

682-2/30.05.2011



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Domeniul major de intervenție 1.5 Programe doctorale și postdoctorale în sprijinul cercetării

Titlul proiectului: Științele socio-umaniste în contextul evoluției globalizate – dezvoltarea și implementarea programului de studii și cercetare postdoctorală

Contract: POSDRU 89/1.5/S/61104

Beneficiar: Academia Română

Mentor/ expert științific

CS II dr. Andi Mihalache

Instituția coordonatoare de tematică: Academia Română – Filiala Iași

Tematica: Discurs literar-artistic și construcție identitară în secolele XVI-XX

Numele și prenumele cercetătorului postdoctoral: Chelcu Cătălina-Elena

Tema individuală de cercetare: În memoria cutumei și cuvântul pravilei. Infrațiuni, pedepse și identități sociale în Moldova premodernă (secolul al XVII-lea – prima jumătate a secolului al XVIII-lea)

CĂTĂLINA CHELCU

Consideration regarding the Penalty in Pre-Modern Moldavia (17th Century – First Half of the 18th Century)

Both the subject of our research and the periodical classification we propose are tightly related to Moldavia's politico-juridical relationships with the Ottoman Empire, which have direct

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implications in the domestic political structure and financial organization, in the criminal code practices. In the 17th century, the subordination to the Ottoman Empire increased. Afterward, the Phanariote regime introduced in 1714 implied the administration of the two countries like quasi-provinces of the Empire, with the help of Princes of Greek origin, directly appointed by the Sultan, with no consultation of the indigenous political class. These foreign Princes' particular situation led to a political conduct that was their specific one, thus unavoidably determining a significant modification of the Romanian traditional world structures. In our investigation, this will be underlined by analysing the documents that mention criminal penalties that attest the execution of punishments, out of which the most frequent one was the redemption of the offence by paying a sum of money. We must say that the number of such papers is a limited one among the written documents, most of them being acts issued in the aftermath of civil trials and making no distinction between civil and criminal issues as far as the procedure is concerned. These situations are to be explained by the absence of the written motivation for the court order in jurisdictional procedure. Such procedure, consisting in the quoting, in the order, the juridical norm that the judges were referring to when making the decision, became compulsory after Constantin Mavrocordat's request. This is one further reason to establish temporary limits to cover the 17th century and the first half of the 18th one¹.

Our project therefore makes a classification of the social identities, as they appear in the context of the confrontation between the memory of the customary norms and the discovery of the written/read juridical texts. Briefly, this is a symbolic dispute between power and authority. The customary was the authority of ancientness and of the uninterrupted practice of customs, somehow

¹ For the content, meaning and consequences of Constantin Mavrocordat's reform, see Valentin Al. Georgescu's pertinent analysis, *Reforma judecătorească a lui Constantin Mavrocordat și urmările ei* [Constantin Mavrocordat's legal reform and its consequences], in *Judecata domnească în țara Românească și Moldova 1611-1831* [Princely Trials in Walachia and Moldavia], vol. II (1740-1831) in Part I. *Organizarea judecătorească* [Legal Organization], București, 1981, p. 5-16, with bibliographical references.

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anonymised by the passage of time. The code of law became a gesture of the power, emerged from the desire of the one endowed with the necessary means of coercion to impose a unification/bureaucratization of the law practices.

2. Stage of the research

Our project regarding the social implications of the criminal law practices, based upon the two law sources existing in the Romanian medieval and pre-modern period – that is, the customary and the Byzantine code of law – has the privilege of benefiting by solid investigations made in the area of: the origin of criminal law and procedure in the medieval and pre-modern period; the definition and content of the notions of criminal offence and penalty; the limits of private law and of the collective criminal responsibility². At the same time, the contribution of linguistics,

² It is important to mention the fact that most of the studies on penalty in the Romanian Principalities come from the legal sciences area: S. G. Longinescu, *Istoria dreptului românesc din vremile cele mai vechi și până azi* [History of Romanian Law from Ancient Times to Today], București, 1908; idem, *Pravila lui Vasile Lupu și Prosper Farinaccius, romanistul Italian* [The Code of Law of Vasile Lupu and Prosper Farinaccius, the Italian Romanist], București, 1909; idem, *Fragmente din istoria dreptului penal roman* [Fragments from the History of the Romanian Criminal Law], „Curierul judiciar” [“The Legal Express”], no. 41, 28 November 1946; no. 1, 1 January 1927; no. 5, 6 February 1927; no. 10, 13 March 1927; no. 15, 17 April 1927; no. 30, 18 September 1927; C. V. Obedeau, *Originile dreptului penal roman în dreptul nescris* [Origins of the Romanian Criminal Law in the Customary Law], in „Revista penală” [“Criminal Magazine”], yr.V, nos. 1-3, 1926, pp. 64-71; Ștefan Berechet, *Judecata la români până în sec. XVIII* [Romanians' Trials until the 18th Century], Chișinău, 1926; idem, *Schiță de istorie a legilor vechi românești* [Sketch of Old Romanian Law History], Chișinău, 1928; I. Tanoviceanu, *Tratat de drept și procedură penală* [Treaty of Criminal Law and Procedure], 2nd ed., București, 1928; I. C. Filitti and D. I. Suchianu, *Contribuții la istoria dreptului penal roman* [Contributions in the History of the Romanian Criminal Law], București, 1927; idem, *Contribuții la istoria justiției penale* [Contributions in the History of Criminal Law], București, 1928; I. C. Filitti, *Despre vechiul drept penal roman* [About the Old Romanian Criminal Law], București, 1928; idem, *Vechiul drept penal roman (schiță). Întregiri privitoare la vechea organizare judecătorească* [The Old Romanian Criminal Law (A Sketch). Further Information Regarding the Old Legal Organization], București, 1934 (excerpt); Petre Ionescu-Muscel, *Istoria dreptului penal roman. Spre o nouă justiție penală. Studiu comparat. Istorie – Filosofie – Drept* [History of the Romanian Criminal Law. Towards a New Criminal Justice. Compared Study. History – Philosophy – Law], București, 1931 (excerpt); Ion Peretz, *Precis de istoria dreptului român* [Handbook of Romanian Law History], București, 1931; Ioan D. Condurachi, *Trăsăturile caracteristice ale vechiului drept penal românesc* [Characteristic Features of the Old Romanian Criminal Law], București, 1934; P. P. Panaitescu, *Obștea țărănească în Țara Românească și Moldova. Orânduirea feudală* [Peasant Community in Walachia and Moldavia. The Feudal System],

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historical sociology and ethnology is not to be ignored in such an approach³. The historians' perspective on the phenomenon of penalty in the medieval and pre-modern period is little visible in this field literature. As it is known, a form of resistance of the Romanian historiography facing the necessity to comply with the communist ideology – that stressed the materialist interpretations in the detriment of the empirical research – was erudition, which found in the political and cultural history of the 18th century a wide range of possibilities. These preoccupations were accompanied by the publication of the critical editions of documents, chronicles and codes of laws. Given the context, the issues related to the criminal law did not find a place among the historians' preoccupations, as this was a prohibited theme, to be approached only by the judicial history

București, 1964, chap. *Statutul juridic al obștii* ["Juridical status of the community"], pp. 200-234; Andrei Rădulescu, *Pagini din istoria dreptului românesc* [*Pages of Romanian Law History*], comments, notes and introduction by Irina Rădulescu-Valasoglu (ed.), București, 1970; George Fotino, *Pagini din istoria dreptului românesc* [*Pages of Romanian Law History*], an anthology, introduction, notes and bibliography by Gheorghe Cronț and Stanca Fotino, București, 1972; Al. Constantinescu, *Jurământul judiciar în vechiul drept bisericesc* [*Legal Oath in the Old Church Law*], in "Biserica ortodoxă română" ["The Romanian Orthodox Church"], yr. XCII, nos. 9-10, 1974, pp. 1261-1265; Valentin Al. Georgescu, *Bizanțul și instituțiile românești până la mijlocul secolului al XVIII-lea* [*Byzantium and Romanian Institutions until mid-18th Century*], București, 1980; *Istoria dreptului românesc* [*The history of Romanian Law*], vol. I, Vladimir Hanga (ed.), București, 1980; Valentin Al. Georgescu and P. Strihan, *Judecata domnească în Țara Românească și Moldova 1611-1831* [*Princely Judgement in Walachia and Moldavia 1611-1831*], Part I. *Organizarea judecătorească* [*Legal Organization*], vol. I (1611-1740), București, 1979 and vol. II (1740-1831), București, 1981; Part II. *Procedura de judecată (1611-1831)* [*Trial Procedure*], București, 1982; Radu Constantinescu, *Vechiul drept românesc scris. Repertoriul izvoarelor 1340-1640* [*The Old Romanian Written Law. Catalogue of Sources*], București, 1984; Vladimir Hanga, *Les institutions du droit coutumier roumain* [*Institutions of Romanian Customary Law*], București, 1988; Ovid Sachelarie and Nicolae Stoicescu (eds.), *Instituții feudale din Țările Române* [*Feudal Institutions in Romanian Principalities*], București, 1988; Ioan N. Floca, *Din istoria dreptului românesc* [*Pages of Romanian Law History*], I. *Dreptul nescris* [*Unwritten Law*], II. *Carte românească de învățătură de la pravilele împărătești și de la alte gudețe, Iași, 1646* [*Romanian Book of Teachings from the Princely Codes of Law and from Other Trials, Iasi, 1646*], Sibiu, 1993; Emil Cernea, Emil Molcuț, *Istoria statului și dreptului românesc* [*The History of Romanian State and Law*], revised and updated edition, București, Editura Universul Juridic, 2004.

³ B. P. Hasdeu, *Șugubeț și șugubină. Un rest din influența juridică a slavilor asupra limbii române* [*Șugubeț and Șugubină. A rest of Legal Influence of the Slaves on the Romanian Language*], in "Columna lui Traian" ["Trajan's Column"], yr. III, no. 1, 1882, pp. 612-619; Henri H. Stahl, *Contribuții la studiul satelor devălmașe românești* [*Contributions in Studying Romanian Joint Property Villages*], vol. I, București, 1958, vol. II, București, 1959, vol. III, 1965; idem *Ethnologie de l'Europe du Sud-Est. Une anthologie* [*South-Eastern Europe Ethnology. An Anthology*], Paris, 1974; Romulus Vulcănescu, *Etnologie juridică* [*Legal Ethnology*], București, 1970.

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specialists. We only have a few starts, substantiated in several papers referring to the main fines in 15th-18th century Moldavia, to cases of capital punishment in the 16th century, to medieval justice in general⁴. The latest approach concerning the topic we are interested in, from both a strictly juridical and a historical perspective, was that of Valentin Al. Georgescu and P. Strihan, *Judecata domnească în Țara Românească și Moldova 1611-1831* ['Princely Judgment in Walachia and Moldavia, 1611-1831'], Part I. *Organizarea judecătorească* ['Judicial Organization'], vol. I (1611-1740), București, 1979 and Part II, *Procedura de judecată* ['Law Procedure'] (1611-1831), București, 1982. After 1989, the cultural and intellectual opening towards the fertile approaches of history in the occidental cultural area, which came with new directions of research, did not entail, in the case of Moldavia, a shift in the angle of analysis of the criminal phenomenon. Better represented from this standpoint (delinquency and/or criminality) is the Walachian historiography⁵ and the Transylvanian one⁶.

⁴ Gh. Ungureanu, *Pedepsele în Moldova la sfârșitul secolului al XVIII-lea și începutul secolului al XIX-lea* [*Punishments in Late 18th Century and Early 19th Century Moldavia*], Iași, 1931 (excerpt); A. Cazacu, *Justiția feudală* [*Feudal Justice*], in *Viața feudală în Țara Românească și Moldova (sec. XIV-XVII)* [*Feudal Life in Walachia and Moldavia (15th – 17th Centuries)*], București, Editura științifică, 1957, pp. 465-499; N. Grigoraș, *Principalele amenzi din Moldova în timpul orânduirii feudale (secolele al XV-lea – al XVIII-lea)* [*The Main Fines in Moldavia Under the Feudal System (15th – 18th Centuries)*], in "Anuarul Institutului de Istorie și Arheologie «A.D.Xenopol»" ["The Annual of the 'A.D. Xenopol' Institute of History and Archaeology"] – Iași, 1969, 6, pp. 159-176.

⁵ „Ceea ce Dumnezeu a unit, omul să nu despartă. Studiu asupra divorțului în Țara Românească în perioada 1780-1850” [“What God has joined together, let no man put asunder”. A Study on Divorce in Walachia in the Period 1780-1850], in "Revista istorică" ["Historical Magazine"], nos. 11-12, 1992, p. 1143-1155; Ligia Livadă-Cadeschi, *De la milă la filantropie. Instituții de asistare a săracilor din țara Românească și Moldova în secolul al XVIII-lea* [*From Mercy to Philanthropy. Institutions of Poverty Assistance in 18th Century Walachia and Moldavia*], București, Editura Nemira, 2001; Ligia Livadă-Cadeschi, Laurențiu Vlad, *Departamentul de cremenalion* [*The Criminal Department*], București, Editura Nemira, 2002; Cristina Codarcea, *Société et pouvoir en Valachie (1601-1654). Entre la coutume et la loi* [*Society and Power in Walachia (1601-1654). Between Custom and Law*], București, Editura Enciclopedică, 2002; Constanța Ghițulescu, *În șalvari și cu ișlic. Biserică, sexualitate, căsătorie și divorț în Țara Românească a secolului al XVIII-lea* [*Sharovary and Ishlik. Church, Sexuality, Marriage and Divorce in 18th Century Walachia*], București, Editura Humanitas, 2004; idem, *Focul amorului. Despre dragoste și sexualitate în societatea românească (1750-1830)* [*The Fire of Love. About Love and Sexuality in the Romanian Society (1750-1830)*], București, Editura Humanitas, 2006; Dan Horia Mazilu, *O istorie a blestemului* [*A History of Curse*], Iași, Editura Polirom, 2001; idem, *Lege și fărădelege în lumea românească veche* [*Legal and Illegal in the Old Romanian World*], Iași, Editura Polirom,

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3. Types of sources and working hypotheses

Our research's objective is the description and analysis of the criminal law practices (offences and penalties) present in the 17th century Romanian society. For a better organization, we will not elude the premises of the 16th century and we will stop towards the middle of the Phanariote century. The higher limit will be the years 1741-1742, when Constantin Mavrocordat, prince for the second time in Moldavia, issued an unusual juridical document, functioning as fundamental law: *Condica de porunci, corespondențe, judecări și cheltuieli a lui Constantin Mavrocordat ca domn al Moldovei, (1741-1742)* ['The Book of decrees, correspondences, judgments and expenses of Constantin Mavrocordat as Prince of Moldavia'], after it had been decreed in Walachia as well in 1740, by the same Prince. The document was accompanied by a series of charters, decrees and assembly decisions – decisions of several councils assembled – that go up until 1749, as part of what was wanted to represent a reform of the Romanian law system. We are in a period when the economic, political and ideological influences of Western Europe were sensibly diluted, on the background of a rise of the Ottoman domination in this part of the continent.

Besides these general features, the temporal limits of our investigations are also justified by the way in which two sources of formal law are applied, that is the customary, called in documents "the law" or the "country's law" and the written law codes, coming from the Byzantium by means

2006; Violeta Barbu, „*Furțișagul*” din visteria țării: de la justiția sumară la proces (Țara Românească, secolul al XVII-lea) (I) [The “Pilferage” from the Country's Treasury: From Summary Justice to Trial (17th Century Walachia)], in “*Revista istorică*” [“Historical Magazine”], t. XV, nos. 3–4, 2004, pp. 83–100 (I); t. XVI, nos. 1–2, 2005, pp. 143–152 (II); Oana Rizescu, *Avant l'«État-juge»: Pratique juridique et construction politique en Valachie au XVII^e siècle* [Before the “Judge-State”: Legal Practice and Political Construction in 17th Century Walachia], București, Editura Notarom, 2008.

⁶ Toader Nicoară, *Transilvania la începuturile timpurilor moderne (1680-1800). Societatea rurală și mentalitățile colective* [Transylvania in Early Modern Times (1680-1800). Rural Society and Collective Mentalities], Cluj-Napoca, Editura Dacia, 2001.

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of Slavonic translations; these are the famous “pravile” or nomocanons. These latter included both elements of ecclesiastic law and elements of civil and criminal law.

Furthermore, special attention must be paid to the context in which the code of laws in Romanian appears, elaborated under Vasile Lupu. The strongly penal character forces us to a self-contained research project. The issue represents, first of all, a pretext to examine the social situation of the epoch, during which the attitude of the lawgiver – as enforcer of the juridical norms existing in the State – towards the different denominational, social or ethnical categories represents the means by which our investigations might lead to satisfactory results.

As mentioned above, in the period we analyse, the court order did not need to be motivated by the invocation of the law system on the basis of which the decision was made. Generally, until the middle of the 17th century, references are made to the “divine law”, “God’s law” and less to the law code (the codified, canonical one, the “Church pravila”, and the imperial one, the “imperial pravila”). Starting with the first half of the 18th century, the references to the “imperial pravila” and to the “holy pravila” grow more numerous. We intend to establish to what extent this phenomenon can be spotted in the criminal law practices, more precisely in the orders given by courts.

4. Methodology

Inventorying, examining and classifying the orders enforced by courts on the individuals accused of criminal offences, we will approach, more easily, the objectives of the project. This departure will prepare the path for the illustration of the existing hierarchies in the social structure of those times, of the differences between the groups forming the society. The topic implies the approaching of the anthropological method applicable in the dynamic area of social interactions. We should state that we approach penalty on the grounds of a modern definition.

We will follow to what extent the denominational, social or ethnic differences, the differences between the older and the recent inhabitants of Moldavia, represented grounds for a

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different treatment in criminal matters. In both the content of Vasile Lupu's *Pravila*, and that of the other documentary and narrative sources we can see signs of a different juridical treatment of the defendant, according to his belonging to one group or another. That is why we intend to confront the text of the code of laws with that of the documents of criminal nature, to establish to what extent the written law was applicable. We mention that the opinions of those who dwelt upon this subject are different. They declared themselves either against the use of the *Pravila* stipulations in the juridical procedures, or in favour of a limited applicability, based upon the fact that fragments of law were found in the penalty decisions referring to certain offences. We believe our approach is necessary for the clarification of this issue, a necessary and compulsory condition being to make an attentive reading of both the published and the unpublished documents, written in Slavonic or in Romanian with Cyrillic alphabet, from different archives. Another objective of the project is the way in which the criminal fine levied by the Prince or his tax farmers becomes both a modality to punish and a source of incomes. Continuing this idea, we intend to motivate the levying, by some monasteries, of the quantum of punishment for murder (*dușegubina*), usually meant to the princely court⁷.

⁷ Very useful to our approach proved to be the methodological perspectives proposed by H. Levy-Bruhl, *Aspects sociologiques du droit* [*Sociological Aspects of Law*], Paris, 1955; Geoff Eley, *A Crooked line. From Cultural History to the History of Society*, The University of Michigan Press, 2005; Carmelo Trasselli, Maurice Aymard, Monique Aymard, *Du fait divers à l'histoire sociale. Criminalité et moralité en Sicile au début de l'époque moderne* [*From the News Items to the Social History. Criminality and Morality in Sicily at the Beginning of the Modern Period*], in: "Annales. Économies, Sociétés, Civilisations" ["Annals. Economies, Societies, Civilisations"], yr. 28, N. 1, 1973. pp. 226-246; Thierry Godefroy, Bernard Laffargue, *Crise économique et criminalité. Criminologie de la misère ou misère de la criminologie?* [*Economical Crisis and Criminality. Criminology of Destitution or Destitution of Criminology?*], in: *Déviance et société*. [Deviance and Society] 1984 - Vol. 8 - N°1. pp. 73-100; Arlette Farge, *Le goût de l'archive* [*The Taste of the Archives*], 1989; eadem, *Dire et mal dire. L'opinion publique au XVIII^e siècle* [*Mouthing and Badmouthing. Public Opinion in the 18th Century*], 1992; eadem, *Des lieux pour l'histoire* [*Places for History*], Éditions du Seuil, 1997; eadem, *Le bracelet de parchemin. L'écrit sur soi au XVIII^e siècle* [*The Parchment Bracelet. Writing on oneself in the 18th Century*], Paris, 2003; Carlo Ginzburg, *Brânza și viermii. Universul unui morar din secolul al XVI-lea* [*The Cheese and the Worms. The Cosmos of a 16th Century Miller*], Rom. transl. by Claudia Dumitriu, București, Editura Nemira, 1996; Robert Darnton, *Marele masacru al pisicii și alte episoade din istoria culturală a Franței* [*The Great Cat Massacre and Other Episodes in French Cultural History*], Rom. transl. by Raluca

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5. Phases of the project

5.1 Looking for hierarchies

We are here in a period that precedes modernity, a period when the principle of equality to law had not yet been stated, justice being made according to the position that the defendants held in society. When we talk about categories of population and the manner in which criminal law justice was enforced in their case, we should, first of all, identify the criteria according to which certain groups forming the social structure are placed in hierarchies and separated from each other. In our opinion, the denominational, social and ethnic criteria are determinant for the definition of the structure of a population, and their listing in this order corresponds to the importance they have in the groups' hierarchy we have mentioned. Consequently, we intend to establish the way in which hierarchies are constructed in Moldavia in the proposed period, examining the time sources. By their subjectivity or objectivity, they create the general image of the society where they live: manuscript juridical writings⁸ and published ones⁹, chancellery documents¹⁰, literary chronicles¹¹, encomiastic literature¹², popular books¹³, notes on manuscripts and books from the epoch¹⁴.

Ciocoiu, Iași, Editura Polirom, 2000; Natalie Zemon Davis, *Ficțiunea în documentele de arhivă. Istorisirile din cererile de grațiere și povestitorii lor în Franța secolului al XVI-lea* [*Fiction in the Archives. Pardon Tales and Their Tellers in 16th Century France*], Rom. transl. by Diana Cotrău, București, Editura Nemira, 2003; all contributions in the volume *L'enquête judiciaire en Europe au XIX^e siècle. Acteurs, Imaginaires, Pratiques* [*Criminal Investigation in 19th Century Europe. Actors Imaginaries, Practices*], Paris, 2007.

⁸ Eustratie Logofătul, *Pravila aleasă, 1632* (manuscris) [*The Rare Code of Law, 1632* (manuscript)].

⁹ *Șapte taine* [*Seven Secrets*], Iași, 1644 (see Moses Gaster, *Crestomație Română. Texte tipărite și manuscrise secolele XVI–XIX dialectale și populare cu o introducere, gramatică și un glosar româno-francez* [*Romanian Chrestomathy. Printed Texts and Manuscripts in the Dialectal and Popular 16th – 19th Centuries*, vol. I, Leipzig, 1891, p. 114-117); *Carte românească de învățătură* [*Romanian Book of Teachings*], critical ed., Andrei Rădulescu (ed.), București, 1961.

¹⁰ See in the following.

¹¹ Ureche, Grigore, *Letopisețul Țării Moldovei* [*Chronicle of the Country of Moldavia*], introduction, index and glossary by P. P. Panaitescu (ed.), București, 1955; Miron Costin, *Opere* [*Works*], introduction, notes, comments, variants, index and glossary by P. P. Panaitescu (ed.), București, 1958; Ion Neculce, *Opere. Letopisețul Țării Moldovei și O samă de Cuvinte* [*Works. The Chronicle of the Country of Moldavia and Some*

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5.2. Denominational, social, ethnic. A Law for everybody?

For the area we have in view, justice was, first of all, a Christian and an Orthodox one, and it mainly addressed the ones who shared this denomination. Moreover, in Romanian language, in both the documents and written works of the 17th century we will see that the “law” designated, invariably, the religious affiliation. Starting from this criterion, in the investigated period we meet, near an Orthodox Christian majority, two other Christian minorities, the Catholic and the Armenian one. Here too, in the same period, near the Christians we find the Muslims and the Jews. Then, the most significant ethnic minority, if we take into consideration the number and the influence they had in the Romanian society of that time, are the Greeks. At a closer look, we will discover that behind this group that we might be tempted to call an ethnic one, we find not only the Greeks, but also the people speaking Greek and coming from the Balkans and settled down in Moldavia, who could have been Albanians or Aromanians. In an hierarchical society, ordered according to the mentioned criteria, we try, following the sources, to establish how much the

Teachings], critical edition and introduction by Gabriel Ștrempel, București, Editura Minerva, 1982; Dimitrie Cantemir, *Descrierea Moldovei [Moldavia's Description]*, translation according to the original in Latin by Gh. Guțu. Introduction by Maria Holban. Historical comment by N. Stoicescu. Cartographic study by Vintilă Mihăilescu. Index by Ioana Constantinescu. With an introductory note by D. M. Pippidi, București, 1973.

¹² Homage verses from Metropolitan Varlaam's *Homiliary*, Iași, 1643; *Cuvântul duhovnicesc [Homily]* uttered by metropolitan Petru Movilă in 1645 (see P. P. Panaitescu, *Petru Movilă. Studii [Studies]*, afterword, notes and comments by Ștefan S. Gorovei and Maria Magdalena Székely (eds.), București, Editura Enciclopedică, 1996, pp. 89-96).

¹³ N. Cartoian, *Cărțile populare în literatura românească [Popular Books in Romanian Literature]*, vols. I-II, Alexandru Chiriacescu (ed.), introduction by Dan Zamfirescu, afterword by Mihai Moraru, București, Editura Enciclopedică Română, 1974 (*Alexandria, Floarea darurilor, Sindipa [Alexandria, The Flower of Gifts, Sindipa]*).

¹⁴ The investigation of the selected material will be done by using the method of linguistic archaeology, proposed by Lucien Fèbvre in *Civilisation, le mot, l'idée (Première Semaine Internationale de synthèse) [Civilisation, the Word, the Idea (First International Week of Synthesis)]*, Paris, Renaissance du livre, 1930, as well as by Michel Foucault, *Cuvintele și lucrurile. O arheologie a științelor umane [The Order of Things]*, Rom. transl. by Bogdan Ghiu and Mircea Vasilescu, București, Editura Univers, 1996, and idem, *A supraveghea și a pedepsi. Nașterea închisorii [Discipline and Punish. The Birth of the Prison]*, Rom. transl. and notes by Bogdan Ghiu, București, Editura Humanitas, 1997.

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denominational, social and ethnic belonging of the individuals weighed in the judgment of the incriminated facts. The sources we will work upon are: chancellery documents published in the two national collections of sources¹⁵, in private collections¹⁶, as well as unpublished documents,

¹⁵ *Documente privind istoria României [Documents on Romania's History]*, A, Moldova, Veacul XVI [16th century], vol. I (1501-1550); vol. II (1551-1570); vol. III (1571-1590); vol. IV (1591-1600), București, 1951; Veacul XVII [17th century], vol. I (1601-1605); II (1606-1610); vol. III (1611-1615); vol. IV (1616-1620); vol. V (1621-1625), București, Editura Academiei, 1952-1957; *Documenta Romaniae Historica*, A., Moldova, vol. XVIII (1623-1625), edited by I. Caproșu and Valentin Constantinov, București, Editura Academiei, 2006; vol. XIX (1626-1628), edited by Haralambie Chircă, București, Editura Academiei, 1969; vol. XXI (1632-1633), edited by C. Cihodaru, I. Caproșu and L. Șimanschi, București, Editura Academiei, 1971; vol. XXII (1634), edited by C. Cihodaru, I. Caproșu and L. Șimanschi, București, Editura Academiei, 1974; vol. XXIII (1635-1636), edited by L. Șimanschi, Nistor Ciocan, Georgeta Ignat and Dumitru Agache, București, Editura Academiei, 1996; vol. XXIV (1637-1638), edited by C. Cihodaru and I. Caproșu, București, Editura Academiei, 1998; vol. XXV (1639-1640), edited by Nistor Ciocan, Dumitru Agache, Georgeta Ignat and Marius Chelcu, București, Editura Academiei, 2003; vol. XXVI (1641-1642), edited by Ioan Caproșu, București, Editura Academiei, 2003; vol. XXVII (1643-1644), edited by Petronel Zahariuc, Cătălina Chelcu, Marius Chelcu, Silviu Văcaru, Nistor Ciocan and Dumitru Ciurea, București, Editura Academiei, 2005; vol. XXVIII (1645-1646), edited by Petronel Zahariuc, Marius Chelcu, Silviu Vacaru and Cătălina Chelcu, București, Editura Academiei, 2006.

¹⁶ Eudoxiu de Hurmuzaki, *Documente privitoare la istoria românilor [Documents on the Romanians' History]*; vol. I, supplement 1, București, 1886 (edited by Gr. G. Tocilescu and A. I. Odobescu); IV/1, București, 1880 (edited by I. Slavici); IV/2, București, 1884 (edited by I. Slavici); V/1, București, 1885 (edited by I. Slavici); V/2, București, 1886 (edited by I. Slavici); VIII, București, 1894 (edited by I. Slavici); IX/1, București, 1897 (edited by I. Slavici); X, București, 1897 (edited by N. Iorga); XI, București, 1900 (edited by N. Iorga); XII, București, 1904 (edited by N. Iorga); supplement II, vol. 3, București, 1900 (edited by Ioan Bogdan and Ioan Skupiewski); XIV/1, București, 1915 (edited by N. Iorga); XV/2, București, 1913 (edited by N. Iorga); N. Iorga, *Anciens documents de droit roumain, avec une préface contenant l'histoire du droit coutumier roumain [Old Documents of Romanian Law, with a Preface Including the History of the Romanian Customary Law]*, I-II, Paris-Bucarest, 1903; idem, *Studii și documente cu privire la istoria românilor [Studies and Documents Regarding the Romanians' History]*, I-XXV, București, 1902-1913; Mihai Costăchescu, Ioan Bogdan, Gh. Ghibănescu, *Surse și izvoade [Copies and Manuscripts]*, I-XXV, Iași, 1906-1933; idem, *Ispisoace și zapise (documente slavo-române) publicate de ... [Old Slavic-Romanian Documents and Acts Published by ...]* I₁₋₂ - VI₁₋₂, 12 vol. 1906-1933; Iacov Antonovici, *Documente bărlădene [Documents from Barlad]*, I-V, Bârlad-Huși, 1911-1926; Teodor Balan, *Documente bucovinene [Documents from Bukovina]*, I-IV, Cernăuți, 1933-1937; VII, Iași, 2005; VIII-IX, Iași, 2006; Constantin Solomon, C. A. Stoide, *Documente tecucene [Documents from Tecuci]*, vol. I-II, Bârlad, 1938-1939; Aurel V. Sava, *Documente privitoare la târgul și ținutul Lăpușnei [Documents Regarding the Town and the Land of Lăpușna]*, București, <1937>; idem, *Documente privitoare la târgul și ținutul Orheiului [Documents Regarding the Town and the Land of Orhei]*, București, 1944; Ioan Caproșu and Petronel Zahariuc, *Documente privitoare la istoria orașului Iași [Documents Regarding the History of the City of Iași]*, I, *Acte interne (1408-1660) [Internal Acts]*, Iași, 1999; Ioan Caproșu, *Documente privitoare la istoria orașului Iași [Documents Regarding the History of the City of Iași]*, II, *Acte interne (1661-1690) [Internal Acts]*, Iași, 2000; III, *Acte*

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lying at the State Archives of Iași¹⁷, the National Archives of Bucharest¹⁸ and the Library of the Romanian Academy¹⁹, *Carte românească de învățătură* [Romanian Book of Teachings], Iași, 1646, the way the phenomenon of criminality was regarded by the foreign travellers²⁰, the Greek chronicles²¹, the religious painting of the 16th century²², where one can find different aspects of the

interne (1691–1725) [Internal Acts], Iași, 2000; IV, *Acte interne (1726–1740) [Internal Acts]*, Iași, 2001; V, *Acte interne (1741–1755) [Internal Acts]*, Iași, 2001; VI, *Acte interne (1756–1770) [Internal Acts]*, Iași, 2004; Florin Marinescu, *Roumanika eggrafa tou Agiou oruz. Arheio Ieraz moniz Eiropotamou, Tomoz protoz, Aθina*. (Marinescu, Florin, *Documente românești de la Sfântul Munte. Arhiva Sfintei Mănăstiri Xeropotamu [Romanian Documents from Mount Athos. Archives of the Holy Xeropotamou Monastery]*, Tom. I, Athens, 1997; idem, *Roumanika eggrafa tou Agiou oruz. Arheio Ieraz moniz Prwtatou, Aθina* (Marinescu, Florin, *Documente românești de la Sfântul Munte. Arhiva Sfintei Mănăstiri Protatu [Romanian Documents from Mount Athos. The Archives of the Holy Protatou Monastery]*, Athens, 2001.

¹⁷ The archive collections *Documente, Vistieria Moldovei și Spiridonie [Documents, Moldavia's Treasury and Spiridonie]*.

¹⁸ The archive collection *Documente istorice [Historical Documents]*.

¹⁹ The collection *Manuscrise [Manuscripts]*.

²⁰ *Călători străini despre Țările Române [Foreign Travellers about the Romanian Principalities]*, II, Maria Holban, M. M. Alexandrescu-Dersca Bulgaru and Paul Cernovodeanu (eds.), București, 1970; III, Maria Holban, M. M. Alexandrescu-Dersca Bulgaru and Paul Cernovodeanu (eds.), București, 1971; IV, Maria Holban, M. M. Alexandrescu-Dersca Bulgaru and Paul Cernovodeanu (eds.), București, 1972; V, Maria Holban, M. M. Alexandrescu-Dersca Bulgaru and Paul Cernovodeanu (eds.), București, 1973; VI, M. M. Alexandrescu-Dersca Bulgaru and Mustafa Ali Mehmet (eds.), București, 1976; VII, Maria Holban, M. M. Alexandrescu-Dersca Bulgaru and Paul Cernovodeanu (eds.), București, 1980; VIII, Maria Holban, M. M. Alexandrescu-Dersca Bulgaru and Paul Cernovodeanu (eds.), București, 1983; Elisabetta Borromeo, *Voyageurs occidentaux dans l'Empire ottoman (1600–1644) [Western Travellers in the Ottoman Empire]*, volumes I-II, Maisonneuve & Larose, Paris, 2007; Marco Bandini, *Codex. Vizitarea generală a tuturor Bisericii Catolice de rit roman din Provincia Moldova 1646–1648 [Codex. General Visit of All Roman-Catholic Churches in the Province of Moldavia]*, bilingual ed., introduction, established Latin text, translation and glossary by Traian Diaconescu, Iași, 2006.

²¹ *Cronicul lui Chesarie Daponte de la 1648–1704 [Chesarie Daponte's Chronicle from 1648–1704]*, in Constantin Erbiceanu, *Cronicarii greci care au scris despre români în epoca fanariotă [Greek Chroniclers who Wrote about Romanians in the Phanariotes' Period]*, București, Editura Cronicar, 2003, p. 5–63; *Catalogul istoric a omenilor însemnați din secolul XVIII, dintre carii marea majoritate au trăit în țările Române Valahia și Moldova [The Historical catalogue of the 18th century important people, most of whom lived in the Romanian Principalities of Walachia and Moldavia]* by Chesarie Daponte, in vol. cit., p. 88–227; *Cronicul lui Neculai Chiparissa [Neculai Chiparissa's Chronicle]*, in vol. cit., p. 65–86.

²² I. D. Ștefănescu, *Iconografia artei bizantine și a picturii feudale românești [Iconography of the Byzantine Art and of the Romanian Feudal Painting]*, București, Editura Meridiane, 1973; Ion Solcanu, *Artă și societate*

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social life, transposed in the gravures of published books of the following century (the gravure of *Carte românească de învățătură* [Romanian Book of Teachings], 1643, for instance)²³.

5.3. Justice and taxation: between the headsman, the prison and the Treasury

The Ottoman Empire in Moldavia, installed in the middle of the 16th century, also influenced the quantum of the domestic taxes, following the obligations to the Porte. We think about the multiplication of the tax obligations in Moldavia, especially in the 17th century, and reaching their climax in the 18th century²⁴. Then, we refer to conversion of the old taxes into monetary royalties and, last but not least, to the elimination of fiscal immunities starting with the second half of the 16th century, which were returned to later, under different forms. In this context, changes occur in the punishment execution as well, by tolerating the redemption of punishments with money. Even the most serious ones, like robbery, could be redeemed or even pardoned by the Prince, a supreme judge of the country, under certain conditions. Generally, the corporal

românească: sec. XIV-XVIII [Romanian Art and Society. 14th – 18th Centuries], București, Editura Enciclopedică, 2002.

²³ Very useful were the methodological orientations of: François Billacois, *Pour une enquête sur la criminalité dans la France d'ancien regime* [For an Investigation of Criminality in the Old Regime France], In: "Annales. Économies, Sociétés, Civilisations" ["Annals. Economies. Societies. Civilisations"], yr. 22, N. 2, 1967, pp. 340-349. Peter Burke, *Istorie și teorie socială* [Social History and Theory], transl. by Cosana Nicolae, București, Humanitas, 1999; Alexandru Florin Platon, *Societate și mentalități în Europa medievală. O introducere în antropologia istorică* [Society and Mentalities in Medieval Europe. An Introduction in Historical Anthropology], Iași, Editura Universității "Al. I. Cuza", 2000 and idem, *Imagologie, identitate și alteritate: repere istoriografice* [Imagology, Identity and Alterity: Historiographic Landmarks], in vol. *Etnie și confesiune în Moldova medievală* [Ethnical and Denominational Belonging in Medieval Moldavia], edited by Ion Toderașcu, Iași, Editura Universității "Alexandru Ioan Cuza", 2006, pp. 13-25.

²⁴ Alexandru Constantinescu, *Dările în Țara Românească și Moldova (sec. XIV-XV)* [Taxes in Walachia and Moldavia (14th – 15th Centuries)], in "Studii și articole de istorie" ["History Studies and Papers"], 1975, 23, pp. 110-118; N. Stoicescu, *Regimul fiscal al preoților din Țara Românească și Moldova până la Regulamentul organic (sec. XV-XIX)* [Tax Regime of Priests in Walachia and Moldavia until the Organic Ruling (15th – 19th Century)], in BOR, 1971, 23, nos. 5-6, pp. 370-381; Matei D. Vlad, *Le regime fiscal et administratif dans les villages de colonisation de Valachie et de Moldavie au XVIII^e siècle* [Tax and Administrative Regime in the Villages of Colonisation of Walachia and Moldavia in the 18th Century], in "Revue Roumaine d'Histoire" ["Romaina Magazine of History"], 1971, 10, no. 6, 1013-1026; I. Caproșu, *O istorie a Moldovei prin relațiile de credit (până la mijlocul secolului al XVIII-lea)* [A History of Moldavia from the Perspective of the Credit Relations (until the mid-18th Century)], Iași, 1989.

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punishments and imprisonment eventually took more and more often the pecuniary form of execution. Consequently, our objective is, on the one hand, the analysis of the way in which this practice becomes a component of the general plan of collection of the cash that the princely court needed, to meet the Ottoman requests, and, on the other hand, the way it was applied at the level of the social structures, inside the majority Orthodox group and inside the minority groups, from an ethnic and denominational perspective. Moreover, we will focus on the law regulations regarding the fiscal offences that the 17th century princes and especially the princes of the next century try to fight (like, for instance, eluding the payment of the *dușegubina*).

A particular problem are the fiscal immunities acquired by some of the Moldavian monasteries. Among these privileges, there is the levying, by these monasteries, of the fines (“gloabe”) for serious offences (“big deed”) like murder. By right, the investigation of the offences was the responsibility of the Prince, who was also levying the fine, established according to the gravity of the crime. Consequently, we insist upon this aspect pertaining to the relation between two institutions, the Principality and the Church, in the period we have in view, from the perspective of some juridical and fiscal privileges that the monasteries were entitled to²⁵.

6. Relevance of the project

The customary was preserving the memory of litigious situations, as well as the inventory of the decisions to those situations. The written codes of laws were codifying part of those long run experiences, the political circumstance conserving or “forgetting”, according to the interests, a series of stipulations and immemorial customs. From our point of view, the social identities of the moment did not come out from the written provisions, but from the distances that always appeared

²⁵ Ștefan Berechet, *Dreptul vechilor noștri ierarhi la judecarea mirenilor* [The Right of Our Old Hierarchs to the Laics' Judgement], București, 1938; Gheorghe Cronț, *Clericii în serviciul justiției* [Clergymen in the Service of Justice], București, 1938; idem, *Justiția bisericească din Moldova și Țara Românească în secolele XIV-XVIII* [Church Justice in the 14th – 18th Centuries Moldavia and Walachia], in “Mitropolia Moldovei și Sucevei” [Moldavia and Suceava's Metropolitan Church], 1975, 51, nos. 3-4, pp. 258-274; 1976, 52, nos. 5-6, pp. 338-359.

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between the letter of the law and its enforcement. These social identities emerge from the otherwise inherent conflict between an extremely complex reality and the articles of law that did not manage to comprehend it in some brief phrases. The competition between the customary and the law leads to the modification of the way in which the idea of guilt was regarded, many of the gestures that once seemed to be self-explanatory becoming, over night, offences. This is the so-called “process of civilization”, which Norbert Elias or Louis Marin talked about, each in his own style. Thus, some laws that seemed to serve, apparently, the individual’s interest, were actually establishing a tacit control, of a different nature. In our case, the modernizing effort originated in an increase of the central power as well, but not like in the case of France; this was an increase emerged from the despair to comply with the Ottomans’ bigger and bigger requests. The simplification of taxes under the Phanariotes was therefore updating the competition between the Prince and the land owner. Here starts, in our opinion, the long history of the sharecropper’s transformation into the tax-payer citizen.

Cătălina-Elena Chelcu

Termeni cheie: offences, penalties, social identities, customary norms, code of law.

Iași

10.09.2011

Cercetător postdoctoral

Cătălina-Elena Chelcu



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