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SUMMARY

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**THE LEGISLATION OF THE ROMANIAN COUNTRY, FROM THE
FANARIOT ERA, REGARDING THE CHURCH AND ITS
CANONICAL-LEGAL INSTITUTIONS**

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Throughout the chapters of the present PhD thesis, I have propounded myself to delve into the in-depth topic: *The Legislation of Wallachia, belonging to the Phanariot era, regarding the Church and its canonical and legal institutions*. For that matter, the purpose of the research of this theme was the presentation and analysis of the main regulations, pertaining to the state and the Church, adopted/applied during the Phanariot regime, with reference to some canonical and legal Church institutions such as: the parish, the monastery, the diocese, the kinship, the marriage, the property, the marriage, the judgement in the court of law etc.

The considerations and the evaluation of the canonicity and of the legality of these institutions has been effected by me in the light of the canonical and state legislation (pertaining to the Romanian Lands), out of which the „Law of the Land” has not either been missing and whose constitutive element has been the Customary Law.

The objectives propounded for approaching and presenting the approached subject have been the following: *specifying the sources of the written law, regarding the Church, during the Phanariot epoch, in the Romanian Land of Wallachia*, with a special accent on the presentation of the impact which the canonical law, the regulatory or Nomo canonical law and the state legislation had in this sense; *indicating the main sources of the written law*, adopted in Wallachia, during the Phanariot period, the context of their elaboration and the particularities of these normative acts; *the presentation of the provisions of the state legislation and the Church legislation regarding the main canonical and legal Church institutions*, during the time period 1716-1820, in Wallachia; *specifying the canonical and judicial bases for the analysed institutions and the identification of new aspects / completions / amendments brought about by the legislation finalized by the Phanariot regime*.

Within the context of the purpose and of the before mentioned objectives, the personal contribution to the present research consists also of the identification and highlighting of those particularities which define the Phanariot legislation with a view to the canonical and judicial institutions of the Church, which – up to the present moment – have not yet made the object of a research with an interdisciplinary character, namely with a historical, canonical and judicial character, subsequently, thus given also the originality of our scientific contribution.

It is besides the matter about a complex analysis of the Phanariot legislation, both pertaining to the state legislation, as well as to the Church legislation, because, throughout the

present thesis, I have not restricted my research only to indicating the texts of law, but I have also identified the sources of these texts, I have specified the context in which these regulations have appeared, the causes which determined their adoption and the manner in which these regulations have been framed within the broader social and historical context of the norms regarding the specified canonical and judicial institutions etc.

In other words, by means of the scientific research conducted, I have tried to both illustrate the historical profile of the Phanariot legislation and to highlight those norms and characteristics regarding the canonical and judicial Church institutions without yet looking at them in a separate manner from the entire canonical and judicial history of the Church.

Some of the Romanian specialists in the canonical law and some of the Romanian jurists, who were also concerned with the regulatory legislation, have highlighted these aspects, problems and particularities also with a view to the impact which this regulatory or Nomo canonical legislation had during the Phanariot epoch. For that matter, by means of my PhD thesis, I have also wanted to present some pages both pertaining to the history of Romanian law, some pages both from the canonical law, as well as from the state legislation, from the Phanariot epoch, a history which remained nevertheless, for the most part, tributary to the Tradition and to the Nomo canonical legislation, which was born out of the fortress from where the Phanariot Lords came from, that is, from Constantinople.

I consider that by means of studying the regulations from the Phanariot period, with reference to the Church, I thus participate in the continuation of the research about the regulatory legislation, a legislation which culminates in the 17th century, therefore in the century prior to the Phanariot reigns.

In this manner, a continuity in the judicial past of the Romanian people and of the Romanian Orthodox Church in particular is created, a continuity which is not given, as we shall see, only by the canonical and Nomo canonical sources upon which the Phanariot legislation was built, but also by the manner in which the State – Church relationship has evolved from a legislative point of view, by the manner in which the Phanariot regulations have established a report with the Church in the century immediately following the regulatory legislation and in the century preceding the great modernist reforms of the Moldavian ruler Alexandru Ioan Cuza.

Therefore, knowing this legislative „record”, both rich and complex, and, the implicit knowledge of the history of the old Romanian law, is crucial both for the understanding of the importance of the Church within the Romanian space, as well as for the manner in which the canonical and judicial institutions of the Church have transformed or evolved during the course of time.

Obviously, such an incursion within the Romanian legislation of the 18th century is not an easy one. Whereas among the difficulties encountered, the most important was the difficulty of the access to the interpretation of the judicial text. There is a secondary literature in the domain which, in many cases, lacks in precision. It is also a reality the fact that the interpretations, the judicial opinions, the personal considerations, the general ideas cannot replace the legislative text in itself, moreover since many of these interventions are subject to interpretation.

The main difficulty encountered by a researcher, who is not familiar both with the text of the Byzantine legislation, as well as with the text from the Phanariot epoch, and who does not either possess solid knowledge of the Greek language and who wants to approach the subject regarding the legislation of the Romanian Countries, during the Phanariot epoch, consists yet of the access to the legislative text in itself. Besides the critical editions of the legal texts *Pravilniceştii Condici* and of the *Legiuirii Caragea*, all the other judicial texts have been consulted by means of some studies elaborated by some jurists (please refer to the Manual of laws, which is published in fragments by Valentin Georgescu) or they have not been consulted at all, either because there is no actual text available (please refer to the Nomo canon of Gheorghe from Trapezunt) or because the collections of laws comprise only some periods from the Phanariot era. For that matter, I have tried to make up for these inherent shortcomings with data put forward by the specialized literature.

According to the Romanian jurist Paul Negulescu (1874 – 1946), „we cannot understand well an event or an institution if we do not know the antecedents which have paved the way for it, the circumstances which have accompanied it, the social status which has made it possible; consequently, everything is interconnected, everything is handcuffed within the field of history and this connection of causes and effects does not manifest itself only in the slightest details (...) for that matter, the study of history is indispensable to the legal sciences.”¹.

On the other hand, anyone who wishes to approach a subject from the area of the old Romanian law is able to realize this reality, subsequently the fact that I had to apply to the historical sources and to the „historical method”.

Thus, we can explain the fact that the legislative norms indicated in the text of the research thesis are presented and analysed starting from the context and the landmarks of the era in which they have appeared and have been applied, but also from their place and their importance in the more vast history of the Romanian law.

¹ Paul NEGULESCU, *Studii de istoria dreptului român*, Ed. Gutenberg, Bucureşti, 1900, pp. 3-4.

The historical circumstances in which these regulations have been elaborated are conclusive including for the determining of some particularities of the Phanariot legislation, among which I hereby recall the following: the use, in the elaboration of the legislative norms, of the Byzantine law (the Church and the State law); the influence triggered by some European legal doctrines; the influence of some external political and social factors, as well as, for example, the external politics deployed by the Ottoman Empire etc.

Given the fact the present research thesis presents and analyses a series of legislative texts, besides the historical method, I have also employed *the analytical method*, every time I have made reference within the text of the research to the canonical and judicial institutions of the Church.

Besides the indication of the canonical and judicial grounds of the main institutions from the life of the Wallachia society, during the Phanariot epoch, I have tried to highlight the elements of novelty brought by the Phanariot legislation and the mode in which they are circumscribed to the area of the canonical and judicial tradition up to that moment.

Likewise, in order to highlight a series of particularities of the legislation elaborated and adopted during the era of the Phanariot reigns, I have also used *the comparative method*, and consequently, the provisions of the legislation of Wallachia, from the Phanariot era, have been analysed also by means of reporting these provisions to the preceding legislation, that is, to the Nomo canonical legislation and to the legislation of the old Romanian written law (*Jus valachicum*). And, finally, by means of a synthetized form, I have also approached the legislation of the 19th century.

In order to elaborate the above mentioned theme I have consulted, in the first place, the legislative monuments during the period of the Phanariot regime, including the Constitution or the Foundation of Mavrocordat, from 1746, whose text I have consulted in the French language. I hereby mention the fact that, on the other hand, the legislative sources have been consulted in the Romanian language, because their text is published in critical editions by various jurists and Romanian researchers. For each of these legislative sources, I have indicated, within the underlined notes, the necessary data for their identification.

Besides these legislative monuments, I have also consulted many other papers, studies and articles pertaining to some researchers knowledgeable in the domain of the history of the Romanian law and in the domain of the law (the Secular and the Church law).

Among these, I hereby bring about to the attention: Ștefan Grigore Berechet, who, in the case of the present theme, makes himself remarked, in particular, by means of the following three papers : *The connection between the Byzantine and the Romanian law* (vol. I)

and *the history of the old Romanian law* (vol. I) and *The right of our old hierarchs to judge the laity*; Valentin Al. Georgescu, who brought a special contribution to the legislative collection *Gathering the sources of the old written Romanian law*, within whose framework, the legislative monuments from the Phanariot period have been also published;

Gheorghe Cronț, out of whose bibliography I have used the following papers *Judicial documents from Wallachia. 1775-1881* and *the Election of Hierarchs within the Orthodox Church*; George Fotino, the author of the following two papers *Pages from the history of the Romanian law* and *Course in Romanian Law history*; Ion Peretz, who, in the framework of the following papers *Course in Romanian Law history. Origins of the Romanian Law* and *The Privilege of masculinity in the Regulatory Register of Ipsilanti* and *the Caragea legislation*, he approaches a series of judicial aspects with a reference to the Phanariot period and phenomenon; Ioan Mateiu, who stands out by means of the following papers *Contributions to the history of the Church law* and *the Church Politics of the Romanian state*; Andrei Rădulescu, out of whose papers I have consulted, for the purpose of the hereby research, the following papers *Course in the history of the Romanian Law, the Sources of the Calimach Code, the Italian influence upon the Romanian law, Research studies upon the Law Education in Wallachia until 1865, the Roman aspect of our Romanian Law*; Nicodim Milaș, whose translations and commentaries to the Church canons I have used for the clarification of some canonical aspects; Liviu Stan, whose erudition may be ascertained also in the studies regarding both the old Romanian Law, as well as the Nomocanonical or Regulatory Law. His entire body of papers has been on the other hand edited and published by Ioan Floca in the two volumes of the study named *Canonical Orthodox Law*, in whose contents I have encountered aspects which clarify many of the judicial and canonical Church institutions analysed in the current research thesis.

In particular, in the domain of the regulatory law, the research papers of Father Priest and Professor Liviu Stan have been of great use to us, both in order to identify and determine the sources of the Phanariot legislation, as well as to observe aspects of judicial continuity between the Regulatory regulations and the Phanariot regulations.

Father Priest and Professor Nicolae V. Dură – apprentice and descendant of Father Priest and Professor Liviu Stan at the Department of Church Law within the Theological Institute of University Degree in Bucharest – given his research work, throughout the libraries and the Universities of the West, has succeeded in offering to the specialized literature important contributions not only regarding the canonical law, but also regarding the Roman, Byzantine and Old Romanian Law. Both his formation as a theologian, canonical law

specialist, jurist and historian, as well as his use of many classical and modern languages, have brought to the Father Priest and Professor a well-deserved international acknowledgement (He is a Member of the National Academy of Georgia and holds four *Honoris Causa* doctorates abroad etc.).

At the same time, I would like to specify that I owe to Father Priest and Professor Nicolae V. Dură – the academic coordinator of my doctoral thesis – all my gratitude for the guidance offered in researching the bibliographic material and in writing this paper. In fact, the research guidelines and the research suggestions provided to me by the Professor have proved to be extremely useful and more than well received.

Mrs. Associate Professor Cătălina Mititelu, whose papers upon the history of the old Romanian Law and upon the canonical and Nomo canonical legislation – in particular about the regulatory legislation, within whose framework she is a reference author in the specialized literature – have not only been researched, but also reproduced, be it even partially, by means of the necessary citations, because they have been of a real use to me in the composition of the structure of my doctoral thesis.

In truth, I am grateful to Mrs. Associate Professor Cătălina Mititelu, whose papers have been useful to me in the research about the regulatory legislation, as well as in the research about the Phanariot legislation, because Mrs. Mititelu has been preoccupied by the manner in which the legislation from these two periods has referred to the canonical and judicial Church institutions. The objectivity shown by Mrs. Associate Professor Cătălina Mititelu has constituted an important resource for the present research thesis.

As it may be concluded from the title of our thesis, the current research thesis makes reference to the legislative regulations elaborated during the Phanariot period, in Wallachia (1716-1820), in connection with the main canonical and judicial institutions of the Church, a fact which has compelled me to research both the sources, as well as the specialized literature, which have made reference the canonical and judicial institutions, from before the Phanariot era, and, at the same time, to register the subject of the thesis within the context of the reality imposed by the conquests of the Ottoman Empire.

At the European level, the period of time 1660 –1821 is characterized in particular by an effervescent expansionism and by the territorial rise of the Ottoman Empire. From a historical point of view, the ottomans were not a new presence in the east of Europe. The Conquest of Constantinople, in 1453, had „propelled” them to the „apex” of history, thus consecrating their reputation of conquerors. During the 17th and 18th centuries, besides the fact that the influence of the Ottoman Empire had risen in the area of the Balkans, the

presence of the ottomans had influence in a significant manner the evolution of international relationships and the social transformation of some European states. The researchers have named this deployment of Ottoman forces as „the rebirth of Oriental origins”.

This „rebirth” has been materialized in particular by means of expanding the frontiers of the Ottoman Empire and, in certain places, by means of establishing a regime of vassals between the territories conquered or dominated and the Ottoman Gate. Unfortunately, this imperialistic expansion of the Ottomans had repercussions also upon the Romanian provinces outside the Carpathian Mountains, namely Wallachia and Moldavia. Starting with the 15th century, these provinces had interacted with the Ottoman expansionistic pretentions.

Regarding the Phanariot governance, it must be said that, at least in the second part of the Phanariot period (after the historical moment of the year 1774), this governance has given rise to ample legislative reforms within the society of Wallachia. Such initiatives have been influenced by many internal and external factors. For example, these initiatives cannot be separated from the more ample strategy assumed by the Ottomans at an international level. Likewise, the judicial and legislative tradition existing, up to that moment, in Wallachia, cannot be neglected.

The process of „modernization” of the Romanian law is also in close connection with such realities, subsequently an analysis of the Phanariot legislation, be it with reference to the institutions of the Church, cannot be objective unless keeping account, among other aspects, of these factors, especially because „the law is not an isolated reality, but it is the testimony of a historical development, it is an element which is part of a whole constituted organically, which is the life and civilisation of a people, [...] within the system of the law, the social realities, the economic basis and the entire mentality of a society is reflected.”².

In order to better capture all these aspects and in order to formulate conclusions which are as objective as possible, I have understood to divide my doctoral thesis in three main chapters. The first chapter refers to the sources of the written law, regarding the Church in Wallachia, during the Phanariot period. Moreover, in this first part of the thesis, I will make reference to the three main sources, namely: the canonical legislation, the Nomo canonical or regulatory legislation and the state legislation. For each source in part I propound myself to indicate the manner in which it has influenced the legislation and in particular the manner in which it has determined orientations of the lawmaker of the respective time period towards the canonical and judicial Church institutions.

² Stelian IZVORANU, „Elemente de drept bisericesc în legiuirile veacului XVIII și XIX până la Regulamentul Organic”, în *Studii Teologice*, seria a II-a, anul XI (1959), nr. 1, p. 61.

Thus, in the first part of my doctoral thesis, I have sought out to familiarize the reader with the specialized literature regarding the sources of the written law, regarding The Church in Wallachia, during the Phanariot era.

In the second part of my doctoral thesis, I have nevertheless made an in-depth presentation of the collections of laws, the state and Church laws, elaborated, adopted and/or applied during the Phanariot period, in Wallachia. I will make reference, in the first place, to the main legislative monuments from the Phanariot era: *Nomocanonul* of Gheorghe from Trapezunt, *Așezămintele* of Constantin Mavrocordat, *Manualul de legi* of George Fotino, *Pravilniceasca Condică* and *Legiuirea Caragea*. Besides these legislative sources, within this chapter I have also presented and analysed other legislative documents (charters, instructions and suggestions etc.), but also various canonical and Nomo canonical collections appeared in the meantime.

In the third part of my doctoral thesis, which is also the most important part, both from the point of view of its length, as well as from the point of view of the information presented, I have made an analysis of the main canonical and judicial institutions of the Church, during the Phanariot period, in Wallachia, with the indication of its canonical and judicial bases.

More to the point, the analysis unfolding in the third part of the thesis makes reference to the following institutions of the Church: the parish, the monastery, the episcopate, the metropolis, the kinship and its forms of organization and manifestation, the marriage, the judgement of the lord of the land and the ecclesiastical judgement and the institution of the property.

For each of these institutions, before the identification and presentation of the Phanariot legislative provisions, I have chosen to indicate the more important canonical and regulatory aspects. Subsequently, in the case of the institution of marriage, I have proceeded to expounding its canonical and Nomo canonical aspects. And with a view to the Church judgement, I have indicated, in the first place, the canonical and Nomo canonical bases, and afterwards I have proceeded to the in-depth analysis of some aspects such as: the judgement of the lord of the land in light of the Phanariot legislation, provisions of the Phanariot legislation regarding the secular and the ecclesiastical judgment, the provisions of principle, enunciated by the legislation of the Church (the canonical and the Nomo canonical legislations), concerning the judgement, and affirmed in the text of the Phanariot legislation in Wallachia.

With a view to the institution of property, besides the enumeration of the norms of the Phanariot legislation, we are also interested in the impact of the provisions of the Byzantine

law upon the regulations regarding the administration of goods, during the Phanariot era, in Wallachia.

Therefore, in the last part of my research thesis, I have made express reference both to the legislative text, as well as to its specificity, and moreover, I have made reference to the manner in which this text refers to the institutions of the Church presented in this thesis, during the respective period, that is, the Phanariot period.

As it was natural, in the Conclusions of my thesis, I have reiterated and propounded both the main idea which has guided me in my scientific research activity, that is the idea of bringing a veritable contribution to the knowledge of the canonical and judicial institutions of the Church during the Phanariot period, which, unfortunately, up to the present moment, these institutions have not made the object of a specialized study of the amplitude of our thesis.

Consequently, I want to mention the fact that the effort of my work of scientific research can be also proved by means of the bibliographical list – ample and diverse – with which I have concluded the pages of my doctoral thesis, in the manner requested on the other hand by the methodology of the work of scientific research.