



UNIVERSITATEA
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— DIN SIBIU —



Doctoral School of SOCIAL SCIENCES

Doctoral field: LAW

PhD THESIS SUMMARY

CODEX ALTEMBERGER – BETWEEN LEGAL TRANSPLANT AND CULTURAL EXPRESSION

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Summary

Conceived in an interdisciplinary manner, this paper aims to address the issue of the applicability of the theory of legal transplantation in relation to the document considered to be the first code of laws of the community of Saxons colonized in Transylvania of the Middle Ages (Province of Sibiu), the Altemberger Codex. Placed within the broader scope of studies on the dynamics of medieval German law in Central and Eastern Europe, the chosen theme departs from the current content of the theory of law transfer¹ frequently used in German historical-legal literature².

My interest in the proposed theme is closely linked to the concerns I have previously expressed in relation to the particularities of the legal systems of minorities in Transylvania, especially during the Voivodeship. During the research I undertook in the field of the respective legal systems, a large part of my attention was captured by the originality and complexity of the legal manifestations specific to the Transylvanian Saxon community. We could not ignore the significant impact that the German mentality and culture had on the evolution of the Transylvanian space, an aspect reflected, at the same time, socially, politically, economically, culturally, and of course, legally. On the other hand, although I encountered the first information regarding both the legal system of the Saxons and the existence of the Altemberger Codex, I noticed the small number of historical-legal research dedicated to these topics.

Thus, most of this type of studies and research prepared in Romanian generally address the issue of the Transylvanian Voivodeship and do not focus in detail on the specifics of the legal system of the Saxons or of the Altemberger Codex. In most cases, social, economic, cultural, political or religious aspects are targeted, with less

¹ Giaro, T., *Modernisierung durch Transfer. Schwund osteuropäischer Rechtstraditionen in Giaro*. T. (Hrsg.), *Modernisierung durch Transfer im 19. und Frühen 20. Jahrhundert, Studien zur europäischen Rechtsgeschichte: Rechtskulturen des modernen Osteuropa Traditionen und Transfer*, Vittorio Klostermann Verlag, Frankfurt am Main, 2006, pp. 275-344; Pócsa, K. (Hrsg.), *Rechtssysteme im Donauraum. Vernetzung und Transfer*, Nomos Verlag, Baden-Baden, 2014; Balogh, E., *Schwabenpiegel-Forschung im Donaugebiet: Konferenzbeiträge im Szeged zum mittelalterlichen Rechtstransfer deutscher Spiegel*. De Gruyter, Berlin, 2015; Carls, W., Gönczi, K., *Sächsisch-magdeburgisches Recht in Ungarn und Rumänien: Autonomy und Rechtstransfer im Donau und Karpatenraum*, De Gruyter Berlin, 2013; Gönczi, K., *Elemente der Magdeburger Stadtverfassung und ihr Transfer in die ostmitteleuropäische Rechtskultur*, in *Annales Universitatis Mariae Curie - Skłodowska*, Vol. LXXLL. Lublin, 2017; Gonczi, K., *Die europäischen Fundamente der ungarischen Rechtskultur. Juristischer Wissenstransfer und nationale Rechtswissenschaft in Ungarn zur Zeit der Aufklärung und im Vormärz*, Vittorio Klostermann Verlag, Frankfurt am Main, 2008; Wieland, C., Eichler, Lück, H., (Hrsg.), *Rechts- und Sprachtransfer in Mittel- und Osteuropa: Sachsenspiegel und Magdeburger Recht, Ius saxonicomagdeburgense in Oriente*, DeGruyter, Leipzig, 2008; Balogh, E., *Schwabenpiegel-Forschung im Donaugebiet: Konferenzbeiträge im Szeged zum mittelalterlichen Rechtstransfer deutscher Spiegel*. De Gruyter, Berlin, 2015.

² Legal transfer in Central and Eastern Europe was already a topic discussed in 2004-2007 at the heart of the research project "Modern Legal Cultures Eastern Europe. Traditions and Transfer" ("Rechtskulturen des modernen Osteuropa. Traditionen und Transfer"), conducted Max-Planck-Institut für europäische Rechtsgeschichte.

attention being paid to legal manifestations. I was intrigued by the absence of detailed research to place the Altemberger Codex in the broader plane of German law dynamics in Central and Eastern Europe, against the background of the theory of law transfer, although such studies dedicated to similar documents are common in these parts of the continent. In this respect, the contributions contained in the collection *Ius saxonico-maideburgense in Oriente (De Gruyter) are also noted*³, which touch on the issue of different legal compilations applied at the level of several cities in Central and Eastern Europe. In this respect, it is relevant that the transfer of medieval German law was not subject to detailed or exclusive studies in Romanian language, although German populations were colonized on the territory of Transylvania, which did not remain without consequences in terms of the history of law in the Romanian space. At the same time, regarding the manner in which works published abroad dealt with the issue of medieval German law transfer, I consider it necessary to point out that none of them introduced a clear distinction between the notion of *transfer of law* and that of *legal transplantation*, another aspect that inspired me in carrying out this work.

Research status

From the critical analysis of the relevant specialized literature, the lack of an adequate conceptual and analytical framework for the complex research of the phenomenon of medieval law circulation in the German-speaking European space emerges. Thus, it is remarkable the non-existence of a publication (from Romania or from abroad) dealing with the issue of the Altemberger Codex from the point of view of legal transplantation, although several works include short presentations of the codice⁴ or references to it, some linking the manuscript to the transfer of law⁵ present in the German historical-legal literature. Foreign literature, published mostly in German, does not analyse the issue of legal transplantation in relation to medieval German law (of course, as indicated above, no clear distinction is introduced between

³ For example, in this series appeared the work Eichler, E., Lück, H. (Hrsg.), Rechts- und Sprachtransfer in Mittel- und Osteuropa. Sachsenspiegel und Magdeburger Recht. Internationale und interdisziplinäre Konferenz in Leipzig vom 31. Oktober bis 2. November 2003, in *Ius saxonico-maideburgense in oriente*, 1, Berlin, 2008.

⁴ For example: Blazovich, L., Das Ofner Stadtrecht und die Rechtsbücher von Ungarn, in Balogh, E., Blazovich, L., Balogh, E. (Hrsg.), Eike von Repgow: A Szász tükör, [Pólay Elemér Alapítvány-Csongrád Megyei Levéltár](#), Szeged, 2005; Gönczi, K., Rechtshistorische Brückenschläge. Zur Geschichte der städtischen Normfixierungen im spätmittelalterlichen Königreich Ungarn und ihrem europäischen Kontext am Beispiel des Schemnitzer Stadtrechts in von Cordes, A., Rückert, J., Schulze, R. (Hrsg.), Stadt-Gemeinde-Genossenschaft, Festschrift für Gerhard Dilcher zum 70. Geburtstag, Erich Schmidt Verlag GmbH & Co KG, Berlin, 2003.

⁵ In this regard, from my point of view, the volumes of the Series *Ius saxonico-maideburgense in Oriente (De Gruyter)* are relevant, but also Moldt Dirk's monograph, *Deutsche Stadtrechte im Mittelalterlichen Siebenbürgen: Korporationsrechte - Sachsenspiegelrecht - Bergrecht*. Collection *Studia Transylvanica*, Böhlau Verlag Köln, Weimar, Wien, 2009.

law transfer and legal transplantation), in general, much less by reference to a particular legal document, as is the case with the Altemberger Codex.

In the field of the history of German law, an entire research niche dedicated to the transfer of medieval German law in Central and Eastern Europe was developed. Thus, in 2004, at the Saxon Academy of Sciences in Leipzig⁶, he started the interdisciplinary project entitled "*Saxon law – of Magdeburg as a cultural link between the legal systems of Eastern and Central Europe*". Initiated by Heiner Lück and Ernst Eichler, the project proposed a new approach to the issue of Saxon law – Magdeburg, by placing it in a European context. The research was not intended to analyse the law of Magdeburg and *Sachsenspiegel* strictly in the light of relevant sources located on German territory or written exclusively in German, but to place this analysis in the wider area of Central and Eastern Europe. In this respect, the project carried out under the aegis of the Leipzig Academy paid particular attention to the distribution of Saxon law – of Magdeburg in the east and centre of the continent, by closely analysing the various manuscripts and prints appearing in the national languages of the abovementioned areas.

In the preliminary phase of this scientific investigation, in the autumn of 2003, a conference was held in Leipzig attended by researchers from countries with tradition in receiving the Saxon right – Magdeburg. The conference wanted to establish the status quo of this research and explore possible prospects for further investigation.⁷ Since then, within the project were examined the distinctive features of the transfer of Saxon right – from Magdeburg to Central and Eastern Europe. For the presentation of the research results, monographs of the series *Ivs Saxonico-maidebvrghense in oriente were prepared*⁸, which focused on the specifics of the transfer of the Saxon right – of Magdeburg to Poland, Hungary, Romania, Czech Republic, Slovakia, Ukraine, Belarus, Baltic countries and even portions of Russia.

As for the temporal coordinates of the investigations that were part of the project, they stretch from the second half of the thirteenth century, at the beginning of the spread of Saxon law – of Magdeburg, to the eighteenth and nineteenth centuries, marked by the appearance in the targeted areas of the first attempts at codification in the modern sense. As we have shown, the area of investigations is generically designated by the formula Central and Eastern Europe and stretches along the western borders of the current territories of Poland, the Czech Republic, Slovakia, Hungary, Romania and the eastern borders of Lithuania, Belarus, and Ukraine. However, the eastern and southeastern boundaries of the area thus outlined have not

⁶ Similar to Halle, Leipzig had early links with Magdeburg law, and in 2004, a new direction was introduced in the research of Saxon law – Magdeburg.

⁷ Eichler, E., Lück, H. (Hrsg.), Rechts- und Sprachtransfer in Mittel- und Osteuropa. Sachsenspiegel und Magdeburger Recht. Internationale und interdisziplinäre Konferenz in Leipzig vom 31. Oktober bis 2. November 2003, in *Ivs saxonico-maidebvrghense in oriente*, 1, Berlin, 2008.

⁸ For more information on the series, see: www.saw-leipzig.de and www.magdeburger-recht.de.

yet been definitively established. Therefore, the internal structure of study areas was also based on current national borders, although it was accepted that they can only inadequately reflect historical circumstances. Given that the political affiliation and administrative organisation of the territory have frequently changed in this part of Europe throughout history, mere reference to geographical coordinates does not offer a viable practical alternative for carrying out research. Therefore, to eliminate such political-geographical dilemmas, the studies carried out within the project related not only to contemporary borders, but also to historical ones. For example, in the analysis of the Polish space, the old historical-geographical regions and their influences were considered: on the one hand, the situation recorded in the territories under the control of the Teutonic Knights, in close relation with the territory of today's Lithuania, was presented, and on the other hand, the impulses coming from Hungary were not neglected. Moreover, the order of the volumes published in the mentioned collection essentially follows the coordinates and dynamics of the spread of Saxon law – by Magdeburg, starting from Silesia. Inevitably, the first volume of the series is dedicated to the rightful transfer to the territory of present-day Poland.

The project carried out at the Leipzig Academy was distinguished from previous research, also by the methodological approach to the analysis of Saxon law – de Magdeburg: mainly, this analysis was based on sources written in national languages and other local linguistic resources, defining the territories involved in the transfer of this type of right. However, there have also been deviations from this methodology, especially in volumes dedicated to territories for which legal sources in national languages are unknown. Such is the case in Hungary, where legal texts have predominantly been drafted in Latin and German, and in the Baltic States, where most sources and references are mainly in Russian, Polish and Latin.

One of the strengths of the project is represented by the summaries dedicated to the research history, which are included in each of the volumes of the collection *Ius saxonico-magdeburgense in Oriente*, thus considering the over 250 years of academic commitment to the issue of Saxon law – of Magdeburg. Proceeding in the manner described, the project also contributed to the dissemination of the results of previous research, outlining an overview of the impressive number of publications on the topic of Saxon law – of Magdeburg, but also that of urban history, colonization and legal history, elements that are constantly intertwined. It is also interesting that, in order to popularize the issue of Saxon law – Magdeburg, as well as related themes, not only a bibliographic collection was drawn up within the project, but an online information platform was created: Das Magdeburger Recht – www.magdeburg-law.com⁹, available in German and English.

In the sense of historians of German law, the term *transfer of law* generally refers to the idea of legal dynamics, of circulation of legal models in Central and Eastern Europe, most often, in the context of the process of colonization with populations of

⁹ www.magdeburg-law.com.

German origin¹⁰. In my opinion, resorting to an often purely descriptive approach to historical, social, or purely political facts, these works use the notion of *transfer of law* not in the sense of *legal transplantation*, but to illustrate the (simple) idea of the movement, in a broad sense, of law in the German-speaking space. Consequently, *the transfer of rights* does not amount to *legal transplantation*, although it does not absolutely exclude it. Unlike *transplantation*, *the transfer of law*, in the sense accepted by the analysed works, does not necessarily imply the existence of at least two legal systems, one importer and the other receiver, between which to migrate ideas, norms or legal institutions.

Also, the notion of *transfer of law* does not imply going through specific stages in carrying out transplantation but is limited to the idea of free movement of legal manifestations. From this point of view, we were talking about a notion with a wider scope, a notion that is more flexible and even more volatile compared to legal transplantation, whose significance, even marked by subjectivism, is, however, subject to some constraints. Moreover, since foreign literature in general is limited to static presentations of a phenomenon that is essentially dynamic, it fails to capture the full extent of the circulation of medieval German law in Eastern and Central Europe. Personally, I believe that, with this approach, which does not take into account, even purely experimentally, the possibility of carrying out legal transplantation, the originality of medieval German law is somewhat blurred, resulting among other things from its modern character, the product of its permanent orientation towards the future, with the clear aim of ensuring not only the continuity of the legal tradition, but also the adaptation of law to changing social needs. At the same time, given that legal transplantation is recognised as an instrument whose use is capable of leading to the development of law, an analysis which does not take it into account cannot be considered complete and entirely relevant. However, there is no denying the significant contribution that these works made to the field of medieval German law history¹¹.

¹⁰ Gönczi, K., Die mittelalterliche Stadtrechtsentwicklung in Ostmitteleuropa im Kontext des Rechtstransfers in [Rechtskultur](#) vol. 6, 2017 pp. 3-7: In recent years, legal links between European regions have been the subject of much discussion and legal transfer has become a central approach to research, especially when it is understood as a dynamic process through its various forms of manifestation. With the help of this approach, beyond nationalist accusations, source and recipient cultures can be analyzed in the context of the relationships developed between them, in terms of analysis making the emergence and interconnection of actors involved in cross-border legal mediation. From Katalin Gönczi's point of view, it is clear how legal transfer acted as a catalyst in medieval society, even before the emergence of nation states in European legal history. According to the same author, this dynamic impact of legal transfer can be demonstrated extraordinarily well in urban law. Thus, if we place ourselves in Central and Eastern Europe, during the Middle Ages, urban legal connections having as common root Saxon law – de Magdeburg prove to be particularly useful for examining the mechanisms of legal transfer. Moreover, in K. Gönczi's view, the source culture can be easily located, and the recipient cultures can also be established without much difficulty, together with other actors of the transfer of law.

¹¹ Here, I consider the collection *Ius saxonico-maideburgense in Oriente*.

In my opinion, it should also be pointed out that most German-language literature addresses the issue of *the transfer of rights* in relation to that of colonisation of the east and centre of the continent by populations of German origin, as inferred from the aspects I mentioned earlier. If up to a certain point this way of working proves not only correct, but also methodologically useful, absolutizing the link between colonization and *the transfer of law* can, however, lead to erroneous conclusions. Although colonization frequently spurred the movement of law, the latter was not entirely dependent on population relocation. A relevant argument in this regard is offered even by situations in which the takeover of forms of German law was made at the level of communities formed long before, based on a rational process that involved balancing the advantages and disadvantages of the loan. Obviously, these situations are not mere illustrations of *the transfer of law*, but we can discuss concrete examples of legal transplantation, insofar as its requirements are met, where appropriate. Moreover, the circulation of German legal models continued even after the end of colonization, which shows, once again, that the two phenomena do not overlap perfectly.

At the same time, in my opinion, perhaps one of the most important disadvantages that the works dedicated to *the transfer of law* bring with them is represented by the constant tendency to uniformize, to excessively homogenize the idea of medieval German law in relation to that of a legal system. Although the existence of the German legal tradition, which is primarily based on custom and brings together a number of other elements common to populations of German origin, cannot be denied, it does not amount to the existence of a unitary legal system. Thus, I believe that, despite the common features of the German communities, including those of spirit and mentality, some distinctions should be introduced between the legal systems of these communities, which is often omitted to be done. In doing so, most of the works artificially superimpose a single (German) legal system on German communities located in Central and Eastern Europe, considering that the law movement represents mainly a repeated series of permutations of ideas, norms and institutions, without a change in the initial framework. Metaphorically, we could compare this approach to simply repeatedly moving books to the same shelf at the owner's whim.

This perspective is somewhat rigid and unimaginative, paradoxically suppressing precisely part of what I consider to be the dynamic character specific to medieval German law. In my view, a more inspired approach should take more account of the specificities of each individual German community, as shaped by the local, political, economic, cultural and religious factors that shaped its evolution. Moreover, given the distinct history of the German communities, even in the presence of the relationships they maintained, it is obvious that differences naturally arose between them which gave rise to their own forms of legal manifestation. At the same time, while acknowledging the existence of a common legal root, this does not prevent the development of several stand-alone legal systems. Given the diverse framework and challenges that German communities in Central and Eastern Europe have had to face, I believe that several legal systems need to be considered. The similarities stemming

mainly from the common culture are not sufficient to support the hypothesis of a single system of law whose elements are constantly moving from one point to another.

In continuation of the ideas previously stated and taking into account the increased appetite it manifests towards the descriptive, static approach *to the transfer of law*, it is noted the lack of constant concern for identifying potential reasons that facilitated this phenomenon. In this respect, too little attention is paid to the concrete problems that German communities have encountered over time, leading them to find appropriate solutions. Also, in most cases, the evolution of the elements subject to legal circulation is not followed. In doing so, most of the publications place the *transfer of right* more in the realm of the abstract, somehow unhappily breaking it from society. However, the precision shown by the authors in identifying the sources and routes traveled by the moving elements must be appreciated. They manage to create real mental maps of the circulation of elements of German law in Central and Eastern Europe, which proved to be a particularly useful tool in compiling this paper.

Also, in relation to the topic I have proposed, since foreign literature does not analyze the issue of *legal transplantation*, it does not include mentions of the notion of *legal imperialism*, although they would be welcome in *the context of the transfer of law*. Given that German communities, especially those founded by colonists, were often under the authority of centers of power (e.g. the Hungarian Crown), the question of whether the latter imposed their own rights might arise, to the detriment of legal formulas of German tradition. However, too few of the works deal with the impact of foreign law on the law of the German communities, and most of the references concern the situation of the Kingdom of Hungary or the Grand Duchy of Lithuania. However, I would like to mention B. Szabo's Legal [Reform Efforts and the Legal Traditions of the Transylvanian Saxons up to the End of the 16th Century](#)¹². Unlike the works mentioned above, the author of the latter refers to the notions of *reception, legal transfer and legal transplantation*: "*In order to gain a theoretical understanding of the problem of legal transference – by simplifying the multitude of positions presented in the infinitely rich literature – we could use three different semantic models, which can be referred to using the notions of reception, legal transfer and legal transplants. In the literature, which has expanded enormously in recent decades, significant differences have been developed to distinguish between these semantic approaches, and a preference for one term or rejection of the other two can be traced from different starting points and hypotheses.*"¹³ The study describes the determined search of the Saxons for laws in

¹² Published in *Acta Ethnographica Hungarica*, vol. 67, no. 1/2022: In 1583, the community of Transylvanian Saxons obtained from the Transylvanian ruler István Báthory the ratification of its own law book, *Eygen-Landrecht*. For a quarter of a millennium, the law book essentially defines everyday law in this unique community of Transylvania, a multiethnic region that has undergone many constitutional changes. The Law Book can be seen as a compilation of genetically different legal regulations, containing and combining indigenous legal traditions and legal customs with "academic" law (*ius commune*) developed by university jurisprudence of Italian origin.

¹³ Szabo, B., [Legal Reform Efforts and the Legal Traditions of the Transylvanian Saxons up to the End of the 16th Century](#) in *Acta Ethnographica Hungarica*, vol. 67, no. 1/2022, pp. 167–187.

the fifteenth and sixteenth centuries, revealing in the background the paradigm of reception typical of law history research and based on the theoretical model of the transfer of legal rules and legal irritations. It examines the external and internal circumstances that affected the Saxons' attempts at legal renewal and the number of phases involved. It also investigates temporal, locally related and legal-cultural factors that may have played a role in the success or failure of the transfer of legal approaches from abroad and the extent to which what can be regarded as traditional Saxon law was able to withstand attempts at renewal. In the last section of this paper are given examples illustrating the encounter between Germanic legal traditions and common law solutions transferred in the 1583 Saxon law book, highlighting the durability of certain traditional and typical solutions.

Since foreign literature does not analyze the problem of *legal transplantation* or *legal imperialism* in relation to the *transfer* of law in general, much less does it in relation to the situation of the Altemberger Codex. In fact, the manuscript is mentioned only tangentially, being offered as an example of a legal compilation present in Eastern Europe, along with other similar documents. In most cases, the manuscript is mentioned in brief analyses of the legal system of the Saxons in the Province of Sibiu, in the context of references to the autonomy recognized to them by the Golden Bull. Very few studies include brief observations on its structure or content¹⁴, but all sublimate its originality, at least as far as the elements of which it is composed. At the same time, I noticed the presence of generally summary comparisons regarding provisions of the manuscript and similar provisions included in other compilations identified on the territory of the Kingdom of Hungary.

On the other hand, if in terms of *law transfer*, foreign literature has some limitations, we can discuss a completely different situation in the case of works that address topics related to the theme we proposed for this work. Thus, the German authors¹⁵ make a significant contribution both in terms of clarifying the notion of colonization and in terms of the stages in which this process took place. At the same time, they are responsible for identifying the directions of spread of populations of

¹⁴ Ius saxonico-maideburgense in Oriente and Moldt, D., Deutsche Stadtrechte im Mittelalterlichen Siebenbürgen: Korporationsrechte - Sachsenspiegelrecht - Bergrecht. Collection Studia Transylvanica, Böhlau Verlag Köln, Weimar, Wien, 2009.

¹⁵ Hardt, M., Landesausbau, in von Cordes, A., Lück, H., Werkmüller, D., Bertelsmeier-Kierst, K., (Hrsg.), Handwörterbuch zur deutschen Rechtsgeschichte, 2., völlig neu bearbeitete und erweiterte Auflage, Erich Schmidt Verlag, Berlin, 2013, Sp. 416-420; Irgang, W., Landesausbau und Kolonisation. Abschnitt V.: Ostmitteleuropa und Ungarn inn: Lexikon des Mittelalters, Bd. 5, 2. Aufl., Taschenbuch Verlag, Munich, 2003, Sp. 1649-1653; Kroeschell, K., Deutsche Rechtsgeschichte, Bd. 1: Bis 1250. 13., Überarb. Aufl., Böhlau Verlag, Cologne, Weimar, Wien 2008; Kuhn, W., Die deutschrechtlichen Stadtgründungen in Kleinpolen in Stooß, H. (Hrsg.), Die mittelalterliche Städtebildung im südöstlichen Europa, hrsg. v. Heinz Stooß, Cologne, Wien 1977, pp. 39-89; Menzel, Josef Joachim, Die schlesischen Lokationsurkunden des 13. Jahrhunderts. Studien zum Urkundenwesen, zur Siedlungs-, Rechts- und Wirtschaftsgeschichte einer ostdeutschen Landschaft im Mittelalter, Würzburg 1977, p. 254, Königshaus, Waldemar P., Die Zisterzienserabtei Leubus in Schlesien von ihrer Gründung bis zum Ende des 15. Jahrhunderts, Wiesbaden 2004, pp. 23-33.

German origin in the center and east of the continent, as well as analyzing the relationship between colonization and the circulation of medieval German law. Moreover, in order to understand the particularities of German law, research on custom and its evolution is of particular value. Nor should we forget the numerous studies devoted to medieval legal documents drawn up in both Latin and German, among which are the comments on compilations designated by the term *mirrors*: *Sachsenspiegel*, *Schwabenspiegel*. On the same note, it is worth mentioning the extensive works¹⁶ of exceptional quality dedicated to the *Magdeburger Weichbildrecht* – *Sachsenspiegel binomial*.

On the other hand, as I have shown before, there is no work in the Romanian literature dedicated to *the transfer of medieval German law*, much less to the relationship between it and the notions of *transplantation* or *legal imperialism*. Despite the originality characteristic of the legal system of the Transylvanian Saxons, as well as of the Altemberger Codex, the manuscript attributed to the mayor of Sibiu Thomas Altemberger¹⁷, most of the scientific works dedicated to the Transylvanian Middle Ages touch only remotely on these issues, limiting themselves to simple descriptive approaches, of a general nature. Currently, there is no translation of the Codex into Romanian, which could be an impediment to addressing this issue. However, it is remarkable the publication, in 2019, of an anastatic edition of the Codex, accompanied by 3 preliminary studies¹⁸, including a paper that resorted to placing the Altemberger Codex in context and to a particularly interesting analysis of it, including even some observations regarding the hypothesis of the Codex falling into the pattern of transfer of rights¹⁹. This edition of the Codex also includes a study dedicated to the materials and techniques used to make the Codex²⁰.

¹⁶ Lück, Heiner, *Der Sachsenspiegel. Das berühmteste deutsche Rechtsbuch des Mittelalters*, Darmstadt, 2017; Lück, Heiner, *Das Denkmal des Magdeburger Rechts in Kiew*, in *Forschungen zur Rechtsarchäologie und Rechtlichen Volkskunde*, Jg. 12 (1990), pp. 109-119.

¹⁷ Gündisch, G. (Bearbeiter), *Urkundenbuch zur Geschichte der Deutschen in Siebenbürgen* (Begründet von Franz Zimmermann). Fünfter Band (1438-1467), Nummer 2300-3098 mit 9 Tafeln. Bukarest: Verlag der Akademie der Sozialistischen Republik Rumänien, Bukarest, 1975; Gündisch, G., *Der Hermannstädter Bürgermeister Thomas Altemberger*, in Gündisch, G. (Hrsg.), *Aus Geschichte und Kultur der Siebenbürger Sachsen*, Böhlau Verlag, Cologne, 1987; Gündisch, K. G., *Das Patriziat siebenbürgischer Städte im Mittelalter*. Cologne, 1993; Gündisch, K., *Deutsche in Roth*, H., (Hrsg.), *Studienhandbuch östliches Europa*, 1 Band: *Geschichte Ostmittel- und Südosteuropas*, UTB Verlag, Stuttgart, 2009; Gündisch, K., *Siebenbürgen und die Siebenbürger Sachsen*, Langen-Mülle Verlag, Stuttgart, 2005.

¹⁸ Lazarus, G. (ed.), *Codex Altemberger. The First Code of Laws of the Saxons of Sibiu*, Anastatic Edition, preceded by a bilingual introductory part, in Romanian and English, Ministry of Culture and National Identity, National Museum of Romanian History, Bucharest, 2019, p. 28.

¹⁹ Dincă, A.C., *Codex Altemberger. Historical study* in Lazarus, G. (ed) *Codex Altemberger. The First Code of Laws of the Saxons of Sibiu*, Anastatic Edition, preceded by a bilingual introductory part, in Romanian and English, Ministry of Culture and National Identity, National Museum of Romanian History, Bucharest, 2019, pp. 24-50.

²⁰ C. Carșote, E. Badea, Z. I. Baltă, I. Petroviciu, L. Miu, *Analyses between the lines - about the materials and techniques used to make the historical Altemberger Codex* in Lazar, G. (ed) *Codex Altemberger*.

Regarding the Altemberger Codex, I also noticed the somewhat older work of archivist *Radu Constantinescu: The Altemberger Codex, Ed. Meridiane, Bucharest, 1988*. However, I believe that this paper refers too little to the legal content of the manuscript and its concrete application, focusing more on exposing theories regarding the origin of the legal compilation or the supposed influence that German law applied by the Transylvanian Saxons would have had on the legal system in Wallachia, for example, during the reign of Vlad the Impaler. Also, the publication does not place the Codex in the European context, does not talk about the transfer of the right (anyway, the idea appears later in the works published in German) and does not address at all the issue of legal transplantation or legal import in relation to the manuscript bearing the name of the mayor of Sibiu. In this context, I specify that in this paper I will use the concepts of transplantation and import as synonyms.

However, of particular importance in the study of the Altemberger Codex, without which the analysis of the applicability of the theory of legal transplantation in this work would not have been possible, has the publication, in Cluj, in 1885, of the full text of the manuscript, in a bilingual edition (German Hungarian) curated by Gustav Lindner and including his critical introductory notes. Such is the work *Der Codex Altemberger (Textabdruck)*, Klausenburg-Kolozsvár, 1885 (Editio altera curavit Eckhardt, Karl, August, Bibliotheca Historiarum, Neudrucke 6, Aalen, 1973). In relation to this work, it should also be mentioned that it was republished in 1973 under the care of Karl August Eckhardt, this concern for preserving the text of the manuscript testifying to its importance in relation not only to the life of the Saxon community in Transylvania, but also to the wider phenomenon developed around medieval German law. On the other hand, in older German-language literature, several points of view have been expressed on the origin of the Codex, some of them belonging to local Saxon historians or jurists²¹.

The First Code of Laws of the Saxons of Sibiu, Anastatic Edition, preceded by a bilingual introductory part, in Romanian and English, Ministry of Culture and National Identity, National Museum of Romanian History, Bucharest, 2019, pp. 52-77.

²¹ Seivert, J., Die Grafen der sächsischen Nation und Hermannstädtischen Königsrichter im Großfürstenthume Siebenbürgen, in *Ungarisches Magazin*, nr. 3, 1782; Czvittinger, D., *Specimen Hungariae Literatae, virorum eruditione clarorum natione Hungarorum, Dalmatarum, Croatarum, Slavorum, atque Transylvanorum, vitas, scripta, elogia et censuras ordine alphabetico exhibens. Accedit Bibliotheca scriptorum qui extant de rebus Hungaricis*, Frankfurt und Leipzig, 1711; Müller, F., *Deutsche Sprachdenkmäler aus Siebenbürgen, Aus schriftlichen Quellen des zwölften bis sechzehnten Jahrhunderts*, Hermannstadt, 1864; Schuler von Libloy, F., *Siebenbürgische Rechtsgeschichte*, Hermannstadt, vol. I, 1867; Rockinger, L., Zur einer handschriftlichen Bezeichnung des Landrechts des sogenannten Schwabenspiegels, als Nürnberger Recht, *Historische Classe, Sitzung vom 3. März 1894*, in *Sitzungsberichte der philosophisch-philologischen und der historischen Classe der Akademie der Wissenschaften*, Munich, 1895 and Valentin Frank von Frankenstein, *Breviculus Originium Nationum et praecipuae Saxonicae in Transsilvania, nonnullis aliis observationibus ad ejusdem jura spectantibus, e rudibus Privilegiorum et Historicorum desumptus, Cibinii Transylvanorum*, 1696.

Taking into account the above-mentioned aspects regarding the state of the relevant literature in relation to the proposed theme, I welcome a paper that nuances and tempers the issue of *medieval German law transfer* in Central and Eastern Europe, individualizing, at the same time, by reference to the applicability of the theory of legal transplation to the Altemberger Codex, the peculiarities that this phenomenon has acquired at the level of the Transylvanian Saxon community. Also, as none of the mentioned works analyzes in detail the issue of the Altemberger Codex within the phenomenon of *law transfer* and does not exclusively address the legal situation of the Transylvanian Saxons in the general context, this paper extends the area of research on *the transfer of German law* in Central and Eastern Europe, broadening the horizon of this phenomenon by introducing distinctions referring to *transplantation/legal imperialism*.

Purpose and objectives of research

Considering the non-existence of another work (elaborated either in Romanian or in a foreign language) dedicated to the proposed theme, although there are works addressing related themes, the motivation for writing this thesis being, mainly, removing the gaps regarding the legal system of the Transylvanian Saxons. By identifying and critically analyzing the particularities of this legal system in relation to other systems belonging to German minorities colonized in Central and Eastern Europe, as well as by permanently referring to the dynamics of medieval German types of law, I want to contribute, in Romanian language, to the research niche dedicated to *the transfer of law – Rechtstransfer, outlining a nuanced perspective on that theory. without, however, denying its merits*. However, unlike the research conducted abroad on the phenomenon of law transfer, a decisive role in the initiative to elaborate this paper was played by the modest attention paid to the Altemberger Codex in terms of the evolution of (German) law in the Romanian space. Thus, having as a support point the particular case of the Codica taken over by the Transylvanian Saxons, I decided to propose a new perspective in the matter of law transfer. Thus, although the established literature²² on the transfer of German law has not introduced a clear distinction between that concept and that of legal transplantation, in my view

²² Balogh, E. (Hrsg.), Schwabenpiegel-Forschung im Donaugebiet: Konferenzbeiträge im Szeged zum mittelalterlichen Rechtstransfer deutscher Spiegel, *Ius saxonico-maideburgense in Oriente*, 4, De Gruyter, Berlin, 2015; Carls, W., Gönczi, K. (Hrsg.), Sächsisch-magdeburgisches Recht in Ungarn und Rumänien: Autonomy und Rechtstransfer im Donau und Karpatenraum, *Ius saxonico-maideburgense in Oriente* 3, De Gruyter, Berlin, 2013; Gönczi, K., Die europäischen Fundamente der ungarischen Rechtskultur. Juristischer Wissenstransfer und nationale Rechtswissenschaft in Ungarn zur Zeit der Aufklärung und im Vormärz, *Studien zur europäischen Rechtsgeschichte: Rechtskulturen des modernen Osteuropa Traditionen und Transfer*, Vittorio Klostermann Verlag, Frankfurt am Main, 2008; Wieland, C., Eichler, Lück, H., (Hrsg.), Rechts- und Sprachtransfer in Mittel- und Osteuropa: Sachsenspiegel und Magdeburger Recht, *Ius saxonico-maideburgense in Oriente*, DeGruyter, Leipzig, 2008.

such a distinction is necessary to facilitate a proper understanding of the characteristics of medieval German law at issue.

To achieve the proposed goal, the thesis aims to achieve **two main objectives and a secondary objective**. Thus, **the first main objective** is to demonstrate that the takeover of the Altemberger Codex in Transylvania was a legal transplant and not a mere transfer. Then, **the second objective** aims to demonstrate that transplanting the Altemberger Codex represented a form of identity manifestation and, implicitly, a cultural expression of the Saxon community in medieval Transylvania. Although at first glance the two research directions seem to be mutually exclusive, they converge, since, in my opinion, the success enjoyed by the legal transplant of the Altemberger Codex was undoubtedly due to the German cultural factor specific to the Transylvanian Saxons.

At the same time, **the secondary objective** of the paper is to demonstrate that, although it is a legal transplant, the Altemberger Codex is, nevertheless, part of the extensive process of transfer of German law to medieval Europe, being a whole-part relationship.

Methodology

Regarding the research methods used in this paper, the main method is the historical one, given the specificity of the approached theme. At the same time, it is noted the combination of the historical method with the comparative method, so that the text is imprinted both a harmonious structure and the necessary coherence. Thus, given that the theme of the paper focuses on demonstrating the applicability of the theory of legal transplantation regarding the Altemberger Codex, as well as the success enjoyed by this approach in Transylvania, the historical method is used to establish the spatio-temporal coordinates indispensable for understanding this issue. First, by using historical analysis, both the features of the colonization process with German populations, which took place in Medieval Europe, as well as the directions of colonization spread, and the actual waves of colonization are identified. On this occasion, the historical analysis is accompanied by a critical perspective meant to highlight the role that medieval German law played in founding the new settlements of colonists, but also the specificity of the legal manifestations that accompanied colonization. Secondly, the historical method also proves its usefulness in drawing the main distinctions between colonization carried out in the west of the continent and that carried out in Central and Eastern Europe, from which these distinctions also follow the differences existing between the forms of law in circulation at that time.

Regarding the issue of transfer of rights, I believe that the use of the historical method makes it possible to trace the directions and channels through which this phenomenon has taken place. The method also contributes to the proper understanding of the social and cultural framework that made this process possible. Moreover, by resorting to it, it is facilitated to build a complex perspective on the issue

of legal transplantation in Transylvania, as this method can contribute to the portrayal of the types of law that were compiled to give birth to the Altemberger Codex. By using the historical method, we could get to know a little better the community of Transylvanian Saxons and thus to deduce part of the reasons behind the decision to perform a legal transplant, to the detriment of developing new legal norms, as well as the selection of transplanted types of law. At the same time, using this method, in relation to the particularities of the legal, social and cultural framework in which the Altemberger Codex was applied, one can observe some of the advantages and disadvantages of its possible practical application. Because phenomena similar to the one recorded in Transylvania occurred in other areas of Central and Eastern Europe, the appeal to the historical method is also made because it can contribute to obtaining information on the peculiarities that these phenomena have recorded. Finally, the historical method involves analyzing both the text of historical documents with a pronounced legal character, such as mirrors, and the critical presentation of legal acts kept in archives.

Next, I will resort to the methodology of comparative law, with the proposed objectives in mind. First, I will use the classical comparative method. It involves detailed comparison of different legal systems to identify similarities, differences, and trends. The method involves analysing legal texts, case law, judicial practices and the cultural and historical context in which laws are applied. I believe that the use of this method is beneficial precisely because of its ability to highlight the similarities and differences between social phenomena, processes, norms, institutions, and the rest of the legal manifestations recorded in different areas of Europe. To begin with, a comparative approach presents the distinctions between the colonization with German elements of Western Europe, on the one hand, and Central and Eastern Europe, on the other. This approach is useful in the sense that it is accompanied by the identification of differences between the types of German law circulating at the time, so that it distinguishes between custom, written law and case-law, but also between rural law and urban/municipal law, namely mining law. As regards the latter distinction, the comparative method allows for a complex approach which reveals the existence of the following types of law: city law of Magdeburg, mining law with its variations, but also legal mirrors. This distinction is even more important because the Altemberger Codex is the result of the compilation of Magdeburg city law, the Jihlava mining law and the so-called *Landrecht of the Schwabenspiegel*. Consequently, to understand the reasons behind precisely selecting these forms of law to the detriment of others for transplantation, it is indispensable to know their content, or this can only be done optimally from a comparative perspective.

Therefore, the comparative presentation of ancient custom, Magdeburg law and *Schwabenspiegel*, *Sachsenspiegel* and *Deutschenspiegel* constitutes an inescapable step towards proving the theory of transplantation, especially since no other compilation with similar content has been identified throughout Europe, despite the phenomenon of transfer of law. Then, in relation to the relationship between legal

transplantation and the somewhat wider phenomenon of transfer of law, the comparative method gives us the opportunity to make the necessary distinctions, by referring to situations observed in other areas of the Hungarian Kingdom, Bohemia or the Kingdom of Poland. Comparing the legal manifestations of other communities formed by German colonists with those of the Transylvanian Saxons, we can see the factors that favored not only the transplantation of the Altemberger Codex and its success, because of the help offered by the cultural elements, but also the features that give originality to the legal system specific to the Saxons. At this point, it should be noted that highlighting the differences in legal and political status between settlers settled in Transylvania and others like them is also due to the use of the comparative method.

Given the fact that, in this paper, the use of the comparative method is centered around the theory of legal transplantation, I consider **it necessary** to clarify the latter theory. Legal transplantation is a concept that refers to the adoption or adaptation of part or all of the legal system of one country by another country or region. This process involves taking elements of one country's legal system and integrating them into the legal system of another country or region. Legal transplantation can be achieved through various means, such as legislative reforms, the introduction of new judicial practices or the adoption of new legal institutions. Legal transplantation can take place for several reasons, including to improve the existing legal system by adopting elements deemed more efficient or appropriate from other jurisdictions, to promote legal stability and certainty, or to respond to social, economic, or political changes. However, legal transplantation can be a difficult task, as it needs to be adapted to the cultural, social and political specificities of the country adopting it. There may also be resistance to change by actors or institutions within the existing legal system²³.

In this research we have given the concept of legal transplantation a special meaning. First of all, as I pointed out in the context in which I introduced the distinction between *legal transfer and legal transplantation*, by the latter I mean a specific, independent phenomenon, consisting in the borrowing by the receiving system of ideas, models, norms or legal institutions belonging to another legal system. Secondly, by the phrase *successful legal transplantation* I mean rational transplantation, based on conscious selection of models, following a critical analysis that proved the usefulness and value of the elements taken, as well as in relation to the internal needs that determined the triggering of this process. Transplantation alone based on the argument of prestige of the models concerned cannot alone be an example of successful transplantation. In my view, if transplantation is rational, it can be

²³ Within contemporary comparative law, thousands of pages have been devoted to legal transplantation theory. Among the most relevant works, we can mention: Reimann, M., Zimmerman, R. (eds.), *The Oxford Handbook of Comparative Law*, Second Edition, Oxford University Press, Oxford, 2008, pp. 442–473; Siem, M., *Comparative Law*, Third Edition, Law in Context, Cambridge University Press, Cambridge, 2022, pp. 287-321; Esin Örüçü, *The Enigma of Comparative Law. Variations on a Theme for the Twenty-first Century*, Springer-Science+Business Media, B.Y., 2004, pp. 93-105,

considered successful to the extent that the borrowed elements behave within the receiving system in the manner envisaged by the importer, even if they also undergo some necessary adaptations to correspond to the new framework.

Within the contemporary methodology of comparative law, we have turned to the methodological perspective "law as culture", which emphasizes the idea that law is not just a set of regulations, but rather a reflection of the values, beliefs and norms of a particular society or culture. It suggests that the law cannot be fully understood or interpreted without considering the broader cultural context in which it operates. This view views the law as deeply rooted in society, shaped by historical, social, political, and cultural factors. It recognizes that legal systems are not static entities, but dynamic and evolving structures that are influenced by cultural dynamics. Starting from these premises, one can explore how legal norms, practices and institutions are constructed, negotiated, and maintained within specific cultural contexts, examining how law interacts with other social phenomena such as religion, economics, politics, and social customs, and how it reflects values and power dynamics in a society. Understanding law as part of culture allows for a more subtle analysis of legal systems and their impact on individuals and communities. This concept emphasizes the diversity of legal traditions and the ways in which legal norms are interpreted and applied differently in different cultures. Personally, I believe that transplantation is not hindered by the cultural factor, as cultural differences between the systems involved in the process are not always an obstacle to its achievement. While recognising the importance of the legal role that culture plays within a society, I believe that transplantation is possible insofar as there are, however, some common cultural features between the exporting and receiving systems, among which language and mentality play an essential role. At the same time, from my point of view, in some cases, transplantation can represent a form of cultural expression, even more so as it is facilitated by the rapprochement between the culture and mentality of the systems involved. In this respect, it is even relevant the situation of the various German communities in Central and Eastern Europe, which sometimes resorted to transplanting elements specific to other German communities with which they came into contact, but from which they differed in many respects. For example, the legal system of the Saxons of the Seven Fortresses cannot be equated with that of the Saxons of Špis county.

Naturally, the thesis also resorts to the logical method, by using premises related to the historical sphere, but also to the legal one, to obtain a series of conclusions regarding both the specificity of legal relations and the existing relations between the norms, institutions and other manifestations characteristic of the legal system of the Transylvanian Saxons. Also, to demonstrate the applicability of legal transplantation in the case of the Altemberger Codex, once the hypothesis of imperialism is rejected, the logical method is used, starting from a series of premises having as object the reasons behind this decision of the Saxon community.

I consider it important to mention that the German language plays an essential role in the elaboration of this paper, given the large number of specialized terms designating legal institutions specific to various forms of medieval German law. Because these terms do not always have a counterpart not only in Romanian law, but also in Romanian, it was often necessary to introduce detailed explanations regarding their content. Those explanations were intended to serve the comparative approach while facilitating a better understanding of the transfer of law. In this context, I would like to point out that the German translations belong to me.

At this point, I must point out that, with this work, I do not intend to translate the text of the Altemberger Codex in its entirety into Romanian language, nor to analyse in detail the substantive and procedural provisions contained therein. Considering the purpose of the paper and the objectives set, I will refer only to a part of the Codex provisions, insofar as this serves the contextualization approach indispensable to address the issue of law transfer, on the one hand, and the applicability of the theory of legal transplantation to the Codex, on the other hand.

As far as the research tools used in this paper are concerned, most of them are represented by various publications dedicated to the issue of law transfer in Central and Eastern Europe, published mainly abroad, in German. There were also used numerous studies, articles, monographs, or other research on related topics, such as colonization, the status of settlers, the description of legal mirrors, city law and urban legal families or mining law. Along with these publications, another research tool was represented by the databases I consulted during my doctoral research.

Research stages and structure of the thesis

As far as the research stages are concerned, the first of them consists in introducing clarifications regarding the development of the colonization process with German populations in medieval Europe and its implications. The necessity of this stage arises from the importance of properly understanding the role that colonization played in the transfer of medieval German law across the European continent, as well as how law in turn influenced the colonization process, imprinting on it a number of specific features. The stage involves establishing the spatio-temporal coordinates in which colonization took place, as well as the reasons that determined the emergence of this social phenomenon. At the same time, the establishment of these coordinates may provide some clues as to the process of transfer of German law that continued to take place after the completion of colonisation. At the same time, this phase involves some terminological clarifications, including notions such as: "colonization"; "lessor", "tenancy diploma", "urban legal family" or "privileged diploma", but also issues related to the legal status of settlers. Finally, it is necessary to restrict spatial coordinates, thus aiming to highlight the peculiarities that colonization has acquired in Central and Eastern Europe. This restriction is indispensable because it facilitates approximation to the concrete situation of the colonization of Transylvania, providing information about the origin of the colonists and the type of right specific to them, the absence of

locators, the privileged legal status of the colonists and the role of German law in foundation of settlements.

The second stage of the research aims at critically presenting the colonization of Transylvania with populations of German origin, at the will of the Hungarian Crown. Without this approach, understanding how legal transplantation was used in the case of the Altemberger Codex would be greatly hampered, since it would have been impossible in the absence of the administrative and legal autonomy granted to the Saxons by the Golden Bull of 1224. At this stage, the sources regarding the origin of the colonists called to Transylvania, the reasons for which this call took place, but also their privileged legal status and the right to autonomous organization are analyzed. These elements have the role of highlighting the originality of the legal system of the Saxons in the Province of Sibiu, presenting the social, legal, political and social framework and providing some clues as to the reasons that led to the transplantation of the Altemberger Codex, to the detriment of creating their own legal norms.

The third stage of the research concerns the establishment of the particularities of medieval German law in its concrete application, as an instrument and enabler of colonization. Thus, using a comparative perspective, the various types of law and their specific manifestations are briefly presented. Starting from the idea that medieval German law could be mostly considered a product of the urban environment, the objective introduces the distinction between custom, judicial practice and written law, highlighting the existence of permanent interactions between them. At the same time, the influences that rural law exerted on other types of law are also considered, especially since settlements, at least in the initial phase of colonization, were predominantly rural. Moreover, the differences between city law, mining law, but also between compilations that took the form of legal mirrors – *Sachsenspiegel*, *Schwabenspiegel* and *Deutschenspiegel* – are highlighted, with particular attention being paid to hybrid forms of law, resulting from the combination of elements of basic types of law. Moreover, along with *Handfeste* (a form of privilege), all types of law mentioned above are variations of written law. Their comparative presentation serves to bring to attention not only the similarities between them, but also to provide some coordinates regarding the extensive process of transfer of medieval German law to Europe, to which cases of transplantation must be reported. With the understanding of the phenomenon of medieval German law transfer, legal transplantation under the Altemberger Codex becomes much simpler to deal with.

First of all, in the absence of knowledge of the types of German law, especially those written, and how custom actually functioned, along with the particularities of urban legal families, a complete and correct analysis of transplantation in Transylvania is impossible, since the manuscript is nothing more than a legal compilation. As a result of combining the rural law part of the *Schwabenspiegel*, Magdeburg urban law and Jihlava mining law, the Altemberger Codex cannot be properly studied unless the separate content of each of the three component types of law is first addressed.

Secondly, given that Sibiu was an urban center of the time, and the evolution of German urban centers was based on their foundation according to the rules of German law, giving birth, in time, to urban legal families, these aspects cannot be eliminated from the transplant analysis. Knowledge of the types of German law, especially written ones, of the functioning of city leagues and urban legal families contributes to the understanding of the reasons that prompted the call for transplantation. Moreover, given the importance of the case-law of the courts in the German cities and the role of Sibiu as a chair of appeal, those issues will also be addressed in the context of that objective, for the reasons set out above.

As for the structure of the work, it includes four chapters: "Some considerations on colonization in the Middle Ages", "Medieval German law – instrument for successful colonization", "Transfer of German law to Central and Eastern Europe: The Case of the Kingdom of Hungary and the Kingdom of Poland" and "Codex Altemberger – between legal transplantation and cultural expression". As regards the first two chapters, it should be noted that they will serve as auxiliary tools for the construction of the third chapter, born around the idea of demonstrating the applicability of legal transplantation theory to the Altemberger Codex. Thus, the first chapter, "*Some Considerations on Colonization in the Middle Ages*" is in turn made up of several sections that trace the red thread of the colonization process with German populations in Europe of the Middle Ages. Colonization was one of the factors that stimulated the evolution of Medieval Europe, which can be defined as a complex phenomenon with multiple implications in all areas of life. Born against the background of the demographic crisis and the economic difficulties faced by many areas of the European continent, colonization was conceived as a solution to these vicissitudes, with its effective implementation, reaching the movement of several types of populations, including those of German origin. Like colonization with other populations, colonization with populations of German origin has known its own peculiarities, materialized in the emergence of lessors as intermediaries of colonization, rental diplomas, but also the privileged legal status granted to colonists. At the same time, one of the most important consequences of colonization was the establishment of new settlements under German law and, moreover, its contribution to the propagation of various forms of German law in Central and Eastern Europe. Moreover, regarding the latter areas of the continent and, in particular, the Hungarian Kingdom, colonization with populations of German origin has known some specific features, among which is noted the replacement of the classical lessor, appointed by the feudal lord, by the king himself. Here, the calling and settlement of settlers was carried out without intermediary, the agreement of wills being established directly between the king and the colonists, without the need for the so-called "lease". Moreover, the legal and political status of the settlers, including their rights and obligations, was determined by privileged diplomas awarded directly by the royalty and often reconfirmed later. In fact, this is also the case of the German colonists settled in Transylvania at the call of the Hungarian Crown, following the conquest and integration.

Regarding the call of German colonists to Transylvania, probably what determined King Géza II to resort to this gesture was both the need to defend the borders and the skill that the colonists showed in the art of war, but also in terms of crafts or agriculture. Once invited to Transylvania, those who would later be called Saxons are granted privileges in relation to the rest of the population, through the Golden Bull of 1224. According to this document, both the legal status of the Saxons and that of the settlements formed by them was established. Thus, the freedoms granted to the Saxons by the privileged diploma constitute some of the oldest components of city law in the Carpathian basin, this type of right being formed, in large part, by the legal customs brought with it by the colonists themselves and preserved over time. Moreover, during the process of forming new urban and, where appropriate, rural settlements, reference was often made to the rules of the so-called *ius saxonum*, which encompassed a broad set of freedoms. One of the most important consequences of the Golden Bull is the recognition of the right of self-administration of the Saxons, which was the basis for organizing their own legal system, distinct from other such systems existing in the Hungarian Kingdom. From this point of view, it can be concluded that, in Transylvania, the preservation and application of one's own type of right, and therefore the possibility of resorting to legal transplantation in the case of the Altemberger Codex, is closely connected with the particularities of the colonization process in Central and Eastern Europe. This chapter not only inscribes the colonization of Transylvania within the larger phenomenon of colonization recorded in much of Europe, but it also highlights the distinctive features that this process has acquired in relation to Transylvania. Highlighting these features is useful in demonstrating that in the absence of the privileged status that allowed the Saxons to preserve and apply their own type of right, as well as the right of self-administration, they would not have had the possibility to resort to legal transplantation regarding the Altemberger Codex, even though the phenomenon of transfer of law that characterized Eastern and Central Europe.

The second chapter of the paper, "German Law – Instrument for Successful Colonization", will introduce both some terminological clarifications and the necessary distinctions in order to understand the legal context in which the Altemberger Codex appeared and was applied in Transylvania, as well as its concrete content. Therefore, in the absence of this chapter, explaining and supporting the applicability of the legal transplantation theory in relation to the Sibiu manuscript would be greatly difficult, if not impossible. The chapter will include some references to the issue of German law as a cornerstone of the city, in the context of its importance in the formation of settlements, or as a product of it. In this respect, although the birth of medieval German law was mainly based on customs and traditions handed down by word of mouth, from generation to generation, it cannot be denied that its subsequent evolution was closely linked to the founding and development of urban settlements. Thus, despite the importance of customs, applied especially in rural areas, the city has become a promoter of written law, gradually moving from custom, to emphasizing the importance of jurisprudence (especially in the case of urban legal families and opinions issued in

this context), and then to the transposition into writing of various legal acts and, finally, of norms. With the written transposition of legal norms, the first tendencies of quasi-systematization and codification of law appeared, through the famous mirrors, whose structure was organized according to the nature of the relations they governed – for example, rural law, feudal law or even city law.

In the field of medieval German law, a central role was played by city law, especially city law from Magdeburg, as well as its subtypes or hybrid forms, among which can be included the mining law of Jihlava, later taken over by Nuremberg. Since Magdeburg law was a collection of legal rules applicable in relations specific to urban environments, it is natural that it was transferred to Central and Eastern Europe, especially in relations with new urban centres or even older cities wishing to develop an efficient legal system. Also, mining law was part of this process, being often taken over and implemented by mining settlements, even in adapted form. It should be noted that, as regards the takeover and adaptation of both Magdeburg law, Jihlava or Banská Štiavnica mining law and their hybrid forms, these were often achieved by selecting only the necessary elements or by adapting the content to the social, political, economic and cultural context in which it was to be applied. Regarding the issue of legal mirrors, a first aspect that should be noted is that they are legal compilations, formed by joining, depending on the author's wishes or the requirements of the limited partner, different types of German written law.

Among the most common types of medieval written German law are feudal law, rural law and Magdeburg city law, which are also those most often found in mirrors. Thus, three German legal mirrors are identified: *Sachsenspiegel*, *Schwabenspiegel* and *Deutschenspiegel*. Each of these mirrors has, over time, undergone changes in the text, with glossed, rhymed or even illustrated forms to serve a better understanding of their legal content by its recipients. In conclusion, it can be argued that medieval German law in all its forms served not only as an instrument of successful colonization, but also as a prestigious model for the formation or development of new settlements of settlers. From this point of view, in relation to the content of the Altemberger Codex (composed of Magdeburg law, *Landrecht* of *Schwabenspiegel* and Slavonic mining law of Jihlava), the prestige enjoyed by the types of law included therein must have been one of the reasons for selection for transplantation. Moreover, by knowing the content of these forms of law and how they were applied in other areas of Europe, it is possible to identify the particularities of the legal system of the Transylvanian Saxons, as well as the defining features of legal transplantation in the case of the Altemberger Codex, seen in the broader context of the transfer of law from Central and Eastern Europe. This chapter will address the issue of legal compilations in Central and Eastern Europe, resulting from the juxtaposition of various types of medieval written German law, especially Magdeburg city law, parts of legal mirrors or mining law. A common coordinate of these compilations is the selection of the component texts and their nature. Given that these are compilations that were to be applied mainly in urban areas, the selection of components indicates a preference for

forms of law included in the wider pattern of city law – e.g. *Silleiner Stadtrecht*, *Brünner Codex*, etc. However, because there were also rural communities dependent on the urban centre around the cities, some of these compilations also included elements specific to rural law, such as the so-called *Weichbildrecht* or the *Landrecht of Schwabenspiegel*.

Through the third chapter of the paper, I will try to outline the broader framework of the transfer of law carried out at that time in Central and Eastern Europe. To begin with, the chapter will highlight the directions of spread of medieval German law in the center and east of the continent, the specifics of the establishment of settlements according to German law, the issue of urban legal connections and the importance of city law in the transfer process, in a broad sense. Subsequently, in the last chapter of the paper, "Codex Altemberger – between legal transplantation and cultural expression", starting from the premises established through the previous two chapters, I will try to demonstrate both the applicability of the theory of legal transplantation in Transylvania, regarding this medieval manuscript, and the success of this approach carried out on the background of the transfer of law, with its broader meaning. Thus, the chapter will analyze the theories regarding the origin of the manuscript, but also, broadly speaking, its content, given that this paper does not aim to provide an exhaustive analysis of the provisions of substantive and procedural law, but to prove the applicability of the theory mentioned above. Therefore, in the Altemberger Codex, along with Magdeburg law and Jihlava mining law, there is also the part dedicated to land law in the Swabian Mirror. Unlike the rest of the compilations, the structure and content of the Altemberger Codex are unique, the manuscript being characterized in some works as *Sachsenrecht mit Gemälde* ("Saxon Law with Images"), due to the richness of images and plant decorations that accompany the text. Moreover, through the richness of its illustrations, the Altemberger Codex stands out among other medieval manuscripts and legal compilations, being considered a legal work not only particularly relevant for the legal life of the Transylvanian Saxons, but also a reflection of German culture.

The origin of the codice has not been established with certainty, but it brought together legal norms born outside the Transylvanian space. Therefore, the Codex was imprinted with a specific spirit and physiognomy. Although the differences between the place of origin and the realities of the Province of Sibiu could have jeopardized the success of legal transplantation, seen even in the broader context of the transfer of law, in practice this did not happen, precisely because of the cultural and implicitly linguistic similarities existing between the importing community and the one that served as a source. Thus, it is about the importance of cultural and mentality rapprochement between the Transylvanian Saxons and the German populations whose forms of law they have taken over and implemented, to the detriment of creating their own legal norms. However, some difficulties in applying those provisions may have arisen from the implications that the legal status recognised to the colonists by the Hungarian Crown had on their mentality and culture, but also on their social

organisation. The granting and reconfirmation of the privileged status of the Saxons, the gradual recognition and consolidation of the ancient freedom, the subordination, even limited, to the Hungarian king is impossible to have remained without consequences at the level of the collective mind of the Transylvanian Saxons.

If the written forms of law that the Saxons took over were from the very beginning a creation of different German populations in Western Europe, until the fifteenth century, the defining peculiarity of the legal system of the colonists in the Province of Sibiu was represented by the existence and extensive and intensive application of the legal custom, hence the predominantly customary character of this system. Thus, until that moment, remarkable was the almost complete lack of written legal norms, the Municipal Statutes coming into being somewhat later (1583), only after the appearance of the Altemberger Codex. Basically, a community that until then had been guided by ancient customs, ends up resorting to written provisions, characterized by greater stability and even rigidity. The transition from the direct application of custom to combining and supplementing it with the written norm, and vice versa, must have raised some problems regarding the interpretation of law by the courts. In this context, by referring both to the wider phenomenon of legal transfer in Central and Eastern Europe, as well as to the reasons that determined the transplant call, but also to the advantages and disadvantages of this approach, the last chapter of the paper also demonstrates the importance of the cultural factor in relation to the success of transplantation. Thus, taking over the manuscript represented a form of cultural expression, given that we are facing an instrument resulting from the transposition into writing of West European German legal thought, most likely close to that of the Saxon colonists in Transylvania. On the other hand, the different political, social and historical context in which that community has evolved must have led to some changes to the borrowed text in order to adapt it to everyday needs.

I believe that the originality and novelty of the thesis is due to the topic approached because, in the Romanian space, the applicability of the theory of legal transplantation in relation to a medieval legal text has not been discussed in any specialized work, much less with reference to the Altemberger Codex. In this sense, unlike the rest of the works which, as we have shown before, mention only tangentially the Codicele, the thesis places him in the historical, political, social, economic, and cultural context of his time, not only within Transylvania, but at European level. When analyzing the structure and legal content of the manuscript, reference is made to the legal situation in medieval Europe, itself influenced by the process of colonization with Germanic populations. In this context, the appearance of the Codex in Transylvania is placed within the phenomenon that German specialized literature designates by the phrase *transfer of law*. Even this classification of the Transylvanian manuscript in the wider scope of *the transfer of law* represents a feature of the originality of the work, insofar as it includes the distinction between this phenomenon and legal transplantation. Moreover, the rejection of the hypothesis of the applicability of legal imperialism to the

Altemberger Codex is another factor which, in my view, contributes to the originality of the work.