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THEFT AND ROBBERY IN THE SENTENCES OF MOLDAVIA'S CRIMINAL DEPARTMENT (1799–1804)

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ABSTRACT

Sources on crimes and their punishment do not really offer much support in the reconstruction of criminal realities in the medieval and pre-modern Moldova, as their frequency until the second half of the 18th century is quite low. However, due to the fact that the writing of procedural elements of the criminal investigation and the application of the sentence as well as the preservation of these records in archives were mandatory, even if on a limited scale, this reality becomes palpable for the historian. Apart from this type of sources, *anaforale* can also be distinguished. These judicial sources are reports issued by members of the Moldovan criminal court, which had operated under the name of the Criminal Department since the late 18th century and in the first three decades of the 19th century. In our study, the documents we are interested in, the reports called anaforale (judicial sources), illustrate significant progress in the judicial practice in Moldavia at the end of the 18th century and the beginning of the 19th century, as far as both the changing of the death penalty to other punishments, and the trial procedures were concerned. In the following article, we are focusing on the punishment of the acts of theft and robbery – in the case of theft, it being accompanied by the violence against victims, as it is provided in the anaforale issued by the Criminal Divan of Iasi between 1799 and 1804. The actors of the criminal investigation (the prosecution agents, the perpetrators, the witnesses), the judicial norms and the practices in cases of theft and robbery, represent an area of interest for our research in regards to the aforementioned period of time. We use these criminal historical sources as a documentation basis for an investigation into the legal system, the criminal organization and its operation in last decades of the Old Regime in Moldova as part of Eastern and Central Europe.

Keywords: theft, robbery, sentences, criminal justice, Criminal Department in Moldavia.

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Criminal justice and criminality represent a very prolific segment of research in international historiography. The way the judicial apparatus worked, the prison system, the statistics, the agents of social control, the doctrines and theories of the criminal system, as well as the different representations of the phenomenon of delinquency at all social levels are some topics of scientific investigation with an impact on how legal practice is approached in other cultural areas as well.

The historical sources that deal with penal matters occupy a limited place among the written sources within the Moldavian documentary fund. Most of them are issued following civil legal proceedings, when the parties settled by plata capului/"blood money," as it appears in the Romanian documents (paying the price of the victim); only seldom were there mentions of situations when the offenders – in the lack of means necessary to pay for their offence – were actually sentenced. One explanation would be that – in penal matters – the complaints and the judgment procedures were oral for the most part. Consequently, redeeming the injury (compositio) – *a commonplace in the wide space of central and eastern European medievality* – is the most mentioned method in documents. There are mentions of certain serious criminal offences when the purpose of writing the legal document is to consolidate the right of acquiring an estate, of purchasing and selling another one, trespassing disputes, as well as redemption lawsuits for the land used as guarantee or sold to redeem the injury. Furthermore, studying the acts concerning the fate of an estate can lead to important findings, because the procedure of redeeming the crime or *plata capului* – by paying material damage to the victim's family in case of murder, or to the injured party, in cases of robbery or theft ("bucatele păgubaşilor" – the rights of the injured) and for the fine to the prince ("gloaba mea" – my tax) – was a practice in the Moldavian Middle Ages and in the premodern period. This practice also had implications in the structure of property because – in the lack of the money necessary to pay the two obligations – most defendants guaranteed with their estates in exchange for the sums they needed[1] or they gave them up to people with financial power, who purchased them. In other words, the concern for the regime of property in medieval and premodern Moldavia made possible the survival of new information regarding infractions and penalties.

Given the state of the art in the field, the discovery in the Archives of Iași of legal documents highlighting the procedural aspects of trying criminal acts has been a great benefit for us, because the research of these historical sources will bring a significant contribution concerning the legal system in Moldavia in late 18th century and the first decades of the 19th century. These historical documents are featured in several registries and they are called *anaforale* (the word comes from neo-Greek and it means: *report made by a high dignitary for the king*). As we will explain later, these *anaforale* are reports issued by the members of the Moldavian criminal court, called the Criminal Department. This way, they conveyed to the king the results of

[1] There is detailed information on the practice of zălogire (guaranteeing) during the Middle Ages in Moldavia in: I. Caproşu, *O istorie a Moldovei prin relațiile de credit până în secolul al XVIII-lea*, Iaşi 1989. The book approaches – from a historical perspective – the political and social-economic implications of lending money on interest until mid-18th century.

researching the offences committed in Moldavia in that period and they – no more than four boyars, recruited from the category of boyars with legal expertise – proposed the adequate penalties for offences. The prince was the one who ruled eventually, though, because he was the supreme judge of the country. He could agree or not with the decision made by the boyar-judges. Consequently, this study proposes to highlight such historical documents (*anaforale*), for a timeframe comprised between 1799 and 1804, in order to underscore the manner of trying the criminal offences of theft and robbery. We reiterate that these historical documents are the most complete acts in terms of legal information contained among all documents preserved. Naturally, they keep on emerging, as the documentary fund of the 19th century is brought to light. Furthermore, the authors of this study are also the editors of a miniseries comprising three volumes of such documents and, as their editing advances, we also make efforts to value the information they contain.[2]

In what concerns the criminal historical sources as a documentary basis for an investigation of the legal system, for criminal organisation and the ruling procedure in Moldavia – as part of Eastern and Central Europe in the last decades on the Old Regime – the outcomes of such research have already been published in the Polish scientific setting.[3] We reprise only a few aspects here.

During this period the legal system continued to be renewed in terms of criminal preoccupations. Both the princes of Moldavia and of Walachia focused on the reformation of justice. The fact that the princes succeeded each other to the throne in the Phanariot 18th century meant, from this standpoint, a great advantage, as different measures regarding the judicial organization and the procedure were promoted, by means of acts with similar content in Iași and in Bucharest. In this context, the prince preserves the prerogative of supreme judge of the country, as well as his place in relation to the boyars-judges. The preservation of legal attributions by the prince in his capacity of supreme instance is underlined in the new form of judicial organisation by the issuing of the definitive sentence, after having read the report including the boyars-judges' proposition to punish the perpetrators. The motivation of the penalty also invoked extenuating or aggravating circumstance, which diminished or, on the contrary, increased the content of the penalty.

The legal documents in Moldavia, dating from the second half of the 18th century, prove the presence of the Byzantine *pravila* in the legal theory and practice of that time. The *Pravila* meant therefore, as we could see in the contemporaries' testimonies, the Byzantine written law, law guides made according to the *Vasilika* or the "Imperial law," those legal texts in 60 volumes made in the 9th century at the demand of Leo VI (also called the Wise or Philosopher, 886–912), which represented an adaptation in Greek of the Roman Law, codified under the Byzantine emperor Justinian I (527–565). The foreign travellers in late 18th century Moldavia remind of

[2] Two volumes have been published thus far: S. Văcaru, C. Chelcu (eds.), *Departamentul Criminalicesc în Moldova (1799–1828). Condici de sentințe*, vol. I: *(1799–1804)*, Iași 2017; vol. II: *(1799–1828)*, Iași 2019.

[3] C. Chelcu, "Organization of Justice and Trial Procedure in Moldavia (The Second Half of the 18th Century, *Saeculum Christianum* 2019, XXVI, pp. 146–157.

the use of the Law of Harmenopoulos (1345) in trying criminal issues. Another legal guide, a nomocanon translated in Slavonic and used in the Romanian area starting with the 14th century, i.e. the *Syntagma* of Matthew Blastares of 1335, were created to replace the *Vasilika*, as they were "more concise and briefer for the needs of the trying courts." It was considered that the Byzantine legal literature was very present in the judicial practice during the Phanariot rules, including in the form of those *Vasilika* (Fabrotus edition of 1647), as well as in other significant laws. But other such collections of nomocanons circulated in Moldavia as well. Particularly spread was *Vaktiria ton Archiereôn* (Bishop's Staff), a work written by the monk Jacob of Ioannina, at the demand of the Patriarch of Constantinople, Parthenius, and printed in 1645.

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 – emerged by violating the protimisis right or due 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." Hence, trial by "law code" became reality from the second half of the 18th century, as proven by the documentary sources made available thus far.

Concerning the wrongdoers featured in the legal documents analysed, they were common people from the Moldavian towns and villages analysed, whose acts were to be tried by the Criminal Department, which was the criminal court in Moldavia, (which would have been founded in late 18th century[4]); beyond any doubt, in 1789, this establishment was active.[5] The Criminal Department had jurisdiction over all "criminal matters"[6] occurred on the Moldavian territory. The Criminal Department tried serious offences, such as the following: forceful liberation of the jailed wrongdoers; printing or minting coin; forceful abortion of the new-born; injuries caused out of hatred, envy, or quarrels; forceful deflowering or prostitution; arson; theft and concealing theft; robbery (theft accompanied by violence on the victim); thieving; plastography; false testimony and perjury; bigamy, etc. However, the Department had no right over the offence of high treason,[7] tried by the Prince along with the Princely Council.

In what regards trying foreigners accused of criminal acts, the competence of the Criminal Department derived from "the application of the international law principle," pursuant to which the laws regarding order and police had a territorial character and they applied to all persons residing in the country."[8] Hence, when a foreign subject

[4] A.V. Sava, "Departamentul Criminalicesc și norme de procedură penală la începutul secolului al XIX-lea," *Revista de Drept Penal şi Ştiinţă Penitenciară* 1933, issues 7–9 (excerpt).

[5] S. Văcaru, C. Chelcu (eds.), *Departamentul Criminalicesc în Moldova (1799–1828). Condici de sentințe*, vol. I: *(1799–1804)*, p. 24.

[6] I.C. Filitti, I. Suchianu, *Contribuții la istoria justiției penale în Principatele Române*, București 1928, p. 39.

[7] *Condica criminalicească cu procedura ei din Moldova (1820 şi 1826)*, series II: *Legi româneşti*, published by Ș.Gr. Berechet, Kishinev 1928, p. 37–38.

[8] Ibidem.

came before the Department as a defendant, during the hearing it was compulsory to have a representative of the consulate corresponding to the country ensuring their protection.[9] Such person also had to be present at all subsequent investigations made by judges concerning the defendant.[10] The inhabitants who were not born in Moldavia and who were not Orthodox Christian were considered foreigners. Christians of other rites and Jews – even if they were born in Moldavia – had limited rights, even if they had the status of Ottoman subjects. The Orthodox Christians who had not been born in Moldavia were initially seen as foreigners, but they had the possibility of changing their status depending on the duration of their residence and on paying all taxes to the state. Therefore, the villagers, the Orthodox Christians colonised in Moldavia could pay their taxes after six months and then be considered autochthonous. As for the boyars – who had to be all Orthodox, they were seen as autochthonous – as citizens with full rights – after 10 years of living in Moldavia. Furthermore, if they married there, the term for recognizing their full rights was shorter, namely seven years.

Based upon wide historical "enquiries," the studies published in the western historiographic area, the French for exemple, put forward new interpretations for different aspects of criminal reality in different places and periods. Among them, our attention was especially caught by those regarding the displaying of the deep springs of medieval and modern violence and the revelation of its identity-related dimension, the issue of theft, deemed as a crime anchored in daily life,[11] and of robbery, that Emmanuel Le Roy Ladurie labelled as "crimes against things,"[12] or the justification for the imposition of some methods meant to repress violence. The natural support of these researches were legal archives. Their role was underlined by the French historian Arlette Farge in a work the historians consider a reference one for the professional approach of this category of sources in writing history. Written in a personal, slightly ironical, style, using manuscripts from 18th century France, the author exploits these documents which are as telling as they are enigmatic, considering that they speak about a reality without describing it, but urging for it to be discovered.[13]

An analysis of other legal documents, i.e. the pardon letters in sixteenth century France, belongs to the American historian Natalie Zemon Davis,[14] who two years earlier underlined the relationship between violence, the account proper of the people involved, defendants or witnesses, and the indulgence obtained, thus establishing the "connections between history, literature and legislation"[15] by means of an extremely thorough investigation of the judicial sources. The "fictional" aspects in the archive

[9] S. Mărieş, *Supuşii străini din Moldova în perioada 1781–1862*, Iaşi 1985, p. 113.

[10] *Condica criminalicească cu procedura ei din Moldova (1820 şi 1826)*, series II: *Legi româneşti*, part I, chap. I, § 19, p. 4.

[11] V. Toureille, *Vol et brigandage au Moyen Âge*, Paris 2006, p. 1.

[12] E. Le Roy Ladurie, *Montaillou, sat occitan de la 1294 până la 1324*, vol. II, Romanian translation, preface and notes by Maria Carpov, Bucharest 1992, p. 302.

[13] A. Farge, *Le goût de l` archive*, Paris 1989.

[14] N. Zemon Devis, *Ficțiunea în documentele de arhivă. Istorisirile din cererile de grațiere și povestitorii lor în Franța secolului al XVI-lea*, translation by Diana Cotrău, Bucharest 2003.

[15] Ibidem, p. 9.

documents are considered a challenge for the historian as far as the fiction-truth relation is concerned, considering that, as the author puts it, the subject of the research is the art of crafting the narrative.[16] Pardons in France at that time were given by considering the extenuating circumstances of the deeds, as some Moldavian judicial sources from the late 18th and early 19th centuries prove.

The topic we propose is also concerned with another issue, that of the role played by the extenuating or the aggravating circumstances in motivating punishments for theft or robbery deeds committed in Moldavia between 1799 and 1804. Michel Foucault had already spoken about it, since 1975, in favour of the disclosure of those "shadows behind the elements of the cause . . . that was tried and punished. Tried – by the bypassed path of the 'extenuating circumstances', which introduce in the body text of the verdict not only 'circumstantial' elements, pertaining to the committed act, but also something of a completely different nature, which cannot be juridically codified: knowing the criminal, evaluating the criminal, what can be learnt about the relationships between him, his past and the crime committed, what can be expected from him in the future . . . things which, under the pretext of explaining an act, represent modalities to label an individual."[17]

The *theory of circumstances*, i.e. those "circumstances, states, situations, qualities or other data of reality that, although not being part of the constituent content of the crime, are however related to either the committed act or to the criminal, and determine the reduction of the punishment under the special minimum, or on the contrary, the aggravation of the punishment, with the possibility to exceed the special maximum,"[18] was historian Michel Porret's topic of research,[19] a topic also approached, very succinctly it is true, by Gheorghe Ungureanu, in a paper published in 1931.[20] Michel Porret represented for us a model in approaching this issue, materialized in a recently published study.[21] His book aims at decoding a traditional legal system, that of the Old Regime, based upon arbitrary in criminal matters. The author focuses on the doctrine and jurisprudence that characterise the arbitrary regime in criminal matters, a regime that was deprived of convenient texts of law in order to judge crimes and motivates punishments. He invites us to *think* the arbitrary, to identify its spirit, its principles, its functioning and its evolution.

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[16] Ibidem, p. 16.

[17] M. Foucault, *A supraveghea şi a pedepsi. Naşterea închisorii*, translation from French and notes by B. Ghiu, scientific revision by M. Ioan, preface by S. Antohi, Bucharest 1996, p. 52.

[18] https://legeaz.net/dictionar-juridic/circumstante [accessed: April 12, 2021].

[19] M. Porret, *Le crime et ses circonstances. De l'esprit de l'arbitraire au siècle des Lumières selon les réquisitoires des procureurs généraux de Genève*, préface de B. Baczko, Genève 1995.

[20] Gh. Ungureanu, *Pedepsele în Moldova la sfârşitul secolului al XVIII-lea şi începutul secolului al XIX-lea*, Iaşi 1931 (extract).

[21] C. Chelcu, "Fapta și circumstanțele sale. Contribuții privitoare la pedepsire (Moldova, sfârșitul secolului al XVIII-lea – începutul secolului al XIX-lea)," in: eadem, *Pedeapsa în Moldova între normă și practică. Studii și documente*, Iași 2015, pp. 135–185.

The application of this theory in the act of justice depended upon the evolution of the character of power, in this case of the social control it imposes.[22] The appropriation of the mechanisms of justice, on the one hand, and the soothing of its rigour by means of the pardon, represents the central idea around which Michel Foucault built the above-mentioned book. For Moldavia at the end of the 18th and the beginning of the 19th century, the "judge's will," that is the will of the country's Prince, the one who gave the sentences, had always had a quite wide field of action. In the West, the idea was accredited that the "claim of the bureaucratic state to a monopoly on legitimate violence is supposed to have accelerated the process by means of which criminal justice was controlled by authority from the top down. For sovereigns, the ancestors of modern state, administering repression and providing pardon were part of the authorization of legitimate power – that of the sovereign towards his subjects"[23]. Furthermore, a major change is noticed by 1850, which also concerned the punishment system, manifested by the decrease of the importance of corporal punishment and a development of criminal detention, that is the appearance of prison at the end of the 18th century. Western historiography pleads for a multidimensional approach of this modality of punishment, which would reflect the changes that the Western societies face, such as: economic transformations in the 18th century by a boom of industrialisation, modifications appeared in the governing systems by means of bureaucratic sanctions in the states being in a process of democratisation, changes occurring in the people's sensibilities[24]. In relation to that, we can mention Pieter Spierenburg's contribution about reassessing the explicative value of the theory of civilisation for Western society, in the light of historical data about interpersonal violence, starting from the criticism against the theory of civilisation launched by Norbert Elias about the decline, in the long run, of the death punishment. We are mentioning here the fundamental theory of the German sociologist, consisting in "disciplining attitudes and behaviours"[25], a result of the reflection upon interdependence between social and affective structures. According to the author, the same mechanism functions in the case of aggressivity control, the "release through physical aggressivity being limited to some temporal and spatial enclaves. When the monopoly of physical dominance

[22] However we might define repression, the fact is that its evolution is tightly related to the development of the state (P.C. Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience*, Cambridge 1984, p. 1), but also to urbanisation (ibidem, p. 6). In the Western states, except for England, in the industrial period centralisation and urbanisation contributed to the development of a rigorous criminal system, of which private revenge disappeared (ibidem, pp. 9–10).

[23] X. Rousseau, "A History of Crime and Criminal Justice in Europa," in: *The Routldge Handbook of European Criminology*, apud Ch. Tilly, *Coercion, Capital, and European States: AD 990–1992*, Hoboken, NJ 1993, https://www.routledgehandbooks.com/doi/10.4324/9780203083505.ch3 [accessed: April 12, 2021].

[24] X. Rousseau, "A History of Crime and Criminal Justice in Europa," in: *The Routldge Handbook of European Criminology*, https://www.routledgehandbooks.com/doi/10.4324/9780203083505.ch3 [accessed: April 12, 2021].

[25] A.-F. Platon, *"Corpul politic" în cultura europeană. Din Evul Mediu până în epoca modernă*, Iași 2017, p. 34, n. 44.

was transferred to central authority, not all the power holders can procure pleasure by means of physical aggressivity, but only few of them, legitimated by central power, such as the policeman towards the criminal, and the great masses only under exceptional times of warlike or revolutionary confrontations, during fights legitimated from a social point of view against internal or external enemies."[26] A few decades after the publication of the two volumes of *The Civilizing Process*, the conclusion of the historian Pieter Spierenburg is that the explicative potential of the civilizing theory, as for violence and other social phenomena, remains a strong one.[27]

The fact that the capital punishment "loses ground" in front of other types of punishment represents in the case of Moldavia too a feature of the punitive system, as the investigated sources for the period 1799–1804 show. This is proven by practice, by the type of sentences given by the Prince, as well as by the juridical rules appeared two decades later, where the criterion of circumstances was included in the motivation of punishment. For instance, the article 174, chapter II of the *Criminaliceasca condică*, made up in 1820 (the part of criminal procedure) and 1826 (the criminal code proper), entitled *Pentru pedeapsile faptelor criminaliceşti de obşte*, stipulated that "the decision in the code to punish an act, when it will be deemed too severe for the frailty of the culprit, than it should be decreased, because the spirit of the code and the end, what it has in view, are to be taken into consideration, and not always the words as they are."[28] Moreover, what was considered were the person and the circumstances in which they committed the act, leaving the judge the "freedom to be milder or harsher according to the circumstances of the deed,"[29] because the judge was the "real custodian of the spirit that enlivens the code, as the code is imperfect."[30]

Forced labour was the most frequent punishment in the sources dating from the period between the 18th and the 19th centuries. Michel Foucault considered that condemnation to the harsh deprivations imposed by the carceral regime, compared to the measure of definitive annihilation of the culprit, represented a new attitude of power in relation to punishment, by means of which emphasis was moved to "utility

[26] N. Elias, *Procesul civilizării. Cercetări sociogenetice și psihogenetice*, vol. I: *Transformări ale conduitei în straturile laice superioare ale lumii occidentale*, translation in Romanian and afterword by M.-M. Aldea, Iași 2002, p. 244.

[27] P. Spierenburg, "Violence and the Civilizing Process: Does It Work?," *Crime, History & Societies* 2001, 5, 2, p. 102. Yet, in *The Spectacle of Suffering*, the same author considered the mechanisms of power took precedence in violence control: the emergence of justice in criminal matters was not a result of a change of sensibilities, the latter started to play a role in this issue later, because it was first a question of maturity and stability of the legal system (idem, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience*, p. 12).

[28] *Condica criminalicească cu procedura ei din Moldova (1820 şi 1826)*, series II: *Legi româneşti*, p. 34.

[29] Ş.Gr. Berechet, *Lămurire istorică*, p. XXXIV.

[30] I.C. Filitti, D.I. Suchianu, *Contribuţii la istoria dreptului penal roman*, Bucharest [s.a.], p. 24; but the two historians admit that this meant "an important step from the standpoint of the evolution from judgement sanctions to legalitary ones" (ibidem).

of punishment"[31] in a carceral system in which the "punitive addition" on the body continued to exist.[32]

Judicial investigation was the procedure used to elucidate circumstances in which criminal acts were committed, to identify authors and possible accomplices, and to discern each one's responsibility. Even if the peasants were not, maybe, fully aware of the committed acts, the investigation was one of the privileged moments of a confrontation with the State, represented by the different actors of the investigation and a peasant community in which values in terms of conflict settlement were not exactly the ones of the judicial institutions.[33]

HISTORICAL SOURCES AND METHODOLOGICAL ORIENTATIONS

Sources regarding crimes and their punishment do not really provide much support in reconstructing criminal realities in medieval and premodern Moldavia, as their frequency by the second half of the 18th century is rather low. Yet, as a result of the fact that writing procedural elements of the criminal investigation and of punishment application was compulsory, as well as preserving these records in archives, even if in a small amount, this reality becomes a palpable one for the historian. Out of this kind of sources, one can distinguish the *anaforale*, which in a wider definition were "the reports made up by the Divan or the Prince's delegates on an administrative or legal issue, by which the Prince was informed about the result of the investigation and a solution was proposed."[34]

In our study, the documents we are interested in, the reports called anaforale, illustrate significant progress in the judicial practice in Moldavia at the end of the 18th century and the beginning of the 19th century, as far as both the switching death penalty to other punishments, and the trial procedures were concerned. We are focusing in the following lines on the punishment of the acts of theft and robbery, in the case of the latter theft being accompanied by violence against the victims, as they are provided in the anaforale issued by the Criminal Divan of Iasi between 1799 and 1804. The actors of the criminal investigation (the prosecution agents, the perpetrators, the witnesses), the judicial norms and practices in the cases of theft and robbery, represent interest areas for our research for the mentioned temporal segment.

For the period between 1799 and 1804, these judicial sources in which we found information about theft and robbery included what we call today the final judgement

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[31] M. Foucault, *A supraveghea şi a pedepsi*, p. 169.

[32] Ibidem, p. 48.

[33] Judicial investigations made in several western states for the 19th century were transposed in a number of studies gathered in the volume *L'enquête judiciaire en Europe au XIXe siècle. Acteurs, imaginaires, pratiques*, Paris 2007.

[34] P. Strihan, sv *anaphora*, in *Instituţii feudale din Ţările Române. Dicţionar*, eds. O. Sachelarie, N. Stoicescu, Foreword by O. Sachelarie, Introduction by V.Al. Georgescu, Bucharest 1988, pp. 14–15.

of the criminal investigation. After the preliminary investigation the high officials made on the spot, after judicial procedures that were specific to the period we are considering here, a note and a report were sent to the Criminal Department, on which basis a judgment was made afterwards in the plenum of the Department. The boyars who made up the bench were resuming the investigation (examination of the culprits, of the witnesses' depositions, etc., administration of other pieces of evidence, etc.). When the evidence presented during the criminal investigation was not decisive, another note was sent to the authorities under whose jurisdiction the act had been committed, in order to restart the investigation "at the scene." Based on the investigation, the judges of the Department were making another report including their proposition as for the punishment that was going to be applied to the culprit. The whole file (including the two minutes reports) was sent to the jail (situated at the Princely Court) in order to be transcribed. These transcriptions are, therefore, sources for our research, known as part of the so-called records of *anaforale*, where, after the results of the judicial investigation made by the boyars-judges from the Criminal Department were transcribed, one wrote the sentence of the Prince, confirming or infirming the proposition that had been made as regarded the punishment to be applied to the defendant.

Judicial documents analyzed in our research show that theft and robbery have been frequent crimes. Famine, poverty, the devastation of the country following the numerous wars 'fed' the robberies against the boyars' fortunes, those of the monasteries, of the merchants passing through Moldavia or against any kind of more or less significant goods, which were often for the injured party quite a fortune. The ways were most often attacked by "professional" robbers, who become thus a central character of collective fear, some of them being known and feared as a result of their deeds.

The criminals were, in their huge majority, men. Women are rarely present among the perpetrators, rather as accomplices and involved in small-value thefts. Most of the thieves belong to the rural world, and the circumstances in which they act get generally dissolved into the daily-life framework. This is the so-called occasional, daily-life delinquency, as opposed, by organisation and denouement, to the major, violent and organised form,[35] that of the groups of robbers, such as the highway robbers hiding in the woods, who represented in the eyes of the community, the incarnation of danger. The punitive gesture also had a political meaning, representing an occasion to affirm the sovereign's power. This will be even more visible in the second half of the 18th century, when the official documents trying an adjustment of punishments for robbers and a better coordination of the local and the central authorities in controlling criminality, grow more numerous.

Consequently, we can identify several types of theft: the simple, common theft or the theft as repeat offenses, the sacrilege-theft, the theft as a servant-master betrayal, the theft accompanied by violence in war circumstances or provoked by those for whom brigandage had become a "profession."

[35] V. Toureille, *Vol et brigandage au Moyen Âge*, p. 3.

The judicial practice showed that theft and robbery, offences against patrimony, were to be punished, by the modern era, by means of serious sanctions. Appropriating, secretly and unjustly, another individuals' goods, in the case of the theft, and the violence accompanying this "act," that is robbery, sentenced the perpetrators to death by hanging. Besides the cases when this punishment was enforced, by the mid-18th century, the documents also attest the practice of the *restitution* or the *blood money*, that is an agreement between the culprit and the victim or the victim's relative, by which the culprit escaped the capital death by paying some money or ceding goods, but only with the approval of the Prince. This way, the authors of many of the thefts managed to redeem their fault by compensating the victim and paying the fine to the state. In the second half of the 18th century, this practice is rarely seen because, starting with Constantin Mavrocordat's judicial reform, several official acts were issued with a view to establish punishments for the robbers and for a better coordination of the local and the central authorities in controlling criminality.[36]

PERPETRATORS' CAPTURE AND PREVENTIVE DETENTION

As for the criminals' capture, especially of the brigands organised in gangs who were attacking the highways or people in villages, a normative act made up in the third decade of the 19th century described clearly how this was done. This is the *Condica criminalicească*, whose *criminal procedure* was published in 1820, while the norms proper were added and printed in 1826. According to it, the *ispravnici* (governors) had to organise armed detachments, with the mission to capture them dead or alive.[37] These detachments could be helped by "more reliable townsmen"[38] or people from villages, "riflemen and hunters."[39] Once arrested, the robbers were imprisoned in the cell, a room of the Governor's office especially arranged to lock in the wrongdoers. From that moment on, researches started, the investigators making up a *tacrir* (questioning),[40] which was to be sent as soon as possible to the Criminal Department

[36] In the development of the legal system (judicial organization and trial procedures) in Moldavia, an essential moment was the legal reorganization proposed by Constantin Mavrocordat, prince of Moldavia and of Wallachia several times. Getting for the second time to the throne of Iași, he ordered for a legal act to be drawn, unusual until then, playing the role of fundamental law: *Condica de porunci, corespondențe, judecăți și cheltuieli a lui Constantin Mavrocordat ca domn al Moldovei, (1741–1742)*, after it had been established, by the same prince, in Wallachia as well. To this act were added a series of old documents, orders, and decisions made by the estates assembly, which get rarer by 1749, being part of what was intended to represent a reform of the Romanian legal system.

[37] *Condica criminalicească cu pricedura ei din Moldova (1820–1826)*, series II: *Legi româneşti*, part I, chap. IV, art. 80, p. 14.

[38] Ibidem, art. 81, pp. 14–15.

[39] Ibidem, art. 82, p. 15.

[40] The culprit had to answer several questions concerning their personal information: name and nickname, age, place of birth, parents' names, their occupation up to that time, their civil status, whether

of Iasi,[41] together with the perpetrators and the evidence. The investigation of the *anaforale* showed that that is also how the state authorities were organised in the late 18th and the early 19th centuries as far as the wrongdoers' capturing was concerned. The information needed to establish the facts were to be obtained by voluntary testimonies. If these were taken under pressure, the defendant had the right to testify in front of the higher court, as their statements had been taken under threats of violence. But, as we will see in the following lines, physical violence was allowed and quite resorted to in order to get the necessary information during the trial.

While they were in the jail of the governors' offices in order to be interrogated, some of the prisoners, the most inventive ones, managed to break out and run away, before being sent to the court of Iaşi. That's what happened to Vasile Gălăţan, an "old robber," that is to say a recidivist, who as soon as he got out of prisons, started stealing and robbing again. Once captured, after the first night in the cell of Serdăriei, he escaped. He was caught some months later and sentenced to jail, and also branded with hot iron on his forehead (the aurochs shape).[42] The aurochs shape branding represented a practice meant to punish criminals; the visible sign played the role of attracting public disgrace and of intimidating thus their fellows to commit criminal deeds. The pain provoked by the branding with the hot iron, as well as the fact that they were to wear the stigmata of their wrongdoings for a lifetime were supposed to discourage the repetition of the same inequities. Yet, many times, the branded criminals re-offended and eventually ended up on the gallows.

During the investigation, in the Criminal Department, beating and torturing were often resorted to. From the documents, we find out that the beating was applied during both the investigation made in the cell of the Department, and in the jail of Iaşi. This was an extreme measure used each time the supposed defendant did not acknowledge the facts. Thus, a baker named Toader, who had stolen salted fish from several shops, "during the investigations, which took place with beating and without beating, both at the Department, and in jail"[43] did not admit the amount of goods that the injured parties solicited. As he had no possibility to pay for the damage, a punishment with beating was decided, and he was to receive 200 bastinados. Sometimes, mentions are made that the beating was "terrible,"[44] "terrible torture."[45] Yet, many of those who had been thus punished during their imprisonment, after they were out, they returned

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they had children or not, what was their fortune, and whether they had been to prison ever before (ibidem, art. 86, pp. 15–16).

[41] V.Al. Georgescu, P. Strihan, *Judecata domnească în Ţara Românească şi Moldova (1611–1831)*, part I: *Organizarea judecătorească*, vol. II (*1740–1831*), Bucharest 1981, p. 84.

[42] National Archives of Iaşi, Manuscrise, 148, f. 41; see also C. Vintilă-Ghiţulescu, "La 'scara Mitropoliei': pedeapsa publică ca spectacol în societatea românească (1750–1834)," in *Spectacolul public între tradiţie şi modernitate. Sărbători, ceremonialuri, pelerinaje şi suplicii*, eds. C. Vintilă-Ghiţulescu, M. Pakucs Willcocks, Bucharest 2007, p. 200.

[43] National Archives of Iaşi, Manuscrise, 148, f. 29v.

[44] Ibidem, f. 25r.; National Archives of Iaşi, Curtea Criminală, tr. 564, op. 611, file 4, f. 25v., 39v.

[45] Ibidem, f. 27r., f. 28v., 36r., 41r.

to the old habits, unable to "give up the wrongdoings and the robberies"[46]. In many of the decisions of the Criminal Department regarding the recidivists – "as they are too experienced in stealing and they are old robbers and as they have not given up by now these things, after all the tortures and punishments they have suffered" and "they are of no use to this world, but they only bring damages and injuries to the inhabitants"[47] – the sentence was forced labour.

Beating and torturing did not happen only in the cell or in jail. These also occurred at the Divan, in front of the judges: "who were then tortured in front of us at the Divan during the interrogation that was made by us."[48] Some of the culprits were released because their deed was not so serious, and the beating during the jail interrogations was considered sufficient.[49] A decision of the Criminal Court dated 28th May 1801 specified what beating was supposed to mean: "for a better control, and discouragement of him, and of other attackers and offenders like him, he will be walked around the town streets, while being beaten by the torturer with sticks, as it is usually done, and after good guarantees that he would never commit again plunders and attacks, he will be released from jail."[50] In *Condica criminalicească*, the coercive role of the punitive measures was clearly delimitated: "the most useful punishments can be those who will accomplish the most powerful work in the people's souls, so that everyone, being terrified, will take care to stay away from wrongdoings, as well as those that are less severe with the culprits' bodies, that is rare and separate, as the goal of the punishment is not only to torment the culprit's body, but to turn him wiser and determined to stop doing thigs with such outcomes, and also to give an example to others."[51]

The place where the beating took place was proposed by the judges and confirmed by the Prince, and it differs from one case to the other: in the town streets, in fairs, in front of the Prince's court, at the stage, etc.

While they were waiting for judgment in prison, the health of some of the convicts weakened because of the beating or of the diseases contracted during detention.[52] The sick were consulted by a doctor,[53] who prescribed for them medicines to get healed.[54] These were paid with the money allocated for the convicts' subsistence. Most of the "remedies" were concoctions of plants, as well as "roots and mustard teas," "rubbing

[46] National Archives of Iaşi, Manuscrise, 148, f. 14r. See also the case of Nechita, who, pardoned from hanging, after he was released from the forced camp in the mine salt, he starts robbing again with other people, attacking in broad daylight the yard of the *spătar* (high official) Vasile Neculce from Prigoreni, gunning down one of the latter's children (idem, Curtea Criminală, tr. 564, op. 611, file 5, f. 6r.).

[47] National Archives of Iaşi, Manuscrise, 148, f. 54r.

[48] Idem, Curtea Criminală, tr. 564, op. 611, file 4, f. 25r.

[49] Idem, Manuscrise, 148, f. 33v.

[50] The defendant was at his first criminal deed (idem, Criminal Court, tr. 564, op. 611, file 4, f. 27v.).

[51] *Criminal Code*, part II: *For the Criminal Deeds and Their Punishments*, chap. II, p. 35, art. 180.

[52] National Archives of Iaşi, Manuscrise, 148, f. 28v.

[53] The issue of a doctor present in each prison was raised only on 31 July 1839, when the Divan solicited the establishing of the prisons within the governors' offices, needing "hospital rooms for the sick prisoners and medicines and the needed doctors" (idem, Condici K/343, f. 63). For the same issue, see also Gh. Ungureanu, *Justiția în Moldova (1741–1832)*, Iaşi 1934, p. 50.

[54] National Archives of Iaşi, Curtea Criminală, tr. 554, op. 559, file 5, f. 81r.

alcohols," "mercury ointments," "camphor spirt,"[55] etc. In November 1800, Tofan, son of Costandin Bejan, a Hetman's functionary, "getting the smallpox, died in jail."[56] As smallpox is a contagious disease, we can assume other convicts shared the same fate, as in the summer of 1803 it was known that "because of the disease that is among the prisoners in jail" some died.[57] This was still not eradicated in May 1804, when many of the prisoners died for the same reason: "because of the disease that was and that you are in prison."[58]

JURIDICAL BASIS AND CIRCUMSTANCES IN ESTABLISHING THE SENTENCE

A very important aspect we can infer from the investigation of the *anaforale* is the presence of the Byzantine *Law* in the judicial theory and practice in Moldavia, namely the *Hexabiblos* of Constantine Harmenopoulos, a judge from Thessaloniki, who organised his 1345 work in six books (hence the title), under the form of a manual, summarizing the Byzantine legislation, included in the *Basilicale* and the normative documents until then. This work was translated in Romanian in 1804 by the cupbearer Toma Carra, on the advice and with the support of Moldavia's Prince, Alexandru Moruzi (1802–1806). Furthermore, in the Moldavian juridical area texts of Byzantine legislation had circulated since the 15th century, i.e. *Basilicale* (*Basilicae*) or "Princely laws," which were juridical texts in 60 books made in the ninth century on the order of Emperor Leo VI (also called the Philosopher; 886–912); this is an adaptation[59] in Greek of the Roman law, codified during the Byzantine emperor, Justinian I (527–565); a nomocanon that circulated here in Slavic-Romanian copies in the fifteenth-seventeenth centuries,[60] i.e. the *Sintagma* of Matei Vlastaris, made up in 1335; the *Nomocanon*, made up in 1561 by Manuil Malaxos, as well as the *Vaktiria ton Archiereôn* (Archbishop's Staff), a work written by monk Jacob of Ioannina on the demand of Patriarch Parthenius of Constantinople and printed in 1645.

In the *anaforale* of the Criminal Department, when the sentences that were to be enforced are motivated, references are made, as legal basis, to Harmenopoulos' Code. But in most of the punishments that were proposed, enforced or not, according to what the Prince decided as the highest authority of the state, the aggravating or the extenuating circumstances used to play a decisive role, decreasing or increasing

[55] Ibidem, file 4, f. 4v. As for the conditions in which the sick prisoners were living, see the report of doctor Mateas Theodoros from September 1832 (ibidem, f. 71v.).

[56] Idem, Manuscrise, 148, f. 58v.

[57] Idem, Curtea Criminală, tr. 564, op. 611, file 6, f. 99v.

[58] Ibidem, file 8, f. 1v.

[59] Ş. Berechet, *Legătura dintre dreptul bizantin şi românesc*, vol. I, part I: *Izvoadele*, Vaslui 1937, p. 37.

[60] G. Mihăilă, *Contribuţii la istoria culturii şi literaturii române vechi*, Bucharest 1972, p. 262.

the punishment, as appropriate. Summarizing, the extenuating circumstances were the following: the perpetrators' age ("not yet old enough"; 22–23 years old was, in 1804, a stage when the individual could not be able to respond for the serious deeds that endangered his fellow citizens), clemency asked by the family, infidelity in a couple – as a result of which the murderer, for instance, was punished less severely, the woman's irresponsibility (her presupposed fragility – "a stupid woman, who rather did it because she listened to other people's advice, not because she was really mean," as a judicial motivation shows), the first infringement, social status, compensations. The aggravating circumstances were: re-offending, cruelty in committing murders and robberies, murders during the night, when the victim was in the impossibility to defend oneself, drunkenness (which could also reduce the penalty as it led to a loss of reason and therefore to a violent behaviour), the intention (scopos) of murder or robbery – which was a strong reason for condemnations to the capital punishment. Associative robbery was punished the same way, when the premeditation of deeds was evident for those entitled to judge such a serious crime.

Let us mention some examples: for a recidivist thief, who together with other individuals stole worship objects from the Saint Panteleimon church:

> Checking it in the Harminopoulos code, book 6, heading 6, file 379, it is shown that if somebody enters the holy alter, whether day or night, and steals any of the sacred vessels, they should be blinded. And if they do not enter the alter and steal from the other worship object of the church, they should be beaten in the streets and chased away from the country. Though they deserve all punishments, considering the deeds they committed, taking away their eyesight is a too hard penalty. And as your Highness' mercy is great, let them be pardoned from losing their eyesight and receive other punishments.[61]

The Prince decided that the perpetrator's "right hand should be cut, as well as the thumb of his left hand and then he should be sent to forced labours in the salt mine."[62] Another person, guilty of murder, who had, according to the code, receive the capital punishment for his deed, was sent to the salt mine for forced labour. The judges' motivation in reducing the punishment was that the murderer "being intoxicated, it can be considered that he got mad, as it is known that the drunk man gets insane."[63]

Following a battle between two drunk men, a few hours after the event one of them died. The bill of indictment, in order to find extenuating circumstances for the perpetrator, who was known in the village as a peaceful man, shows that it was an "accident, as this kind of dangers happened before because of the consumption of alcohol, especially among the farmers who usually, when they get drunk, start fights and scuffles and they often fall into death dangers."[64] Considering that they could not make a clear statement that the beaten man had surely died because of that, the

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[61] National Archives of Iaşi, Manuscrise, 148, f. 2r.

[62] Ibidem, f. 1r.

[63] Ibidem, f. 5r.

[64] Ibidem, f. 22r. Many of the crimes were made by men under the influence of alcohol, which represented at that time an extenuating circumstance (ibidem, f. 34r.; National Archives of Iaşi, Curtea Criminală, tr. 564, op. 611, file 4, f. 13v.; ibidem, file 5, f. 22v.; ibidem, f. 33v. and 39v.; f. 47r.; f. 51v., 53v., f. 72r.; ibidem, file 8, f. 4r. and f. 15v.).

judges solicited the Prince's mercy in order for the culprit "to be free to go home, having a family with many children and as he had not such a great blame to take, especially that evidence was made that they had never quarrelled before, the wife of the dead man herself testifying that, being neighbours, they had lived like brothers."[65] Sometimes, drunkenness brought up as argument in order to get rid of the penalty they were to get was not taken into consideration. The Prince of Moldavia, Alexandru Constantin Moruzi condemned Vasile Zăghiian to gallows, though the judges had asked for his sending to the salt mine; the motivation was that "just because of two cups of raki he could not have been so intoxicated" as to murder a man.[66] Even in some of the judges' decisions it is mentioned that the culprit cannot be pardoned for what he did, because "it was not because of consumption of alcohol or other thing he committed murder, so that his blame could be diminished."[67] A certain Alexandru from Belceşti put the fire to the house of the village priest. He was caught, brought to the cell and tried. Here, the perpetrator was proved to be "mindless"; the decision was made for him to be carried around the streets of Iaşi, then, for a guarantee that a deacon from his village gave, to be sent home.[68]

The cases of pardon from forced labour in the salt mines by the Prince are numerous[69] and these were mainly due to the intervention of the relatives (parents, wives, children) who managed to determine the victims – injured parties after a theft or a robbery, those who had suffered an aggression or the victims' relatives in cases of murder – to withdraw their complaints. Furthermore, the Metropolitan Bishop's, the boyars' or the villagers' interventions to the Prince could also lead to the culprit's pardoning.[70]

A particular issue is that of the foreign criminals. If we take into consideration their names, as well as the information that sometimes we can find in the correspondence with the governors, almost half of them had come from beyond the frontiers.[71] These ones, in some cases associated with locals, were also very aggressive in the robbery cases.[72] For their wrongdoings, they were tried and condemned just like the

[65] National Archives of Iaşi, Manuscrise, 148, f. 22v.

[66] Idem, Curtea Criminală, tr. 564, op. 611, file 5, f. 37v.

[67] Ibidem, file 4, f. 36v.

[68] Ibidem, file 6, f. 99v.

[69] Several pardons took place on 1 and 7 October 1801 (ibidem, file 3, f. 49v.).

[70] Gh. Ungureanu, *Justiţia în Moldova (1741–1832)*, p. 46.

[71] This is the case of Constantin Cogălniceanu, who "for about a year came there to the village of Moşna and for no wages worked here and there" (National Archives of Iaşi, Curtea Criminală, tr. 564, op. 611, file 3, f. 4v.). Another one is Ivan rusul (idem, Manuscripts, 148, f. 5r.), Iosip and Pricopi, deserters from the Russian army (ibidem, f. 37r.), Gheorghe Şchiopul and Moisa, who could pay nothing to the injured parties, "being completely poor and foreigners" (idem, Curtea Criminală, op. 564, op. 611, file 4, f. 3v. – 4 r.), Bucur and Moisa, brothers come from Transylvania, who killed their master (National Archives of Iaşi, Manuscrise, 148, f. 59v.), Dediul Craioveanul who, with other nine robbers from abroad "committed plunders," and not in Moldavia, but also in Wallachia (idem, Criminal Court, op. 564, op. 611, file 5, f. 41r. – 41v.); and the enumeration could go on and on.

[72] National Archives of Iaşi, Manuscrise, 148, f. 4v. Several foreigners plundered Ioniţă Ivaşcu, "terribly punishing the boyar and the women, and burning them with fire to give them the money, and they even put one of the children down, his head on the doorway to be cut" (idem, Curtea Criminală, op. 564, op. 611, file 4, f. 7v.); "Stan and Radu, Transylvanians, who because of their cruel nature,

locals: hanging at the stage of the murder, while the accomplices were sent to the salt mine for an undetermined period of time,[73] though some of them were released after a while. Most of them were recidivists. Such a group made up at Iaşi, at the beginning of 1804, eventually represented a threat for the inhabitants of the capital city. They were caught and tried, and, in order to stop "the damages the poor inhabitants are often exposed to, by some wrongdoers and robbers such as these ones," the Prince sent them to forced labour in the salt mines.[74]

TOWARDS THE STAGE OF THE PUNISHMENT

Another segment of the activity carried on by the members of the Criminal Department was concerned with enforcing the final judgment given by the Prince. That was really about taking the convicts to the place of execution of the penalty, and about the organization of the capital execution or of the corporal punishments, and of the persons in charge with that.

For the convicts who received sentences to forced labour in salt mines or who were to be hung, special security measures were needed, for them not to escape. They were transported with a carriage driven by two or four oxen, provided by the governors of the regions they were traversing.[75] According to the Prince's order, each village on the route had to provide such a transportation mean: "you, governors and inhabitants in the villages, should provide, in each village, a carriage driven by four oxen and the necessary guardians for the travel."[76] An *armăşel*[77] was appointed to guard the convoy, helped by governor's servants. The number of servants was different, from one[78] to four[79] people, according to how many convicts were to be trans-

tortured the Gypsy, burning him with embers, and with the axe" (*ibidem*, file 5, f. 57v.). These ones were accomplices of three Bulgarians, Alexa Boşneag, Dumitru, and Nicola, a Ion from the area of Olt, and other three individuals come from Transylvania.

[73] National Archives of Iaşi, Manuscrise, 148, f. 43v.

[74] Ibidem, f. 43v.

[75] Usually, the people sentenced to forced labour in the mines passed through the regions of Iaşi, Cârligătura, Roman and Bacău (National Archives of Iaşi, Curtea Criminală, op. 564, op. 611, file 3, f. 12v. – 13 r. and f. 21r.).

[76] Ibidem, f. 55 v.

[77] *Armăşel* = servant of the *armaş*, i.e. high official who was supposed to fulfil the princely order of death penalty, to catch, imprison and investigate the ones guilty of murders, to guard the prisoners, being also the chief of the princely jails.

[78] On 10th June 1801, in order to bring Dumitru Herghelegiu to the salt mine, the governors were asked to provide for the *armăşel* one of their men for the guard (ibidem, f. 21r.). On 21st July 1803, in order to carry the three convicts to the salt mine, the governors were asked "to give, in each region, a carriage with two oxen, that should be replaced in every village, as well as three servants each" (ibidem, file 6, f. 66v.).

[79] Decision from 18th April 1803, given to the *armăşel* in order to carry Dumitru Grecu to the gallows in Târgu Neamţ (ibidem, p. 22r).

ported, and considering the difficulty of the route. When the *armăşel* received the mission to lead a robber to the salt mine or to the gallows, he received from the Department three documents: the authorisation of *armăşel*, i.e. the written document representing the proof of the mission he had received, the Prince's act meant for the region's governors, who had thus to offer all the necessary help, and the documents meant for the officials in charge with the salt mines, who were asked to provide the *armăşel* a written document testifying they had taken over the convict.[80]

The judges of the Criminal Court were also the ones to establish the route and the place for the public executions, in the cases of murder and robbery, which supposed extreme violence. These involved hanging, throwing in the river, beheading, etc. The capital execution was done where they "committed the deed," in public areas, in the squares, at "the roadside" or at fairs,[81] where there were many people "to see and to get frightened and not commit wrongdoings anymore"[82], "to make an example and to discourage other fellows,"[83] or, as mentioned in a document, "in the eyes of the community, for the example of other such individuals."[84]

In order to give an example as frightening as possible, all those who had received from the judges, for their crimes, death sentences by hanging were gathered and, on an established day, they were sent to gallows in different regions. The convoy of the condemned, once they left the jail, was passing through the streets of Iasi like a real parade: the servants of the Agie [law enforcement institution] who were in charge of the robbers, not to evade, the carriage driven by oxen, where the prisoners were caught in handcuffs, and then the people who were to apply the corporal punishments.

A particular case occurred on 11th May 1801, when several convoys start from Iaşi with 15 prisoners sentenced to death. A first convoy was made of seven man, out of whom: one was to be hung "at Stâncă, that is at the Poşta Ulmilor, beyond the hill," another one "near the woods of Bâcul," another one "at the plateau near Spătăreşti," another one in the region of Vaslui, at Scânteia, another one in the region of Tutova, another one in the region of Cârligăturii, "at the plateau of Podu Leloai,"[85] and another one in the region of Suceava. The governors of the departments were ordered that the prisoners, after being hung, were to be left at the execution place for ten days: "arranging for men to guard them during those days and, after this term, the guardians should burry them; and when the latter ones return, I, the Prince, will be notified that you met my orders faithfully and fully."[86]

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[80] Gh. Ungureanu, *Justiţia în Moldova (1741–1832)*, pp. 45–46.

[81] See the document dated 4th March 1824, when Ioniţă Sandu Sturza confirms the capital punishment pronounced in the case of a robber, ordering for him to be "hung during a fair day" (C.C. Angelescu, *Pedeapsa cu moarte la români în veacul al XIX-lea*, Bucharest 1927, p. 17).

[82] Ibidem.

[83] National Archives of Iaşi, Curtea Criminală, tr. 564, op. 611, file 5, f. 43r.

[84] C.C. Angelescu, *Pedeapsa cu moarte la români în veacul al XIX-lea*, p. 17.

[85] This is Ion, son of Ştefan Teslariu, in whose case the Prince commuted the sentence in the last moment, sending him to forced labour (National Archives of Iaşi, Curtea Criminală, tr. 564, op. 611, file 4, f. 24v.).

[86] Ibidem, file 3, f. 11v.

Another convoy was made of three persons sentenced to death for robbing and beating a Turk from Baia. The perpetrators were to be hung like this: Dumitru Herghelegiu at Baia,[87] where he committed the deed, Iancu Sălăgeanu by the side of the road at Scânteia, and Arsănie Frumuşanu by the side of the road again, at Stânca, on the Prut.[88]

The third convoy accompanied to the stage of the execution Babic Armanul, Vasile, the son of Ion Rotar, Ion, the son of Ştefan Teslar and Enachi Cocul. "Like some old, evil robbers," they were condemned to death by hanging: "Vasâle, sin Ion Rotariu, in the region of Cârligăturii, by the side of the road, in front of the place where they robbed and plundered the houses, and Enache Cocul by the side of the road at Vasluiu, and Ion, sin Ştefan Teslar, again by the side of the road in the town of Bârlad, and Babic Armanul in the town of Tecuci, again at the roadside."[89]

Another day when several carriages with robbers left the jail of the Iaşi was 12th August 1803. In one of these there were Stan and Ion, Transylvanians, who were to be hung a Huşi, "somewhere in the town, where it will be deemed right."[90] To Huşi left another convoy with Ion Ciobanu, also sentenced to hanging.[91] By his side there was Ion Buzaună, who was to be hung in Codrul Iaşilor.[92] Three other carriages were leaving the jail, going towards the salt mines, with 9 prisoners inside and guarded by two *armăşei* and four functionaries of the Governor's office.[93] Another one, with other guardians, had three Gypsies inside, belonging to the *vornic* [Justice functionary] Alecu Ghica.[94] Other times, the gallows place is the decision of the governor. Thus, the Prince's authorisation sent on 5th October 1803 states: "as soon as the established *armăşel* bring [him] to you, organising the hanging there, in the town of Bacău, where you will consider it right."[95]

Therefore, the emphasis is put on the visibility of the punishment, by carrying the convict all the way to the punishment execution place, in order to turn this into an example. Sending the prisoners in groups to the punishment stage had to be for the spectators, as the historiographic works have already notices, a public show. For instance, the robber Simion Buzatu was hung in the woods of Iaşi, and Ion Olteanu, his companion, in the region of Fălciu, where he had been caught.[96] The convicts' execution was made as an example for those who might have been "tempted" by wrongdoings, and as a way to discourage other people's attempts to commit crimes. This way, the public authority offered to a significant number of inhabitants the occasion "to assist the terrifying show, in order to become convinced of the fate that was awaiting any

[87] On its way to the gallows, the convoy was reached by a letter from the Prince, changing the legal framework and sending him to the salt mine as long as the Prince's order establishes (ibidem, f. 24r.).

[88] Prince's *Anafora* from 11th May 1801 (ibidem, f. 13 v.).

[89] *Anafora* from 11th May 1801 (ibidem, f. 15 v.).

[90] Ibidem, file 6, f. 96v. In the authorization given to the *armăşei* it is shown that one of them was going to be hung in the town of Bârlad, and the other at Gura Pereschivului (ibidem).

[91] The carriage and three servants were to be given by the governors of Iaşi (ibidem).

[92] Ibidem.

[93] Ibidem.

[94] Ibidem, f. 98r.

[95] Ibidem, f. 108v.

[96] On 12th August 1803 (National Archives of Iaşi, Criminal Court, tr. 564, op. 611, file 5, f. 55r.).

person that would have broken the law. To the same purpose, the heads of the thieves killed during the fights with the police detachments were hung at the crossroads."[97]

The capital punishment was not, however, a daily show. Of course, its enforcing brought people together in order to impress them and control them from committing similar deeds, which would have led them towards the same ending. Each participant understood the execution in their own way, according to the relation they had with the perpetrator or with the victim. The action was meant to be, on the one hand, terrifying for those who would have dared commit such a serious crime as the convict had done, but, on the other hand, it was supposed to give the victim's family the feeling that justice was done. The researched documents reveal the fact that the death penalty tended to be replaced, even for the cases of murder and robbery, with other punitive sanctions. Of course, the consulted documents are acts. Most of those who in the previous centuries would have been killed for their deeds, in the period that we studied were sent to the salt mines,[98] for exhausting labours, in very harsh conditions, i.e. cutting the salt rocks.[99]

We should also mention that many of the robberies were committed in villages at te frontier with Bessarabia, Bukovina or Transylvania; because of this, catching the criminals was quite a difficult for the Moldavian authorities, as the criminals managed to go back, beyond the borders.

SOME CONCLUSIONS

In the reconstruction of the judicial practice in late 18th and early 19th Moldavia, the reports of criminal investigations, the *anaforale*, written in the Criminal Department – the criminal court of Moldavia wearing this name until the Organic Law – are not only substantial legal sources in identifying the social phenomenon of delinquency, but also a rich documentary material for a social history of Moldavia.

The investigation of the judicial acts, especially the *anaforale*, issued by the chancellery of the Criminal Department in the period 1799–1804 showed us the fact, in many cases of robbery, punishment by hanging was enforced. In the cases of the repeated failures of conduct correction (that is to say in cases of re-offending) or in cases of extreme violence, the perpetrator was also sentenced to death. Yet, capital punishment was losing ground compared to other punitive measures, the most frequent one being derivation of liberty in the salt mines, where the convicts were subjected to forced labour in salt exploitation.

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[97] C.C. Angelescu, op. cit., p. 5.

[98] About the dangers present everywhere for those who were working in the salt mines, see S. Văcaru, S. Grigoruţă, "Populaţia Târgului Ocna la anul 1820," *Acta Bacoviensia* 2012, vol. VII, Oneşti, p. 119.

[99] D. Vitcu, *Istoria salinelor Moldovei în Epoca Modernă*, Iaşi 1987, pp. 106–109.

What is to be underlined is that our research strengthens, by its conclusions, the idea that punishments grew milder after 1750, and that there was a tendency to eliminate death penalty from the court judgments, an idea that appeared in Romanian historiography in the 1980s already.[100] As the study of criminal law for the medieval and premodern periods was forbidden in Romania, researches in the field stagnated for a while, and the results that researchers had reached enjoyed little circulation. The cultural opening after 1989 led, as it is well-known, to a widening of the historiographic scope, due to the contact with the western literature about both violence and criminal law. Consequently, the resemblances between the western punitive system and the Romanian one for a given historical period could seem surprising. One of these similarities is the very evolution of the criminal law authority in Moldavia at the end of the 18th and the beginning of the 19th centuries, when being deprived of some goods or of a right started to be deemed as a more effective modality to reach the criminal law purpose. Although beating remained a constitutive element of the punishment, we could say, with Michel Foucault, that for the researched period – as seen in other *anaforale* as well, which are awaiting publication – "punishment passed from a practice of unbearable sensations to an economy of suspended rights."[101]

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[100] P. Strihan, T. Voinea, V. Șotropa, N. Stoicescu, "Pedeapsă," in: *Instituții feudale din Țările Române. Dicționar*, p. 357.

[101] M. Foucault, *A supraveghea şi a pedepsi*, p. 43.

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