

Offences and Sentences. Judiciary Practice in Medieval and Premodern Moldavia

Abstract

The topic related to the social implications of criminal judiciary practices founded on the two law sources in the Romanian medieval and premodern periods – the customs of the land (traditional mores) and the Byzantine law – benefits from solid research conducted by law professionals. They investigated the origin of law and criminal procedure in the medieval and premodern periods, the definition and contents of offence and criminal sentence, the limits of private justice and collective criminal liability (S. G. Longinescu, C. V. Obedeianu, Ștefan Berechet, I. Tanoviceanu, I. C. Filitti and D. I. Suchianu, Petre Ionescu-Muscel, Ioan D. Condurachi, P. P. Panaitescu, Andrei Rădulescu, Al. Constantinescu, Valentin Al. Georgescu, P. Strihan, Radu Constantinescu, Vladimir Hanga, Ovid Sachelarie, Ioan N. Floca, Emil Cernea, Emil Molcuț). It is also worth noting the research focused on linguistics (B. P. Hasdeu) and historical sociology (Henri H. Stahl). The historians' perspective on the criminality phenomenon in the medieval and premodern periods was not highlighted in the specialised research before 1989. Their viewpoint was visible in studies on political and cultural history, critical editions of documents, chronicles, and codes of law. Given this context, historians did not include criminal aspects among their points of interest because the topic was available only to specialists in judiciary history. Several studies by them are worth highlighting concerning criminal fines in Moldavia in the 15th-18th centuries, capital penalty application in the 16th century, and medieval justice in general (Gh. Ungureanu, A. Cazacu, N. Grigoraș) in "A.D.Xenopol» Institute of History and Archaeology Annuary" – Iași, 1969, 6, p. 159-176), as well as the history of the first establishments for criminal justice in the first three decades of the 19th century (Gh. Ungureanu, C. C. Angelescu). Another study – concerning a topic of interest for me from a strictly legal and historical perspective – belongs to Valentin Al. Georgescu and P. Strihan (Valentin Al. Georgescu and P. Strihan, *Judecata domnească în Țara Românească și Moldova 1611-1831*, Part I. *Organizarea judecătorească*, vol. I (1611-1740), București, 1979 and Part II. *Procedura de judecată* (1611-1831), București, 1982). Following the events that occurred in Romania more than thirty years ago, as our country was officially included in the western cultural and intellectual space, the Wallachian historians (Ligia Livadă-Cadeschi, Laurențiu Vlad; Constanța Vintilă-Ghițulescu, Dan Horia Mazilu) and those from Transylvania (Toader Nicoară, Maria Pakucs, the studies within the series *Caiete de Antropologie Istorică*, Julia Derzsi) got a better insight into the issue of criminality phenomenon.

In this habilitation thesis, I featured several scientific endeavours published after 2010, when I defended my doctoral dissertation. It regarded the jurisprudence and judiciary practice in medieval Moldavia until the mid-18th century and from the end of this century to the first three decades of the 19th century. The sources that I (re)discovered and (re)assessed conditioned the temporal frameworks above.

My habilitation thesis is divided into three major parts. The first and most extensive part is called *Scientific and professional achievements*, and it features, besides the necessary *Introduction*, four chapters: *Justice and fiscality: between the executioner, the jail, and the Treasury*; *Judiciary practice in Moldavia until the first half of the 18th century*; *Judiciary norm and practice in Moldavia at the crossroads between medieval and modern (late 18th century – early 19th century)*; *Administration of justice and political ideology in late 18th century and early 19th century*. In this part, I included the studies mentioned above, followed

by a chapter of conclusions and one of the professional and academic achievements other than those presented in detail in the scientific contents of the thesis due to my status as a scientific researcher with the “A.D.Xenopol» Institute of History and Archaeology. The second part includes a *Career plan and research directions* for the near future. I featured an unpublished study titled *Judiciary Sources in Premodern Moldavia: Two Reports of the Mine Administration in the Early 19th Century*. This study will be published along with others by Romanian historians in a volume edited by Nicoleta Roman – a scientific researcher with the “N. Iorga” Institute of History – at the Romanian Academy Publishing House this year. The last part of the thesis comprises a selective bibliography featuring essential historiographical contributions concerning the issue of criminal history and judiciary practice in medieval and premodern Moldavia. All of them have greatly assisted in elaborating the studies and papers I have published in the thirteen years since I obtained my PhD.

After a presentation of the historical and historiographical sources used, the specific methodology, and a brief account of the topics within each study of the volume, I included two chapters, i.e., *Justice and fiscality: between the executioner, the jail, and the Treasury and Judiciary practice in Moldavia until the first half of the 18th century*. Within the two chapters, I analysed the jurisprudence and judiciary practice in Moldavia from the first legal documents mentioning offences with a sentence and criminal acts to the mid-18th century (i.e., 1741–42), when Constantin Mavrocordat – who reigned in Moldavia for a second time – issued an unprecedented legal document acting as a fundamental law. Its title was *The Register of Orders, Correspondences, Judgements, and Expenses by Constantin Mavrocordat as the Ruler of Moldavia (1741-1742)*. The same prince had issued a similar document in Wallachia in 1740. This document was followed by a series of princely decrees and decisions made by states’ assemblies until around 1749 – all included in a reform of the Romanian judiciary system.

The Ottoman regime in Moldavia, installed around the mid-16th century, also influenced the amount of domestic taxes, which followed the monetary obligations to the Porte. All the tax duties increased in Moldavia, especially in the 17th century. It peaked in the 18th century, as the old taxes became monetary royalties. Not least, tax exceptions were waived starting with the second half of the 16th century; they were reinstated later but under different forms. In this context, changes occurred in how convicted felons executed their sentence, given that it was possible to avoid executing sentences by paying various amounts of money. The ruler could redeem or even pardon more severe offences such as robbery (*jăcuire, tâlhăşug*) in certain conditions, given that the prince was the country’s supreme justice. There was an overall trend of replacing corporal and freedom-deprivation sentences with the pecuniary form of execution. Consequently, I had a twofold objective: on the one hand, analysing how this practice became a component of the general plan to collect the cash that the princely institution needed to meet the Ottomans’ demands; on the other hand, assessing how it was applied at the level of the social structures within the majority Orthodox community and the ethnic and confessional minority groups.

I also focused on the juridical regulations concerning the tax offence that all princes throughout the 17th and mostly the subsequent century tried to combat (e.g., avoiding paying the *deşugubina* – tax for murder). In one of the studies included in this habilitation thesis, I featured the issue of tax immunities acquired by various Moldavian monasteries (particularly the submitted monasteries) as part of the judiciary practice and as an aspect related to the relationship between the two establishments – the Prince and the Church. The places of worship cashed in the fees (*gloabe*) for severe offences (*faptă mare*) such as murder (*moartea de om*). *De jure*, the prince was entitled to judge and rule on deeds that broke the laws; he also received the fee determined by the gravity of the offence committed.

Among the various offence categories, theft and robbery (i.e., theft accompanied by an act of aggression against the victim) were the most common in Moldavia and everywhere. For theft, fines were applied to occasional or relapsing offenders and robbers; in some cases, sentences included freedom deprivation or even the death penalty. Whether it was a success or a failure, the reprimanding gesture had a precise political significance as a manner of asserting the prince's power. It became even more apparent in the mid-18th century when more official documents were issued to regulate sentences for robbers and ensure better coordination between the local and central authorities in criminality control policies. As for the causes of such offences, people were driven by famine, poverty, country's devastation due to the numerous wars. These were all reasons to steal from monasteries, boyars and merchants crossing through Moldavia in that period. Sometimes they would rob other people of all they had – a fortune for the person who got robbed. Roads were often the place of choice for “professional” robbers; thieves became a central figure of collective fear, and some were well-known and feared due to their deeds. I paid great attention to the litigations concerning the border between Moldavia and Transylvania in the 17th century because there are numerous sources in this respect. The conflict state generated by the political and economic realities reflected in the manner of solving border matters, where both parties breached the old commercial agreements: for instance, the Moldavian party contested the appraisal of various persons, while the Bistrița party conditioned the restitution of goods on the payment of damages.

The next chapter – *Judiciary norm and practice in Moldavia at the crossroads between medieval and modern (late 18th century – early 19th century)* – comprises findings from my research on judiciary institutions and corresponding practice in the late 18th century and early 19th century. I highlighted the prince's significant role in judging offences against the backdrop of the modernisation of the judiciary system by establishing a specialised judiciary institution, i.e., the Criminal Department. I reconstructed the judiciary practice in Moldavia towards the late 18th century and the first half of the 19th century based on criminal proceeding reports and written reports from Criminal Department (the criminal court in Moldavia, named as such until the Organic Statute). Such written reports (*anaforale*) are not just consistent judiciary sources to point out the social phenomenon of delinquency but also rich documentary material for the social history of Moldavia. I reconstructed a glimpse of the history of this institution based on an unpublished document that I found in the Romanian Academy Library, the “Historical Documents” Collection, where Prince Ioniță Sandu Sturza established on November 24, 1822, the session days for the Princely Council and the Criminal Department¹. Thus far, we only knew that the Princely Council held public sessions twice weekly, where “everyone was free to join and plead for their causes”². According to this document, things were clearly determined: the Criminal Department ruled on matters every Saturday. For the rest, the workweek for the Princely Council unfolded as follows: on Mondays, Tuesdays, and Fridays, it ruled on “matters concerning natives”, i.e., civil matters of all kinds concerning the Moldavians; on Wednesdays, issues concerning the “Southerners” (foreigners, non-natives); Thursdays were “break” days.

The fifth chapter of the thesis – *Administration of justice and political ideology in the late 18th century and early 19th century* – includes three studies I wrote based on judiciary documents from the late 18th century and the first two decades of the 19th century. I underlined the corrective character of sentences, their legal grounds, the role of aggravating or alleviating circumstances, and the focus of princely power in providing criminal rulings based on the *iconomy* principle of Byzantine origin. This principle was among the foundations of the

¹ Biblioteca Academiei Române, Documente istorice, DCCV/80.

² *Călători străini despre Țările Române*, X, part I, volume edited by Holban, Maria M. Alexandrescu-Dersca Bulgaru, Paul Cernovodeanu (editor), București, Editura Academiei Române, 2000, p. 170.

State–Church relationship in the Romanian space, too; the *Bizance après Bizance* that became part of the approach to the issue of the origin of Romanian political power in the Middle Ages and the premodern period. Thus, I also delved into the characteristics of Byzantine imperial ideology to explain some of the political behaviours of the princely institution in Moldavia concerning judiciary practice in the period mentioned above, based on the two principles of Byzantine *iconomy*, i.e., philanthropy and leniency. The last study of this chapter – and the thesis – focuses on the persons delivering justice in Moldavia in the late 18th century and the first two decades of the subsequent century: the boyar judges appointed by the Criminal Department (along with the princely institution, of course). I discussed the job description of these judges with no legal background, as they are featured in the documents I consulted and the findings of the historiography on the matter. Their duties are clearly stated in a crucial legal document for the system’s evolution in the first half of the 19th century: *The Criminal Procedure Register* (1820).

As shown in my career development plan, I will keep studying the issue of judiciary practice in Moldavia until 1832, then until 1859, because the unpublished historical sources hosted by the State Archives in Iași and the Romanian Academy Library are more than generous in this respect. My final goal is to elaborate a comprehensive work on the topic (for Moldavia), which will comprise a history of the criminal institutions in this province, initially until the Organic Statute, then until the 1859 Union, because they are not featured in the Romanian historiography yet.

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