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ORGANIZATION OF JUSTICE AND TRIAL PROCEDURE IN MOLDAVIA (THE SECOND HALF OF THE 18TH CENTURY)

In the Middle Ages and the premodern period (the second half of the 18th century), in Moldavia, justice was exercised by the prince, the Council [*Divan*], certain dignitaries (central or local, while exercising their duties as delegated by the prince) certain city administrative bodies and urban guild bodies (urban justice), the feudal master (secular or ecclesiastic), concerning the people under his subordination. Justice was also exercised by free owners (*megieși*) or the good elders (the justice of the free community), the clergymen (the ecclesiastic justice), as well as the trial by the Church (upon observing the princely judgment) of the civil and criminal cases between civilians, if they were somehow related to the dogmas or canons of the Church (marriage, divorce, civil instruments, wills, donations, oaths, curses, perjuries, virgin kidnappings, violations of moral standards, social care, etc). Concerning the trial procedure in Moldavia, the legal standards according to which a criminal trial was held both within the community and in the princely court were mostly oral. They were determined by customs, which were generally not written down. Even the criminal procedure documents remained unwritten until mid-18th century; the prince and the dignitaries would try both civil and criminal cases. There were no special criminal courts, nor was there a difference between civil and criminal jurisdiction. Criminal investigation was performed by the person in charge of the trial. Evidence was usually provided by witnesses and jurors; the trial procedure was public, but its public character was relative: access to the actual place of the trial was strictly regulated; not just anyone could assist¹.

In the second half of the 18th century, Moldavian princes continued to be interested in reorganizing the judiciary system in Moldavia after attempting to apply measures initiated in this respect by Prince Constantin Mavrocordat, who was the Iași-based ruler of the country three times: 1733-1735; 1741-1743; 1748-1749. I recall here the main measures that he took in this matter. During his second reign, he ordered the elaboration of a rather unusual legal document, until then considered a fundamental law, and titled *Condica de porunci*,

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¹ *Istoria dreptului românesc*, vol. I, edited by Prof. Ioan Ceterchi, PhD, București, Editura Academiei RSR, 1980, p. 377, 456.

corespondențe, judecăți și cheltuieli a lui Constantin Mavrocordat ca domn al Moldovei (1741-1742) [The Chronicle of Orders, Correspondences, Sentences and Expenditures of Constantin Mavrocordat as Moldavian Prince]. Earlier, in 1740, he had imposed the same type of document in Walachia². This act was joined by numerous documents, orders and council decisions – taken by various assemblies – dating up to circa 1749, thus included in what he wished to be a reform of the Romanian judiciary system. As for the judiciary organization, each region was run by an *ispravnic* – chosen from among the boyars with no court functions – acting as administrators and representatives of the judiciary and executive (performing) power³. In criminal matters, the *ispravnici* were forbidden to hold trials when homicides or robberies were committed in their region. Their competence was reduced to catching delinquents through the subordinated dignitaries, to having perpetrators locked up in prisons or jails (the latter situated in the locality where the *ispravnic* was located). An *ispravnic* also had to investigate serious matters at the scene, including identifying the hosts of the perpetrators; he would then write down the information in a document called “trial file”⁴. Subsequently, the accused were sent to the *Divan*, which would try and convict them⁵. Thus, the capacity of criminal judge was only granted to the *ispravnici* for minor matters⁶. Moreover, they were not allowed to be judges and *globnici* (fee collectors) at the same time, but were only entitled to collect fees from robbers if they had a princely order for them. They were forbidden to make abuse of cashing in “jail money” (the fee for jail release), because other dignitaries were entitled to accomplish this task (the great *armaș* [administrative and legal supervisor] or the great *spătar* [army commander])⁷. Besides the *ispravnici*, on January 15, 1742, Constantin Mavrocordat appointed boyar judges in every region, “for all categories, boyars or any other person”⁸, meaning “professional judges”, and the impact of this measure has been highlighted by Romanian law historians⁹. The fact that the policy of this prince included an intense concern for the reduction of criminality – the success of which depended directly on the way the *ispravnici* understood the need to apply prevention and punishment measures – is proven by the great number of warnings and threats made against them for failing to observe his provisions in this respect.

For instance, in *Porunca ce s-au dat ispravnicilor pentru tâlhari și pentru alte giudecățiuse să le fie deschise* [The Order given to the *ispravnici* for robbers and for other criminal proceedings available to them], of May 10, 1742, Prince Constantin Mavrocordat stated his discontent regarding their juridical activity, due to the decreasing number of theft and robbery

² For the contents, meaning and outcome of the justice reform initiated by Constantin Mavrocordat, see the relevant analysis of Valentin Al. Georgescu, *Reforma judecătorească a lui Constantin Mavrocordat și urmăriilei*, in *Judecata domnească în Țara Românească și Moldova, 1611-1831*, part I, *Organizarea judecătorească*, vol. II (1740-1831), București, 1981, p. 5-16, with bibliographic references. See also Florin Constantiniu, *Constantin Mavrocordat reformatorul*, second edition, București, Editura Enciclopedică, 2015, p. 116-132.

³ Gh. Ungureanu, *Justiția în Moldova (1741-1832)*, Iași, 1934, p. 4-5.

⁴ *Istoria dreptului românesc*, vol. II, first part, edited by: Dumitru Firoiu and Liviu Marcu, București, Editura Academiei RSR, 1984, p. 28 și 169.

⁵ Gh. Ungureanu, *Justiția în Moldova*, p. 7; *Istoria dreptului românesc*, II, p. 168.

⁶ Valentin Al. Georgescu, Petre Strihan, *Judecata domnească în Țara Românească și Moldova (1611-1831)*, part I, *Organizarea judecătorească*, vol. II (1740-1831), București, Editura Academiei R.S.R., 1981, p. 9-10.

⁷ *Ibidem*.

⁸ Gh. Ungureanu, *Justiția în Moldova*, p. 8.

⁹ Valentin Al. Georgescu, Petre Strihan, *op. cit.*, p. 11.

cases sent to Iași for trial. The prince suspected them of lack of interest, lack of professional skills or even dealings with perpetrators in exchange for bribes: “I believe you are not trying enough, you are not giving it due attention or you catch them and hold them there, or you make a deal and take whatever they have on them and then let them go”. He threatened that there would be consequences should they continue the same way: “This will be one of the matters”¹⁰. The prince ordered such things expressly to one of the judges in Bacău, Radu Racoviță former great *logofăt* [chancellor]: “I expressly order to you to really focus on the thieves; to figure out their targets and to catch them”. The text also indicates the type of theft, by damages: “should they steal as much as a beehive, if they are proven to have stolen it, they will be considered thieves and they will be tried as having committed a serious offence”. The perpetrators had to be sent to the prince along with documents proving the theft, while for the “small” thefts, such as “a hen or any other petty offences, you should deal with them locally, not sent them here, for they committed a small offence”¹¹. The prince used the same imperative tone for the order addressed to the *vătămăni* [rural tax collectors] and villagers of Comănești to protect the lands and the trails, to prevent anyone from advancing without a pass, mostly in order to catch the thieves, in the absence of the “*paștiri*”, namely the officers in charge of guarding the borders: “Beware of the thieves and do not let any thieves pass using your trail, for you will answer for that with your heads”¹². Whereas some of the judges failed to accomplish their tasks, thus forcing plaintiffs of minor acts to address the Divan, others failed to send to Iași the criminals and the thieves, according to the procedure. Upon learning that thieves were caught in some region, the prince requested for them to be sent to Iași for trial. He did the same in case of three thieves caught by Dinul *armaș, ispravnic* of Suceava, whom he ordered to send them to Iași¹³. This stands to show that they sometimes failed to accomplish the prince’s order in such cases. This happened with Sofroni a thief, whom Costandinache the former great captain of Soroca failed to send to the prince, “as to the order”, but who “managed to escape on his watch”¹⁴.

Consequently, the concern for punishing robbery was consistent. Princes thus tried to encourage the members of the administrative system and the country’s inhabitants to participate more decisively in the action of catching perpetrators. Hence, Toma from the village of Bosance and his son were summoned, through a princely messenger, “for having seen the thief Toader Doiboi but failed to seize him”¹⁵. Cucoranul the *pitar, ispravnic* of Cărligătura, received the same warning when perpetrators crossed his land: “What kind of *ispravnic* are you there, since it has come to my attention that thieves came to your region, but you failed to notify me?” Such a failure would be sanctioned with “great wrath”¹⁶.

¹⁰ *Condica lui Constantin Mavrocordat*, vol. II, edition with an introduction, notes, indices and glossary by Corneliu Istrati, p. 93-94, no. 258 (document of March 10, 1742).

¹¹ *Ibidem*.

¹² *Ibidem*, p. 194, no. 608 (a document of June 13, 1742).

¹³ *Ibidem*, p. 192, no. 602 (a document of June 14, 1742).

¹⁴ *Ibidem*, p. 461, no. 1218 (a document of September 1, 1742). See also Valentin Georgescu, Ovid Sachelarie, *Judecata domnească în Țara Românească și Moldova (1611-1831)*, part II. *Procedura de judecată*, București, Editura Academiei R.S.R., 1982, p. 137-138.

¹⁵ *Condica lui Constantin Mavrocordat*, II, p. 204, no. 652 (a document of June 19, 1742).

¹⁶ *Ibidem*, vol. III, p. 336, no. 2615 (a document of June 5, 1742).

On the other hand, it was forbidden for quick trials to be held and for robbers to be killed by the injured party, without respecting the legal procedure forcing them to send the perpetrators before a competent judiciary authority. Whoever chose to do so would be punished. This is what happened with ten people within the villages of Greceni and Pelini, accused of making justice for themselves, by hanging a robber at the scene, without sending him to trial: “have them seized and brought before me, to account for the robber whom they hanged”¹⁷. In this case, the trial was held by the Divan, the competent court in such matters, with headquarters in Iași.

According to these regulations, the Divan served as a court of appeal for all civil cases, but it was a trial court for serious criminal cases because, as shown above, the perpetrators caught in various regions for committing serious offences had a criminal prosecution “file” drafted by the “regional dignitaries” and they were subsequently sent to Iași. Because too many litigations were sent to the Divan, Constantin Mavrocordat decided for the boyar judges – namely those who were part of the Divan – to try cases “at their respective headquarters”, and for the great boyars to try more serious cases, depending on the rank of their dignity¹⁸.

Upon analyzing domestic documentary sources from the second half of the 18th century, it was concluded that the attempted reorganization of justice and the trial procedure by Constantin Mavrocordat had not attained its short-term purposes not only due to abuses by the regional *ispravnici* who cumulated multiple privileges¹⁹, but mostly due to the elimination of the *namesnici* (clerks)²⁰ from the administrative and the legal system. They were subordinated to the *ispravnici*, their delegates on the outskirts of regions and their substitutes in administrative and legal matters²¹.

Attempts to reorganize the judicial system were made even after the reign of Constantin Mavrocordat, as proven by the fact that the boyar judges – as representatives of the judiciary power alone – feature in documents as early as 1760²². They are mentioned, for instance, in a document dated April 13, 1768, belonging to Prince Grigore Ioan Calimachi, where he stated that “the regional *ispravnici* were busy charging fees and fulfilling other orders and demands pertaining to their region” and they were unable to also try the multiple cases arising in their respective region, reason for which the prince decided to appoint two boyar judges per region. They were given the task of trying cases alongside the *ispravnic* or the head of the region and, in order to prevent them from “becoming greedy and charging all sorts of fees, which may colour their judgment”, he also gave them a fixed revenue, to be provided by the administration of the region. The judges were told not to be “procrastinating”, given that they had the “most sensitive and important duty of all, for only God is entitled to judge”²³.

¹⁷ *Ibidem*, vol. II, p. 29-30, no. 72 (a document of July 14, 1742).

¹⁸ Gh. Ungureanu, *Justiția în Moldova*, p. 44.

¹⁹ *Ibidem*, p. 9.

²⁰ The *namesnici* were subordinates of the *ispravnici* in the regions and counties within their jurisdiction; they were delegated to try the matters arising on the outskirts of the region in question (Șt. Gr. Berechet, *Pentru citorii acestei cărți*, la Gh. Ungureanu, *Justiția în Moldova și Țara Românească*, p. V).

²¹ *Ibidem*, p. V-VI.

²² *Ibidem*, p. 11.

²³ *Ibidem*, p. 13-14; See also Valentin Al. Georgescu, Ovid Sachelarie, *op. cit.*, the subchapter *Cercetarea penală*, p. 136-143.

Three Treasury documents of 1775²⁴, September 1, 1776²⁵ and April 1, 1777²⁶ were drawn up establishing the incomes and wages of the princely dignitaries and clerks, and of the servants within the princely Court. Common provisions within the three documents also deal with the tasks given to the *ispravnici* in what concerns catching thieves, drafting the paperwork on the acts committed and the assets stolen, sending the perpetrators and the persons hosting them to Iași, to be tried by the Divan; “for thieves, things will unfold as follows: Whatever thieves they catch, the clerks should put them in prison, along with the stolen assets found on them; as for things found in the thieves’ houses, upon an order from regional *ispravnici*, the clerks must obtain a document signed by the *ispravnic* and hand those assets back to their rightful owners and, upon repairing damages, the fee for the clerk will be established as per the decision of the Divan, depending on the severity of the offence. As for the thieves caught by regional *ispravnici* or by other dignitaries on the outskirts, they are to take anything they find in the possession of the thieves: first, they will return the stolen properties to the rightful owners, and as for the items found on them but for which they fail to identify the owner, the *ispravnici* will take them as fine, irrespective of their movable or immovable character. And, concerning the items found in the thieves’ houses, the *ispravnici* will draw up and sign a document; they will send the thieves and the documents to the clerk, along with the persons proven to have hosted the thieves. Both the things found in thieves’ houses and those in the hosts’ houses will be given to the villagers and the princely Divan will subsequently decide the punishment for the thieves and the hosts and the compensation for damages, as well as the fee for the clerk. Should any conflict or other matter lead to homicide, the regional dignitary must send the killers, wherever they may be, along with a written document on their deeds, to the village *vornec* [magistrate] where, upon trying them alongside the Divan, both the punishment and the fee for the clerk are to be determined. As for the killers and robbers that join bands and cross the country killing and robbing and torturing people, whoever catches them has a right to confiscate everything, for they risk their lives seizing them; they are, however, obligated to return any items claimed by their rightful owners, should evidence be provided in this respect”²⁷.

Another phase in this field is represented by the document dated January 1, 1783 issued by Prince Alexandru Constantin Mavrocordat, through which he appointed new regional judges²⁸. However, he did not manage, this time either, to set the foundations of an institution that would pass the test of time. In the subsequent year, 1784, the same prince wrote to the *ispravnici* of the Suceava region “to try and convict each [perpetrator] justly”²⁹. Afterwards, the documents of December 29, 1794 and March 18, 1795, ordered for the *ispravnici* to receive anyone who came to them for a legal issue. Actually, for the procedure of summoning the parties, a person was sent “on behalf of the *ispravnic*”, to whom the parties had to pay a fee of 10 *bani* per hour. The same documents included the decision according

²⁴ *Documente privitoare la istoria orașului Iași*, vol. VII, *Acte interne (1771-1780)*, edited by Ioan Caproșu, Iași, Editura “Dosoftei”, 2005, p. 110-138, no. 129.

²⁵ *Ibidem*, p. 237-272, no. 221.

²⁶ *Ibidem*, p. 330-365, no. 267.

²⁷ *Ibidem*, p. 114, no. 129. The same tasks were featured in the documents dated September 1, 1776 (*ibidem*, p. 250-251) and April 1, 1777 (*ibidem*, p. 344).

²⁸ Gh. Ungureanu, *op. cit.*, p. 17.

²⁹ *Ibidem*, p. 18.

to which the *ispravnici* should “let off all the *namesnici* that the dignitaries always appoint to various offices for legal matters and sentencing of inhabitants; the *namesnici* are hereby banned from such offices; they are not entitled to try or to sentence; only the dignitaries have such rights. Indeed, some *ispravnici* even sell regional offices to *namesnici* and captains and lower clerks, and the persons who buy them actually try the cases presented before them. Such acts are, of course, entirely blameworthy and against my orders and good morals. I have made it clear that all those who buy such offices have no other purpose than to rob the inhabitants”. The *ispravnici* were obligated to have three registers where they had to write down all the decisions and arrangements made in their region³⁰. Concerning the criminal trials, the procedures were the same as during the reign of Mavrocordat: those who managed to catch the robbers, “who walked around armed and killed people”, had a right to confiscate all assets found in the thieves’ possession, in their houses and in their hosts’ houses, for their seizing was considered to entail “a deadly risk”³¹.

The justice reform was a crucial issue for the princes in both Moldavia and Walachia. The fact that they were moved from one throne to another repeatedly in the 18th century was actually an advantage from this perspective, given that they promoted the measures concerning judicial organization and trial procedure by issuing documents with a similar content in Iași and Bucharest. In this context, the prince keeps his prerogative as supreme justice in the country and in relation to the boyar judges³². The fact that the princely institution preserved the attributes as Supreme Court within the new organization of justice is highlighted by its issuing of definitive sentences, upon reading the report comprising – as mentioned above – the proposition made by boyar judges to punish the perpetrators.

The judicial organization and trial procedure, as well as the relation between common law and written law in Moldavia during the second half of the 18th century and mostly during its last quarter, were also mentioned in the memoirs and accounts of the persons who were on the Moldavian territory in that period, for one reason or another. One of them was Friedrich Wilhelm von Bauer (Bawr), a German officer, who fought in the tsarist army during the Russo-Turkish war of 1768-1774, under the command of General Rumyantsev. Along with his officers, he drew the maps of provinces where the war unfolded, namely, Moldavia, Walachia, Podolia, Volhynia and Crimea, as well as Bulgaria and the straits. He also drafted the battle plans for the main battles, such as the siege of the cities of Hotin, Tighina, Cetatea-Albă, Chilia, Brăila, Giurgiu, etc. However, due to lack of funding, he only managed to print the first map, of Moldavia (Amsterdam, 1781), but without the accompanying informative material. By contrast, he did manage to print the data for Walachia, but without the map: “*Mémoires historiques et géographiques sur la Valachie avec un prospectus d’un atlas géographique et militaire de la dernière guerre entre la Russie et la Porte Ottomane*, published by B..., Francfort and Leipzig, at Henri Louis Broenner, 1778”. During his stay in Moldavia, being provided with important data by the county *ispravnici* in Walachia, and by the *ban* Mihai Cantacuzino – who was working on *Istoria Țării Românești* [The Walachian History], and benefiting from his own experience, he observed, among others, organizational and criminal procedural issues.

³⁰ *Ibidem*, p. 19.

³¹ *Ibidem*, p. 20.

³² Valentin Al. Georgescu, Petre Strihan, *op. cit.*, p. 37. Regarding the legal status of the princely power highlighted in the texts of the time and the historians’ opinions on this topic, see *ibidem*, p. 36-46.

“The Divan is the Supreme Court of the country, and all the other Courts are subordinated to it, along with all dignitary functions related to government. All legal matters, irrespective of their nature, and tried here, and any decision taken by any subordinated Court may be appealed here. Usually, the Divan has a public session twice a week, where anybody is free to present their case; even if the defendant is a great boyar, he has to defend himself publicly. Generally, the prince attends these meetings to reinforce justice and in multiple cases, he issued severe punishments for the boyars found guilty of offences. However, one must be very sure that his complaint is valid before complaining to a higher court, because he will get a harsh punishment should his claim be found without grounds”³³. The author of this account also noted the prince’s absolute power in criminal matters: “He [the prince – author’s note] is somehow above this Supreme Council, because he can annul its sentences should he find them false or contrary to the laws, or should that be in his interest, or even should he just want to do it”³⁴. As for the legal grounds of the punishments, “all sentences and convictions follow the traditions and customs of the country. However, this is a highly unstable jurisprudence, and the people suffer many shortcomings because of it. The Courts themselves are often conflicted, because they do not know what is the best decision to make, and the Divan, which ultimately receives all cases for which an appeal was made, only complicates things even more, without any hope of clarifying them in the future”³⁵. It is also worth noting the accounts on Constantin Mavrocordat’s attempt to impose the Byzantine law as a legal foundation, as well as the obligation of writing down all legal actions. “Constantin Mavrocordat subsequently founded three courts where trials would be held pursuant to Justinian’s law; they also had to draft up reports and to register all procedures. However, this regulation was dissolved after being submitted, and all sentences and decisions were provided according to traditions and customs; such a procedure – whereas the least reliable one, entailing conflicts and countless shortcomings – has been used until this day”³⁶.

Jean Louis Carra also wrote on aspects regarding trial procedures in Moldavia and Walachia, which he observed during his brief one-year stay at the court of Grigore III Ghica (1774-1777)³⁷. Carra wrote *The History of Moldavia and Walachia*, published at Bouillon in 1777. The subchapter titled *Government and Justice* reads, “Moldavia, like Walachia, has no printed or written law. *All cases are tried verbally by the prince or by his advisors*. Sentences are pronounced orally and only seldom are they written down. Should they by any chance be noted on a piece of paper, they are not binding documents, because there is no registrar office or chancellery to have them submitted. It is quite common to have the same trial starting again ten times during the reign of the same prince or of another prince”³⁸.

Another witness to Romanian realities – closer to the period of the sources on which my research is based, namely 1799-1804 – is Leyon Pierce Balthasar von Campenhausen, a Polish baron and a former cavalry officer in the Russian Imperial army, who had participated, among others, in the campaign in the Romanian Principalities during the Austro-Russo-Turkish

³³ *Călători străini despre Țările Române*, X, part I, volume edited by Maria Holban, Maria M. Alexandrescu-Dersca Bulgaru, Paul Cernovodeanu (editor in charge), București, Editura Academiei Române, 2000, p. 170.

³⁴ *Ibidem*, p. 170.

³⁵ *Ibidem*, p. 171.

³⁶ *Ibidem*, p. 234-242.

³⁷ *Ibidem*, p. 252.

³⁸ *Ibidem*, p. 252

war (1787-1791). In this conflict, he had the position of secretary of foreign correspondence for the Russian prince Potemkin. He travelled mostly to the territory between the Pruth and the Dniester, to which he dedicated 74 pages within a comprehensive work printed in Leipzig in 1807.

The part in which I am interested for this research is titled, in translation, *P.B. Campenhausen on the things seen, experienced or heard in Moldavia, in 1790-1791*³⁹. From this author, it is worth discussing his notes mentioning the trials held pursuant to the *Manual* written by Harmenopulos by both the religious and the secular judicial authorities. From this historical source, I recall here the information on the trial procedure, the law status and the rewards received by the boyars within the Divan: “Trials are held and most of the times tried or appeased by the metropolitan. When a case is difficult, then the six books by Harmenopulos are consulted (...). The aforementioned six books by Harmenopulos and to a larger extent their abstract from the laws of the Byzantine emperors are considered by Moldavians a standard even in the Divan. It should have comprised the prince and 12 members but, since quite a while now, it has included only five dignitaries, the magistrate or the chancellor, with a monthly income of 1,000 *kuruş* or 600 rubles, the hetman of Kishinev or the Great Marshall of the Court, for 180 rubles monthly, the *aga* or the chief of police, for 150 rubles monthly, the *vornic* of the upper land and the *vornic* of the lower land, namely the governors of the Upper Land and of the Lower Land, with a monthly income of 150 rubles”⁴⁰.

On the other hand, another officer serving the tsar during the same war unfolding between 1787 and 1791, namely General Alexander of Langeron, underlined in *The Journal of the Campaigns Conducted in the service of Russia in 1790 by the General Count of Langeron* a different situation from the one outlined by his contemporary. According to the general, the Byzantine laws – whereas well-known to the person with jurisdiction in their application – were ignored due to the arbitrary character of the justice practiced by the boyar judges along with the prince of the country, as bribery played a major role herein. “These princes [of Moldavia and Walachia – author’s note] are not actually despots, even though they may benefit de jure from a despotic authority. They have high incomes and great privileges”, being “appointed by the sultan and they paid a huge amount to him as tribute”⁴¹. “The Court called Divan comprises native boyars. The de facto president of this Divan is the great treasurer of the country, who does pretty much whatever he likes there: the Divan is the Supreme Court in legal matters; it shares or it should share sovereignty with the prince and it acts in a very arbitrary manner, because nobody takes into account the written laws, (still represented by Justinian’s code), given that the size and importance of “gifts” brought to the new treasurer and to the other members of the Divan usually influence the outcome of a trial and often which such disgrace, that there are three or four conflicting decisions taken for the same case”⁴².

Information concerning “justice and laws” is also provided by the physician Andreas Wolf in the second chapter of his book issued in Sibiu in 1805, written in German, the English title

³⁹ *Călători străini despre Țările Române*, X, second part, volume edited by Maria Holban, Maria M. Alexandrescu-Dersca Bulgaru, Paul Cernovodeanu (editor in charge), București, Editura Academiei Române, 2001, p. 863.

⁴⁰ *Ibidem*, p. 880-881.

⁴¹ *Ibidem*, p. 934.

⁴² *Ibidem*, p. 934-935.

of which would be *Contributions to a Statistical and Historical Description of the Moldavian Principality*. This is also the result of his observations made during his three stays in Moldavia: in 1780-1783, 1788-1790 and 1796-1797⁴³. “Trials are held per the «customs» and, if applicable, according to Harmenopulos. Princes judge by their competence. The *ispavnic* hold trials in an expediting manner. Even the most complicated case files do not exceed 2-3 pages. (...). The underlying cause of this outrage of things is the prince’s despotism and his reversals of decisions made by the Divan”⁴⁴ – this is the physician’s opinion on the judicial practice in late 18th-century Moldavia.

Fragments of the judicial practice in the first years of the 19th century feature in another account, namely a report on the two Romanian countries, requested by Napoleon, drawn up by Charles Frédéric Reinhard, the general consul of France in the two principalities, who was based Iași in the period March-December 1806. The report refers to the two law sources – the customs and the Byzantine law – and to the extent of their actual application. The French diplomat also identified the social background of perpetrators, as perceived in the short period spent in Moldavia and in Walachia, the punishments they received, as well as the duties of the dignitaries in ensuring public order and applying sentences. I quote here a few of his notes. “Besides the prince function the Great and the Small Divan. The first, run by the metropolitan, is presided by the prince. It is at the same time the State Council and the Supreme Court of Appeal. The second provides sentences in minor cases or drafts the report. Everywhere, administration and justice are merged. The prince’s decision prevails in all fields. Often, even the most crucial and important decisions and sentences are provided orally, and nobody cares for their transcription. For this reason, upon finishing one trial, it may be reopened during the reign of the same prince and carried on, whichever the actual stage of the trial, by the prince’s successor. There is a collection of written customs, based on the Roman law, and an incomplete collection of laws of the Byzantine emperors (...); custom is the law when authorities have no interests in ignoring it. (...) The chief of the administrative and judicial police is called *aga*; another dignitary (the great “*armaș*”) monitors the prisons and the application of criminal sentences. Death penalty is rare; usually, for homicide the punishment is life in a mine. (...) the great killers are almost always Gypsies or foreign homeless people. Punishments are the same for boyars and for peasants; the first are not exempted from beatings (using wooden sticks) or from mines, and it was no honour to get beaten by the prince himself with the sceptre. In the government and the administration, corruption is a commonplace and injustice is no surprise for anyone. They cite horrendous examples of murders left unpunished and of punishments given to innocent people”⁴⁵.

These accounts – contradictory at times but unanimous in several aspects such as the division of justice between the Divan and the prince or the arbitrary character of justice – mention the presence of Byzantine law code in the judicial theory and practice, both in Moldavia and Walachia.

Pravila meant, as seen in the accounts by contemporaries, the Byzantine written law code in the form of law manuals drafted according to the *Basilicale* or the “imperial

⁴³ *Ibidem*, p. 1250-1252.

⁴⁴ *Ibidem*, p. 1258.

⁴⁵ *Călători străini despre Țările Române în secolul al XIX-lea*, new series, vol. I (1801-1821), volume edited by Georgeta Filitti, Beatrice Marinescu, Șerban Rădulescu-Zoner, Marian Stoian (volume secretary), Paul Cernovodeanu (editor in charge), București, Editura Academiei Române, 2004, p. 253-254.

laws” – the juridical texts divided into 60 books and written in the 9th century upon the order of Leo VI (surnamed the *Philosopher*; 886-912) that represent a Greek adaptation⁴⁶ of the Roman law, coded during the reign of the Byzantine emperor Justinian I (527-565). Leyon Pierce Balthasar von Campenhausen and General Alexandre of Langeron mention the *Pravila* or *Manual* by Harmenopoulos, which was shown to have been “often used in Romanian courts”, mostly the printed neo-Greek edition of 1766, Venice⁴⁷. In 1804, it was translated into Romanian by the *paharnic* Toma Carra, upon the order of and with support from the prince of Moldavia, Alexandru Moruzi (1802-1806). Constantine Harmenopoulos was a judge in Thessaloniki, and his work is titled *Hexabiblos*, after the six books it contained. It was drafted in 1345, and summarized the Byzantine legislation within the *Basilicale* and the legal amendments, in the form of a manual. It was appraised that this manual along with another legal text⁴⁸ – a nomocanon translated into Slavonic and used in the Romanian space from the 15th century⁴⁹, namely the *Syntagma* (Law Code) by Matei Vlastaris written in 1335 – had been drafted to replace the *Basilicale* because they were “more concise and more succinct for the needs of the Courts of Law”⁵⁰. It has been assessed that the Byzantine juridical literature had a frequent presence in the judicial practice of the phanariot reigns, notably in the form of the *Basilicale* (the Fabrotus edition of 1647⁵¹), and other important laws⁵².

However, other editions of nomocanons also circulated in Moldavia. One of them was *Vactiria ton Archiereôn* (the Bishop’s Sceptre), written by the monk Jacob of Ioannina upon the order of the Constantinople patriarch Parthenios and printed in 1645. A century later, it was translated from Greek, upon the request of Metropolitan Iacob I. Putneanu, in Iași (1754)⁵³, by friar Cosma within the Metropolis of Moldavia, with the assistance of typographer Duca of Tassos⁵⁴, after the edition of 1645. This work and other great Byzantine law works – such as the *Syntagma* of Matei Vlastares – that circulated in the 18th century and in early 19th century in the Romanian space were all in the library of the ruling family of Mavrocordat⁵⁵. In late 18th century and especially in the first half of the subsequent century, the need for a domestic juridical reform emerged in Moldavia too, given that – as shown above – in Walachia the first synthetic code of laws had been issued and confirmed by the prince, and then entered into

⁴⁶ Șt. Gr. Berechet, *Legătura dintre dreptul bizantin și românesc*, vol. I, part I, *Izvoadele*, Vaslui, 1937, p. 37.

⁴⁷ Idem, *Dreptul bizantin și influența lui asupra legislației vechi românești*, Iași, 1931-1932, p. CLXVI. The legal manual written by Harmenopoulos was used mostly after being printed in modern Greek in 1744, by Alexios Spanòs in Venice, after the 1540 edition by Saalemberg, which he had found in Adrianople. His work had subsequent editions also issued in Venice, in 1793 and 1805 (I. C. Filitti, *Vechiul drept penal român*, p. 8).

⁴⁸ Șt. Gr. Berechet, *op. cit.*, p. CLIV.

⁴⁹ Vezi G. Mihăilă, *Sintagma (Pravila) lui Matei Vlastaris și începuturile lexicografiei slavo-române (secolele al XV-lea – al XVII-lea)*, in *Contribuții la istoria culturii și literaturii române vechi*, București, Editura Minerva, 1972, p. 261-306.

⁵⁰ Șt. Gr. Berechet, *op. cit.*, p. 40.

⁵¹ *Ibidem*, p. 42.

⁵² *Ibidem*, p. 41. On the application of the *Basilicale*, it appears they began to be applied “until around the first half of the 19th century” (*ibidem*, p. 43). An “increasing application” of the Byzantine juridical collections was also outlined by Valentin Al. Georgescu, in *Bizanțul și instituțiile românești până la mijlocul secolului al XVIII-lea*, București, Editura Academiei R.S.R., 1980, p. 195.

⁵³ *Istoria dreptului românesc*, I, p. 229.

⁵⁴ Șt. Gr. Berechet, *op. cit.*, p. CLXXII.

⁵⁵ Valentin Al. Georgescu, Petre Strihan, *op. cit.*, p. 31.

force during the reign of Alexandru Ipsilanti⁵⁶. However, the Byzantine law was still present in an adapted form and it counted as the so-called domestic law of the prince⁵⁷, manifest in the legal documents that represented codification initiatives and experiences, which were precursors of the juridical codes per se in the first half of the 19th century.

It is also worth mentioning that – in the documentary sources preserved and researched thus far – the importance of sources where the Byzantine law texts represented the legal grounds concerns mainly the civil cases and to a lesser extent the criminal cases. Border-related litigations – due to violation of the *protimisis* right or to conflicts regarding the inheritance of lands or wealth in general – were solved in courts by consulting the Byzantine juridical standards. Most of the times, it is generically called the “holy code of law”. Valentin Al. Georgescu has highlighted – within a broader study on the role of the Church in the institutionalization of nomocanonic law, with the consent of the State, of course – that the name “holy code of law” was extended from mid 18th century to the *Hexabiblos* of C. Harmenopoulos⁵⁸. Hence, trial by “law code” became a reality from the second half of the 18th century, as proven by the documentary sources made available thus far.

Organizacja wymiaru sprawiedliwości i postępowania sądowego w Mołdawii (druga połowa XVIII wieku) Streszczenie

Opracowanie podejmuje tematykę organizacji sądownictwa i postępowania sądowego, a także relacji między prawem zwyczajowym a prawem pisanim w Mołdawii w drugiej połowie XVIII wieku, a zwłaszcza w jego ostatniej ćwierci. W tym okresie system prawny dotyczący spraw karnych podlegał dalszym modyfikacjom. Mołdawskie dokumenty prawne, pochodzące z drugiej połowy XVIII wieku, dowodzą obecności bizantyjskiej *pravili* (prawa) w teorii i praktyce prawnej tamtych czasów. Pod rządami fanariotów, bizantyjską literaturę prawniczą szeroko wykorzystywano w praktyce sądowej, choć dostępne były również inne zbiory nomokanonów. Do szczególnie rozpowszechnionych dzieł należało *Vaktiria ton Archiereôn*, napisane przez mnicha Jakuba z Ioanniny, na prośbę patriarchy Konstantynopola Partheniusa, i wydrukowane w 1645 roku.

Słowa kluczowe: Nomokanony, organizacja wymiaru sprawiedliwości, postępowanie sądowe, „święty kodeks prawa”

In our study we deal with the issues of organization of the judiciary and court proceedings, as well as the relationship between customary law and written law in Moldova in the second half of the eighteenth century, and especially in its last quarter. During this period, the legal system relating to criminal cases was subject to further modifications. Moldovan legal documents, dating from the second half of the eighteenth century, prove the presence of Byzantine *Pravila* (law) in the legal theory and legal of those times. Under the Phanariotes’ rule, Byzantine legal literature was commonly used in court practice, although other collections

⁵⁶ *Istoria dreptului românesc*, II, p. 74.

⁵⁷ *Ibidem*.

⁵⁸ Valentin Al. Georgescu, *Bizanțul și instituțiile românești până la mijlocul secolului al XVIII-lea*, p. 72-76.

of nomocanons were also available. The work, *Vaktiria ton Archiereôn*, written by the monk Jacob of Ioannina, at the request of the Patriarch of Constantinople, Parthenius, and printed in 1645, belonged to the particularly widespread ones.

Keywords: judicial organization, trial procedure, “holy code of law”, customary, nomocanons

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