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“AND I BOUGHT MYSELF OUT OF THIS BURDEN”. ECONOMIC CONSEQUENCES OF REDEEMING PENALTY IN MOLDAVIA (16TH-17TH CENTURIES)

„I wykupiłem się od tego obciążenia”. Ekonomiczne konsekwencje wykupienia się od kary w Mołdawii (XVI-XVII w.)

Abstract

Procedura odkupienia przestępstwa (*compositio*) lub *plata capului*/główszczyzna (rekompensata dla rodziny ofiary) była stosowana powszechnie w mołdawskim średniowieczu i okresie przednowożytnym, a także w szerokiej przestrzeni średniowiecznej Europy środkowo-wschodniej. Praktyka ta miała wpływ naw strukturę majątkową, gdyż wobec braku pieniędzy potrzebnych na uiszczenie obu zobowiązań, większość oskarżonych gwarantowała spłatę potrzebnej im sumy swoimi dobrami ziemskimi lub odstępowała je osobom posiadającym zasoby finansowe, które te ziemie nabywały.

Słowa kluczowe: odkupienie przestępstwa, *compositio*, *plata capului*/główszczyzna, gwarancja, „wynegocjowana sprawiedliwość”

Abstract

The procedure of redeeming a crime (*compositio*) or *plata capului*/”blood money” (paying the price of the victim) was a practice in the Moldavian Middle Ages and the premodern period, and was commonplace also in the wider space of medieval central and eastern Europe. This practice had implications in the structure of property as well because, in the absence of the money needed to pay the two obligations, most defendants guaranteed with their estates in exchange for the sums required or gave them for sale to people with financial power, who purchased them.

Keywords: redeeming the injury, *compositio*, *plata capului*/, ”blood money”, guarantee, ”negotiated justice”

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Law historians have stressed the Byzantine influence on the Romanian legal establishments, among which are worth mentioning the system of property and the functioning of the *protimesis* (the right of pre-emption) under its two forms of preacquisition or *protimesis* per se and redeeming or retracting,[2] in relation to the issue of the economic consequences of redeeming penalty − as well as to Romanian legal practice, through the laws.[3] As to the latter aspect, it is argued that besides the application of consuetude law (the way of the land) they also used written Byzantine codes of law in Slavonic translations: laws, or nomocanons, comprising not only ecclesiastical law, but also elements of civil and criminal law, manuscripts or printed works. Among the manuscripts, I highlight here *Syntagma* by Matthew Blastares, penned in 1335, translated into Serbian Slavonic during the reign of Tsar Ştefan Dušan (1348) and disseminated among the Bulgarians, Serbians, and Romanians, and preserved in Moldavia in the form of 14 Slavic-Romanian manuscripts copied during the 15th-18th centuries,[4] next *Pravila Sfinţilor Părinţi (Apostoli)* and *Canoanele Sfintelor Soboare*, included in canonical collections circulating in Slavonic sborniks or laws; and *The Nomocanon* of Manuel Malaxos (1561-1563), this is the systematic, not the alphabetical version of *Syntagm*, translated by *logofăt* Eustratie in *Pravila aleasă – Carte de îndreptare*, in 1632, *Hexabiblul lui Armenopol* (1345), featured as excerpts in the nomocanons of Blastares and Malaxos. Among the ones printed, I mention here *Pravila mică de la Govora* (1640) and *Direptătoriu de lege*, translated by Mihai Moxalie, the chronicler, upon the order of Metropolitan Teofil. Subsequently, the Three Hierarchs Monastery in Iaşi printed *Cartea românească de învăţătură de la pravilele împărăteşti şi de la alte giudeţe*. This code of laws was labelled "the first laic code of laws, meant to meet the needs of layman matters", unlike the one issued six years earlier, in the printing house of the Govora Monastery, for "ecclesiastical matters."[5] Though these were meant to be applied to clergymen, the penalties within the second part of the code have a strong laic character.[6]

The initiative of the translation of this code of laws from Greek and Latin sources pertained – beyond doubt – to Prince Vasile Lupu. The sources used for the translation by Eustratie the *logofăt*, − with the support, it seems, of the great Greek theologian of the time who happened to be in Moldavia in that period, namely Meletios Syrigos[7] and of Metropolitan Varlaam[8] − were multiple., for this "book of teachings", they used *The Agrarian Law* – a rural Criminal Code drafted up during the reign of Justinian II Rinotmenos (685-695; 705-711), based on the Institutes, the Digest, the Code, and the Novella of this emperor, translated from Greek

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2 V. Al. Georgescu, *Bizanţul şi instituţiile româneşti până la mijlocul secolului al XVIII-lea*, Editura Academiei RSR, Bucureşti 1980, p. 200.

3 Ibidem, p. 223-286.

4 See G. Mihăilă, *Sintagma (Pravila) lui Matei Vlastaris şi începuturile lexicografiei slavo-române (secolele al XV-lea – al XVII-lea)*, in: *Contribuţii la istoria culturii şi literaturii române vechi*, Editura Minerva, Bucureşti 1972, p. 261-306.

5 Ș. Gr. Berechet, *Schiţă de istorie a legilor vechi româneşti 1632-1866*, Chişinău 1928, p. 25.

6 G. Cronţ, *Dreptul bizantin în ţările române. Pravila Moldovei din 1646*, „Studii. Revista de istorie", year XI, 1958, issue 5, p. 35.

7 N. Iorga, *Vasile Lupu ca următor al împăraţilor de răsărit în tutelarea Patriarhiei de Constantinopole şi a Bisericii Ortodoxe*, „Analele Academiei Române. Memoriile Secțiunii Istorice", series II, tome XXXVI, 1913, p. 9; see the historiography concerning the issue of Meletios Syrigos's participation in the drafting up of *Pravila lui Vasile Lupu*, in: G. Cronţ, op. cit., p. 39.

8 G. Cronţ, op. cit., p. 40.

with interpretations – along with the Criminal Code titled *Praxis et Theoricae criminalis*, drafted up by Prosper Farinaccius (a well-known Italian jurist of the 17th century) based on the Basilicalae and on the writings of medieval glossists – both categories of sources with laic contents.

The enforcement of the new code of laws in the judgments of cases – from its printing and throughout the 17th century – has represented a comprehensive topic of discussions between the Romanian historians. Doubts were expressed[9] and there were talks about the impossibility[10] of using it in current judgments, to do with its restricted use in relation to the way of the land,[11] and its enforcement *ad litteram*.[12] The group of researchers who initiated the publication of its text in 1961 tended to recognize the enforcement of juridical provisions, even if although in our documentation on the judgments, there is no invocation of its provisions in the argumentations of the legal decisions.[13]

In criminal law matters, Romanian law historians have noted the marked reception of the Byzantine Criminal Law through juridical texts, used as forms of law received in different historical periods[14] and identified as solidarity liability in the case of an infraction committed collectively, as the enforcement of the principle of penalty individualisation, as the use of judgment procedures of serious offences, and forms of legality in the enforcement of criminal penalty, namely public judgment by a competent body (advisors, boyars of the Princely Council), and the enforcement of a penalty required by law (*pravilă*).[15]

The historical sources that deal with penal matters occupy a limited place among the written sources in the Moldavian documentary fund. Most of them were 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 was there mention of situations when offenders were actually sentenced due to a lack of means to pay for their offence. One explanation might be that in penal matters complaints and judgment procedures were mainly oral. Consequently, redeeming the injury (*compositio*) – commonplace in the wide space of medieval central and eastern Europe – is the most mentioned method in the documents. There is mention of certain serious criminal offences when the purpose of writing the legal document was to consolidate the rightful acquisition of an estate, purchasing and selling of another one, trespassing disputes, as well as the redemption lawsuits for land used as guarantee or sold to redeem the injury. Indeed, studying the acts concerning the fate of an

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9 Ştefan Gr. Berechet, op. cit., p. 28.

10 G. Fotino, *Influenţa bizantină în vechiul drept românesc*, in: *Omagiu Profesorului Constantin Stoicescu pentru 30 de ani de învăţământ*, Bucureşti 1940, p. 28.

11 G. Cronţ, op. cit., p. 56.

12 Some references to provisions of the *Pravila* are included in the judgment acts form the second half of the 17th century (see C. Chelcu, M. Chelcu, *Pagube, furturi, despăgubiri, pedepse: între pravilă şi obiceiul pământului. Câteva consideraţii*, ”Arhiva istorică a României,” Bucureşti, I, 2004, p. 98-108).

13 *Carte românească de învăţătură*, critical edition, Editura Academiei Române, Bucureşti 1961, p. 21. The second cover mentions that this edition was drafted up by the collective for the ancient Romanian law of the RPR Academy, led by Academician Andrei Rădulescu and comprising Alexandru Costin, Vasile Grecu, Vintilă Gaftonescu, Constantin Tegăneanu, Gheorghe Vlădescu-Răcoasa, Anibal Teodorescu, Gheorghe Cronţ, Radu Dimiu, Ovid Sachelarie, Gheorghe Nicolaisa. For a part of these works, Anicuţa Popescu and Mircea M. Sadoveanu also brought in their contributions.

14 V. Al. Georgescu, *Bizanţul şi instituţiile româneşti*..., op. cit., p. 180.

15 Ibidem, p. 136.

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", rights of the injured), or as a fine to the prince (”gloaba mea" – my tax)[16] – was a common practice in the Moldavian Middle Ages and in the premodern period.[17] This practice also had implications for the structure of property because the lack of the money necessary to pay the two obligations made most defendants guarantee with their estates in exchange for the sums needed[18] 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 assured the survival of new information regarding infractions and penalties.

Among the 150 documents identified in the volumes edited in the 16th-17th centuries, along with other historical sources such as the narrative ones, many account for the evaluation of the theft offence in Moldavia during these two centuries. They describe the penalty redeeming procedure for death penalties, in the case of ”grand" thefts or imprisonment in the case of common ones, as used for ending the usual agreement between the damaged party and the perpetrator; the latter giving the estate to the first in exchange for escaping the penalty. Serious criminal acts may also be identified in the acts comprising orders of the country's princes and in research of homicide or theft cases brought before him by the victims, by their relatives, or by the damaged parties.

People tried to salvage their life – in cases of homicide, robbery, or theft – or their freedom, depending on the case. Some of them had this possibility only by either finding guarantors for the payment of the debt caused by the offence committed; or the money loan for which they gaged their estate; or by giving to a purchaser the land ownership, in exchange for the amount necessary to compensate the victims or their families and to pay the fine to the princely institution; or by abandoning their assets to the damaged party and renouncing the right to own them. Even if the pledge was used in the hope of getting back the guarantee, namely the land used as gage, after the reimbursement of the amount borrowed by the guilty party for their life, the renouncement of the estate by selling it or by giving it away was accompanied by the express mention in the purchase and sales agreement of the impossibility of reclaiming it in virtue of pre-emption because, in such cases, it was a definitive sale. Consequently, I have focused, for now, on the social category represented by the landowners, namely those who – in such extreme situations – could afford to redeem their life or their freedom by using their assets.

Our intention is to find out for which reason redeeming a crime is the most common method of solving serious criminal matters in legal documents. Another objective is to learn to what extent the practice of *compositio* actually implied ”donating" a life in exchange for

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[16] Document of 25 March 1635 (*Documenta Romaniae Historica*, A. *Moldova*, XXIII (1635-1636), elaborated by L. Şimanschi, N. Ciocan, G. Ignat, D. Agache, Romanian Academy Publishing House, Bucharest 1996, p. 85-86, no. 70) (still will quote: DRH, A., Moldova).

[17] For the Romanian historians, the term ”premodern" covers the 17th century and the first part of the 18th century, when the political and cultural changes became visible compared to the medieval period per se.

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

material benefits (money, cattle, land). The image of the moral, political, social, juridical principles that governed society will be enriched significantly by shedding light on the motivations of practicing the redemption of a crime: was it Christian virtue (of Byzantine origin), economic reasons or the power of example, by sentencing the defendant to death. It was necessary to clarify the context of this form of escaping death penalty, so as to focus on the extent to which individual features (social status, financial power, relations with legal authority) represented advantages when it came to exempting one from the death penalty for serious crimes. For the moment, we have put the emphasis on the social category represented by landowners, who in situations of need were able to pay for their life or their freedom by using their assets. In works on the history of the Romanian law, redeeming a serious crime – called in historical sources ”big error”, ”sin”, ”guilt”, compoziţiune[19] or compoziţie[20] – is defined as ”an agreement between the defendant and the victim or the victim's relatives, through which the guilty party redeems his guilt by settling in exchange for an amount of money or for donation of goods (cattle, land, etc)”. It was ”practiced as a customary law institution even before the constitution of feudal States.”[21] This legal practice appears in documentary sources by the name of *plata capului*. Of course, this does not involve death penalty, which is exemplarily when it punishes political crimes or lese majesty crimes. Whereas manslaughter and robbery were sanctioned by the norms of both customary and written or Byzantine law by beheading or hanging, depending on the defendant's social status, *plata capului* was available only for grand theft.[22] The criteria for determining it were the value and the presence of breaking in or relapse; *plata capului* was also applied for manifest theft, ”furt de faţă.”[23] However, some cases of ”small” theft – as called in Pravila lui Vasile Lupu[24] – could be exempted, with the prince's permission, from executing the penalty, most of the times represented by prison or mine. For this reason, we are interested in all the situations involving a payment for exemption, as they are featured in documentary sources.

In medieval and premodern Moldavia, redeeming the crime was a way of solving conflicts by settling, forgiving and making peace; by settling and making peace between the victim or his relatives and the defendant, after the latter obtained forgiveness from the princely legal authority, represented by the prince or by his dignitaries who had legal functions, too. ”And so they negotiated before myself and made peace” – this is the usual closing sentence for penalty redeeming acts. In most cases, the legal action of expiating the guilt is limited to a settlement, a convention or a transaction made with the purpose of making peace between the parties. In fact, this was a way of avoiding trials. In the Moldavian documentary

[19] *Istoria dreptului românesc*, [The history of Romanian Law], vol. I, editor Prof. I. Ceterchi, PhD, Romanian Academy Publishing House, Bucharest 1980, p. 430-431.

[20] Petre Strihan and Valeriu Şotropa, entry compoziţie, in *Instituţii feudale din Ţările Române. Dicţionar* [Feudal Institutions in the Romanian Principalities. Dictionary], ed. O. Sachelarie, N. Stoicescu, foreword by O. Sachelarie, introduction by V. Al. Georgescu, Bucharest 1988, p. 117.

[21] *Istoria dreptului românesc* [The history of Romanian Law], op. cit., I, p. 431.

[22] Ibidem, p. 453. In *Carte românească de învăţătură* [Romanian Book of Teachings], Pricina [Chapter] 13, Pentru furii cari ţân drumurile fără arme, paragraph 111: ”Cela ce va fura furtuşag mare, de oara dentăi să-l spândzure” [The one who commits a grand theft will be hanged, even if it is the first time] (p. 67).

[23] Petre Strihan, entry furt [theft], in *Instituţii feudale din Ţările Române. Dicţionar* [Feudal Institutions in the Romanian Principalities. Dictionary], op. cit., p. 203.

[24] *Carte românească de învăţătură* [Romanian Book of Teachings], Pricina [Chapter] 12, Pravila împărăteşti pentru furtuşaguri, paragraph 98, p. 65.

fund – mainly from the 17th century – there are many zapise (written notes) that confirm the practice of agreements between the offender and the injured party, mediated by the prince or by a dignitary delegated by him, mostly in the case of theft. Exemption from penalty by *plata capului* is also mentioned in narrative sources on legal practices of in the beginning of the 18th century. Thus, those who committed manslaughter or ”grand theft” ”can only seldom obtain the mercy of princes, except in cases when the murderer fails to reach a settlement with the relatives of the victim. Then, the relatives do not declare before the prince that they forgive him or that they no longer ask for his blood to be redeemed by blood or his death by death. If the murderer does reach such an agreement, however, he can hope to obtain the prince's mercy, but he cannot be sure that his life will be spared. Because, if the prince realizes – from his past behaviour – that his bad character cannot be corrected by any penalty or if there are other reasons for which he should be removed from the community, he usually replies that the plaintiffs and the relatives of the victim may forgive the crime of murdering the person, but that he cannot allow the murderers and the bad characters to keep on living within the community and stain the healthy limbs with their pus. Considering these aspects, he sentences the offenders either to death or to mine” (our translation).[25]

However, the documentary sources do not mention criminal penalty only in the form of a secular penalty, but also as spiritual penalties by the Church, as a substitute or in addition to the first. A letter of February 11, 1600, from the priest Văsiian Beuz and deacon Nicolai, his son, addressed to the office and the jurors of the Bistriţa city regarding the legal situation of their cousin's murderer, invoked the pravila [code of law] that advises the others to forgive the offender, persuaded that he will execute the sentence after the divine judgment. The relatives of the victim ask the political authorities not to sentence him to death, because ”să-l lăsaţi la focul <Iadul>, să dea el samă de fratele nostru, că noi nu poftim morte dereptu morte” [let him burn in hell, there he will account for our brother, for we will not punish death by death].[26] Even if the issue was murder, robbery and sometimes theft, which would have led to a death penalty for the offender, most of the time the parties ”negotiated” – like when buying or selling common goods – and ”made peace” after admitting the guilt. And when the danger of losing one's head became imminent – ”vâzindu că mi-a vini vreme de peiri” [realizing I was going to be executed] – the solution was to redeem the injury – ”am cădzut după dumnealui postelnicul Dumitraşco să-mi scoată capul dentr-această nevoi” [I persuaded chamberlain Dumitraşco to save me from this trouble].[27] They did so by donating or pledging the defendant's estate; after paying the obligations to the victim or to the relatives and to the prince, the offenders were exempted from penalty. While manslaughter and robbery are punished – in both customary law and the pravile [codes of law] printed since the middle of the 17th century in Moldavia and Walachia – by death and redeemed, as found in documentary sources, by *plata capului*, in the case of theft, *plata capului* becomes a common

[25] Dimitrie Cantemir, *Descrierea Moldovei* [Moldavia's Description], translation according to the original in Latin by Gh. Guţu. Introduction by M. Holban. Historical comment by N. Stoicescu. Cartographic study by V. Mihăilescu. Index by I. Constantinescu. With an introductory note by D.M. Pippidi, Bucureşti 1973, p. 253.

[26] *Suceava. File de istorie. Documente privitoare la istoria oraşului Suceava* [Suceava. Pages of History. Documents on the City's History] (1388-1918), vol. I, ed. V. Gh. Miron, M.-Ş. Ceauşu, I. Caproşu, G. Irimescu, Bucharest 1989, p. 219-220, no. 84.

[27] Act of May 4, 1637, Siret (DRH, A., Moldova, XXIV (1637-1638), volume elaborated by C. Cihodaru, I. Caproşu, Romanian Academy Publishing House, Bucharest 1998, p. 81-82, no. 83).

formula. For theft, it included redeeming the injury, both in the case of ”grand” theft, when the defendant was threatened with death penalty, and of others, punishable by sending the offender to prison. Thus, penalties are negotiated. It becomes a practice for those who can afford it – the landowners.

In order to understand better the functioning of *compositio* in the Romanian criminal juridical practice during the period of interest, we found very useful the conclusions of French historiography, where the debates concerned a ”negotiated justice,” a ”justice without guilty parties,” when a legal authority allowed the ”negotiation” and ”payment” in exchange for the life or freedom of the defendant.[28] The criminal charge of the offender depended on what he had done and it was determined by its gravity. However, if the parties made peace, then the defendant no longer had to execute the court's sentence. *Plata capului* to escape ”a hard situation,”[29] ”a guilt,”[30] a ”great need, a death threat,”[31] redeeming ”a bad deed”[32] could cost the offenders entire villages or parts of estates. These became the possession of the victim's relatives or of the injured party, of a boyar who paid the damages to the victim or the injured party as well as the princely fine, or who served as a guarantee for a loan taken with the same purpose. In the case of murder, for instance: it is said that, on March 20, 1580, ”one hundred and fifty-eight oxen and cows, and six hundred sheep and seven horses and thirteen mares with colts” was the price paid[33] for the death of a Greek in a place called, from that moment on, the Greek's Valley. The murderer was Petre Albotă, mare vătav[34] of Iaşi and ”he paid head for head.”[35] Another example: with half of the Cucoreni village, in the Hârlău region, which he had donated to his brother Cristea Cucoranul, Tiron escaped the death penalty ”because he paid for his head three times, for several murders he committed”; in other words, because he paid the *plata capului*, as mentioned in a document of 1618.[36]

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[28] See C. Gauvard, *Grâce et exécution capitale: les deux visages de la justice royale française à la fin du Moyen Âge*, ”Bibliothèque de l'école des chartes”, 1995, tome 153, p. 280-281, chapter *Négocier la paix*; idem*, La dénomination des délits et des peines en France à la fin du Moyen Âge, in Le temps des savoirs*, t. 1: *La dénomination*, Paris, 2000, p. 205; M.-S. Dupont-Bouchat, *Le crime pardonné: la justice réparatrice sous l'Ancien Régime (XVIe-XVIIIe siècles)*, ”Criminologie”, vol. 32, no. 1, 1999, p. 31-56; M. Sbriccoli, *Justice négociée, justice hégémonique. L´émergence du pénal public dans les ville italiennes des XIIIe et XIVe siècles*, in: *Pratiques sociale et politiques judiciaires dans les villes d´Occident à la fin du Moyen Âge*, ed. J. Chiffoleau, C. Gauvard, A. Zorzi, Ecole française de Rome 2000, p. 389-421; X. Rousseau, *Politique judiciaires et résolution des conflits dans les villes de l´Occident à la fin du Moyen Âge*, in: *Pratiques sociales et politiques judiciaires…*, op. cit., p. 497-526; B. Garnot, *Justice et argent: les crimes et les peines pécuniaires du XIIIe au XXIe siècle*, Editions Universitaires de Dijon 2005.

[29] Acts of December 2, 1632 (DRH, A., Moldova, XXI, p. 313-315, no. 251) and December 4, 1632 (ibidem, p. 316-317, no. 252).

[30] Act of January 31, 1633 (ibidem, no. 282).

[31] Document of December 24, 1595 (DRH, A., Moldova, IX (1593-1598), volume elaborated by P. Zahariuc, M. Chelcu, S. Văcaru, C. Chelcu, S. Grigoruţă, Romanian Academy Publishing House, Bucharest 2013, no. 149, in press).

[32] DRH, A., Moldova, XXV (1639-1640), volume elaborated by N. Ciocan, D. Agache, G. Ignat, M. Chelcu, Romanian Academy Publishing House, Bucharest 2003, p. 19-21, no. 18.

[33] *Documente privind istoria României* [Documents regarding Romania's History], A., *Moldova*, XVIth Century, vol. III (1571-1590), Bucharest 1951, p. 132-134, no. 168 (still will quote: DIR, A., Moldova).

[34] Mare vătav = great bailiff, princely servant working in the districts, with fiscal, administrative, judiciary and military attributions.

[35] DIR, A., Moldova, XVIth Century, vol. IV (1591-1600), Bucharest 1952, p. 281-283, no. 347.

[36] Acts of November 22, 1618, Iaşi (DIR, A., Moldova, XVIIth Century, vol. IV (1616-1620), Bucharest 1956, p. 299-300, no. 368), August 1, 1622 (DIR, A., Moldova, XVIIth Century, vol. V (1621-1625), Bucharest 1957,

The prince Gaspar Graziani gave a "mandate" to "Costin the treasurer of Iurghiceni to be powerful and strong with this princely mandate, to rule over and to take from his land-owning peasants his determined share of the estate, the share of Ifrim, son of Bălan from Iurghiceni, for paying off his sentence of death by hanging and for giving him 46 talers].[37] There are more such examples.

Regarding theft, the documentary sources that we have so far inventoried attesting the practice of redeeming the penalty (the death penalty by *plata capului* or prison sentence) show that many of them comprise the practice of settlement, of negotiation between the injured party and the offender. These are written notes, which show that the two parties have reached a settlement, thus avoiding the beginning of a trial. They mention the conditions, meaning of the redeeming "price"; a dignitary, whose legal competence had been delegated by the prince, authenticated the act of the settlement. In fact, the injured party and the offender stood before the prince, who – by his "mercy" – allowed the latter to redeem his injury.

I provide several examples in this respect.

"The fourth part within the half Criveşti village, situated in Strungă and the fourth part within the half of the Găureni village limits, and the fourth part within the half of the Răvăcani village limits, and the fourth part within the Hotceşti village limits, situated in the Roman village, and the fourth part within the half of the Găneşti village, situated in the Cârligătura area" – all together represented the price paid by Dumitru and Vasilie, the sons of Anghelina, in order to get their brothers out of trouble – in the summer of 1608 – due to their theft of broadcloth worth 700 *taleri* from Steţco, an Armenian merchant of Lvov.[38] A vine of Dric, within the Huşi vineyard, had been taken by Horjea former *vornic* of Huşi "from several perpetrators; those perpetrators did a lot of harm and stole a great deal; they redeemed their heads with that vine"; subsequently, the new owner had to redeem the penalty for the great crime of "having laid with a woman, having made her pregnant, and not having been able to solve it, but by redeeming himself using the vine in question."[39] On June 25th, 1635, it is shown that Simion Pilipovschi and his wife Mărica along with their children give half of the Şerbiceni river, on the Drabişte creek in the Hotin region, to Isar *cămăraş*, to redeem from death two other sons, guilty of having robbed Isar and of having killed merchants: "[…] our sons Vasilie and his brother Ionaşco, robbed Isar the *cămăraş*, in Buoreni, and they took many assets from him, three thousand lei in cash and documents accounting for nine thousand lei and then they shot him and they killed friends of his, merchants. Subsequently, they were caught, put in prison, and a legal decision was made to have them executed as perpetrators.

no. 214). Tiron Cucoranul was killed by a thief, as shown in a document of January 9, 1635, where "mourning his father, Tiron justly" calls Ionaşcu, son of Buchilă, before the court – "because, as a thief that he is", he had killed his father – to redeem his head. Consequently, the prince acknowledges his possession of a part of the Plotuneşti village, given by Ionaşcu as duşegubină (payment for the victim) (DRH, A., Moldova, XXIII (1635-1636), volume elaborated by L. Şimanschi, N. Ciocan, G. Ignat, D. Agache, Romanian Academy Publishing House, Bucharest1996, p. 8, no. 6).

[37] Act of May 27, 1619, Iaşi (DIR, A., Moldova, XVII, IV, p. 350-351, no. 446).

[38] Act of July 15th, 1608, Iaşi (DIR, A. Moldova, Veac XVII, vol. II (1606-1610), Bucureşti 1953, p. 167-168, nr. 217); *Documente privitoare la istoria oraşului Iaşi*, vol. I, *Acte interne (1408-1660)*, edited by I. Caproşu, P. Zahariuc, Editura "Dosoftei", Iaşi 1999, p. 114-115, nr. 82.

[39] Act of May 20th, 1617, Huşi (DIR, XVII, IV, p. 165, nr. 203). Paying for the serious offence of adultery is also included in documents of January 18th, 1607 (DIR, XVII, II, nr. 92) and September 7th, 1621 Târgul Trotuş (DIR, XVII, V, p. 64, nr. 80).

And, because they did not have more than 750 lei to redeem their lives, we paid for the error made by our sons half of the Şerbiceni village, with neighbours, a pond, and a mill place, and with the entire income, located in the Hotin region, in Rădiu, on the Drabiştea creek.”[40] The theft of nine horses was also redeemed by compensating the owner and by paying the criminal fee to the princely institution in 1635.[41] The theft of the 17 beehives was to be punished by having the perpetrator brought to ”Iaşi, to jail” by the *pârcălab* of Neamţ who had tried the case. However, the guilty party asked the dignitary to let him ”pay for the food of the damaged party and my fee,” namely redeeming his offence by reaching a deal with the damaged party and with the representative of the princely judiciary authority.[42] On April 30th, 1676, Antonie Ruset confirms to hetman Alexandru the ownership of several parts of a vineyard in Miroslava, bought from Martin Panica from Miroslava, whom ”they all considered guilty, claiming to have known him for a bad man and for having stolen since his childhood.” With the money for the vineyards, he paid for some horses that he had stolen, thus escaping jail: ”with that money, he escaped prison and paid for the horses of the damaged party.”[43] People could also redeem sacred church items. *Pravila lui Vasile Lupu* was very harsh with those who committed such an act, namely death by hanging.[44] However, the vineyard of Tanga and ”some houses” were given in 1657 by Iacob the shoemaker to the Three Hierarchs Monastery as fee for ”being unable to redeem their lives” given the theft ”of a chest comprising many expensive items, namely: a precious stone and four types of holy relics, as well as twenty golden *galbeni* and 80 lei, along with silverware.”[45]

In the case of homicide, theft, or ”grand” theft, the penalty stated by both the common law (”the way of the land”), and the written law (the Byzantine law) was the death of the perpetrators. If they could not redeem their life by paying the criminal fee, namely the *duşegubina*, they had the possibility of appealing to wealthy people, who committed themselves to pay the amounts in question, should the defendant fail to, thus becoming guarantors. As for reconstructing the situations where the defendants of serious criminal cases found guarantors to prevent the loss of their life or freedom due to the offence committed, the documentary material is almost inexistent until the end of the 17th century. Even so, the documents researched reflect the fact that there were gage rules: first of all, the observance of the *protimesis* upon assessing the status of an estate sold by the guarantors, and upon failing to observe the deal with the person using this method to escape the penalty; secondly, the duration of the judgment for reacquiring the estate lost, given the inexistence of an authority principle for the asset involved. The relatives of the damaged party initiated criminal proceedings,[46] namely Dumitraşco Chiriiac, whereas Scărlet had princely confirmation

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[40] Act of the June 25th, 1635 (DRH, XXIII, p. 180-181, nr. 143).

[41] DRH, XXIII, p. 51, nr. 52.

[42] Ibidem, p. 85-86, nr. 70.

[43] *Documente privitoare la istoria oraşului Iaşi*, vol. II, *Acte interne (1661-1690)*, edited by I. Caproşu, Editura ”Dosoftei”, Iaşi 2000, p. 405-406, nr. 448.

[44] *Carte românească de învăţătură*, p. 67, Pricina 13, *Pentru furii cari ţân drumurile fără arme*, paragraph 109: ”The one who steals something holy from the church, should it even be the first offence, shall still be hanged”; see also the paragraphs 149, 152, 154 within the same chapter.

[45] A document of April 8th, 1657 (7165) (*Documente privitoare la istoria oraşului Iaşi*, vol. I, *Acte interne (1408-1660)*, op. cit., p. 487, nr. 428; see also the act of July 1st, 1656 (7164), ibidem, p. 481, nr. 420).

[46] For the juridical terms naming the parties involved in a legal trial, see V. Al. Georgescu, *Judecata domnească în Ţara Românească şi Moldova (1611-1831)*, part two, *Procedura de judecată*, Editura Academiei, Bucureşti 1982,

documents for the purchase from Gavril Mirca *vornic de gloată* and from his son Dodon. The aforementioned act is one of the numerous situations where in the absence of the principle of authority concerning the case tried, medieval justice favoured the reprisal of trials in the hope of regaining ownership of the estates lost.

I will not discuss here well-known information within the scientific literature, concerning the – unwritten – norms of functioning of the personal guarantee institution as well as the criteria by which one chose the guarantors and the types of guarantee.[47] My purpose was to highlight the aspects pertaining to the retrieval of the estates by the relatives of those whom the circumstances of life had brought into a position of defendant and who had found a means to save their life or freedom by seeking the assistance of people able to guarantee that they would actually pay back the debt caused by the redemption of their guilt. The functioning of the gage institution in the Middle Ages and in the premodern period is rather well-known, even though the documentary support is very scarce; such situations were the result of a complex of circumstances involving offences and penalties. A major number of sources concerns situations when escaping the death penalty involved using as gage the land owned by inheritance or purchase. This is also illustrated in the investigation below

"Ci i-am zălogit toată partea de ocină a noastră şi a părinţilor noştri" [I guaranteed for him with our share of the estate and that of our parents]

There are many documents that mention transactions involving a loan for someone who needed it and for which he had to guarantee with a piece of land. In the texts, the transaction is called "negotiation"; the one who guaranteed "by free will and not under coercion," thus by "his free will" chose to give up on the estate in favour of his creditor. Moreover, zălogirea (material guarantee) with the defendant's assets if he did not have actual money – a characteristic of the medieval epoch, considering the significant material effort of paying the price of the victim after committing a "big crime," "big error," "guilt" – accompanied the entire practice of personal guarantee (chezăşia). Just as in cases of loans to pay the taxes or certain debts, those made to escape death penalty had deadlines, too.

I start from the assumption that criminal justice is founded on the idea of a compromise between the judiciary institution (laic or ecclesiastical) and the target groups of justice. This relationship logically involving an agreement, and in a certain context, several concessions on both ends, is illustrated by the functionality of the institution of *compositio* or as mentioned above, of a payment for the life and collective liability, reduced to two cases: family liability in matter of treason and the solidarity liability of the community should the perpetrator not be caught (*duşegubina*). Hence, the practice of gaging with estates as a way of saving oneself from capital punishment in the hope of getting money for the obligations deriving from the payment of life, is an important piece in the reconstruction of the process of justice in the time and space mentioned. In any case, the negotiation of the penalty had become a regular practice among those who could afford it financially, namely landowners. This practice had crucial effects on the structure of property, because some landowners could be seen at a certain point as former landowners, given that the cash necessary to pay the fines

p. 7: "In the civil lawsuits and more rarely in the criminal trials, the plaintiff (victim) was called *jăluitor*, *pârâş*, *prigonitor*, while the defendant (perpetrator) was called *pârât*, *prigonit*, *învinuit* (in criminal matters)".

[47] P. Strihan, V. Şotropa, op. cit.

– *duşegubine* – and to compensate the victim or the victim's family made this the single or last means of escaping.

The practice of gaging estates was commonplace in the domestic documents of the 15th and 16th centuries, most of them due to money loans for paying taxes. This led to the development of loans with interest relations, a practice that had "revealed only to a very low extent the implications of domestic documents in the subsequent period, of the practice of loans with interest, noted to the smallest details."[48] In my research, I have noticed that the gaging of estates – when the juridical authority allowed the redeeming of guilt by compensating the victim or the relatives and by paying the crime fee to the princely institution – is mentioned in the documents of the 15th and the 16th centuries, but in the subsequent century, the examples multiplied significantly. Furthermore, I have noted the reduced frequency of documents submitted to *protimesis*, of sales or gage, until the mid-16th century, the effect of which was "a low reflection of *protimesis* in the documents – not very numerous – preserved."[49] The cash crisis in Moldavia, the immediate need of money leading to the "intensification of interest loan in the country"[50] and implicitly the land gaging of loans also constituted – in the cases of escaping the penalty – the reason for estranging and temporarily renouncing the usufruct of the estates of the defendants in favour of their creditors. For these reasons, when researching the gage in criminal cases, I have chosen – from a methodological perspective – to start from the lawsuits of redeeming the estates highlighting the entire issue.

The claim on the gaged estates through redeeming is closely related to the issue of the terms specific to loans for which land ownership was gaged. However, the documents do not always mention the gaging terms, but only the action per se and the condition that – should the payment fail to be performed – the estate would be fully owned by the creditor through "princely privileges."[51] In the early 17th century, two princely servants – *sulger* Savin and *diac* [princely chancery secretary] Costin – get the order to research a case referring to the ownership of an inherited piece of land in the village of Bârjoveni, a village on the Orbic creek in the region of Neamţ. The plaintiff, Dumitru Popoţea and his brothers, Ionaşco and Ilea, are against redeeming the inherited piece of land, even if the enforcement of the gage met the requirements; namely, the loan taken by Mihăilă from the father of the three, "Popoţea the elder," because he could not pay a *duşegubină*, – reason for which he guaranteed with an estate of Bârjoveni – had been paid back. There is no mention of the serious crime committed by Mihăilă for which he had been forced to pay this fine: a homicide, a grand theft, or one against sexual morals.[52] Popoţea the elder's descendants postponed Mihăilă's ownership of the land, "lawfully" pertaining to Mihăilă, reason for which he complained to the prince and then this led to the investigation of the matter by the two servants of Prince Gaşpar. Furthermore, during the research, the plaintiff is told to bring other means of proof

48 I. Caproşu, op. cit., p. 42.

49 V. Al. Georgescu, *Preemţiunea în istoria dreptului românesc. Dreptul de protimisis în Ţara Românească şi Moldova*, Bucureşti 1965, p. 34; "Mentions in documents become frequent and they depict a complex structure of the institution [of *protimesis*], which could not be a recent creation, as late as from the second half of the 16th century" (ibidem, p. 47).

50 I. Caproşu, op. cit., p. 122.

51 Document of November 23rd <1607-1609> (DIR, XVII, II, p. 132, nr. 162).

52 For the meaning of *duşegubină*, see P. Strihan, entry *duşegubină*, in *Instituţii feudale din ţările române. Dicţionar*, op. cit., p. 180.

for getting back the piece of land, apart from his word, because it appears that Mihăilă did not possess an ownership document for the land claimed.[53]

In many records of land gaging, the reason for which this solution is found – the need of money to redeem the life or the freedom – is doubled by the emotional implications of the kinship relation with the defendant. Neaniul was ”in great need”; even though his brothers knew his acts and his temper, they would not let the hangman have him, but accepted to give him their estate within the Măstăcani village, with all its income, to help him redeem his deed: ”seeing his need and his meanness, we could not let him have his head cut off, *for he is our brother* (my italics), so we gathered, all the brothers and all our relatives and we gave our part of the inherited land, within the village of Măstăcani, within the village limits and on the outskirts, and the water and the pastures and the hills, with all its incomes; we gave to our brother, Neaniul, to sell it all for a price and to pay for his life when needed.”[54]

Sources also reveal situations where the perpetrator manages to pay for the damage caused to the victim but failed to pay the fine to the *pârcălab*. This leads inevitably to the gaging of his estate in order to redeem his life. The practice was so commonplace that, in the settlement documents between the perpetrator and the victim or the victim’s family, but always with the knowledge or the mediation of the princely dignitary,[55] the compensation of the damaged party appears as a *debt* to be paid for preserving one’s life. Ursul, the son of Băncea of Macicăuţi, confesses ”himself” the theft of two oxen having belonged to Tiron of Izbişte, who denounced him to the *pârcălabi*: ”I was denounced by Tiron of Izbişte for two oxen and I was in *debt* to him and I paid for the oxen and I also had to redeem my head from the *pârcălabi*.”[56] The damaged party received the payment, but the dignitaries did not receive their crime fee. The solution found could only involve gaging the estate, in the presence of witnesses, with the mention that, in case of failed payment, it would belong to the creditor. As to the amounts for which an estate was gaged, in early 17th century, it was estranged, for instance, for ”22 grand *taleri* counted,” being the amount to pay by the person having stolen the two aforementioned oxen.[57]

The historical sources – mostly starting with the 17th century – show that, for most people in such ”trouble,” paying the ”price” for their life had a twofold consequence: by redeeming the injury, they preserved their life, but with the risk of eventually losing all the estates used as guarantee.

Estranging the land by using it as guarantee was conditioned by respecting the right of pre-emption, – a customary law institution in use until the mid-18th century[58] – in order to maintain it in the solidarity circle of the landowning community.[59] Among the causes leading to long lawsuits to redeem the land we can mention the violation of the pre-emption right,

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[53] DIR, XVII, IV, p. 397-398, nr. 509.

[54] DRH, XXIII, p. 474, nr. 413.

[55] P. Strihan, V. Şotropa, entry *compoziţie*, p. 117.

[56] Document of November 23rd <1607-1609> (DIR, XVII, II, p. 132, nr. 162).

[57] Ibidem. The inventory of the amounts borrowed in exchange for which the landowner gaged the inherited piece of land, mostly in civil cases and, in so far as the documents allowed it, in criminal cases, is analysed by I. Caproşu, op. cit., p. 161.

[58] V. Al. Georgescu, *Preemţiunea în istoria dreptului românesc* [Pre-Emption in the history of Romanian law], Bucureşti 1965, p. 56.

[59] *Istoria dreptului românesc* [The history of Romanian Law], op. cit., I, p. 550.

with the creditor trying to sell the estate used as guarantee without clarifying its status with the debtor, or even an actual sale by a third party in order to get back the money lent to a former offender. Troubled ages were occasions to commit criminal offences. This occurred in the final years of the 16th century, when aprodul[60] Gligorie Dinga, son of Ciorca Dingoaie, the grandson of Herâie logofăt,[61] stole ”six good horses” from Simion Sechil cămăraş,[62] and brought them to Walachia. The facts are presented in an act dated 159<8> (710<6>) 20 February. The ”price” of the offender's life or freedom – a decision of the judge – was fixed at 12,000 aspers, which, according to the same document, was the value of the stolen horses. Under these circumstances, to escape the penalty, considering that he did not have the resources needed, the offender chose to borrow the money, for which he guaranteed with half of the village of Gocimani, on the Orbic brook, which included a mill and a pond, ”until [Gligorie Dinga] gives him the aforementioned money, 12,000 aspers.”[63]

Of course, the bailiff was clearly thinking of saving his head when ”he fell to his knees and begged *pan* Simion Séchil *cămăraş* to keep the half village in question,”[64] for I cannot think of a better reason than getting out of this great trouble that bailiff Gliga faced. However, there is no term mentioned of giving back the money, but it can be inferred that the perpetrator did not have much time to return the said money: according to the same document, the creditor became the owner of the gaged estate due to the failure to pay the amount borrowed by the sister of Gligorie Dinga and his wife, who had probably died meanwhile, sometime during the reign of Prince Aron or little before.[65] In order to take back the estate of Gocimani, the two women were given four weeks to pay around 90 *galbeni*,[66] being the equivalent of the amount in golden coin. Failure to return the money in due time has the prince decide for the gaged estate to be given to Simion Sechil *cămăraş*, in exchange for the latter's payment of the real equivalent value of the estate, namely another 8,000 *aspri* besides the amount already loaned.[67]

Consequently, the amount of the fine must have exceeded the possibilities of the debtors to pay off the loan, given that they eventually came to the definitive estrangement of the estate, and the restitution term had been uttered in a more formal way, as it occurred in other cases and as I will show below. Two months later, Simion Sechil *cămăraş* acquired several estates, among which the estate gaged by usher Gliga. The document clearly shows the duration of

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[60] Bailiff.

[61] Head of the royal chancery.

[62] Royal dignitary who was caring mint country. Dignitary stands for the Romanian ”dregător” = until the 16th century, ”dregători” were both the high dignitaries and servants; in the 16th century, there are dignitaries of high dignities, recorded in the documents together with boyars, but before them; in the 17th century, the notion of dignitary becomes synonymous with that of boyar.

[63] February 20, 1598, Suceava (DIR, A. Moldova, XVI, IV, p. 189-191, no. 249; the same document was dated in DRH, A. Moldova, vol. IX, p. 362-367, no. 293 as follows: 159<8> (710<6>) February 20, Suceava).

[64] DRH, IX, p. 366, nr. 293.

[65] Gligorie Dinga was an usher between 1580 and 1598 (DIR, A. *Moldova*, Veacurile XIV-XVII (1384-1625), *Indicele numelor de persoane*, drafted up by A.I. Gonţa, edited and foreword by I. Caproşu, Editura Academiei Române, Bucureşti 1995, p. 261).

[66] The continual depreciation of the *aspru* compared to the golden coin led – in the late 80s of the 16th century – to the equivalence a 1 *galben* = 130 *aspri* (M. Berza, *Haraciul Moldovei şi Ţării Româneşti în sec. XV-XIX*, ”Studii și materiale de Istorie medie”, II, 1957, p. 14).

[67] According to the estimates made by M. Berza, op. cit., it may be noted that 20,000 *aspri* were at that point the equivalent of 150 *galbeni*.

the lawsuits that the descendants were entitled to initiate to redeem the estate, namely "before Prince Aron and before Răzvan,"[68] and also who had been present at the judgment as well as now, in 1598, before Ieremia Movilă.

In many testimonies on guaranteeing with land, the reason why this is the final solution – the lack of money for redeeming a life or freedom – is doubled by the emotional implications implied by the kinship relation with the offender. The mentioned boyar Neaniul got himself in "big trouble" and, although his brothers were aware of his temper and his deeds, they could not stand to see him killed. For this reason, they accepted to donate to him their estate of the Măstăcani village with all its incomes to redeem the injury: "we have seen his deed and his malice, but we did not let him lose his head, for he is our brother (our italics)."[69]

Conclusions

Our investigation brought important clarifications regarding the extent to which individual characteristics (social status, financial power, relation with the legal authority) represented advantages for exemption from death penalty in cases of serious crimes. As already stated, these characteristics pertained to landowners, to people who had financial resources to pay for their life if they committed a crime generally punishable by death penalty. Furthermore, prison was also a means of forcing the persons sentenced to death (for theft or murder) to find the material resources necessary to redeem their life. "Paying for the life" implied, on the one hand, that the offender had to pay material damages to the victim or the victim's family in the case of murder and, on the other hand, a fine to the prince. This fine was called duşegubină, which literally meant "loss of soul." However, the sums paid as damages varied significantly. As we have seen, the criteria that determined the amount of money or the price of redemption were related to the social status of the offender, underlined by his financial power. The practice of redeeming the injury was actually a way through which certain people – accused and liable to death penalty – could avoid this sentence by the intervention of a guarantee. As we have seen, if the offender failed to pay the damages to the injured party and the corresponding fine to the State in order to redeem his head, he would lose the possession – belonging to him or to his relatives, if they accepted to lose their possession right temporarily – used as guarantee. If he did not have actual money, the offender had to buy his life or freedom with other assets. Hence, the following phrase is a commonplace in the acts that mention paying off a murder: "cu altă n-au avut cu ce să plăti […], capul, şi au luat acea ocină" [they did not have anything else to pay for […] their head, so they took this estate as guarantee].[70] For some of those who used their estates to pay for the life or freedom of an offender, estranging their estate by accepting for it to be used as guarantee meant a definite sale. Actually, some of those who wanted to get their estate back had to appeal to extreme probationary means: group oath, oath made in a church, on the Holy Book, etc. In the case of murder, robbery of theft, offenders tried to save their life or freedom. Some of them were able to do this by the following means: using guarantees to pay for the debt caused by the crime; borrowing money, for which they guaranteed with their estate; finding

[68] DIR, XVI, IV, p. 207, nr 262; DRH, IX, p. 415, nr. 318.

[69] Ibidem, p. 474, no. 413.

[70] DRH, A., Moldova, XXIII, p. 185, no. 147.

a person willing to give them the money to pay the damages to the victim or the relatives and the princely fine, in exchange for the temporary loss of their estate; giving some of their assets and the right of possession to the injured party. Whereas in the case of the land used as guarantee, there was a hope of getting it back after the offender paid the money borrowed for *plata capului*/”blood money,” estranging the estate by selling or donating it no longer comprised this possibility. Actually, in the sale document, it was stated that the right of pre--emption could not be applied, because, in such cases, the sale was definite. In negotiations, the agreement between the parties in the conflict mediated by the prince or by his dignitaries also meant that the defendant had to give up his most valuable asset in the Middle Ages: his land. Furthermore, there were little chances to get it back. Hence, the exemption from death penalty did not foreclose another ”penalty”: losing the land.

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