

**ANDREI RĂDULESCU – HISTORIAN AND EXPERT IN  
COMPARATIVE LAW, PRECURSOR TO COMPARATIVE  
SOCIOLOGY OF LAW.  
ABOUT THE ROMANIAN LEGAL CULTURE<sup>1</sup>**

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**Abstract**

The results of the remarkable anticipative researches of the Romanian Academician Andrei Rădulescu about legal culture in Romania, made after the First World War, from the perspective of the history of law and comparative law are regaining exceptional value today.

The comparative sociology of law, from which the concept of legal culture arose, is given significant consideration due to the European integration. This process includes the integration of legal cultures, legal interculturality and respect for the cultural identity in the field of law.

**Keywords:** Andrei Rădulescu, comparative sociology of law, culture

**I. Andrei Rădulescu (1880–1955)**, whose name is currently held by the Institute for Legal Research of the Romanian Academy, was a remarkable personality of the XXth century. He devotedly served Romanian justice, Romanian law education and Romanian law science.

Being interested in the science of law, as well as history, he simultaneously graduated with honors from both the Faculty of Law and the Faculty of Linguistics and Philosophy, obtaining a *magna cum laudae* at both faculties. He obtained the Ph.D. in Law from the University of Liège, with the mention “*Avec Grand Distinction*”.

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<sup>1</sup> Those interested in the life and work of Andrei Rădulescu, should refer to the scientific works dedicated on the occasion of its 125<sup>th</sup> anniversary, published in the periodical “Academica”, no. 45 of December 2005; namely: Acad. Eugen Simion, *Andrei Rădulescu, Un om drept, învățat și prob (Andrei Rădulescu, a just, educated and onest man)*, pp. 20–21 Acad. Dan Berindei, *Locul lui Andrei Rădulescu în istoriografia română (The place of Andrei Rădulescu in Romanian Historiography)*, pp. 22–23; Brândușa Ștefănescu, Raluca Dimitriu, *Andrei Rădulescu, profesor universitar la Academia de Înalte Studii Comerciale și Industriale (Andrei Rădulescu, University professor at the Academy for High Commercial and Industrial Studies)* pp. 32–33, Liviu P. Marcu, *Andrei Rădulescu și vechiul drept românesc (Andrei Rădulescu and Ancient Romanian law)*, pp. 35–37, Barbu B. Berceanu, *Andrei Rădulescu și Dreptul constituțional (Andrei Rădulescu and Constitutional law)* pp. 38–40; Ortansa Brezeanu, *Personalitatea lui Andrei Rădulescu (The personality of Andrei Rădulescu)* pp. 47–51.

He was a first class magistrate, holding the position of first head of the Romanian Court of Cassation. He also was an excellent university professor, teaching History of Romanian Law, Civil Law, Constitutional Law and Public International Law.

He was a remarkable scientist, as well as author and coordinator of numerous and valuable scientific works. He was elected correspondent member of the Romanian Academy and afterwards full member of the Academy. He was president of the History Section of the Romanian Academy and was elected four times as vice-president of the Academy. In the years 1946–1948 was President of the Romanian Academy. He was part of prestigious international scientific bodies and for his scientific and cultural activity was distinguished with numerous orders and medals.

**II.** The studies undergone by the author of this paper regarding comparative sociology of law and particularly legal culture<sup>2</sup>, as a subject tackled by most specialists, beginning with the '60, preceded her research concerning Andrei Rădulescu's contribution in the field of comparative law<sup>3</sup>. When addressing this topic, she surprisingly discovered interesting anticipations of Andrei Rădulescu concerning the legal cultures issue, within the scope of the History of Law and Comparative Law.

The thorough studies made by Andrei Rădulescu regarding Romanian legal culture are gaining a valuable significance today, some of it due to the European integration within the field of law, integration that includes legal cultures, interculturality, respect of cultural identity, both general and legal. Moreover, his research is gaining importance in the context of the complicated process of forming a European legal culture, as well as of globalization of legal culture.

**III.** At the reception speech held in the solemn meeting of the Romanian Academy at 3<sup>rd</sup> of June, 1922<sup>4</sup>, Andrei Radulescu underlined the general features of legal culture development in Romania across a period of a hundred years, beginning with 1814–1818. At the time of the speech he was analyzing the state of

<sup>2</sup> Sofia Popescu, *Derecho comparado y sociologia juridica comparada*, vol. „El derecho en red. Estudios en Homenaje al profesor Mario G. Rosano”, Dykinson, S.R. Madrid, 2006; idem, *Cultura juridică – concept cheie în cercetarea căilor integrării europene în domeniul dreptului*, „Studii de drept românesc”, No. 3–4/2002, idem, *Legal Culture – a Key Concept for Research on the European Integration*, in „Ad Honorem Dr. Professor Csaba Varga «Law and Philosophy in the XXI Century»”, Akadémiai, Kiado, Budapest, 2008.

<sup>3</sup> The results of this research were brought into attention in the scientific presentation with the theme *Andrei Rădulescu și dreptul comparat (Andrei Rădulescu and comparative law)*. The presentation was published in the periodical „Academica”, no. 45 / December 2005, pp. 42–46.

<sup>4</sup> *Cultura juridică românească în ultimul secol (Romanian Legal Culture in the Last Century)*, speech held at 3<sup>rd</sup> of June 1922 in solemn meeting, (under the presidency of H.R.H. Prince Carol, with the response of Jacob C. Negruzzi, secretary general of Romanian Academy, *Cultura Națională*, no. 4/1923, București, Academia Română, Discursuri de recepțiune, LIII. Special attention was given to the following pages: pp. 9–17, pp. 19–35, p. 37, p. 39, pp. 40–49; also, *Cultura juridică românească*, București, Imprimeria Națională, Pandectele Române, nr. 1–3/1942.

legal culture. He split the timeframe tackled by his research in two periods, both of approximately 50 years in length. The second period was concluded by the First World War and the Great Unification of 1918.

In justification of the subject, he showed that legal culture wasn't carefully observed and that provoked the apparition of erroneous claims on the existence and value of Romanian legal culture.

He reproached that some, mistakenly claimed that there wasn't a national legal culture until 1864–1866, while others were denying its existence, even after the mentioned years, and finally, that some, although recognizing its existence in the past hundred years, considered the legal culture of the first period of fifty years quite worthless.

Andrei Rădulescu demonstrated, in a most persuasive way, within the timeframe mentioned, the existence of a specific Romanian legal culture. He also highlighted its fundamental ideas, such as: sovereignty, constitutional regime, separation of powers, individual freedom, and respect towards property. As for the administration of justice, he mentioned the *res judicata* principle, irremovability of judges, equality before the law and justice.

His conclusion was that superiority of fundamental ideas and their materialization in substantial law and legal institutions proved without doubt the value of Romanian legal culture of those times. Permanent disregard towards applying these ideas or their faulty exertion, which constituted real situations in other countries as well, diminished their positive effects, without affecting the value of the national legal culture.

From the same reception speech we can deduce the insistence of Andrei Rădulescu in underlining that the process of national legal culture development was characterized through conservation of Romanian particularities, by consolidating and spreading of Romanizing ideas, laws, and for that purpose, contributed to the national reawakening.

Western legal culture – as mentioned by Andrei Rădulescu – was used, but not assimilated completely. Gradual adaptations were made to the conditions and needs of Romanian people. The concrete aspect of legal culture was also emphasized, as there weren't many erudite legal theories or studies, because of the primary need for written laws, customs, civil servants and a more prominent preoccupation from the authorities.

Andrei Rădulescu realistically observed that the legal culture of the studied period wasn't very advanced, not on the account of existing laws but on the part of its spread within the population, as well as from the perspective of juridical literature.

**IV.** It was normal for Andrei Rădulescu not to include in the scope of authority of the concept of legal cultures exactly the same key components that will be considered, a few decades later by the experts of comparative sociology of law, although even now there are significant doctrinaire differences.

Strikingly, there are substantial similarities to the contemporary theories that justify his scientific approach as authentic anticipation and therefore, permit practical and parallel comparison.

A first example in the research of legal cultures refers to the significant weight of the positive law, both written and non-written, as product of the legal culture. Following this direction, we should pay attention to the remarks of Csaba Varga<sup>5</sup>, known for his studies in the philosophy of law, as well as his interest in comparative sociology of law. According to this expert, the study of legal cultures is different from the descriptions of legal texts which the community utilizes, as technical instruments, but do not lose their quality as symbols and embodiments of legal cultures.

On the other hand, the reputed pioneer of comparative sociology of law – Volkmar Gessner<sup>6</sup> considers that both official and unofficial legal norms are part of a society's culture, as they both rely on coercion. Relating to the elements of Romanian legal culture in the aforementioned period, Andrei Rădulescu also analyzed the level of legal knowledge, although he didn't differentiate between internal legal culture<sup>7</sup>, of law practitioners and external legal culture, of common people or, as it is sometimes called "*of the public*".

He also observed that, as early as the XVIIIth century, the law was progressing in the Romanian Princedoms, due to the influence of Phanariote Lords, some of them quite enlightened, of some of the boyars who knew how to read the legal sources of ancient law. Also, famous law specialists were brought to teach law to children of high officials and noblemen and most importantly, in those times, there were men who knew the intricacies of national law, as well as those of Roman law, Greek-Roman law, French law and German law.

He draws attention towards what is today known as external legal culture. He gives the following example: If someone has any doubt concerning the measure of the level of law knowledge, he should research the life of Romanian people, especially the Romanian rural life, as he will be strongly impressed of the sharpness of the people to understand and assimilate legal rules, as well as of the amazing means used in their efforts to learn

On the first period of the timeframe, Andrei Rădulescu was mentioning the special development of legal studies in the two Principalities, with chronological specifications regarding the teachers and disciplines.

A special mention was dedicated to the beginnings of youth legal trainings, which studied, almost exclusively in Paris.

<sup>5</sup> Csaba Varga, *European integration and uniqueness of national legal culture*, in „*The Common Law of Europe and the future of legal education*”, Ed. Bruno de Witte and Caroline Forder, Metrou Kluwer, 1992, p. 725.

<sup>6</sup> Volkmar Gessner, *The transformation of European Legal Cultures*, in „*European Legal Cultures*”, Dartmouth, Oxford Press, 1995, p. 513.

<sup>7</sup> The term „internal legal culture” was used for the first time by the american professor Lawrence Friedman, who assumed the role of introducing the concept of „legal culture” in sociology of law.

Andrei Rădulescu didn't let out the existence of those who obtained in the country certain juridical knowledge and who were occupying at the time judge or dignitary posts or were part of the professional order of the barristers at law. He also noted an increase in the desire for law knowledge. He mentions too, that famous lawmen of the time were using almost the entire doctrine and jurisprudence available at the time.

The statute of legal professions, as a traditional subject of the sociology of law was taken into consideration by the comparative sociology of law also, as part of the legal culture.

For instance, Carlo Penissi<sup>8</sup>, studying the empirical applications of the legal culture concept, was aware of the reasoning patterns used by specialists of law, in their attempt to emerge from the normative and abstract basis to individual consequences, using sentencing and justification techniques, as well as the specialized lexicon in which they expose their ideas, values, ideologies, reasoning patterns and legal solutions which contributes to maintenance and expansion of lawmen as a professional group.

The first element Erhard Blankenburg<sup>9</sup> includes in the scope of legal cultures is the complex of exposition and interpretation techniques, used by the law operators, to which he adds knowledge related to the specific vocabulary to legal professions.

Recently, Mark van Hoecke<sup>10</sup> appreciated that in the context of comparative law – although we believe the reasoning to be compatible to comparative sociology of law as complementary sciences – the concept of legal culture refers to a mixture of positive law and attitudes towards the law within legal professions, society or communities in which is applied. The same author considers that those who were educated in the spirit of a certain legal culture and were later socialized again by the same legal culture, will follow its principles when entering legal professions.

Returning to the research focus of Andrei Rădulescu, we mention a growth in lawmen numbers in the period of the Organic Rule, when the conservators and traditionalists were joined by young enthusiasts who studied law in Western Europe. Moreover, it was of significance that the order of barristers at law was formed in a time when special attention was given to the general improvement of law status, as well as justice administration.

Andrei Rădulescu underlined the important role that small officials who worked in courts and offices had in the juridical life, as they spread the legal culture. He also insisted on the necessary qualities a judge should have: honesty, impartiality, professional skill, considering that respect towards the judge is also mandatory.

<sup>8</sup> Carlo Penissi, *Sociological Uses of the Concept of Legal Cultures*, Ed. David Nelken, Dartmouth, Oxford Press, 1997, pp. 114–115.

<sup>9</sup> Erhard Blankenburg, terme „*Culture Juridique*” in *Dictionnaire Encyclopédique de Théorie et Sociologie du Droit*, Bruxelles, L.G.D.J., 1998, Red. André Jean Arnaud.

<sup>10</sup> Mark von Hoecke, *European Legal Cultures in a context of Globalization*, Vol. 23 IVR World Congress, August 1–6, 2007, Cracow, Poland, *Law and Legal Cultures in the 21st Century. Diversity and Unity*, Plenary Lectures, Ed. Tomasz Gizbert Studnicki, Jerzy Stelmach, Oficyna, Warszawa, 2007, p. 83.

In order to continue the comparison, we observe that in comparative legal sociology literature<sup>11</sup>, the scope of legal culture does include the way that law operators are fulfilling their duties and that a reasonable, adequate orientation in legal culture's area constitutes a necessary condition for the judges activities, administration activities and attorney's activities.

During the second half of the examined period, which began in 1864–1866, a superior stage of legal culture evolution started. New foundations for Romanian law were laid; new laws were imported from western systems, especially from the French legal system, which was considered more appropriate. Also, a vast work of law making took place, continued by real progresses in justice administration, including a rise in the numbers of jurists and bachelors of law, who were at the same professional level of their counterparts in western European systems.

Other achievements mentioned were: the dissemination of legal culture, teaching elements of law in almost all the schools, legal training for functionaries, admittance in the professions of attorneys and magistrates only for the bachelors of law, Ph.D.'s and long time practitioners.

Andrei Rădulescu brought to light the fact that some of the folk people had knowledge of the new law provisions, entered into force after 1864, while field work demonstrated that allegations which stated the contrary were completely inaccurate.

According to his speech, the image of legal culture of the second period had two substantial progresses: the creation of a valuable collection of jurisprudence which could earn an honorable place next to the foreign ones and also the creation of scientific works and periodicals which attracted an increased interest.

He critically qualified the fact that the ancient legal culture and tradition were abandoned as essentially wrong. However, he explained the mistake as it was necessary in order to unify the national legal regulations.

Placing himself also on a critical position, similar to that of modern comparative sociology of law, he warned that in the last years of the second period, the practice of issuing law-decrees was abundant, almost to the point of abuse. Moreover, the *res judicata* principle and the *non-retroactivity* principle were faulted.

Showing objectivity and wisdom, Andrei Rădulescu didn't deny the reality of some lapses in Romanian legal culture, considering that is better to be revealed by Romanians, but not in an exaggerated fashion.

He asked that anyone who would make appreciations over the Romanian legal culture needs to be serious and impartial, considering the difficulties in forming a modern a state and developing a legal culture for which he foresaw new directions and development opportunities.

Again, by using comparison, we mention that Lawrence Friedman<sup>12</sup> stated about the concept of legal culture that it proved essential in comparative sociology

<sup>11</sup> Volkmar Gessner, *The transformation of European Legal Cultures*, *op. cit.*, p. 513.

<sup>12</sup> Lawrence Friedman, *More Comments in Changing Legal Cultures*, Oñati prepublications, Ed. Johamest Feest and Erhard Blankenburg, 1997, p. 202.

of law, being firstly related to how law dynamics, as well as change and evolution of legal systems is conditioned by legal culture.

In the same speech, was mentioned that, in the perspective of 1918 Great Union, legal culture was necessary to cement the legislative union as it is considered the best way to promote fraternity.

The remarkable jurist and historian, to which this paper is dedicated, was characterizing legal culture as part of national culture, the latter being one of the reasons for the existence of nations, as a purpose to insure their life and a contribution to general culture and mankind progress.

He also mentioned that it cannot be conceived for a complete national culture to miss on an essential part – legal culture.

Finally, by anticipating what will later be known as prospective research, Andrei Rădulescu foresaw that, no matter how many legal principles common to all nations will exist and no matter how many identical laws would be enforced in order to facilitate international relations and no matter how internationalized law will become, there would still remain enough specific parts of every nations in the field of legislating and, no less, in the field of interpretation, understanding and enforcing law.

