

# THE EVOLUTION OF WRITTEN LAW UNTIL THE PHANARIOT RULING. ASPECTS REGARDING LAW IN THE PHANARIOT AGE

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**Abstract:** *This paper aims to analyze the evolution of the written law until the Phanariot rulings, also poring over some general issues regarding law in the Phanariot age. A very important role in the development of the feudal society was played by the appearance of the books of law which were written both in an ecclesiastic manner and in a laic manner. The written law was meant to provide increased authority to central power as opposed to unwritten law.*

**Key words:** *written law, rules, Phanariot period, reforms, evolution.*

## 1. The Evolution of Written Law in the Romanian Country and Moldavia

The centralization of the feudal state was achieved by the initiatives of the lords supported by the Orthodox Church. One factor which contributed to the overall development of the feudal society was the appearance of the books of law which were written both in an ecclesiastic manner and in a laic manner, which would legalize and regulate the feudal reports which existed on an economical, social and political manner. These would represent true works of art, as they would regulate religious matters as well as customary laic matters, which reflected Christian spirituality in connection with the practical aspects of material life.

Written law provided increased authority to central power, which was represented by a lord, as opposed to unwritten law,

namely legal custom, which allowed for the possibility of local leaders, the great feudalists, to have different regulations, which would affect the very functioning and existence of the feudal state, threatened by these discrepancies and the political division.

The appearance of the religious books of law would also provide an increase of the lord's power along with the authority of the Christian orthodox cult, as they were elaborated on the order of the lord or the high clergy. In regard to the content, these legislative monuments contain specific regulations of civil law, criminal or procedural law, profoundly affected by religion, as it was a time when the religious ideology was the main form of manifestation for doctrine in the feudal state.

The Orthodox Church in the Romanian country, much like all the churches of the

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same religion from south-east Europe, was under the authority of the High Patriarch of Constantinople both from an ecumenical point of view and an institutional one. The Byzantine influence would manifest in regard to the content and the form of the religious books of law and also the laic books of law, as they contained similar provisions with those of the Byzantine Empire in regard to organizing society from a political, economical, social and religious point of view.

We can state that, through these interferences, a law system was designed, one with common regulation in all Romanian countries which were at the same stage of development and had similar tendencies to evolve given they all belonged to the same religious cult. The Byzantine influence comes from the Slavic, as the first books of law were written in Slavic. Mid 16th century, given that these books of laws „were to be applied to a people who did not know the Slavic language” the religious books of law would be written in Romanian [1].

The Byzantine influence over the first books of law is exemplified by the translation of the work called „The Matei Vlastares’Nomo Canon” which was first drawn up in 1335 several times, in 1452 in Targoviste by the writer Dragomir, in 1974 by Ghervasie from Neamt, in 1495 by the writer Damian [5].

Another copy of this manuscript was made in 1636 in Bistriţa (Monastery from Oltenia) on the order of Matei Basarab’s wife [5]. Other books of law in Slavic are the 1557 one from Neamt, the 1581 one from Putna, the 1698 one of Bistrita (Moldavia), the Chosen book of law of 1632, the Galati book of law (17th century), Nicon Cernogoretul’s books of law (a summary of Byzantine religious law). During the 16th century, the first books of law are written in Romanian – The Good Book of Law and Codex

Negosianus book of law [5]. Between 1560 and 1562, the deacon Coresi printed the Book of the Holy Apostles at Saint Nicolas Church in Brasov, based on the teaching of Vasile the Great. In Moldavia, Eustatie draws up the Chosen book of law in 1632 by translating certain books of law from Greek which were written a century before.

On the order of Matei Basarab, in 1640 the Govora book of law is drawn up and printed [3]. Along with canon law, it had rules regarding the division of inheritance, the respect adopted and natural children must have for their natural or adoptive parents, cases in which marriage was not allowed, sexual crimes and so on [5].

The Govora book of law would be published in two identical editions, one for the Romanian Country and one for Transylvania [1], which certifies the unified development of the three Romanian countries as well as the fact that the laws were addressed to the same people.

By following the main provisions of these books of law, we can see that it contained specific provisions of church law or the history and organizing of the church, as they regulate the legal conditions of people in regard to divorce, marriage or civil in-laws, regulations of contracts or criminal law provisions of antisocial deeds seen as sins, as well as the regime of punishments.

The material law provisions as well as procedure law provisions, which were influenced by the Byzantine society, would represent the indirect and mediate way by which Roman law influenced the legal regulation in the Romanian countries.

The legal regulations are not listed in categories or branches of law, they are listed randomly along with the religious ones; when analyzing this, we can see that they were meant to conserve the feudal structures, by strengthening the position of

church in society and the ruling social class which had a privileged position.

The most important regulations regarding written law were drafted mid 17th century, namely the Romanian Book of Teaching (1646) and The Amendment of Law (1652), and were true codes of laic and legal content.

Based on a short analysis, we can see that the provisions of these two regulations are nearly identical in content and form, which proves the unified development of the Romanian courtiers as well as the tendency to consolidate and centralize the feudal state, an action of the rulers of those times.

In 1646, by the order of the lord of Moldavia, Vasile Lupu, the Romanian book for teaching from the emperor's book of law was drawn up by Eustatie, who stated, in the preface of the book, that he used both „Greek and Latin paragraphs” as well as the work of Italian writer Prosper Farinaccius, named "Prexis et theoricæ criminalis" [5]. He also shows in the preface, that the main formal sources of law, namely law and custom, were studied. He divides the branches of law into "ius humanum", "ius divinum" and "ius naturalae".

There is a new principle which appears, phrased in a rather stylized manner, namely that of the legality, when it is stated that – „Feudal law should be known and respected by all the inhabitants of the country" [6].

The book of law discusses several law institutions both of material, civil and criminal nature, as well as those of procedural nature, which proves an evolution in the procedure of creating laws. In the economy of this law, an important space is granted to property, the regime of people, as well as criminal provisions, which would protect the regulated values of the feudal state,

legitimated by the ruling, as well as the privileges of the great nobles.

The institution of patrimony is described in detail, discussing the legal regime of private property, goods, life interest, as well as issues of obligations, contracts and legal liability which resulted from committing illicit deeds – bad faith, guilt. In regard to succession, it had rules regarding capacity, categories of heirs, the content of the legate and replacement of heirs. The criminal regulations would accentuate social inequality both in regard to sanctioning certain antisocial deeds, called „guilt” (crimes) and in regard to the regime of punishments (the punishment was called argument). The book described a series of institutions of criminal law such as – attempt, relapse, committing several crimes as well as circumstances which remove the criminal character of the deed (minority of the perpetrator, self defense, order from the superior and so on).

The character of these regulations is obvious from the way it protects and values subjective rights. Thus, the extrajudicial way was used by the feudal nobles as well as the common way, the judicial one. Also, the fact that some people belonged to a certain social class sometimes eased the punishment or absolved the people or sometimes it aggravated it.

The second written law, the Great Book or the Amendment of Law was edited and printed in Targoviste on the order of Matei Basarab in 1652 by Daniil Panoneanul. This law had the same content as the Romanian Book of teaching, as both works were based on the same sources which were to be translated. The second book contains, in the final part, some appreciations regarding areas of general interest such as – medicine, grammar, philosophy or economical issues.

## 2. The Evolution of Written Law in Transylvania

The process of creating laws in Transylvania was affected by the legitimate tendency of Romanians to keep and enlarge their autonomy and to force „the law of the land” as their own legal system and the policy of centralizing the state promoted by the Hungarians, who wished to enforce their system of law, which was in complete disagreement with the interests of local nobles, represented by the „three nations” acknowledged as such until principality was established. In the voivodship of Transylvania, the documents coming from the Hungarian crown would play a secondary role in the law system of Transylvania.

The effort to organize law reflects the tendency to centralize the state, as promoted by Hungarian regality. In this context, the 1517 collection of laws drawn up by Stefan Verboczi, on the initiative of Gladiola the third, tried to codify the written and unwritten legal regulations. When the new political regime was established leading to the ruling of the Austrians, the Leopold Code of 1691 stated the provisions of the Verboczi Tripartite which regulated the privileges of the three nations and the four cults „acknowledged in Transylvania”.

The status of these privileged nations was to be defined by the document called „Unio trium nationum” passed in Capalna in September 1437, which excluded the majority Romanian population from the political life of the voivodship, by considering them a nation which was merely tolerated. State political power was exercised by the Hungarian nobles, the German and the Szekler ones [4], as Verboczi’s code regulated slaves, by pointing out the autonomy of the voivodship by making a clear distinction between Hungarian law and Transylvanian

law. Regulation of the class privileges of these written provisions is proved especially in regard to succession, as it stated that the lands of slave peasants who had no successors belonged to the Hungarian king and, later on, to the noble owners [1].

At the same time, we acknowledge the active resistance of the Romanian people, who, according to their own rules, seek to enforce their system of law, based on the regulations of the old Romanian law, called „the law of the land”, seen mainly in Fagaras country.

When the autonomy of the Country of Fagaras was threatened, through „universitas saxorum”, the Romanian fought in the 1503 and 1508 rebellions and, in 1508, obtained the codification, in Latin, of the old customs as regulated in „the statute of Fagaras Country”.

This law was similar to the regulations in the Romanian Country, considering the traditional liaisons which existed between the two, as the same institutions were regulated in regard to property, family or succession. Similar regulations between the three Romanian countries are seen in regard to collective liability, an old institution of the territorial village, as well as the common use of certain portions of grassland or forest.

There are similar regulations in criminal matters, both in regard to criminal deeds and the punishments which must be applied. The existence of common regulations between the three countries proves that legal custom which was the basis of these regulations was unique and the Romanian people, even though, given the historic hardships, had to live in different countries, they had a unified evolution provided by common order and the orthodox belief. The autonomy of Transylvania, as stated by the 1504 Sighisoara Code, emphasized that the laws

passed by Hungary would no longer cause effect within the autonomous principality.

The great number of laws would determine the Transylvania Assembly to codify it in the book called "Approbatæ Constitutiones" between 1540 and 1563 and "Compilatae Constitutiones" between 1653 and 1669. Thus, a unique document was created, called "Approbatæ Compilatae Constitutiones", an act which would prove the autonomous status of the Transylvania principality. By this legal regulation the policy of local nobles interested in maintaining the class privileges of the feudal order were reaffirmed.

The work of codifying the written and unwritten regulations would also be achieved in regard to city population, who drew up the paper called „The status of village municipality” (1583), a paper with civil law provisions (obligations), criminal and procedure regulations.

### 3. Law in the Phanariot Age

By establishing the Phanariot ruling, the ottoman domination became more severe on a political level, which led to a restriction of Moldavia and the Romanian Country's autonomy.

The Phanariot ruling, named as such, after the Fanar neighborhood in Constantinople, a neighborhood where a large Greek community lived, from which the future rulers of Moldavia and the Romanian Country would be named, would begin with the reign of Nicolae Mavrocordat, the son of Alexandru Mavrocordat (1711 in Moldavia and 1716 in the Romanian Country).

The Phanariot age ended in 1821 with the revolution led by Tudor Vladimirescu.

During this time, the ottoman ruling manifested by the frequent naming of the rulers from Istanbul, thus naming as rulers the people who were loyal to the ottoman

regime. During this age of over a hundred years, 40 lords were named in the Romanian country and 36 in Moldavia, thus considering the interests of the ottoman ruling, as when a new lord was named, a significant tax called mucarer would be paid. Annually, the small mucarer also had to be paid to the ottoman ruling.

However, these frequent changes had a positive side, as for example Constantin Mavrocordat, by ruling six times in Muntenia and four times in Moldavia, created the necessary background for a unified evolution of these countries, a unified political and legal evolution in order for these countries to unify on a political level.

The relations between the Ottoman Empire and the two Romanian participates were regulated by several documents, passed by the sultans – the documents of 1774 regulating the peace treaty of Kuciuk-Kainargi, the 1783 one or the 1791 and 1792 ones, documents which did not acknowledge the old right of the Romanian Countries to choose their own lords [2].

Through these treaties, several financial obligations were regulated, obligations of the Romanian Countries to the Ottoman Empire. The provisions of the Kuciuk-Kainargi peace treaty referred to the necessity of opening the first consulates in Iasi and Bucharest. Thus, the Russian consulate appeared in 1782, followed by those of Austria (1783), Prussia (1785), France (1798) as well as England (1803).

The presence of the consulates led to the creation of a legal regime which favored foreigners who lived in the country, a regime which was annulled during the 19th century as a result of the efforts made by the Romanian diplomacy.

The situation of the Romanian countries was aggravated by the strenuous evolution of the relations between the great powers

in this area, thus, between 1711 and 1812 six wars occurred between Turkey, Russia and Austria who, by acting in an alliance or separately, caused territorial loss to the Romanian Countries; among these, Hotin was transformed in a Turkish province in 1713, Bucovina was given to Austria in 1775, the territory between the rivers Prut and Nistru was lost to Russia in 1812 and Oltenia was temporarily annexed to Austria between 1718 and 1839 [2].

The negotiations of the great powers, at different peace treaties, made possible the presentation of some memoirs from the Romanian front ranks who required the enforcement of the country's law regarding autonomy and the appointment of the rulers as well as the ideas which supported the national party program, aiming to unite Moldavia with the Romanian Country under the ruling of a single Romanian prince (see the Focsani treaty of 1772).

The most eloquent document which valorizes the desire of national emancipation of the Romanians from the Participates is represented by the 1807 memoir addressed to Napoleon I, the emperor of France, requesting the unification of the two Romanian countries and their independence from any foreign power.

Thus, the program of the national party began to form; its objectives would be accomplished later, namely the unification of Principalities in 1859 and state independence - 1877 – 1879.

Even if the Romanian countries' independence was severely weakened by the phanariot regime, the political – judicial status of the Principalities was acknowledged by the Ottoman Empire, who, by the Book of Law (kanunname), passed by the sultan in 1792, acknowledged that the imperial administration had no power over the internal ruling of the country, by saying that – „The Romanian Country and Moldavia

are, from the past and until now, free in every way..."[2].

The Phanariot ruling was a time of economical regress, which increased the privileges and the fortunes of the great nobles and burdened the people with excessive taxes.

Given all these, the Phanariot age led to new reform which, in the spirit of the enlightened tyranny, attempted to settle any social and political tensions by preserving, as much as it was possible, the structure of the feudal society.

Also, another stage was that when steps were made towards the unification of the Principalities, the successive reforms made in one country or the other, initiatives in culture, by pointing out spiritual unity and by being aware of the fact that Romanians speak the same language, have the same habits and are a part of the same people.

#### **4. Constantin Mavrocordat's Reforms**

Constantin Mavrocordat inherited from his father Nicholas Mavrocordatos the inclination toward culture and acquired skills in the arts of diplomacy.

He tried to give a new orientation to the overall development of the Principalities implementing through the reforms that were to promulgate the thesis and principles defining the political rationalism and enlightened despotism.

His reforms had the gift to strengthen the political and legal scaffolding which supported the feudal state, which was in a process of profound change as a result of penetration of the new mode of production's ideas, the capitalist one.

The principles that define Constantin Mavrocordat 's political reform would be synthesized in the 13 articles of his Constitution of 7th February 1740 published in "Mercure de France" in the issue of July 1742 .

The documents were aimed at the reforms implemented by 1740 regarding the regulation of the financial system and the priestly class status and the boyars in general.

According to him, the status of nobleman was given by the condition of fulfilling a royal service and not by the ownership of certain buildings or land, which announced the introduction of a modern principle in qualification the status of an official in the state. A ranking of the Boyar class was produced by the same institution, depending on the importance of the jobs held by such distinguished boyars called "veliți" occupying important governor positions and "mazilii" which had a lower rank as compared to the former.

Being an advocate of strengthening the power of large landowners in the state, Constantin Mavrocordat exempted from taxes the category of *veliți* boyars, while the *mazili* category was liable for only part of the taxes levied on. The clergy would benefit of tax relief but its jurisdiction right would be limited thus attempting to secularize the society's organization.

In the fiscal area the reform was the introduction of the single tax called civic customs that basically achieved a unification of taxes owed. Its amount rose to 10 lei annually payable in four quarters, but due to the increased demands of Turks it reached six or twelve quarters.

The administrative reform was to change the chief magistrate and head masters of the counties with two stewards. In this area modern principles that came to abolish the old feudal practices were introduced, like introducing a system of remuneration of the rulers with salaries obtained from the country's treasury.

However the rulings pronounced by officers were recorded in special books with the aim of curbing the arbitrariness and abuses.

Wishing to modernize the society, new legal regulations on the organization of the management of cities were introduced.

The measures in the social area which were stipulated in the 1740 Establishment, strengthened the position of the boyars to the detriment of exploited peasants who were denied the right to move from one estate to another, as well as by the new regulations which made it possible to increase their employment benefits, however ultimately all those led to the raising of *bejănie* (fleeing abroad).

As a result of this natural phenomenon, between 1741-1746 the number of taxpayers in the Romanian Country halved [1], which prompted a new trend in law regarding the legal condition of the peasantry by abolishing "rumânia" in the Romanian Country in 1746 and "serfdom" in Moldova in 1749.

By two consecutive charters from March 1 and August 5, 1746 the *rumânia*, meaning the dependence of peasants, was disbanded. Through the first act, the runaway peasants that returned on the estate where they wanted to settle, were ensured the release from *rumânia*.

For to the new nobleman they were required to perform a number of days of work.

Given the scale of the phenomenon and ambiguous formulations concerning the deadlines required by the first charter, namely the date on which runaway peasants could return, on August 5 it was issued a new decree which provided free release of all Rumanians. However, if the owners did not want to freely release peasants, they could redeem their freedom by paying 10 thalers [7].

In 1749 through a similar reform *vicinia* was also abolished in Moldova with the difference that there was no talk about paying any money in exchange for the release of the peasants.

Under these reforms the dependent peasants from the Principalities became free men and would be called clăcaşi in the future, as they conclude the pacts with the landowners, according to land records.

These reforms have facilitated the penetration of capitalist relations in agriculture and also abolished the feudal relations in which peasants exercised a right of use of agricultural land, leading to the consolidation of absolute ownership and division of the divided property.

According to new regulations the great feudal property was released by the right to use of the peasants [1].

Through these reforms Constantin Mavrocordat actually reinforced the position of nobility and introduced new forms of exploitation of the peasantry, while also achieving a consolidation of the central power.

## 5. Conclusions

This paper, divided into three sections - The evolution of written law in the Romanian country and Moldavia, The evolution of written law in Transylvania, Law in the Phanariot age, Constantin Mavrocordat's reforms - highlights the benefits of the written regulations in relation to the unwritten law, containing an evolution of the main written regulations

issued during the period covered by our study.

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