

5. The defense of acquired rights

Acquired rights are valid only as long as they can be defended. That is why almost from the beginning there is among the joy about a new property the fear of losing it again. This was not any different in our ancestors. When they settled in Grosskopisch the ownership structure was in a fluid state. In the area between the Schässburger and the Mediasch Stuhl there remained a so-called Praedium, land without settlements, that had been occupied by the lineage of the counts of Apa von Malmkrog and settled by Germans. The communities Kreisch, Peschendorf, Felsendorf, Malmkrog, Rauthal, and Neudorf developed. A long feud evolved about their affiliation to the Schassburger Chair (Stuhl) and with it to the King's land. The dispute finally ended in the year 1340 when the Seven Chairs let go of these communities out of their federation. From then on they belonged to the grounds of the County and were subject to the jurisdiction of the Count of Siebenbürgen.

Nine years later the noble Johann von Malmkrog charged in the Court of King Ludwig the Great that the "hospites" ("guest") or settlers of Grosskopisch and Waldhütten had taken ownership of the area Lapesch during the tenure of his father and used illegally despite the fact that this area was located within the borders of his property Rauthal and Neudorf. The king ordered an investigation and commanded to give his property back to the plaintiff Johannes Apa von Malmkrog.

In a document dated the 13. Of December 1349 in Bistrich the Szekler Count Andreas speaks about the implementation of this order. He stated that he had carried out public and secret investigations of nobles and by community planners of Hermannstadt and other villages and towns and had therefore acquired specific knowledge about the borders. Thereby he had learned and recognized that this ground was an inherited property of the Apa family. Consequently he had ordered to give them back to Johannes as appropriate and irrevocable property. The Saxons of Grosskopisch and Waldhütten were commanded to remain silent forever about this matter. A week earlier he had written a letter to the Chapter of Weissenburg in which he asked the Chapter to assist that this order of the King was carried out.

But with this judgment the dispute was not yet finished. From 1363 – 1366 the argument was continued, sometimes violently. In 1363 when a commission made a formal walk along the border and new Hattert mounts were erected, and the Lapesch was awarded to the Count Johann von Malmkrog, the Saxons of Grosskopisch and Waldhütten protested with violence. They destroyed the new border mounts and wounded lethally a relative and a servant of the Count with arrow shots. The commission had to flee. Their report now sounded in earnest that the Saxons of the two communities had taken possession illegally of the disputed region. The unruliness of these Saxons was reported in detail.

The judicial dispute was forwarded from the Voivodal Court to the King because both parties underpinned their position with documents. In the year 1363 King Ludwig held court in Weissenburg and dealt also with this legal Hattert dispute. Count Johann von Malmkrog charged the Saxons of both communities of the same offense as before. Therefore the King ordered the Weissenburg Chapter to undertake a walk along the border and to determine the relationships among individual ownerships, productivity, and value of the disputed land. This happened. The report stated that only one great heap of earth dividing the districts of Grosskopisch, Birthälm, and Malmkrog had been set, marked as border, and was recognized by both parties. In the same way a border point at the Long Mountain between the properties of Neudorf and Waldhütten property was recognized similarly. Then Johannes pointed to several places along the same mountain asserting that there had been more border markings but that those had been removed by the Saxons, removed purposefully. When Johannes could no longer identify existing markers, the Saxons led the commission to the opposite mountain, on which slope border markings were clearly visible which had been erected at the time of the Voivode Ladislaus, that is at the time of their initial settlement of the region. Johannes then remarked that these unauthorized border posts had been placed by the Saxons arbitrarily. After an exhaustive discussion with the nobility present and the administrators of the adjacent Mediasch Chair the commission concluded that in view of the given circumstances an agreement about the disputed land was not possible. They estimated that the Count with his grounds, forests, waterways, and vineyards could easily support eighty farms with foods and fruits.

The judgment, that a peaceful solution was not possible, the contrariness of the arguing parties, and the report of the commission caused the King to make use of his right as supreme judge of the country. Without a doubt he has also considered the use of force by the Saxon farmers as a sign and a warning. Even today it is the question whether they

would have had the courage (for the fight) if they had been unjustified in their demands. Didn't their action demonstrate an answer to bitter injustice that was done to them? The King now instructed the Ban of Croatia and Dalmatia, Nikolaus de Zeech, and the Vicevoivode of Siebenbürgen, Petrus de Jara von Galt, whom he entrusted with royal privileges, to peacefully settle the dispute about the Lapesch. In this, the Count of Petrus von Hetzeldorf should represent the inhabitants of Waldhütten, and the Count Johannes von Grosskopisch stand in for his own community. The Chapter of Weissenburg was also asked for assistance by the King.

On the 13th of July 1366 the King Ludwig I confirmed the judgment of the commission. In it is stated that the Count Johann von Malmkrog repeatedly had asked for the transfer of his inheritance. When he was almost granted his petition, he had had several disputes and fights with the Saxons who, when his father was still alive, had illegally taken possession of the land. On his own free will he had agreed to divide the piece of land, because he had recognized that he could not obtain all of the land in a peaceful manner. Otherwise a riot would erupt among the Saxons. That is why the envoys of the King had divided the grounds among the two parties, which was acceptable to both. With their consent visible heaps of earths were built as border markings on both sides of the Lapesch Creek, which was now the new border. The last marker was at the lower end of the part of Grosskopisch, below the top of the Lilien Mountain (Lilienberg), s. Lejabarch.

On the 27th of August, 1366, the King gave the order to the Saxons of the Chairs Hermannstadt, Mediasch, and Schelk, to take care not to disturb Count Johannes as well as his sons and their future descendants in their inheritance rights for half of the valley of the Lapesch Creek, which had been awarded to them through the peaceful division of the land by the commission agreed upon by all. The newly erected border markings were not to be violated. This arrangement was followed and today the border proceeds the same as it was established then.

In November of the same year the Count Johannes von Malmkrog brought suit in front of the Woiwode from Siebenbürgen that in the night of the 23rd of November the Saxons of Grosskopisch had raided the village of Neudorf, burned down five houses, two barns, stole the small personal possessions stored there, and drove away six oxen and one Jobagyen (serf). The Weissenburg Chapter was asked to investigate the case. The result of it is not known. In no case one can assume that it was a robbery. More likely is that a servant of the Count let the oxen graze on the Kopisch side, was apprehended, and held in custody with the cattle until the owner paid for the damage of the land, in a similar way as this would be handled, up until our present time. If the owner refused to pay, the possessions of the servant would be raided in order to put pressure upon the owner. Proceeding this way could further inflame a situation so much that arson cannot be excluded. Such ruthlessness served to let the Count and his servants know that the Saxons were determined to defend their property by all means. For the assumption that damage to the land had provoked the quarrel, speaks the fact that neither the result of the investigation nor a judgment in this matter has been documented.

It is historically established that from the beginning the property of the Saxons was disregarded in a similar fashion. Not only was there theft in the forests, but also their wheat fields were abused by letting cattle and sheep graze there. For such infringements the King himself had to intervene. So he ordered in the year 1432 for the Szekler Count to pay 7000 Gulden for the damage to the land in the Repser Chair which had been caused by the Count's troops. Our years later again he commanded Szekler again to "take care to refrain from assassinations, robbery and similar deeds in the Repser Chair from now on." Such crimes were more common in the border states because villains could escape the criminal prosecution by the flight to the grounds of the nobles from where they were not extradited by the land owner.

There were also border disputes among the Saxon communities. A dispute also occurred between Grosskopisch and BIRTHÄLM. In the year 1640 from the community BIRTHÄLM spent "as the Monsieur Mayor (of Mediasch) came by the Border markings (Hatterthausen) on the Kapuscher Hatterert he bagged sixteen eights of wine, and 13 eights of wine and one shoulder for the Midischer gentlemen." Upon this J.M. Salzer writes: "Most likely... it was where in the swamp field the BIRTHÄLMER Hatterert cuts off the Hatterert of Grosskopisch." Such a presumption strikes the absurd of this border. BIRTHÄLM'S property proceeds in the so-called Great Valley of BIRTHÄLM from the mountain ridge, on which it began from the border to Waldhütten, until it came down here in the Grosskopisch valley, the Marhelt. Right in the middle an acre is located which belonged to a family from Grosskopisch, called the Hatterert Stone. A little above it the valley is again intersected in the eastern direction. On the eastern ridge the border then moves to the south and cuts off the Grosskopisch Hatterert a third time. This time from the area of pasture "Fettendorf", thus again enlarging the BIRTHÄLMER property. The Hatterert Stone suggests that the litigation was not the only one. Otherwise the borders were only marked by a mound of earth. In this case the border was identified by a border stone which could not so easily be removed. Another proof for this is the border

entrenchment which was dug up from the turn of the border to the south from Bralle Ridge (Brallerücken), along the Sharp Ridge (Scharfer Rücken) and the Fettendorfer Hagen to the three Hatterert heaps (Hatterthaufen).

The economic superiority of Birthälm, which competed with Mediasch about priority in the Two Chairs until the year 1553, was acknowledged with resignation by the people of Grosskopisch, especially relating to the border, because of a tale. The story told that the prince who came from Fettendorf rode across the bridge in the Marhelt over the Creek of Grosskopisch when his horse tripped with one leg on the bridge and got badly injured. Thereupon the prince requested a large sum of money in damages for the loss of the horse and promised the southern part of the Marhelt and Fettendorf to the community if they came up with the money the following morning and having built a new bridge overnight. The Birthälmer people would have been capable to meet his demands. That is why, since this incident, they owned the parts of the Hatterert thus mentioned. All of this happened at the original time of settlement when the land had not yet been distributed definitively. In the legend they had been satisfied with this unnatural border. But it is no wonder that in reality it was bound to lead to disputes.

The rights guaranteed in the Goldener Freibrief were disregarded and threatened even by their own folk people. Soon the right of equality for all settlers was broken by individual men of power. Every community elected for themselves the Hannen or Ruler who at the top of the community together with the elders kept watch over law and order. But wherever people come to power they are tempted to misuse the power and use it for their own personal gain. Only extraordinary greatness of spirit and a finely tuned conscientiousness for social and ethical problems enable virtuous moderation. But there has always been a shortage of that, in part also with our ancestors. If men from the same family are elected sequentially as rulers they lay claim to inheritance of this office. They enriched themselves from the common goods, usurped a portion of the land, obtained freedom from paying appropriate taxes, gave no Tenth, requested wood free of charge, free pasture rights, the right to establish taverns, and a portion of the profits of the community mill. It also occurred that they held unauthorized court on their property without a jury, setting punishments and keeping prisoners. It also happened that they deployed priests. Not only property, but whole villages they accepted as gifts from the king. This led to violation not only of rights and property, but such behavior also threatened the freedom of all of the people. When in 1291 King Andreas III gave a new Letter of Freedom (Freibrief) to the Nobility he specified that "the Saxons owning property and living in the same way as Nobles are to be considered equal in status to those of the Nobility".

Grosskopisch also had a Count who inherited his title. This is indicated by naming a fruitful side valley which runs from the middle of the village eastward, called Greveln, s. graivaln, and most likely belonged to the property of the Count's family. In documents princes (Gräfen von Grosskopisch) are mentioned often. So, in 1359, two, named Nikolaus, participate along with the elders in a Province Meeting (Gau Versammlung), during which a piece of forest disputed by the communities of Wölz and Baassen was awarded to the people of Wölz. In the litigation with the Malmkrog Count about the Lepesch Count Johannes represented his community. Finally, in 1456 a prince (Gräf) Paul is mentioned.

But then the male inheritance line of the family became extinct. Because of this the Count Jakob of Hetzelburg laid claim on the office of the Grosskopisch Count in the year 1477. When the community did not want to acknowledge him as heir he filed a suit with the Province Community (Gauversammlung) of the Two hairs in Mediasch. They decided that he should bring a written certificate documenting his rights of inheritance to the office. But the community should provide twenty four witnesses, who could testify that Jakob's ancestors holding that office did not have such inheritance rights. In the fall Jakob of Hetzeldorf did not show up because he did not have such a certificate. The people of Grosskopisch refused to submit such heavy oaths "so schwere Eide abzulegen" and appealed to the National University that they wanted to burden the people with such heavy oaths. In Hermannstadt the villagers were represented by the Pleban Johannes, the "Orts Hannen" Michael Richart and the sworn citizens Valentinus Dümling, Sigismund Pilgram, Johannes Hammer, Bartholomäus Ungermann, Christianus Sutoris, Johannes Wallmann, and Jakobus Farber. The plaintiff did not show up. For this reason the Meeting lasted three days longer. There one let, according to an old customary law of their native country (nach altem Gewohnheitsrecht", a herald call from the steps for the first, the second, and the third time that anybody who had something to contribute to the case of Count Jakob, his brothers and kinship should come forward and testify. Nobody came. So the community was set free from the oath and also was liberated from all other demands by the plaintiff, who was commanded to remain silent forever. The people of Grosskopisch returned home relieved in two ways. They did not have to swear an oath and also were now free. So the community was freed from the inheritable reign of the Count (Erbgraf). To this fact political events also had contributed. In the year 1467 a riot had occurred against King Mathias. In it Saxon Nobles had also participated, for example the Royal Judge Petrus, Count of Rothberg. For this

reason he was executed. But the King promised that among the Saxons nobody would large to their detriment and therefor eliminated the inheritance right for the position of the Royal Judge. The holder of this office was to be elected according to old customary rule. This decree strengthened the desire of the people for freedom and the will to fight, which helped many a community to ward of the yoke of subjection. Whether by this judgment the old power struggle between two leading lineages, that of the Count (Erbgraf) and the Huemeister, was brought to an end can no longer be determined. Fact is, however, that the community in the trial against the Count (Erbgraf) was represented by Pleban, Johannes Huemeister, the brother of Nikolaus de Copsch. Both lineages were on the downslope.

The bitterest enemy subsequently was the Hungarian Nobility. In the beginning the power struggles with the king played a role, in which the king relied on support of the Saxons. Even so the three nations at the time of the Peasant's Revolt from 1437 had closed a "Brotherly Unity – Brüderliche Einigung", it occurred that Saxon farmers seeking refuge in Komitat ground from Turk persecution, were hindered on their return by Noble landowners, robbed of their freedom and forced into subservience.

When King Ludwig II died on the flight after the battle of Mohacs, the prince of Siebenbürgen became the king of Hungary with the help of the Turks. The Saxons supported he legal heir of the throne Ferdinand I of Austria. Because of this they were fought by followers of Zapolyas. With how much cruelty this occurred shows the example Stolzenburg, whose castle was conquered in 1529. Its defendants were impaled. When Ferdinand made peace in 1538 and let Zapolya have Siebenbürgen and a part of Hungary, the "Brotherly Unity" was renewed, but this did not prevent the Nobility and Szekler to file an application in 1580 on the Diet (Landtag) that in order to pay for the debts of the country a part of the Tenth should be taken from the Saxon Clergy. At first the Count refused. Upon petition of the Mayors of Hermannstadt and Mediasch the Count received a quarter of the Tenth which he accepted and promised to pay a lease for it, but this never happened. Later this Tenthquart was set aside for the state and became under the name fiscal quart (Fiskalquarte) a heavy burden for our peasants.

Numerous Nobles had the opinion that it was only right to burden the Saxons with everything. They said they were land runners (Landläufer) in a country that the fathers had conquered with the sword. That they had been tolerated by the ancestors only by grace, so that one may take pleasure at their work. Therefore today's Saxons were legally their property like all the other serfs of the nobility. Like they talked they also acted. They let the prince present them with the Tenth and oppressed the population. Traveling through Saxon country nobles demanded for themselves and their court officials free catering and an extra team of horses. If the judge of a village refused to fill such illegal demands he was abused. They introduced their arbitrary claims as a historically based right.

The National University decided that the royal judge Albert Huet should give a speech of defense to stop such attacks on the honor and freedom of the Saxon Nation at the Diet (Landtag) of the prince to inform the audience about the origin of the Saxons, their lives, and their trade and change (Handel und Wandel). He defended his people in a speech held in Latin "against the hostile tooth of malevolent envy" on the tenth of June 1591 in Weissenburg. He said, the Saxon were not roaming vagabonds but had been called into this country as guests. Therefore they expected to be treated as honorable guests. They had been called not for serfdom but for freedom. For this they had given the king and the country faithful service not only by paying more taxes than all other together, but also with the sword in hand. Even today they were ready in case of danger to take up arms immediately and dare all against the enemy, not yielding to sleep or wine. Their beliefs were founded inexorably on the teaching of the Lord.

Then he requested that the prince protect their rights and not to allow abuse by the Nobles. He should ensure that justice rules the country and that their goods and freedom were not to be infringed upon. For that the Saxon Nation would reward him with loyalty and he would not only increase the fame of his name but he could also calmly step in front of God's judging chair and receive the crown of the eternal life.

This speech of Huet made a deep impression on the audience, but evaporated so quickly that in the same year new attacks on their rights had to be fended off.

The Saxon towns gave the nobility and the Szeklers the right to seek shelter in their castles at the times of war. But this was not enough for them. They wanted the rights of citizenship, which are to acquire land and houses. The Saxons contested this. They insisted on their special right to remain the sole owner of their towns. When, in the year 1623, the Diet gave the desired rights to the members of the other two parties without the permission of the Saxons, armed

members of the Gau Meeting (Gauversammlung) of the Nation went to Weissenburg and forced the prince to take back his confirmation of the decision. In most cases, however, they sought to disarm the attacks with "begging and pleas", as they sacrificed many thousands guilders and countless silver jugs over many centuries. But only the restlessness of wars, breaking out again and again, the prince needing their weapons and armor, their walled castles of towns, and their money, and the nobility in distress needing their hospitality, extinguished the fire. Beneath the ashes the brand continued to smolder and the smallest puff of wind could set it aflame again.

When in 1790 at the Diet of Klausenburg this question was again raised, the decision was that Nobles and Szeklers could acquire the rights to citizenship on Saxon land. The Saxons forced the addendum that then they had to accept all laws and responsibilities pay taxes like all other citizens in Saxon regions. That cooled their desire noticeably. With the dissolution of the Saxon land this problem became moot because then all special rights for Saxons were repealed.