

A LEGAL MANUSCRIPT OF 1784, REFLECTING THE POSSESSORY RIGHTS OF THE ROMANIAN PASTORAL VILLAGE OF RĂȘINARI

ELA COSMA*

Abstract The study presents *Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem 1784*, a manuscript volume of 1,318 pages, preserved at the Church Museum of the Bishops' House in Rășinari, Sibiu county, transcribed entirely and translated partially by a group of medieval and modern history researchers from the "George Barițiu" Institute of History of the Romanian Academy in Cluj-Napoca. As the urbarial trials filed in court by the Romanian inhabitants of Rășinari against the Saxon Magistrate of the Sibiu city and seat lasted over half a century (1735-1784), these *Transmissionales* fully reflect the course followed by the civil juridical documents (regarding either legal actions or procedures) in South Transylvania during the 18th century. The article also shows the contents, structure, as well as an essential chronology of the volume of *Transmissionales*, followed by its comprehensive annexes (including the conscription of Rășinari from 1754-1784, diplomas and juridical documents from the 13th-18th centuries).

Keywords *Transmissionales*, 1784, Rășinari, Mărginimea Sibiului, legal manuscript, critical edition.

Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem 1784

At the end of June 2017, I visited the Church Museum of the Bishops' House in Rășinari (*Muzeul Bisericesc din Casa Episcopală de la Rășinari*). Among the museum exhibits, I found a thick leather-bound volume. *Transmissionales* became part of an unbudgeted research project

*The Institute of History "George Barițiu" of the Romanian Academy, Cluj-Napoca. ela_cosma@yahoo.com.

ORCID: 0000-0001-6898-2459.

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at my Institute (*Mărginimea Sibiului - History and Cultural Heritage, 2019-2025*)¹ and of a grant of the Romanian Academy (*Romanian Historical Juridical Heritage in Unedited Documents and Archives, 2019-2020*),² as me and my colleagues started the transcription, translation, editing and interpretation of this document. It offers prodigious data about *Jus Valachicum* and the sense of landed property among the richest, most conservative and self-conscious of the Romanian shepherds (*mărginenii*). In 2020, we published an ample monographic volume of studies and critical edition, dedicated to the *Romanian Historical Juridical Heritage from Mărginimea Sibiului*.³

By means of the *Collaboration agreement and scientific project* (Acord de colaborare și proiect științific), signed on 15 July 2017 by the “George Barițiu” Institute of History of the Romanian Academy in Cluj-Napoca (represented by senior researcher I dr. Ela Cosma), on the one hand, and the Orthodox Parish Rășinari (represented by parish priest Nicolae Jianu) and the Rășinari Town Hall (represented by mayor Bucur Bogdan), on the other hand, due to the logistic involvement of the Group of Local Action (Grupul de Acțiune Locală, GAL), represented by its manager Marina Bogdan, at the County Library ASTRA (Biblioteca Județeană ASTRA) in Sibiu, the professional scanning of the entire volume and its digitization were realised under secure conditions, in order to avoid damage of the historical document.

Based on the photocopies of the document from Rășinari provided by Marina Bogdan, in February 2018, at the “George Barițiu” Institute of History in Cluj, within the tutorial of Latin language and applied palaeography conducted by *magister* Vasile Rus, we started the scientific processing and the critical editing of this volume. *Transmissionales* from Rășinari was integrally transcribed by Latinist Vasile Rus (2021) and partially translated into Romanian by Vasile Rus, Ela Cosma, Victor Vizauer, helped by Daniela Deteșan, Mircea Abrudan, Mirela Popa-Andrei (2018-2020).

¹ *Mărginimea Sibiului - istorie și patrimoniu cultural* [Mărginimea Sibiului - History and Cultural Heritage], research project no. III/15, Institute of History “George Barițiu”, Cluj-Napoca, 2019-2025.

² *Patrimoniu istorico-juridic românesc în documente și arhive inedite* [Romanian Historical Juridical Heritage in Unedited Documents and Archives], research grant financially supported by Fondul Recurent al Donatorilor [Donors’ Recurrent Fund] available for the Romanian Academy and managed by Fundația “PATRIMONIUL” [“Patrimoniu” Foundation], GAR-UM-2019-II-2.5-13, project leader Ela Cosma, 2019-2021.

³ *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului (Rășinari, Săliște)* [Romanian Historical Juridical Heritage from Mărginimea Sibiului (Rășinari, Săliște)], coordinated by Ela Cosma, authors and editors Mircea-Gheorghe Abrudan, Marius Boromiz, Alexandru Bucur, Ela Cosma, Daniela Deteșan, Livia Magina, Tatiana Onilov, Vasile Rus, Victor C. Vizauer (Cluj-Napoca/Gatineau: Argonaut/Symphologic Publishing, 2020) (abbreviated: *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*), 870 p.

Contents of the *Transmissionales* from Răşinari

The text of *Transmissionales*, including 175 pages exclusively written in Latin language,⁴ is inaugurated by the letter sent on 16 January 1784 to the emperor Joseph II by the Transylvanian governor Samuel von Brukenthal and the gubernatorial counsellors joined in the courtroom.⁵ *Transmissionales* relates the conduct of the Gubernium's hearing held in court. Gál Hilibi Antal (*Antonius Gál de Hilib*), fiscal clerk in Sibiu, was the fiscal assistant and *procurator* (lawyer, attorney) of the villagers from Răşinari in their action in reconvention filed on 19 April 1782. Gál Hilibi, whom we meet in documents until 1794 in the same capacity as attorney and *procurator*, presented the confirmation report (*certificationis relatorias, raport de adeverire*), that was written on 10 April 1782 and then submitted to the emperor by Berekszászi József (*Berekszászi Iosif*) and Iрмаi István (*Jrmai Stephan*), scribe jurors (*juratis scribis, juraţi scribi*) and notaries at the provincial Transylvanian Great Chancellory (*Cancellaria Majoris caesareo-regio provincialis Transilvanicae*) in Sibiu.⁶

The outcome of the judicial narrative and of the leather-bound volume is represented by the *Deliberatum*, the decision adopted in the Transylvanian Gubernium's meeting of 5 February 1784, at the end of the action in reconvention in the cause of the villagers from Răşinari. It is an original document, set and authenticated with signatures *manu propria* and seals of red Spanish wax.⁷

Its chronology and issues

The action in reconvention from the years 1782-1784, which forms the main narrative of *Transmissionales in causa Possessionis Resinar*, reveals the steps gradually undertaken by the inhabitants from Răşinari, in order to regain the old boundaries of their village and the past benefits enjoyed by them. The account develops in an aleatory order, determined by the flow of arguments. The volume comprises, both in the text with non-chronological exposing and in the annexes, plenty of inserted documents from earlier periods and times, invoked as proofs in

⁴ *Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem 1784*, manuscript, Church Museum in the Bishops' House, Răşinari (abbreviated: *Transmissionales*), 1-175.

⁵ *Ibid.*, 1.

⁶ *Ibid.*, 1, 2, 5, 8.

⁷ *Ibid.*, 1308.

the civil action started and conducted by the Rășinari villagers in the 18th century, during the lawsuit for the protection and restitution of their violated territorial and judicial rights.

The events' chronology can be retraced as follows:

Rășinari reacted *via juris* to the abuses exerted by the Sibiu officials *via facti*. In the years 1695-1703, the consul (mayor) of Sibiu, who was at the same time Saxon comes, Johann Sachs von Harteneck, triggered the actions of robbery and usurpation of the rights enjoyed by the villagers from Rășinari, beginning with the most lucrative one, the right of selling alcoholic drinks and keeping pubs open (*educillium, drept de cârciumărit*). Von Harteneck's actions were continued and aggravated by his successors.⁸

In the year 1700, an inquiry commission of the Saxon National University (*Universitas Saxonum, Sächsische Nationsuniversität*), led by the mentioned comes Sachs von Harteneck, made an investigation and a conscription in the following Romanian localities of the Saxon seat of Sibiu: Poplaca, Rășinari, Cisnădioara, Cisnădie, Sadu, Veștem, Mohu. After the inquiry, document no. 2333/1700 was written, under the title *Misera et status Pagorum Poplak, Roschinar, Michelsberg, Heltau, Czod, Vesten, Moichen* (The Misery and Condition of the Villages Poplaca, Rășinari, Cisnădioara, Cisnădie, Sadu, Veștem, Mohu).⁹ As concerns Rășinari, the document includes a general presentation of the largest village from Mărginimea Sibiului,¹⁰ the conscription of Rășinari for the year 1700,¹¹ the names of the village's inhabitants (*Nomina Incolarum*) and the names of the fugitives (*Nomina Fugitivorum*),¹² followed by the answer given to the received instructions (*Respondent ad Instructionis*) and by the conclusions of the inquiry from 1700.¹³

In 1735 the villagers from Rășinari initiated their first action in court, as complainants, because the Magistrate of Sibiu continued *via facti* Rășinari's spoliation of numerous rights. As a matter of fact:

a) their juridical rights pertaining to the *Jus Valachicum* were violated; the same happened to

⁸ Ibid., 19-20.

⁹ Ibid., 41, 48, 1173-1200.

¹⁰ Ibid., 1188.

¹¹ Ibid., 1189-1197.

¹² Ibid., 1197-1198.

¹³ Ibid., 1199-1200.

b) the tenure rights of the Romanian shepherds from Rășinari over their pastures in exchange for the payment of the tax *quinquagesima* or *terragium*,¹⁴ given the fact that the Magistrate imposed them the payment of an increased fee of 200 Hungarian *florins*, by also arresting 20 innocent jurors from Rășinari¹⁵;

¹⁴ The text from *Transmissionales*, 20, uses the disjunction “or”: *quinquagesima seu terragium*, although, in fact, the two taxes differed from one another. Thus, the *quinquagesima* or the 50th part meant to pay a sheep or a cow out of 50. Later the tax increased, turning into the *tricesima*, that is the pay of a sheep out of 30. On the other hand, there was the “*terragium*, tax on the land”, as defined in *Glosarul de termeni și expresii din documentele latine privind istoria medie a României* [Glossary of Terms and Phrases from the Latin Documents regarding the Medieval History of Romania], [Medieval History Collective of the Institute of History in Cluj] (București, [1965]), 187.

¹⁵ *Transmissionales*, 20-21: “In anno 1735 verno tempore eosdem miseros pecorarios et pecuarios ab omnibus locis pascuorum penes solvendam de iis *quinquagesimam* seu *terragium* a saeculis pacifice tentorum via facti eisdem privassent et novo pro iis in H.Fl.is [Hungaricalibus florenis] 200. annuis taxis solvendis subiecissent, cui tamquam eousque inusitato novo oneri, quia sese submittere noluisent, 20. senatores pagi totam communitatem repraesentantes nec citatos, nec jure convictos in eorum praesentiam magistratuali potestate accersitos in curia praetorali medio satellitum via facti incaptivari, vinciri vinctosque in sqvallidos et publicos civitatis et sedis carceres conici et ibidem tam dire macerari fecisset, donec e vinculis super solvenda tunc noviter et v[i]olenter imposita pasculi taxa de se se obligatorias ab iis violenter extorsissent taliterque in Hungaricalibus florenis 200. introductam pasculi taxam successive ita auxissent, ut iam ab anno 1770. hoc titulo ab iis Rflni [Rhenani floreni] 329. xri [Cruciferi] 10. annuatim exigerentur et in civitatis usus converterentur et Roschinarienses ex iis non participarentur.” (In the year 1735, during springtime, the miserable cow and sheep breeders were deprived *via facti* of all their pasturages, held by them peacefully since centuries, in exchange of the payment of the *quinquagesima* or *terragium*, and they were forced again to pay annual taxes of 200 Hungarian *florins* and to perform a new chore by mandatory payment of [further] annual taxes of 200 Hungarian *florins*. And, because they refused to submit to this chore, that was never used before, 20 jurors who represented the whole village community, without being neither cited, nor convicted *via juris*, were brought by force to the pretorial courtyard by the guards. And this [Magistrate] ordered them to be properly arrested *via facti*, to be put in chains, and once they were arrested to be thrown in the infect public prisons of the seat, so as to rot there terribly, until they [the Magistrate] would tear out from them with violence a commitment on the pay that had just been forcedly imposed for the pasture tax. Then they started to increase little by little the newly introduced pasture tax of 200 Hungarian *florins*, so that in the year 1770 they claimed under this title not less than 329 Rhine *florins* and 10 *kreuzer* yearly. And this money was turned to the benefit of the city, while the villagers from Rășinari could not enjoy their money.) Vasile Rus, Ela Cosma, “*Transmissionales in Causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem 1784*. Documentar” [Documentary], in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 436 (Latin text), 459 (Romanian translation).

c) the village assembly (*forum villanum, adunarea sătească*) of the 40 jurors led by the village judge (*judex, judele sătesc*) was abolished;

d) the pannage,¹⁶ a *beneficium* of feeding of swine with acorns (*glandinatio, ghindărit*), or as the text from *Transmissionales* says: *beneficium glandinationis e sylvis quercinis et faginis* (the right of pannage in the oak and beech forests), was taken away from the inhabitants of Rășinari, as the Magistrate allowed them the access in their own forests of only that many pigs as to cover the value of the tax for pannage paid to the city of Sibiu;

e) the moderated *robotă*, the obligation of the Transylvanian serfs (*iobaggiones, iobagi, Jobaggen*) and tenants (*inquilini, jeleri, Sedler*)¹⁷ to work for their landlords, that was introduced in Rășinari only after 1700 among the villagers, who were actually *libertini*,¹⁸ gradually became a collective serfdom obligation;

f) the highland residents from Rășinari were brought to starvation, suffering a severe lack of local corn and bread, that they had previously received for the executed *robotă* work;

g) 15 of the 30 mountains owned by the villagers from ancient times and pertaining to the village boundaries of Rășinari were occupied by the Magistrate, who initially cashed the tax imposed to the villagers from Rășinari for their very mountains, but later the Saxon Magistrate allocated and leased these mountains to the inhabitants from the neighbouring small villages Tilișca and Poplaca;

h) the places, mills, meadows, woods, vineyards of the villagers from Rășinari were also occupied by the Magistrate of Sibiu;

i) from Bucura and Beleu, the mountains belonging to Rășinari, where the stations of the Austrian military border were located, the wood was cut for the repository (*ligna magazinalia, magazie, Magazin*) of the Sibiu city.¹⁹

¹⁶ Pannage, practice of releasing livestock-pigs in a forest, so that they can feed on fallen acorns, beechmast etc.

¹⁷ The terms in round brackets are in Latin, Romanian, German. *Inquilino* (masculine nominative singular) / *inquilinos* (masculine nominative plural), *inquilina* (feminine nominative singular) / *inquilinas* (feminine nominative plural) = 1. tenant (one who pays a fee to use a land or live somewhere), renter, lessee, lodger, inhabitant of a place which is not his own; 2. tenant farmer.

¹⁸ The *libertini* from Transylvania were “dependent people, although they were exempted from the regular works and servitudes of the serfs, in order to perform further services, usually the military service, in the lord’s citadel or at war, but also many other services in the citadel, on the domain.” David Prodan. *Iobăgia în Transilvania în sec. XVII* [Serfdom in Transylvania in the 17th Century], vol. I, (Bucharest: Editura Științifică și Enciclopedică, 1986), 95. Emperor Joseph II abolished serfdom in Transylvania by means of the solemn patents of 22 August 1783.

¹⁹ *Transmissionales*, 20-25.

As an answer to these complaints, on 8 March 1735 the Transylvanian Gubernium issued a resolution (*gratiosa resolutione*) in the cause of the villagers from Rășinari.²⁰ On 30 September the same year, the rescript of Emperor Charles VI came from Vienna, containing the imperial instruction for the Gubernium as concerned the situation of Rășinari.²¹

As the gubernatorial and imperial resolutions from 1735 had no response in Sibiu, in 1736 another action in court was filed by the complainants from Rășinari.²² The answer of the Sibiu Magistrate to the Transylvanian Gubernium from 13 March 1736 confirmed the reception in copy of the imperial ordinance, that is the reception of Charles VI's rescript from 30 September 1735, together with the *memorandum* transmitted to the emperor by the Romanian Greek-Catholic bishop Inochentie Micu-Klein together with and in the name of the Orthodox inhabitants from Rășinari.²³

The last mentioned *memorandum* was also in vain, being of no help to the villagers from Rășinari. The Habsburgs' aim, to remove Inochentie Micu-Klein from further social grievances and national rebellions of the Romanians from Mărginimea Sibiului, was accomplished in 1744, during Visarion Sarai's uprising, as the Greek-Catholic bishop refused to interfere by force and to condemn the movement led by the Orthodox monk.²⁴ This contributed to the Romanian bishop's banishment to Vienna and Rome.

That is why, between 1735-1777, the injured villagers from Rășinari repeatedly exposed their complaints, injuries and the suffered damages in front of the imperial Supreme Court and of the Transylvanian Aulic Chamber from Vienna, as well as in the councils of the Transylvanian Gubernium from Sibiu. The acts of the complaints were always communicated to the culprit Magistrate of Sibiu, who deposited them in the Magistrate Archive and furnished to the villagers of Rășinari authenticated copies of them.²⁵

The new action filed in court by the plaintiffs from Rășinari in 1752²⁶ determined the issuance in Vienna, on 26 October 1752, of empress Maria Theresia's rescript for the Transylvanian Gubernium. The latter was commissioned to form a gubernatorial inquiry

²⁰ Ibid., 42, 48.

²¹ Ibid., p. 4-5.

²² Ibid., 40.

²³ Ibid., 19. The *memorandum* of the inhabitants from Rășinari to the emperor, containing their grievances and the signature of bishop baron Micu-Klein, in *Transmissionales*, 871-876.

²⁴ Ela Cosma, "Patrimoniul cultural al Mărginimii Sibiului în istoriografie" [Romanian Cultural Heritage from Mărginimea Sibiului in Historiography], in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, chapter "Istoria bisericii" [Church History], 45-47.

²⁵ *Transmissionales*, 18.

²⁶ Ibid., 40, 46.

commission, that was to include among its members the director of the Royal Causes (*Causarum Regalium directore*), who was responsible for the observance of the emperor's rights and monopolies (*regaliae*), or his lawyer, to defend the interests of the villagers from Rășinari.²⁷

The imperial rescript of 26 October 1752 was finally applied, by sending to Rășinari a gubernatorial inquiry commission. As a member of the inquiry commission, Szombathfalvi László (*Ladislaus Szombathfalvi*) was assigned as lawyer (*procurator*) of the inhabitants from Rășinari.²⁸

Although a resolution of the Transylvanian Gubernium concerning the mountains belonging to Rășinari was issued in Sibiu, on 8 March 1755,²⁹ it did not solve the case in question. So that, in 1759, another action was filed in court by the plaintiffs from Rășinari.³⁰

In parallel with the continuously postponed and delayed course of the juridical actions, around the year 1768 a new intrusion occurred in Rășinari. According to the principle *divide et impera*, the Magistrate of Sibiu allotted the best mountains and pastures from inside the village boundaries of Rășinari (namely 15 mountains: Bucșa, Tomnatic, Mălăițel, Cuculeu, Nanu, Groși, Muncelu, Bătrâna de Sus, Bătrâna de Mijloc and Bătrâna de Jos, Piciorul Dușii, Rojdești, Șerbănei, Cânaia, Cindru) to the shepherds from the neighboring village Tilișca, in the seat Săliște, in exchange of a payment of 100 *florins* per year.³¹

In fact, as the villagers from Rășinari insisted in their grievances registered in *Transmissionales*, they wanted back all their 30 mountains, stretching from south to north as follows: Bucșa (*Buxa*), with a sheep shelter called Stâna (*Ovile Sztina*)³²; Tomnatic (*Tomnatik*),

²⁷ Ibid., 5, 45, 46.

²⁸ Ibid., 45.

²⁹ Ibid., 39.

³⁰ Ibid., 40.

³¹ Ibid., 24-25.

³² *Stână* means a specific Romanian type of alpine sheep-pen, with a different organization, structure and functionality than the lowland sheep-pens of the Slovaks at the foot of the Northern Carpathians and of the Hungarians in the *Alföld Puszta*, the Great Hungarian Plain. The word itself, *stână*, like many other Romanian pastoral and mountain related terms (*baci, baier, baligă, batal, băiat, bordei, bortă, brad, brândușă, brânză, brâu, brusture, bucurie, buiestru, burtă, butuc, butură, buturugă, caier, căciulă, căpușă, cătun, cetină, cioară, cioban, cioc, ciocârlie, ciomag, cârlan, cârlig, codru, copac, copil, cruța, curma, curpăn, cursă, custură, dărăma, deretica, descăța, descurca, dezbăra, doină, dop, droaie, dulău, fărâmă, gard, gata, gălbează, genune, ghes, ghiară, ghimpe, ghiob, ghionoaie, ghiont, ghiuj, gorun, gresie, groapă, grui, grumaz, iazmă, iele, jintință, jintuială, leagăn, lespede, mal, măceș, măgură, mălai, mămăligă, mânz, mieru, mire, mireasă, mistreț, mișca, moș, moț, mugure, murg, năpârcă, ortoman, păstaie, păstra, pânză, pârâu, prunc, pururea, răbda, rânză, sterp, stejar, stână, strungă, sugruma, sugușă, șale, șiră, șopârlă, șoric, scula, scurma, sâmbure, traistă, tulei, țap, țarc,*

near Izvorul Bucșii (*Iszvor Buxi*); Mălăițel (*Malaitzel*); Cuculeu (*Kukulio*); Nanu (*Nan*); Groși (*Gross*); Muncelu (*Muntsel*); Bătrâna din Mijloc (*Batrina din Mislok*); Bătrâna (*Batrina*); Bătrâna hel din Sus (*Batrina hel din Szusz*); Piciorul Dușii (*Pitsoru Dusii*); Rojdești (*Rosdesd*); Șerbănei (*Szerbanyei*); Cânaia (*Kinaje*), that is Munții Chinezilor/Munții Cnezilor or Munții Juzilor (*Kinesorum seu Judicum Alpes*, Knez or Judge Mountains); Cindru (*Cintru*), these mountain being usually allotted, since 1768, to the villagers from Tilișca, seat of Săliște, for 100 *florins* yearly; Niculeștiul hel Mic (*Nyikulest hel mik*); Niculeștiul hel Mai Mare (*Nyikulest hel mai mare*); Costișă (*Kosztaszé*); Beșineu (*Bessenjö*); Oncești (*Ontsésd*); Capul Bobeș (*Kapu Bobes*); *Küvoralirol* [?] ³³, usually allotted to the shepherds from Poplaca; Bucura (*Bukure*); Beleu (*Beleo*), where the military border command at the state borders with Wallachia was, and from where the wood for the city repository of Sibiu was cut and sent on the Valea Călugărului brook (*Vale Kolugeru*, Monk's Valley) down the valley to

țarină, țăruș, țundră, țurcă, a se uita, urcior, urdă, urdina, urdoare, vatră, vătăma, viezure, viscol, zăr, zână, zburda, zestre, zimbru), are not of Latin or foreign (Slavic, Turkish, Hungarian, Germanic, Romance) etymology, but *per exclusionem* derive from the Dacian language. The main terms describing the Romanian pastoral way of life in the highlands and mountains were also in use among the Northern and Southern Vlach shepherds. See: Gheorghe Șișeștean, *Români care s-au stins. Valahii din Carpații Nordici și românii din Ungaria* [Extinct Romanians. The Valachians from the Northern Carpathians and the Romanians from Hungary] (Cluj-Napoca: Academia Română, Centrul de Studii Transilvane, 2012); *Colonizarea valahă în Slovacia și colonizarea slovacă în România. Lucrările celei de-a X-a reuniuni a comisiei mixte de istorie româno-slovace (Banská Bystrica, 25-27 septembrie 2012) / Valašska kolonizácia na Slovensku a slovenská kolonizácia v Rumunsku* [The Valachian Colonization in Slovakia and the Slovak Colonization in Romania. Papers of the 10th Meeting of the Romanian-Slovak Mixed Commission of History, Banská Bystrica, 25-27 September 2012], volume of studies edited by Eva Mârza and Marek Syrný, bilingual edition (Banská Bystrica: Múzeum Slovenského Národného Povstania, 2014). Mara N. Popp's maps, regarding: 1. the distribution and frequency of the terms of Romanian origin concerning mountains and shepherding in the Northern Carpathians, and 2. the terminology of the pastoral life in Romania (published in Mara N. Popp. *Urme românești în vieța pastorală a Carpaților Polonezi* [Romanian Traces in the Pastoral Life of the Polish Carpathians]. *Buletinul Societății Regale Române de Geografie*, LIV (Bucharest, 1935), 220; Eadem. *Ungurenii* [The Transylvanian Romanians Settled in Moldo-Wallachia]. *Buletinul Societății Regale Române de Geografie*, LXI (Bucharest, 1942), map II), are reproduced and discussed by Nicolae Dragomir. *Oierii mărgineni* [The Shepherds from Mărginimea Sibiului], edition and historical-ethnographical study by Alexandru Păcurar (Cluj-Napoca: Argonaut Publishing, 2014), 366, 394-395.

³³ Unidentified Romanian toponym.

Poplaca and Rășinari³⁴; Pleșa (*Plese*); La Între Saduri (*La între Szaduri*); Negovanul Mare (*Nyegován Máre*); Negovanul Mic (*Nyegován Mik*); Zimbrul (*Zimbru*); Clăbucet (*Klebutset*); Zinda (*Zsinda, Zsmida, Jmida*).³⁵

Two years later, in 1770, the Sibiu Magistrate already increased the tax for pasturage imposed to the villagers from Rășinari from 200 Hungarian *florins* yearly to 329 Rhine *florins* and 10 *kreuzer* each year. The tax was charged by the city of Sibiu, with no benefit for the Rășinari inhabitants. Instead, their best pastures were entirely confiscated, and the Magistrate started to allocate them in exchange of a tax payment only to shepherds from further, even remote villages. Thus, the villagers from Tilișca, Cacova and Tălmăciu received the grazing right on the pastures possessed by Rășinari.³⁶

No wonder that in 1773 the inhabitants from Rășinari decided again to go to court for another claim, action which was repeated in 1777, too.³⁷ In the meantime, on All Saints Days of the year 1776,³⁸ the Magistrate of Sibiu handed to the inhabitants from Rășinari, after payment of the usual fee, the authenticated copies of the juridical documents containing all their previous complaints³⁹ that they had filed since 1735.

Many details about the Romanian judicial customs (*Mores Valachicales*) and especially about the concrete functioning of the Romanian consuetudinary law (*Jus Valachicum*) are offered in *Transmissionales*, when describing the gubernatorial inquiry unfolded in December 1776 by the commission constituted at the express command of the empress Maria Theresia. The gubernatorial commission investigated the complaints of the inhabitants from Rășinari, that had been presented in front of her majesty the empress by the very representatives of the village community, nominated in the document as follows: judge (*judex, jude*) Bucur Dancăș, old juror (*juratus senior, jurat bătrân*) Manea Persad and juror of the Romanian village Rășinari (*juratus pagi Valachalis Rasinar, jurat al satului românesc Rășinari*) Coman Roman. The inquiry account is preceded by the letter sent on 30 December 1776 by the Gubernium to the

³⁴ *Transmissionales*, 25: "23. In confiniis Valachiae, ubi comanda seu vigilia limitaneorum militum *Beleo*, ubi ligna magazinalia pro civitate Cibiniensi secantur, et per fluviolum *Vale Kolugeru* dictum versus Poplakam et Roschinar demittuntur."

³⁵ *Ibid.*, 24-25, 586-589.

³⁶ *Ibid.*, 21-22.

³⁷ *Ibid.*, 40.

³⁸ On 1 November 1776.

³⁹ *Transmissionales*, p. 18-19.

empress.⁴⁰ This letter includes the imperial order of 17 December 1776 addressed to the Gubernium in order to initiate the inquiry in Rășinari.⁴¹

The gubernatorial letter reproduced in *Transmissionales* is followed by the specification of the 13 inquiry questions⁴² of the investigation conducted in Mărginimea Sibiului at the turn of the years 1776-1777, namely in Sadu on 30 and 31 December 1776 and in Gura Râului on 2 January 1777, and by the joined answers of the 11 witnesses examined in Sadu,⁴³ respectively of the 14 witnesses from Gura Râului.⁴⁴ The detailed accounts of this examination of witnesses from the years 1776-1777, as well as of the previous and much more extensive hearing of 1738, are presented in a special study, also approaching further issues related to the *Jus Valachicum* and the juridical practice in Rășinari, Mărginimea Sibiului.⁴⁵

The results and conclusions of the investigation conducted by the gubernatorial commission inquiring the complaints of the inhabitants of Rășinari were eventually exposed in front of the Transylvanian Gubernium and of the *Thesaurarius* from Sibiu. This determined the issuance of the gubernatorial decision (*determinatione*) no. 5916, on 30 May 1777, in Sibiu. The latter was aiming the revision of the grievances filed by the villagers from Rășinari, in order to settle the legal dispute. The gubernatorial decision was communicated both to the village of Rășinari, and to the members of the Magistrate in Sibiu.⁴⁶ It was a great success for the complainants from Rășinari.

An even more important legal victory was the imperial ordinance sent to the Gubernium of Transylvania from Vienna, on 26 October 1777, in the same cause of Rășinari and its people.⁴⁷

However, the imperial ordinance of 1777 did not succeed to expedite things. That is why, on 20 January 1782 the new rescript issued by emperor Joseph II ordered granting of fiscal assistance to the villagers from Rășinari and commissioned procurator Gál Hilibi Antal (*Antonius Gál de Hilib*) to this effect.⁴⁸

⁴⁰ Ibid., 580-585.

⁴¹ Ibid., 581-585.

⁴² Ibid., 586-589.

⁴³ Ibid., 589-653.

⁴⁴ Ibid., 654-747.

⁴⁵ Ela Cosma, "Din practicile juridice de la Rășinari: *Jus Valachicum* în două ascultări de martori (1738 și 1776-1777)" [Juridical Practice in Rășinari: *Jus Valachicum* in Two Examinations of Witnesses, 1738 and 1776-1777], in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 473-523.

⁴⁶ *Transmissionales*, 7, 15, 39-40, 42, 46-47.

⁴⁷ Ibid., 6.

⁴⁸ Ibid., 1.

The rescript was followed by the imperial ordinance given in Vienna, on 30 January 1782, that included the monarch's response addressed to the Transylvanian Gubernium, who was ordered to make an indictment of the requests and complaints brought by the Rășinari inhabitants to the Magistrate of Sibiu.⁴⁹

It was a miracle that, for the first time since 1735, the Gubernium from the capital city of the Saxon Land reacted quite promptly. On 19 February 1782 it issued a gubernatorial decree, assigning the Magistrate from Sibiu the duty to initiate the procedural cause in court in the period of the Lent (*Păresimi*)⁵⁰ of 1782 and, in a year's time, to come to a final verdict, which was to be sent *in forma Apostolorum*⁵¹ to the Revision Court in Vienna, the highest court of instance of the Austrian Monarchy.⁵²

We have already mentioned the confirmation report, written by the scribes, jurors and notaries Berekszászi József and Irmái István (*Josephi Berekszász, et Stephan Irmái*) in Sibiu, on 10 April 1782. On that very day the confirmation report was layed out in the Magistrate House, in the presence of the viceconsul Johann Georg Honnamon,⁵³ of the seat judge Johann Friedrich von Rosenfeld and of the ordinary public provincial notary Michael Brantsch. On this occasion, the members of the Sibiu Magistrate decided that, according to the legally established term, the trial session of the action in reconvention ought to take place in eight days, therefore on 19 April 1782.⁵⁴

⁴⁹ *Ibid.*, 6, 11-12, 43.

⁵⁰ *Păresimi*, *Postul Mare* (in Romanian), the Lent or "Great Fasting" of 40 days before Eastern is traditionally observed by the believers of the Orthodox Church by eating no meat or animal products (eggs, milk etc.), except for honey and fish (in the days settled for the so-called "fish untying", *dezlegare la pește*). Being the longest and most difficult among the numerous Orthodox fastings, the Lent culminates with the "black fasting" (*postul negru*), that means neither eating, nor drinking (not even water), in the Good Friday (*Vinerea Mare*), the whole day until midnight, or, even more severe, for three days, since Maundy Thursday (*Joia Mare*) until the Service of Resurrection (*Slujba Învierii*), on Saturday to Sunday night, in order to receive the Holy Eucharist (*Sfânta Împărtășanie*).

⁵¹ *In Forma Apostolorum*, in form of *Apostles* (noun in nominative plural). It was a type of official letter of response, a letter of appeal. Apud Antonius Bartal. *Glossarium Mediae Infimae Latinitatis Regni Hungariae* (Budapest, 1901), 39, it resembled to the *litterae transmissoriae* or *transmissionales*. Apud Vasile Rus, it was a letter sent to a superior ecclesial *forum*.

⁵² *Transmissionales*, 7, 11.

⁵³ Johann Georg Honnamon (*Joannes Georgius Honnamon*), provincial consul or mayor of the city of Sibiu (1769-1776), then provincial vice-consul (vice-mayor of Sibiu), *locum tenens* of the mayor, member of the Magistrate in Sibiu (1776-1782).

⁵⁴ *Transmissionales*, 2, 8-11.

And indeed, in the Gubernium *conflux* held in Sibiu, on 19 April 1782, the reconventional action in the often mentioned cause of the village Rășinari was finally filed in court. Gál Hilibi was the attorney (*procurator*) of the villagers from Rășinari, while Körösi de Körös András (*Andreas Körösi de Körös*) was the attorney of the Sibiu residents.⁵⁵

Almost two years later, on 16 January 1784 another trial session of the Transylvanian Gubernium took place in Sibiu, in the presence of the governor and of the other gubernatorial counsellors.⁵⁶ A few days later, on 5 February 1784, the new *conflux* of the Gubernium eventually adopted the long awaited decision (*deliberatum*) that put an end to the action in reconvention.⁵⁷

Annexes of *Transmissionales*

The trial deeds of the village of Rășinari against the Magistrate of the city of Sibiu are included in the first 175 pages of the volume *Transmissionales in causa Possesionis Resinar contra Liberam Regiamque Civitatem Cibiniensem 1784*. The rest of the volume's pages (up to 1.318 sheets) is composed of the comprehensive annexes, which contain all the documents that were significant for the history and possessory rights of Rășinari.

Relevant for the historical demography and statistics, as well as for the economic history is the general conscription of the village Rășinari for 30 years (1754-1784). There are more than 100 pages with the conscription tables and documents, annexed to the volume of *Transmissionales*.⁵⁸ This conscription from the second half of the 18th century, fragmentary edited in the Latin-Romanian critical edition elaborated by Vasile Rus,⁵⁹ has been analysed in detail by Victor Vizauer, from the point of view of the premodern Romanian anthroponymy in Rășinari and Southern Transylvania.⁶⁰

⁵⁵ Ibid., 11-12, 15-17.

⁵⁶ Ibid., 1, 2, 5, 8.

⁵⁷ Ibid., 1308.

⁵⁸ Ibid., 176-276.

⁵⁹ Vasile Rus, "Documente din Rășinari (sec. XIV-XVII). Traducerea în latină (după 1761) a *cărții ocolniță* (1488) și a extrasului actului de danie (1383)" [Records from Rășinari, 14th-18th Centuries. The Latin Translation, after 1761, of the *cartea ocolniță*, 1488, and of the Extract from the Deed of Donation, 1383], in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 318-359.

⁶⁰ Victor V. Vizauer, "Antroponimia românilor din conscripția de la Rășinari (1754-1755)" [The Romanians' Anthroponymy in the Conscription from Rășinari, 1754-1755], in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 409-421.

The volume's annexes also contain much older documents, mostly in Latin language, and some in Hungarian.⁶¹ Among these, we mention *Notata ex metalibus Heltensibus Anni 1469* (Records about the Boundaries of Cisnădie in the Year 1469).⁶² The document comes from the times when the Saxon localities Sibiu (*Hermannstadt*) and Cisnădie (*Heltau*)⁶³ confronted one another in court, both litigating in order to usurp the village boundaries of Răşinari.

In this context, *Transmissionales* includes the translations from "Wallachian" (Romanian) into Latin of two documents, that in the 18th century were considered to have a founding value for the village of Răşinari. Major importance was granted to both documents, as the first of them, the so-called "book of the village boundaries" (*cartea ocolniţă*), was translated into Latin after 1761 (*Translatio [...] Literarum metalium Resinariensium*), in order to be used as a strong testimony in court.⁶⁴ *Cartea ocolniţă* of 22 May 1488 described the perambulation of the village boundaries (*reambulatio*)⁶⁵ that separated the Romanians living in Răşinari from their "big neighbours" of the Saxon Cisnădie (*вєчнїв Чѡв марв Чвѣходїв, vecinii cei mari Ciznodii, vicinos Csisznodieny*). The second document is represented by the Latin translation of a Romanian original, written with the Cyrillic alphabet and including a few Slavonic words. It is the extract from a deed of donation of 7 January 1383. The document indicated "the year from the making of the world 6791" (*anul de la facerea lumii 6791*), when Radu Negru Vodă (*Radul Negru Vode*), voivode of Wallachia and *herceg* of the Land of Amlaş and Făgăraş (*Ţara Amlaşului şi Făgăraşului*), donated certain estates to the Saint Paraschiva Church of Răşinari. The donation was confirmed by his son, the famous Wallachian ruler Mircea cel Bătrân (*Mircse Vode Beserab*).⁶⁶

In her *History of a Controversion*. "*Cartea ocolniţă*" (1488) and the Extract from the Deed of Donation (1383), Ela Cosma debates the two property documents, trying to answer the question if they are *Lost Originals and Late Copies or Fake Documents of the 18th Century?*⁶⁷

⁶¹ *Transmissionales*, 280-1307.

⁶² *Ibid.*, 858 sq.

⁶³ Cisnădie (in Romanian), Heltau (in German), Nagydisznód, Disznód (in Hungarian), today a town in the Sibiu county, neighbouring Răşinari.

⁶⁴ *Transmissionales*, 1136-1141.

⁶⁵ *Reambulatio*, "perambulation of boundaries", as designated by Hunyadi Zsolt. "Administering the Law: Hungary's *Loca Credibilia*", in *Custom and Law in Central Europe*, edited by Martin Rady, introduction by Bak János M. (Loughborough, Leics: Centre for European Legal Studies, Faculty of Law at the University of Cambridge, 2003), 33.

⁶⁶ *Transmissionales*, 1141-1142.

⁶⁷ Ela Cosma, "Istoricul unei controverse. *Cartea ocolniţă* din Răşinari (1488) şi extrasul actului de danie (1383), originale pierdute şi copii târzii sau falsuri de secol XVIII?" [History of a Controversion. *Cartea*

The quoted Romanian documents from Rășinari had raised suspicion among some scholars, beginning with Nicolae Iorga (1906), who considered that the document of 1488 was a fake document made in the 18th century out of necessity, because of the very urbarial trials filed in court by the villagers from Rășinari.⁶⁸ Given the interest generated by the documents from 1488 and 1383, Tatiana Onilov deals with *The 18th Century Romanian-Cyrillic Copies of "Cartea ocolniță" (1488) and of the Extract from the Deed of Donation (1383)*,⁶⁹ and Vasile Rus with *The 18th Century Latin Translation from "Wallachian" of the same documents*.⁷⁰

There are further original *diplomas* reproduced in simple copies, as inserts in *Transmissionales*: the Golden Bull of 1224, issued by Andrew II of Hungary (*Andreani Privilegium Pro Cibiniensibus et ejus 7. Sedium Subordinatarum Terra Regalis Incolis Teutonicis A. 1224*)⁷¹; the Saxon general vicar Ludovicus's confirmation in 1366 of the privilege (*Praescriptum Privilegium*) issued by the Hungarian king Charles in 1317⁷²; the late copy after 1556 of the foundation document of the abbey from Cârța (*Fundationalium Abbatiae Kerczensis*) in 1223, where we meet a contested toponym explained by its 16th century location: "*Villa Riutsel (Resinár)*".⁷³

Unprecedented is the testimony, in German and Latin, of the mason master Johann Drotlich. On 5 June 1755, when the old Saint Paraschiva Church in Rășinari was demolished, as a new stone edifice was to be built, the Saxon master found a "book" (*Librum, Buch*), that he handed to Alăman, the son of the priest Sava (*des Pop Szávul sein Sohn*) from Rășinari.⁷⁴ It was exactly the document of the already mentioned *cartea ocolniță*, whose tribulations reflect, on

ocolniță (1488) and the Extract from the Deed of Donation (1383), Lost Originals and Late Copies or Fake Documents of the 18th Century?, in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 249-268.

⁶⁸ Nicolae Iorga. *Scrisori și inscripții ardeleni și maramureșene* [Letters and Inscriptions from Transylvania and Maramureș], I, colecția "Studii și documente cu privire la istoria românilor" [Studies and Documents regarding the History of the Romanians], vol. XII (Bucharest: Atelierele Grafice Soccec&Comp., 1906), chapter IV. "Despre actele rășinărene" [About the Juridical Documents from Rășinari], XXXIII.

⁶⁹ Tatiana Onilov, "Documente din Rășinari. Copiile româno-chirilice de secol XVIII ale *Cărții Ocolnița* (1488) și a extrasului actului de danie (1383)" [The 18th Century Romanian-Cyrillic Copies of *cartea ocolniță* (1488), and of the Extract from the Deed of Donation (1383)], in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 269-284.

⁷⁰ Vasile Rus, 294-301.

⁷¹ *Transmissionales*, 1143-1150.

⁷² *Ibid.*, 1150-1151.

⁷³ *Ibid.*, 1151-1155.

⁷⁴ *Ibid.*, 1142-1143. Vasile Rus, 301-302.

a small scale, the very history of the possessory rights, held, lost and regained after long urbarial trials by the villagers from Rășinari.

The volume of *Transmissionales* comes to an end with the gubernatorial decision (*Deliberatum*) of 5 February 1784, followed by the last 10 pages containing the index (that can be considered a sort of contents of the volume) and *errata*.⁷⁵

After a half-century of long juridical fights, the villagers from Rășinari finally succeeded to free themselves from the urbarial servitudes which the Sibiu Magistrate had imposed to them. Moreover, by 1786 emperor Joseph II declared Rășinari an *imperial free village*.⁷⁶ It was an uncommon and rare privilege for the Romanian shepherd village from Mărginimea Sibiului. This status was preserved until the establishment of the Dual Monarchy in 1867.

Conclusions

The importance of the discovery and critical editing of *Transmissionales in causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem 1784* is beyond doubt, surpassing local history, medieval and premodern history of Transylvania and Romania. The manuscript from Rășinari is a significant landmark for legal history and old Romanian consuetudinary law (*Jus Valachicum*), for ecdotics, diplomatics, palaeography, and for other connected disciplines and fields. It opens a large perspective for interdisciplinary interpretative approaches.

In fact, in our monographic volume on the *Romanian Historical Juridical Patrimony from Mărginimea Sibiului* (2020),⁷⁷ we have already dedicated 300 out of the book's 870 pages to Rășinari, the largest Romanian pastoral village in Mărginimea Sibiului (with over 5,000 inhabitants). Rășinari's historical development from the middle ages until the modern times can be resumed as a prolonged juridical fight in order to keep its mountains, land possessions

⁷⁵ *Transmissionales*, 1308-1318. See the *Index Transmissionalium*, in Latin and Romanian, in Vasile Rus, 387-395.

⁷⁶ Victor Păcală. *Monografia satului Rășinari* [Monograph of the Village of Rășinari] (Sibiu: Tipografia Arhidiecezană, 1915), 87; Lucas Joseph Marienburg. *Geographie des Großfürstenthums Siebenbürgen* [Geography of the Great Principality of Transylvania], vol. II (Sibiu: Martin Hochmeister's printing house 1813), 249. Although the latter reflected the perspective of the Transylvanian Saxons' historical privileges, even Marienburg admitted that the "great Wallachian mountain village" of Rășinari (*Reschinár, Picivicus, Städterdorf*) had been declared by Joseph II in 1786 an imperial free village, to whom the emperor granted a separate territory and boundaries, mills, mountains, pastures and the freedom of selling wine. Joseph II's diploma of 1786 for the imperial free village of Rășinari is still unidentified and unedited.

⁷⁷ See footnote 3.

and estates inside the village boundaries, and to defend them against the ceaseless usurpation attempts exerted by the Saxon Magistrate of the Sibiu city and seat. The already mentioned two legal documents, significant for the history and possessory rights of the studied pastoral village from Mărginimea Sibiului - namely the *cartea ocolniță* (book of the boundaries) of 1488 and an extract of a deed of donation of 1383 -, were analysed by Ela Cosma⁷⁸, Tatiana Onilov⁷⁹ and Vasile Rus⁸⁰, while aspects of Romanian anthroponomy in mid-18th century Rășinari were presented by Victor Vizauer.⁸¹ As concerns *Transmissionales in Causa Possessionis Resinar*, a fragment of the long manuscript was also critically edited and published in Latin transcription and Romanian translation by Ela Cosma and Vasile Rus.⁸² Legal aspects regarding *The Trials in the Cause of the Possession Held by the Village of Rășinari against the Magistrate of the City of Sibiu (1735-1784)*,⁸³ as well as the juridical practice and the Romanian consuetudinary law (*Jus Valachicum et Mores Valachicales*) in Rășinari were outlined by Ela Cosma, based on two unedited examinations of witnesses of 1738 and 1776-1777.⁸⁴ Last but not least, the same author described several unknown *Houses and Inscriptions from the 18th-19th century in Rășinari*.⁸⁵

⁷⁸ See footnote 67.

⁷⁹ See footnote 69.

⁸⁰ See footnote 59.

⁸¹ See footnote 60.

⁸² Vasile Rus, Ela Cosma. "*Transmissionales in Causa Possessionis Resinar contra Liberam Regiamque Civitatem Cibiniensem 1784*. Documentar" [Documentary], in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 423-471.

⁸³ Ela Cosma, "Procesele în cauza posesiunilor satului Rășinari contra Magistratului orașului Sibiu (1735-1784)," in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 397-407.

⁸⁴ See footnote 45.

⁸⁵ Ela Cosma, "Case și inscripții de la Rășinari din secolele XVIII-XIX" [Houses and Inscriptions in Rășinari from the 18-19th Centuries], in *Patrimoniul istorico-juridic românesc din Mărginimea Sibiului*, 229-248.