Ion Budai-Deleanu, this perception is changed, and the tendency is to eliminate these arguments and to use the arguments of natural law to justify a certain form of government which grants rights or offers official recognition to the Romanian nation. Vaida, is one of the followers of this trend, combining historical arguments and the desire to abandon such arguments and to use other grounds in justifying certain rights in his Annotations. In this context, Vasile Vaida uses historical works¹⁰ that confirms the existence of the Romanians as descendants of the Romans on these territories in these areas prior the migration of the Hungarians. "*This notary (the notary of King Bella) tells us plainly that when Tuhutum entered Transylvania, places inhabited by Romanians and Slavs, subject to the rule of Duke of the Romanians – Gealon, and that Duke Gealon dying in battle, the inhabitants (Romanians and Slavs) showed no resistance, but closing an agreement they voluntarily chose Tuhutum as their ruler ... thus (concluded Vaida) the Romanians subjected to the rule not defeated under weapons, but on the basis of an agreement*"¹¹.

By sustaining the idea that the Romanian nation was never oppressed, Vasile Vaida recalls the pact signed in 1427 between nobles and serfs: "*on the event of the reconciliation...they reconciled with the nobles, the Hungarian and Romanian serfs, thus it results that serfs were constituted of Hungarians and Romanians just like the nobility*"¹².

⁹ Vasile Bichigean, *art.cit.*, p.73. According to these regulations, the nobles and the united priests are "incorporated" in one of the three nations on the territory which they chose to settle by purchasing land.

¹⁰ References to the works Anonymus, Katona, Benkő.

¹¹ Vasile Bichigean, *art.cit.*, p.69.

¹² *Ibidem*.

Once achieving an entire historical argument about the rights of Romanians in Transylvania, Vaida ascertains that regardless these theories, or even if there was a theory that would refute the Romanian nation and the Latinity of the language, this argument could not jeopardize the rights of Romanians as no theory can “give or to take something from the Romanians, as a nation is famous not by **the origin of blood**, but by their virtues and gains glory not by its lineage, but by its deeds and by the deeds of its predecessors, or only by its deeds”¹³. Thus, the existence of the Romanians’ rights is not necessarily based on a certain origin of blood (which Vaida does not deny but he justifies it with historical arguments) but on the deeds of a nation. What deeds Vaida makes reference to? In this case it is all about the fights of the border control regiment from Năsăud, because these facts are the gist of the Poemation. “Famous for its belief, steadfastness and courage, (the militia) showed what signifies and what the love for one’s country is capable of... they rather sacrificed their lives than surrender to the enemy, so that you come to believe that the **Hunnish and Roman ancestors, the most brilliant promoters of military virtues, revived in their grandchildren**”.

The theory of the social contract as regarded by Vaida Ladislau

In his works of law, even if dealing with legal issues, Vaida proves the assimilation of this theory in his attempt to define the role of the courts in dealing with cases and finding the truth. Thus, in his work *Az erdély polgári magános törvényekkel három könyve*¹⁴ - *The three books about the knowledge of the private civil laws of Transylvania*. The Book II, entitled “*Despre persoanele care pot interveni în înfăptuirea justiției*” (*About the persons who can intervene in the administration of justice*) reveals how the society has entrusted its power to the king, “*The High Royal Power, to whom the society (republic) entrusted the public and private initiative, internal and external, has as a primary responsibility to settle down, according to the law, the disputes arising between citizens, and since due to the multitude of tasks that the High Royal Power has, it can not solve by itself these disputes, it led to the establishment of Courts provided with power within their jurisdiction; thus, we can figure out why Werboczi in his introduction sustains that Public Law is the law that refers to the Power, to the preserving customs, respectively to public affairs, including here sacred objects, Priests and Officials; from this we conclude that the one who brings offense to the Priests, to sacred objects or to Officials may be accused of having infringed the commonwealth*”¹⁵. The text shows on the one hand that the society entrusted the sovereignty (internal and external) to the High Royal Power (the theory of social contract), and also the fact that the state powers are shared (the reason being the multitude of tasks that High Power exercises). It follows also that Vaida Voievod did not only ignore, but also addressed and theorized on the idea of separation of powers in state, the idea so loved by the ascending social labor of bourgeoisie.

The principle of separation of powers is one of the fundamental principles of the constitutional law and one of the premises of the rule of law.

¹³ *Ibidem*, p.66.

¹⁴ The title of the work *Az erdély polgári magános törvényekkel való esmeretségek*, Cluj, 1830. The work is comprised of three books which covers legal issues: Book I (*About the ways of acquiring properties*); Book II (*About the persons who can intervene in the administration of justice*); Book III (*About the order of judgment, the arising legal ways and the exceptions*).

¹⁵ Vajda Ladislau, *Az erdély polgári magános törvényekkel való esmeretségek második könyve*, Cluj, 1830, pp.1-2.

The principle is closely linked to the idea of a representative system in which the danger of tyranny¹⁶, the abusive violation and restriction of individual rights and freedoms are eliminated. He outlined himself in the state's life to the extent he felt the need of establishing a constitutional regime. That is why most of the modern constitutions enshrined with different shades that principle¹⁷.

The principle of legality

The respect for law is a principle of law present in all Vaida's legal proceedings. Any change in the structure of the society can be achieved only on the legal basis and the overall activity of state organs must develop within the limits of this principle.

In the same Book II, the activity of solving cases is considered in accordance with the law in force, the Romanian jurist making numerous references in this respect:

- The analysis of the facts that form the object of litigation based on the documents submitted by the opposing parties, the evidence emerging from these documents respectively their corroboration with the arguments of the parties and with the *Laws*;
- The judge shares his people justice through Law;
- The law is subject to the scope of finding the truth, and therefore, judgment depends on the dispute brought before the judge regarding the decision that will be pronounced according to the law.

The same principle of legality actually attesting the compliance with the existing state of affairs, is shown in the Vaida's introduction of the third book entitled "*About the order of judgment and the legal ways arising from the exceptions*". In this book, the first part entitled "Common (general) aspects about the legal steps arising in the order of judgment introducing the reader to the procedural matters, talks about the common good and the goals of any society, about the importance of the Emperor in the state leadership and the state leadership according to the law: "*The purpose of the society (Republic) is courage, its means and methods are the Laws, its maintainer is the Prince and his representatives acting as Prosecutors in the case of violating the rights of the Prince and by hearing the accused persons, they administer the justice*"¹⁸.

Nowadays, a modern state in the absence of legality, respectively in the absence of the duty to respect the *law* is inconceivable. The principle itself is a fundamental rule of our law under which all the state organs, institutions, officials, citizens and other inhabitants of the country (the stateless persons) are bound by strict laws and other normative acts of the organs of power and state administration, which governs the social relations in which they participate¹⁹. The compliance with the law and other normative acts is an essential requirement of the Constitution according to the postulate expressed in Article 16 paragraph 2, which states that *nobody is above the law*.

The principles of criminal law (Beccaria's influence) in the work of Vajda Ladislau

The second book also describes the manner of judgment in the criminal trials insisting not only on the application of law enforcement but also on the appeal to "right

¹⁶ Oxford – Dicționar de politică, Univers Enciclopedic Publishing House, Bucharest, 2001, p. 363.

¹⁷ Victor Duculescu, *Drept constituțional comparat*, vol. II, Lumina Lex Publishing House, Bucharest, 1999, 2nd Edition, p. 938.

¹⁸ Vajda Ladislau, *Az erdélyi polgári magános törvényekkel való esmeretségek harmadik könyve*, Cluj, 1830, p.2.

¹⁹ Tudor Drăganu, *Drept constituțional*, Cluj, 1972, pp. 275-276.

conscience”. Vaida insists on establishing the circumstances of committing the offense, on the scale factor of the offence with the gravity of the offense, and the non retroactive application of law: “*In litigations of criminal nature this situation occurs only when the offense took place under the same circumstances that the legislature has had in mind when he created the law; in fact, according to the **principles** of criminal law, the punishment must be adapted to the committed offense and this can be achieved only when the situation will be interpreted in the light of the circumstances existing at the time the defendant brewed the offense; thus all these circumstances can save the defendant, they can mitigate or aggravate the penalty, or move the whole situation under the rule of another crime than hitherto discussed, all these being details which in case they are not taken into consideration by the judge in his judgment than the judgment as well as the punishment will be inaccurate. Considering all these facts we can conclude that in cases of criminal litigations, a judgment that takes into consideration strictly the laws is not always possible as the judgment based on the inherent consciousness is gaining ground in this area. Moreover, in such litigations, the complaint of the Plaintiff is unable to deplete all the details because in such cases the circumstances in which the defendant acted can be found only in the process of the trial by the evidence made available by both sides*”²⁰.

Many of the ideas presented and analyzed by Vaida Ladislau are found in the modern criminal law of any rule of law, including the Romanian criminal law. Thus, the current Constitution of Romania as well as the Criminal Code governs the fundamental principles of the criminal law and criminal procedure: the principle of the trial legality, the principle of finding out the truth; the principle of the active role of judicial organs, the principle of guaranteeing the personal freedom; the presumption of innocence, the right to a fair trial etc.

The idea of truth

Truth is not necessarily a legal truth ruled by one or other courts and in relation to strict legal grounds, although they are still present in the settlement of a case because they are the central point of any judgment; it appears related to the so-called “*right consciousness*”: “*The judicium or the judgment is of two kinds, respectively that based on the strict understanding of the law, namely one based on their own conscience*”. The task of finding the truth belongs to the judge, this being the only professional duty, while he is the only person endowed by law with such an attribute: “*A judge is appointed ... with the purpose of finding the truth... finding the truth is only required where it is questioned and this purpose can be achieved only by the one that holds power in this respect; in this respect see the definition presented above about the notion of Judge*”²¹.

The ideas of Vaida Ladislau translate into the contemporary law through the constitutional and legal provisions governing Justice: the principle of legality (Justice is administered in the name of law), the principle of unity, impartiality and equality, the principle of the right to defense, the presumption of innocence, the principle of the independence of judges and obedience only to the law, the public nature of the debates. Justice materializes in the *activity of settlement, with power of legal truth and res judicata of legal conflicts arising between people or between people and the State, through court judgments*. By the *power of legal truth* we understand the presumption that the act of

²⁰ Vajda Ladislau, *Az erdély... második könyve*, Cluj, 1830, p.3.

²¹ *Ibidem*.

dispute settlement is based solely on the law and expresses the truth. By *res judicata* we understand that the judgment, expressing truth, is final, and thus the parties and the public authorities are obliged to comply with it and implement it²².

²² Tudor Drăganu, *Drept constituțional și instituții politice – tratat elementar*, Bucharest, 2000, vol. I, pp. 214-215.