

## LEGAL SUBSTRATUM AND SOCIAL CONDITIONS OF DISSOLUTION OF MARRIAGE IN MOLDAVIA COMPARATIVE STUDY (14<sup>TH</sup>–17<sup>TH</sup> CENTURIES)

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**ABSTRACT.** The main objective of the study is to show the specifics and features of the social phenomenon of divorce in medieval Moldavia. Divorce was known in all civilizations, however, in the context of European history, both common and specific features were observed in the Principality of Moldavia. The study of documentary historical, legal and act material of the era, notes and information of Catholic missionaries shows that in the Principality of Moldavia not only men, but also women had the right to divorce and remarry. Moldavian women could and had the right to initiate a divorce.

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Issues related to family life in the Middle Ages are a less explored topic in Romanian historiography. In recent years, this topic has become more and more tempting, as in-depth studies of private life open up new perspectives for studying social, demographic, every day, mental, moral, psychological and other problems of society. In addition, there is an acute need in historical science for such research, because the family as an institution has always been of special interest and is always a topical issue.

Closely related to and resulting from marriage, divorce is a highly sensitive social phenomenon. In medieval Moldova, both men and women had the same rights when it came to separation or remarriage. The word “divorce” comes from the Latin language — “divortium”, “separation”. In various explanatory dictionaries, it is translated as follows: “dissolution of marriage by court order”,<sup>1</sup> “legal dissolution of mar-

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<sup>1</sup> See: *Le Petit Larousse illustré 2001*, Paris 2000, p. 266.

riage” or “separation by divorce”. The legal notion of “divorce” (Lat.: *divortium*) means “separation, parting, separation of spouses”.<sup>2</sup>

Discussions on this issue in the historical literature have generated many opinions. For example, in the monograph *Rozwody w rodzinach magnackich w Polsce XVI–XVIII wieku* [Divorces in magnate families in Poland in the 16<sup>th</sup>–18<sup>th</sup> centuries], the Polish historian Iwona Kulesza-Woroniecka argues that the term “divorce” comes from civil law, and not from canonical or ecclesiastical law. In the 16<sup>th</sup> and 18<sup>th</sup> centuries, this notion meant “the official decision on the invalidity of a marriage”. It is also important how this terminology is used in the sources. In church documents and apostolic canons concerning marriage, the following terms are found: *nullitis matrimonii*, *nullitatis matrimonii*, *divortio et separatio*. Instead, in private documents, letters, memoirs, and so on the word “divorce” is used.<sup>3</sup>

In Catholic states, marriage was considered inviolable. Relatively recent studies have established that this was not the influence of Christianity, as previously thought. This was the legacy of the Roman world in the first centuries of the new era, a world in search of stability and the transformation of moral values. This change was especially noticeable among the rural population. Then, when the Church tried to impose its own family model in these communities, it had a better chance of success, since a very similar model already existed. It remained to attract aristocratic families, and in this process, there was a double influence: from above, from the Church, and from below, from the rural world.<sup>4</sup> However, the tendency to impose an ideal model of marriage has collided with the realities of everyday life. Thus, in the Middle Ages, some families continued to break up by repudiating women and by divorcing. According to Phillipe Ariès, divorce “cannot be regarded as a means of correcting a mistake, but as the normal sanctioning of a feeling which neither can nor must last and which must therefore give way to the next”.<sup>5</sup>

In the historical literature we also find various names and explanations for this social phenomenon. In modern historiography, several authors have addressed the issue of divorce. Thus, Matei Cazacu, in his article on the situation of women in the 14<sup>th</sup>–19<sup>th</sup> centuries “La famille et statut de la femme en Moldavie” [“The family and the status of women in Moldova”], analyzing the reasons for divorce in the Middle Ages, mentions that adultery, alcoholism, absence of virginity on the wedding night were recognized by the court as grounds for separation in the case of a church marriage.

<sup>2</sup> M. Bartošek, *Encyklopedie Římského práva*, Praha 1981, pp. 111–112.

<sup>3</sup> I. Kulesza-Woroniecka, *Rozwody w rodzinach magnackich w Polsce XVI–XVIII wieku*, Poznań–Wrocław 2002, pp. 1–3, 8.

<sup>4</sup> M. Székely, *Structuri de familie în societatea medievală moldovenească*, “Arhiva Genealogică” 1997, vol. 4, no 1–2, p. 75–76; idem, *Pentru o istorie a vieții zilnice*, “Magazin istoric” 1997, vol. 31, no 5, pp. 57–59.

<sup>5</sup> Fh. Ariès, *Le mariage indissoluble* [in:] *Sexualités occidentales*, eds. F. Ariès, A. Bejin, Paris 1982, p. 146.

Another reason for the divorce was the husband's refusal to return to the marital home after a period of imprisonment.<sup>6</sup>

Maria Magdalena Székely made a significant contribution to the study of the topic, and in her article "Family Structures in Medieval Moldavian Society", she also dwells on the chapter on divorce. Using rich documentary and historiographical material, she points out: "Divorce was allowed in Moldova, among the reasons for the separation of spouses were: adultery, misbehavior, sodomy, pedophilia, lesbianism, exhibitionism, pandering, heresy, beating and death threats from the husband, expulsion of the wife from home, the monasticism of one of the spouses".<sup>7</sup>

Another well-known specialist in the field of the medieval family, Sarolta Solcan, also addresses the issue of marriage dissolution. In the monographic study "The family in the 17<sup>th</sup> century in the Romanian Principalities", the author states: "Very rare information on divorce refers almost exclusively to situations where the man requested separation".<sup>8</sup> We do not agree with this point of view and in this study we present a number of counterarguments. A special phenomenon is the right of women to divorce. There are many cases where the initiators of the divorce were women. In some way, however, the author admits that the reasons for divorce could not be "unilateral", "the dissolution of marriage could be obtained only in case of immorality of the spouses",<sup>9</sup> and argues her position with the situation in European countries: "Here, as on the rest of the continent, we rather face a family in which the woman condescendingly accepts male adultery, the husband's relationship with maids and women of low status".<sup>10</sup> Obviously, we have a lot in common with other European countries in terms of divorces, but we believe that it would be good to highlight the specifics of the Romanian space.

In 2005, another monographic study by the researcher Sarolta Solcan appeared — "Women from Moldavia, Transylvania and Wallachia in the Middle Ages", in which the author provides new information on divorce, describing different cases of divorce among Catholics and Orthodox. This is a significant historiographic progress in highlighting the problem of the female factor in the medieval history of the Romanian Principalities.<sup>11</sup>

Another specialist in this field, Constanța Ghițulescu, in the article "Family and Society in Wallachia (17<sup>th</sup> century)" emphasizes the following:

<sup>6</sup> M. Cazacu, *La famille et le statut de la femme en Moldavie (XIV–XIX siècles)*, "Revista de Istorie Socială" 1997–1998, vol. 2–3, p. 12.

<sup>7</sup> M. Székely, *Structuri de familie în societatea medievală moldovenească*, pp. 75–76.

<sup>8</sup> Ș. Solcan, *Familia în secolul al XVII-lea în Țările Române*, București 1999, p. 169.

<sup>9</sup> *Ibidem*, p. 191.

<sup>10</sup> *Histoire de la famille*, eds. A. Burguière, Ch. Klapisch-Zuber, M. Segalen, F. Zonabend, Paris 1986, pp. 91–92.

<sup>11</sup> Ș. Solcan, *Femeile din Moldova, Transilvania și Țara Românească în Evul Mediu*, București 2005, pp. 77–79.

If divorce was forbidden for the Catholic space, it was not so for the Orthodox space. In Wallachia, marriage does not imply indissolubility; the Orthodox Church accepts divorce. Two spouses may request separation for the following reasons: because of adultery, leaving the marital home, because of “husband’s hostility”, if the woman is not a virgin on her wedding night, if one of the spouses wants to become a monk, and so on.

According to the author, the reasons for the divorce could also be “the wife’s defects, such as: wickedness, lack of wisdom, waste of wealth and ineptitude in housekeeping (...), “bad living” associated with drunkenness and waste of dowry”.<sup>12</sup>

In 2004, another monographic study by the researcher Constanta Ghițulescu, “Wearing sirwal and işlic. The Church, sexuality, marriage and divorce in the Romanian Principalities of the 18<sup>th</sup> century”, where the chapter “On divorce” expands and analyzes in detail the issue of divorce in the era under consideration. Based on numerous studied documents, the author presents various cases of divorce and their consequences.<sup>13</sup>

Regardless of the time, dissolution of a marriage was a complicated and lengthy process. The procedure was based on certain rules and customs, which were entirely within the competence of the church. Divorce was achieved only in cases of serious discord between the spouses and after unsuccessful attempts to reconcile them by close relatives: parents, brothers, sisters, godparents, etc. Most historians dealing with the issue under study usually rely on documents reflecting the causes and procedure of divorce.

*Divorce* and *separation* were not the same thing. The separation of spouses could be temporary and did not involve the final dissolution of the marriage in court. Divorce, by contrast, was a complex legal process that forced spouses and the entire family to comply with a series of rules and legal responsibilities. Divorce also entailed a moral responsibility to the church, relatives and society. The decision to dissolve a marriage in most cases was very difficult. We have already mentioned that in medieval Moldavia both men and women had the right to divorce.

Obviously, the reasons for divorce and the circumstances of the dissolution of marriage were very diverse. But it goes without saying that they were not made public, especially when they took place in princely families. For example, much has been and is being written in the historical literature about the political activities of Prince Peter VI the Lame, but very little is known about his personal life<sup>14</sup> and his divorce

<sup>12</sup> C. Ghițulescu, Ghițulescu C., *Familie și societate în Țara Românească (secolul al XVII-lea)* [in:] *Studii și Materiale de Istorie Medie*, vol. 20, 2002, pp. 110–113.

<sup>13</sup> C. Ghițulescu, *În șalvari și cu işlic. Biserică, sexualitate, căsătorie și divorț în Țările Românești a secolului al XVIII-lea*, București 2004, pp. 446–448.

<sup>14</sup> Younger brother of Alexandru II Mircea the Prince of Muntenia. He was a descendant of Vlad Dracul: the House of Bogdăneștii, on the female side through the daughter of Radu the Fair, the granddaughter of Vlad Dracul, the wife of Stephen the Great, and the House of Mihneștii on the male line, through Mihnea cel Rău, the son of Vlad the Impaler and the grandson of Vlad Dracul, whose grandchildren, in turn, were Peter the Lame and Alexandru II Mircea.

from his first wife.<sup>15</sup> Peter VI the Lamé was born in 1540 and married around 1562, at the age of 22. His first wife was Elena Cherepovich “(Cherepovits or Seerepi) daughter of Niculae Cherepovits, a Serb from Transylvania”. From this marriage, the girl Teodorița was born, “whom her mother took with her in the third year after the marriage, when they parted (divorced)” with Peter VI. We have no information about the reason for the dissolution of the marriage, we only know that Peter VI was married twice more; his second wife was Maria Amiralî Paleologu from Rhodes, from whom he had a daughter, Maria (wife of Zotu Spătaru), and the third wife was “Irina Doamna, the former nurse in their house, from whom their son Ștefan was born, in 1584”.<sup>16</sup> But these marriages are a special topic, which we will discuss in other paragraphs.

Another parting in a princely family is the separation of Prince Alexandru Iliăș (1616–1618, 1627–1629), Iliăș’s son (1591) and Alexandru Lăpușeanu’s grandson, with his wife. According to the Cantacuzene Chronicle,

Alexandru Voivode [...] separated from his princess and hastily fled to Brăila, and his princess went to Giurgiov. Radu Voivode, learning about this, sent him money and clothes as a gift. But Alexandru Voivode, with a heavy heart and concern for his princess, did not even know where she was.<sup>17</sup>

Of interest is the reason for this so-called *separation*, because we cannot call it a divorce. Alexandru Iliăș, having lost power, fled the country, abandoning his wife, whom he would later search for. He probably pursued a certain interest and did it out of fear of endangering the life of the princess. From the lines of the chronicle, it is clear what feelings Alexandru Iliăș had for his wife. The person who found her was generously rewarded by Alexandru Iliăș, who then went to Rusçuk, where he “met his princess”.<sup>18</sup>

One more *separation in the princely house* took place when Prince Gheorghe Ștefan (1653–1658) lost power and abandoned his wife, Princess Safta. This case is described in several sources of that time: “Princess Safta for a long time lived abandoned by her husband, who did not want to take her with him into exile, where he went with the Russian kept woman Stefania Mikhailovna, or she did not want this”.<sup>19</sup> Contemporaries described Gheorghe Ștefan as a depraved person devoid of moral values, “lover of wine [...] women and entertainment”.<sup>20</sup>

<sup>15</sup> C. Rezachevici, *Cronologia domnilor din Țara Românească și Moldova. a. 1324–1881*, vol. 1, București 2001, p. 707.

<sup>16</sup> Șt. Greceanu, *Genealogiile documentate ale familiilor boierești*, București 1916, p. 380.

<sup>17</sup> A. Uricarul, *Cronica paralelă a țării Românești și a Moldovei*, ed. G. Ștrempel, București 1993, p. 344.

<sup>18</sup> *Cronicari munteni*, ed. M. Gregorian, București 1961, pp. 145–146.

<sup>19</sup> N. Iorga used a study published “in a very rare German paper” *Baltische Studien* of the Society for the History of Pomerania, translated by the late Papadopol Calimah.

<sup>20</sup> N. Iorga, *Istoria românilor prin călători*, vol. 2, București 1981, pp. 253–254.

Radu Popescu also left a negative comment about Gheorghe Ștefan, and in particular about how he rejected his wife and sent her home from exile without any material support: “after [...] he was defeated in Moldavia, and disgraced, he went to the Polish Lands, and from there to Moscow, and then to other lands, to the very end, and he sent his princess from the Polish Lands to Moldavia to sit at her home; because he did not love her, since he had kept women”.<sup>21</sup> In the end, life kicked him back: Gheorghe Ștefan traveled to many countries, he was in Austria, Prussia, Russia, even Sweden; he ended his days in Stettin in 1668. His remains were brought to his land and buried in the Cașin monastery founded by him.<sup>22</sup>

The case of Sigismund Báthory (1572–1613), Prince of Transylvania (1581–1601) also serves as an illustration of divorces in princely families. Negotiations for the marriage of Sigismund III began in the second half of February 1595. His chosen one was Maria Christina (November 10, 1574), a princess from the House of Habsburg. According to the testimony of the era, she was a very refined personality, well-educated and cultured. Her sister Anne was the wife of the king of Poland, Sigismund Vasa (1566–1632), and her brother Ferdinand II was king (from 1617 — King of Bohemia, from 1618 — King of Hungary). From January 31 to February 27, 1595, the messages from Prague to Graz followed. The girl’s mother and her sister were against this marriage, they tried to postpone the wedding, but the brother insisted, since the marriage pursued political interests and was urgent. On March 1, envoys from Transylvania were received at the royal court, and on March 2, 1595, Carrillo, head of the Transylvanian delegation, officially asked for the hand of the princess. Maria, the bride’s mother, wanted as a wedding gift several thousand guilders and the estates that will bring annual income of this amount. The wedding was scheduled for June 11. Due to the illness of the bride, Maria Christina, the plans changed, and the wedding procession started only on June 15 from Graz through Bratislava, Košice and Sathmar, where Sigismund Báthory had to come secretly to see the bride. The wedding took place on August 6 in Alba Iulia. The bride received as a gift Făgăraș<sup>23</sup> with its surroundings (before that it was the property of Balthazar Báthory) and many jewels and valuables. Three weeks later, Sigismund went to war. In 1597, after his relationship with Rudolf broke down, Sigismund declared that he agreed to divorce Maria Christina, who wanted not only a divorce, but also a *separation*. In May 1597, Carrillo went to Rome to seek the divorce, but the Pope did not grant permission. They tried to persuade her mother, Maria, to write to the Pope and ask for the divorce. On April 18, Maria Christina wrote a letter to the king asking him to let her return home. She wrote the same to her mother.<sup>24</sup> On August 18, she left Alba Iulia. In May

<sup>21</sup> *Cronicari munteni*, 1984, vol. 1, p. 292.

<sup>22</sup> C. Giurescu, D. Giurescu, *Istoria românilor din cele mai vechi timpuri până astăzi*, București 1975, p. 437.

<sup>23</sup> B. Farkas, *Erdély története: A mohácsi csatától a váradi békekötésig, 1526–1538*, Kolozsvár, 2000, p. 149.

<sup>24</sup> L. Bazylow, *Siedmiogród a Polska 1576–1613*, Warszawa 1967, pp. 79–81, 90–92.

1599, Carrillo was in Prague to announce his departure for Rome to inquire about the divorce. On June 24, 1599, he personally brought there a statement that Sigismund and Maria Christina had never been married, that is, they did not live as husband and wife (!). A few weeks later, a special commission set up by the Pope announced the approval of their divorce. The final decision was made later, on August 17, 1599, in Graz: “Hoglie si é a la fine publicata la senteza o dispensa sopra la dissolutione del matrimonio, onde non avendo piú a fare, me ne parto questa sera per Vienna, Carrillo do kardynala Piotra Aldobrandini, Graz, 17 sierp 1599, in Carrillo Alfonz jezuita- atya levelézese é iratai 1591–1618”.<sup>25</sup>

A very special case of divorce is described in a document dated July 26, 1600. This historical source tells how a woman obtained a divorce, but her husband later initiated the process for her return to the family. The scribe Gheorghe, the husband, complained to Metropolitan Dionysius of Tarnovo and Moldavia that his wife had obtained a divorce from the Bishop of Huși without his knowledge, “by tricks and cunning” and that he wanted to force her to return to him. This scribe Gheorghe testified that “his wife, Drăguța, obtained a *divorce paper* by cunning, and... Bishop Ioan gave a *justification paper* so that (Gheorghe — author’s note) could take his wife Drăguța again”<sup>26</sup>. It can be seen from the text of the document that Drăguța’s relatives, namely her brother Onufrie, also participated in the process. The latter testified that this *justification paper* of the scribe Gheorghe “was received without the knowledge of the bishop, but one monk named Isaiah, having received three beehives from the said Gheorghe, forged the document, as if it were from the bishop, and gave it to him”<sup>27</sup> (DIRA XVI/IV, 298).

Since the testimony varied, there were many ambiguities in this situation, and several persons involved in the case were summoned to the court for investigation:

Hieromonk Athanasius, Hieromonk Eutychius, righteous and pious men, whom we carefully questioned in our humility, testified that Gheorghie, by cunning, took the paper from the aforementioned monk Isaiah. In our humility, in connection with their testimony, we gave the woman a separation from her ex-husband Gheorghie, in accordance with the divorce that was made by the God-beloved Ioan the Bishop of Huși, and this George should be separated from his ex-wife Drăguța.<sup>28</sup>

This document once again proves the right of women to divorce. It is also interesting that the document contains certain terminology characteristic of that time — “divorce paper” (*carte de despărțire*) and “justification paper” (*carte de dezvinovățire*), which tells us about the different situations that arose in case of divorce. Unfortunately,

<sup>25</sup> *Monumenta Hungariae Historica. Diplomataria*, ed. E. Vereess, Budapest 1906, vol. 32, pp. 101–102.

<sup>26</sup> *Documente privind istoria României, veacul XVI. A, Moldova*, ed. M. Roller, București 1952, vol. 4, pp. 298–299.

<sup>27</sup> *Ibidem*, p. 298.

<sup>28</sup> *Ibidem*, pp. 298–299.



we do not have documents revealing the reason for this divorce, but since the woman won the case, it is clear that her husband was to blame. Events can be explained very simply. Firstly, Drăguța obtained a divorce without the presence of her husband. Without convincing evidence and witnesses, it was impossible to win a lawsuit and receive a “divorce paper” from the bishop. Secondly, the “justification paper” was issued in cases of cunning of one of the spouses and only if the guilt was acknowledged.

The institution of witness in the situation of dissolution of a marriage was of undeniable importance, the main witness had to be a priest, since divorce, like marriage, was formalized only according to church rites and traditions. The right of Moldavian women to divorce is also confirmed by numerous mentions in the narrative sources of that time (chronicles, historical works, memoirs, etc.), especially of foreign missionaries and travelers. Catholic missionaries were astounded by this because, unlike the Orthodox and Protestant churches, the Catholic Church did not recognize divorce. Only in exceptional cases could Catholics obtain official confirmation of the dissolution of marriage, and only on the grounds that the marriage was not legitimately officiated, which meant the annulment of marital obligations.

In the famous work of Johann Sommer “The Life of Jacob the Despot, Lord of Moldavia” (1563), there is a separate chapter “On Divorces”, which notes:

The Despot was adamant in his punishments, especially against those who did not keep the marriage covenant, according to the custom of this people, or even stubbornly violated it. For such a custom among them (among the Moldavians — the author’s note) has taken root, which still remains as a kind of law, that if a wife has been insulted or beaten, she is free — as if it were a serious injury — to move into another marriage, if she can pay her husband a third of a gold coin, thus proving that she is beyond his power.<sup>29</sup>

The author is indignant that

this custom was imitated by the Hungarians and Saxons, living scattered throughout the country, so that many of them had three or even four wives in their lives, from whom they often had children, as well as those wives from other men with whom they had been married after leaving their husbands.<sup>30</sup>

Antonio Maria Graziani (1537–1567) left a similar account in his “Description of Moldavia”: “Men often dissolve marriage even because of the most insignificant words, sending divorce papers to their wives (*Premisso uxori nuncio* — repudiating the wife) and paying twelve denarii to the treasury”.<sup>31</sup> At the end of the 16th century, in 1599, Bernardino Quirini (?–1605), “bishop of Argeș in the provinces of Moldavia

<sup>29</sup> *Călători Străini despre Țările Române*, eds. M. Alexandrescu-Dersca Bulgaru, P. Cernovodeanu, M. Holban, București 1970–1972, vol. 2, p. 262.

<sup>30</sup> *Ibidem*, pp. 260–261.

<sup>31</sup> *Ibidem*, pp. 382–383.



and Wallachia”, describing the situation of Catholics, was struck by family relations and freedom to dissolve marriages:

I also became aware that many married Catholics who have received a divorce paper [...] with permission to remarry, as is done in all Orthodox places, live for many years with illegal wives in a second illegitimate marriage, and both of them have children from the second marriage. For not to declare bastards these children of their [...] because they do not want to return to live with their first spouses, and if I forced them to do this, they would allow to be excommunicated and they would immediately refuse due obedience, converting to Orthodoxy in which such a marriage is usually allowed after a divorce.<sup>32</sup>

This text also proves the existence of another cause of divorce, namely the conversion to another confession. The author emphasizes the depravity of the Orthodox population in family relations and motivates the dissolution of many marriages with marital liberties offered by the Orthodox Church.

Conventual Franciscan Paolo Bonnicio (?–1632) from Malta lived in Moldavia for nine years. In his reports “On Moldavia” he noted that the customs remained unchanged and that the ability of women to get rid of an unwanted marriage depended on the available financial capital, and not on public morals. In this regard, we find a note by Paolo Bonnicio (1632), who wrote:

It is customary for bishops to make separation decisions; [...] when the spouses no longer want to be together, they offer the bishop as much money as is necessary to reach an agreement; the divorce takes place on the spot, and each can remarry; that is, a husband can take another wife, and a wife can take another husband [...] and one who would persuade a Catholic be baptized in the schismatic faith is said to be forgiven of all his sins.<sup>33</sup>

Most missionaries emphasized the equality of men and women in the right to initiate and obtain a divorce. In the first half of the seventeenth century, this fact is mentioned in all accounts. The Italian monk Niccola Barsi (?–1640) from Lucca visited Moldavia twice, between 1632–1639, and left several observations about family relations: “When someone does not like his wife, whether she is ugly, or he does not have a heart for her, or he does not love her, even if he has a child with her, then he takes a cow and gives it to the metropolitan. That allows both of them to remarry the person they like”<sup>34</sup>.

Pietro Bogdan (Deodato) Bakšić (ca. 1601–1674) wrote:

I saw that when someone comes in a case, a husband against his wife or a wife against her husband (...), the case is resolved quickly, regardless of canons or councils [...] When he wants to separate a wife from her husband and break the marriage, as is customary with them, for the most insignificant

<sup>32</sup> Ibidem, vol. 4, p. 44.

<sup>33</sup> Ibidem, vol. 5, pp. 11–13, 24.

<sup>34</sup> Ibidem, vol. 5, p. 79.

word, he first makes an agreement with them: “How much do you give?”, and first setting the price, he allows the man to marry another wife, and the woman to take another husband.<sup>35</sup>

The Catholic Church treated marriage as an agreement and as a sacrament. A legal marriage could not be annulled. However, according to the documentary material and testimonies of Catholic missionaries, sometimes, very rarely, in exceptional cases, “women had the right to initiate the dissolution of a marriage” and even more rarely could win lawsuits, not being legitimately and morally protected by society. It is interesting that all the divorce cases from this period show that the women were loyal to the family and claimed the marriage dissolution only in desperate situations, when there was no other way out.

Historical documents clearly show that the rights and status of women in society were not equal to those of men. There were many reasons for divorce that men could use. At the same time, women relied solely on mostly unwritten laws, which were established by secular traditions and customs, to obtain a divorce.

It should be noted that the situations and reasons for the dissolution of marriages were different, and their consequences for women in medieval society were similar: sometimes they lost their social status, found themselves isolated from society and even despised. To illustrate, let’s take an example when a husband wanted to divorce his wife, but then they reconciled “and lived together”.<sup>36</sup> After the husband’s death, the wife was left with the property left to her by her husband by will, but the husband’s relatives tried in court to claim the inheritance on the grounds that at some point the two wanted to separate:

1637. Vasile the Voivode (Vasile Lupu — the author’s note), for Dumitru Gheuca [...] and his sister Angelina, who are suing their sister-in-law Mărica, wife of Sămion Gheuca [...] for his inheritance, Băcanii, on Tutova [...] Simion Geuka wanted to divorce his wife, Mărica, because of the hatred they felt for each other, but after that they reconciled and lived together, from then until what happened.

The widow showed her husband’s letter to “boyars and priests and to the abbots of the holy monastery of the Assumption of the Blessed Virgin and the Holy Friday, according to which, after death, he leaves everything to his wife: “This is for the commemoration, as she will leave for her commemoration; he gave his grandchildren everything he wanted during his lifetime”.<sup>37</sup> At the end of the trial between Anghelina and her sister-in-law, the decision was made in favor of the latter. The wording of the court is interesting: “The Sovereign does not believe the first acts”.<sup>38</sup>

Some clarifications are needed here. As can be seen from the terminology of the document, in the case under consideration it is not about divorce, but only about *the*

<sup>35</sup> Ibidem, p. 244.

<sup>36</sup> *Documenta Romaniae Historica, A. Moldova*, București 1998, p. 197.

<sup>37</sup> Ibidem.

<sup>38</sup> Ibidem.

*intention to divorce*, which may have taken place in the first years of the reign of Miron Barnovschi. We assume that when the lawsuit was initiated “because of the hatred they felt for each other”, the husband, having no good reason to blame his wife and fearing that as a result of the trial he would lose part of his fortune in her favor, in order to save his estates, gave them to his brother and sister. In the end, as can be seen from the document, the couple reconciled and lived together “from then until what hapened” (until his death — author’s note). But after the death of Gheucă, his close relatives, his brother and sister, intended to take away his brother’s property, although the wife of the deceased had the will. Surprisingly, the trial reached the court of last instance, of the prince. In turn, the prince, investigating the case “with all the evidence”, made a very clear decision against the claims of the family of the deceased, emphasizing that he “does not believe the first acts that were made in the hatred, when the boyar wanted to divorce his wife”. So, it is quite clear that the spouses were not divorced. In our view, the very fact that the woman was involved in the divorce attempt and was blamed by her husband, who wanted to leave her, prompted their relatives to try to get the property to which she was entitled. There are many documents that tell us about such facts, when, having wills and not being divorced, women were still forced to defend the property left by the husband against the claims of his close relatives. To conclude this part, we note that this document describes an aspect of the legal and social status of women during the period of study, when in most cases and under certain circumstances women were not protected either by law or by society, and even the slightest suspicion could place them “outside society”.

In the Romanian Principalities, we do not know any documentary attestation of the dissolution of marriage due to evasion of marital duties, but a number of documents have been preserved that prove the adultery cases. Adultery, called there “preacurvie” in the Middle Ages, was the fault of a wife who allowed herself to have sexual intercourse outside of marriage.<sup>39</sup> A woman was punished for adultery both according to canonical and secular law, according to written laws and customary law: “One need to know that a woman, if she is caught and convicted of adultery, must be imprisoned in a monastery, and if she is convicted of another guilt (\*\*\*\*), then she will not be imprisoned in a monastery, but will be separated from her husband and in for 5 years will not be able to marry another man”.<sup>40</sup> So, according to the document, a woman accused of adultery is separated from her husband and sent to a monastery. It also indicates the period during which a woman did not have the right to remarry, i.e. 5 years. In addition, in order to eradicate wild morals, the punishment for adultery was toughened by the prohibition of the punished woman from marrying her accomplice: “Whoever is accused of adultery with any woman cannot marry her”.<sup>41</sup>

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<sup>39</sup> *Istoria dreptului românesc*, București 1980, p. 443.

<sup>40</sup> *Manualul legilor sau așa numite Cele șase cărți*, ed. C. Harmenopolos, București 1921, pp. 342–345.

<sup>41</sup> *Ibidem*, pp. 343–345.

In the “Life of Vlad the Impaler” we find descriptions of how women were punished for adultery:

If any woman committed adultery, he commanded to cut off her private and skin her, and tie her naked and hang her on a table in the middle of a fortress or a town. He did the same with girls who had not retained their virginity, and with widows, and cut off the breasts of others, skinned others and impaled them through their private parts on a red-hot rod that came out through the mouth, and so tied them naked to a post until their flesh and bones fell off or became food for the birds.<sup>42</sup>

The woman guilty of adultery lost her dowry in favor of her husband. On September 5, 1533, Vlad Vintilă (1523–1535) upheld “by justice” (*pravdu*) and “according to the old law” (*stari zakon*) the decree of Vlad Călugărul (1481–1482) on the confiscation of by the outraged husband of the property of his adulterous wife.<sup>43</sup>

The Princely Act of 1612 from Wallachia shows us the attitude towards adultery at that time. Radu Mihnea, who judged Lupu Mehedințeanu’s wife, states that “she was caught committing adultery with a servant [...] and her head should have been cut off [...] all the boyars begged to spare her life, but to take away all her patrimonial estates, all her lands and villages”.<sup>44</sup> As can be seen from the document, according to a decision made on the basis of custom, the husband becomes the owner of his wife’s property.

If a husband was accused of adultery, the wife became the owner of his property. In addition to the simple cases of adultery shown so far, we have also found documents proving the existence of more complex cases, which find a solution at least strange, but still “legal”. The documents confirm the application of a rule of *consuetudinary law* and at the same time the practice of redemption of guilt through a compensation called the “head payment” (*plata capului*). There are some exceptional documents. For example, a document from 1609<sup>45</sup> describes a case of a double crime against morality — adultery and homicide. A woman and her lover killed her husband and paid compensation for the head:

1609 June 24, Bârlad. [...] Here we are, Cârstea Dănilă, the head of the council and 12 members of the council of the town of Bârlad [...] this woman appeared before us and before all the local elders, namely Mariica, and her brothers, Gavril and Toader, sons of Sorcăi, grandsons of Onul, from the village of Oleșești, not forced or oppressed by anyone, but for her great sin, that she cut off the head of her husband, namely Văscan, and made love with another man, namely Burduban from Spăriați. Thus, she had nothing to pay for the head, but she sold her part of the patrimonial estate and the part

<sup>42</sup> *Cronicile slavo-române din sec. XV–XVI*, ed. I. Bogdan, București 1959, p. 210.

<sup>43</sup> *Documenta Romaniae Historica, B. România*, București 1975, vol. 24, p. 269; V. Georgescu, *Bizanțul și instituțiile românești până la mijlocul secolului al XIII-lea*, București 1980.

<sup>44</sup> *Documente privind Istoria României, veacul XVII. B. România*, ed. M. Roller, București 1953, vol. 2, pp. 116–177.

<sup>45</sup> *Istoria dreptului românesc*, București 1980, vol. 1, p. 443.

of her brothers mentioned above, from the village of Oleşeşti, on a branch of the Putna, the part of their grandfather Onul.<sup>46</sup>

This case is special and strange from all points of view. The lady, having escaped punishment for two grave crimes, was able to pay for the head (*avoiding the death penalty!* — author's note), sacrificing the fortune of her brothers. In medieval Moldavia, as in all European countries, the only punishment for killing a person was the death penalty. The use of the death penalty was also envisaged for adultery, but, obviously, as the mentioned document shows, this could also be avoided with the help of compensation. There were no such cases in any European country, because there was a difference between adultery and murder. Europe inherited the punishment for adultery from Byzantine law (*lex Iulia de adulteriis*) and especially from *German law*. Various methods of punishment were provided for: flogging, public shaming, monetary fines, etc.

It is interesting that in the neighboring countries of Moldavia the reasons for divorce were similar. For example, in Russian Galicia, among the Orthodox population of the region in the 15<sup>th</sup> and 16<sup>th</sup> centuries, the reasons for divorce were as follows: marital infidelity; evading the fulfillment of conjugal obligations; adultery; suspicion of adultery; treason; the danger of infringing on the rights or attempt on the life of one of the spouses; the absence of the woman from home without the permission of her husband; participating in entertainment with other men without the permission of the husband; visiting the public bath, the theater or the circus without the permission of the husband; abortion; the impossibility of living together; the disappearance of one of the spouses; imprisonment; madness (mental insanity); the refusal of one of the spouses to live together; the refusal of one of the spouses to accept Christianity; the monkhood of one of the spouses; infertility; if the woman was not a virgin on the wedding night; leprosy; starvation of the family (not ensuring support for daily living); lack of communication with the wife's family; lack of communication with the husband's family; divorce by mutual consent of the spouses; embezzlement of wife's property.<sup>47</sup>

In the Czech Kingdom in the 11<sup>th</sup>–16<sup>th</sup> centuries, in historical documents, the dissolution of a marriage was called “rozvod ot stola a lože”, that is, the separation of spouses. “Rozvod ot stola” meant the division of common property, and “rozvod ot lože” meant the termination of marital relations.<sup>48</sup> According to the “Právo Země České” (1347), if a woman had real estate in her own possession that was not recorded in the name of her husband during marriage, then no one had the right to claim her property.<sup>49</sup>

<sup>46</sup> *Documente privind Istoria României*, vol. 2, p. 224.

<sup>47</sup> K. Sochaniewicz, *Rozwody na Rusi Halickiej w XV i XVI wieku*, Lwów 1929, pp. 7–13.

<sup>48</sup> *Dejiny státu a práva v česko-slovensku do roku 1918*, eds. Karel Malý, F. Sivák, Bratislava 1992, p. 152.

<sup>49</sup> Н. Иванишев, *Древнее право чеховъ*, Киев 1876, p. 142.

In medieval Bulgaria, both spouses formally had the right to divorce, but in reality the situation was different. The reasons for divorce in medieval Bulgaria were: adultery, threat to the life of one of the spouses, drunkenness of the husband, evasion of the husband from fulfilling marital obligations (for three years), insanity, leprosy, absence of one of the spouses from home for 3 years, torture of wife by husband. It is curious that if the wife was accused of adultery, the husband had the right to demand a dissolution of the marriage, but if the husband committed adultery, then the wife could not initiate a divorce.<sup>50</sup>

In Poland, the reasons for divorce were similar, but let's not forget about the specifics of the Catholic environment, that is, do not confuse divorce with the separation of spouses. Separated spouses lived together, but the husband was obliged to refrain from marital relations. The wife remained under the authority (could be subjected to corporal punishment — author's note) and guardianship of her husband, who was obliged to accompany his wife at all court hearings. In case of divorce (without mutual fault), when the property was divided, the husband received the wedding gifts, and the wife received the dowry.<sup>51</sup>

I. Kulesza-Woroniecka, based on the study of *Genealogy* by Wł. Dworzaczek, found 84 cases of divorces in noble families in the 16<sup>th</sup> – early 19<sup>th</sup> century, of which 5 occurred in the 16<sup>th</sup> century, 11 in the 17<sup>th</sup> century, and 68 in the 18<sup>th</sup> century and early 19<sup>th</sup> century. Based on the studied statistical material, the author concludes that the dynamics of divorce proceedings was growing.<sup>52</sup> Polish historian Witold Maisil in his work *Poznańskie prawo karne do końca XVI wieku* tells us about the punishment for adultery in the cities of Wrocław and Poznań (Poland). The author points out that the documents on adultery are very few and fragmentary. For example, in Wrocław, the punishment for adultery at the end of the 15<sup>th</sup> century and in the 16<sup>th</sup> century was a fine.<sup>53</sup> In Poznań, on the contrary, adultery was severely punished, up to the death penalty. The studied documentary material of the second half of the 16<sup>th</sup> century describes the following situation: out of 26 couples convicted of adultery, 15 people were sentenced to death, 11 persons were given a milder punishment, in 2 cases the clerk did not indicate the judge's sentence. All participants in the *adulterium duplex* were sentenced to death, that is, if two partners, a man and a woman accused of adultery, were married. 5 cases of *adulterium duplex* were recorded. In the case of *adulterium simplex*, when one of the partners was unmarried, he was not sentenced to death, but was punished with flogging and expulsion from the city.<sup>54</sup>

<sup>50</sup> М. Андреев, Д. Ангелов, *История Болгарского государства и права*. Москва 1962, pp. 240–241.

<sup>51</sup> Z. Gloder, *Encyklopedia staro-polska ilustrowana*, Warszawa 1902, vol. 3, p. 851.

<sup>52</sup> I. Kulesza-Woroniecka, *Rozwody w rodzinach magnackich w Polsce XVI–XVIII wieku*, Poznań 2002, pp. 34–36.

<sup>53</sup> W. Maisil, *Poznańskie prawo karne do końca XVI wieku*, Poznań 1963, p. 257.

<sup>54</sup> Ibidem, pp. 257–258.

In the 17<sup>th</sup> century in Moldavia, according to the documents of that time, the death penalty was no longer applied for adultery. Men, like women, could atone for their infidelity. Such a case is described in a document from 1607, when, through a lawsuit, accomplices redeemed the head:

but for the great sin that Ursul committed, since Ivan found him with his wife named Neagole when they made love, and they had nothing to pay for the head, but they sold their patrimonial estates in the village of Oleșești [...] So they got up and ransomed Ursul's head with this money for his sin [...].<sup>55</sup>

The situation, like the previous one, finds no logical explanation. First of all, the court confirms that this Ursul has committed a great sin (*sic!*). But Ursul redeems the head and the decision is made on reconciliation: “seeing their good agreement and full payment, we made this testimony from us to Pavel the dyak, until he will get the privileges from the lord”.<sup>56</sup> So, as we see, the issue was resolved by a simple material agreement, that is, by money, and there was no question of dissolving the marriage.

During the period under study, any person “guilty of the death of a human was sentenced to death, a sentence, which, however, in the period before the 18<sup>th</sup> century, could generally be avoided by allowing the murderer to atone for the death of a person. Identified and caught, the criminal paid, himself or his relatives, to the prince — in Wallachia, or to the great vornik — in Moldavia, a fine called *dușegubina* (Slavic: *loss of soul* — author’s note) in order to “ransom the head”, and compensation to the civilian side. The forgiveness of the offender by the victim or his successors after receiving compensation usually also entailed the replacement of the death penalty with a fine. The fine due for the death of a person was set in money. In the absence of cash, the payment was most often made in kind, namely: in patrimonial estates, animals, fabrics, or even by alienating freedom.<sup>57</sup>

Summarizing the above, I would like to note that the family and legal status of Moldavian women in the period under study was unique. Moldavian women enjoyed numerous legal freedoms and prerogatives, guaranteed by customary law, and subsequently by lawmen. Analysis and research of historical and legal documents shows that Moldavian women (of high origin) had a special status compared to women from neighboring countries. Emphasizing the legal side of the phenomenon of liberties and freedoms of Moldavian women, it was revealed that they enjoyed certain advantages compared to women from neighboring European countries, had the right to dissolve the marriage, while retaining the right to use property and guardianship over children; get married after a divorce; bequeath property to children, spouse, relatives, or even deprive heirs of property, and so on at their own discretion.

<sup>55</sup> *Documente privind Istoria României*, vol. 2, pp. 80–81.

<sup>56</sup> *Ibidem*.

<sup>57</sup> V. Georgescu, O. Sachelarie, *Judecata domnească în Țara Românească și Moldova (1611–1831). Partea a II-a. Procedura de judecată*, București 1982, pp. 21–22.



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