

**ALEXANDROS YPSILANTI'S CODE OF LAWS
(PRAVILNICEASCA CONDICĂ).
FROM THE DOWRY "ANTE NUPTIAS" AND "POST NUPTIAS"
TO THE "SHEET OF DOWRY" OF THE OLD ROMANIAN LAW**

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Abstract: *The examination and assessment of the contents of the Code of Laws published in the year 1780 by Alexandros Ypsilanti, Prince of Wallachia (1774–1782; 1796–1797) – known as Pravilniceasca Condică – is the result of an interdisciplinary research, carried out on the basis of documentary material of prime importance for the history of Romanian medieval law and the country's old legal institutions.*

One of these legal institutions was marriage, which occupied a leading place in the framework of juridical institutions of the Romanian principalities, even though in some Codes and Collections of secular legislation – such as the one of 1780 – we find provisions that concern only certain matrimonial documents (dowry, dowry sheet, testamentary inheritance, etc.).

Since in the specialized literature there is no interdisciplinary study with historical and legal content about Ypsilanti's Code of Laws, or about its "sheets of dowry", through our research we managed to bring new contributions regarding the genesis and legal status of the "dowry", as well as about the process of reception of Byzantine law in the Romanian geographical space at the end of the 18th century.

Keywords: *Phanariot period, Roman and Byzantine legislation, customary law, dowry, marriage*

Rezumat: Codul de legi al lui Alexandru Ipsilanti (Pravilniceasca Condică). De la dota “ante nuptias” și “post nuptias”, la “foaia de zestre” din vechiul drept românesc. Examinarea și evaluarea conținutului Codului de legi publicat în anul 1780 de Alexandru Ipsilanti, Domn al Țării Românești (1774 - 1782; 1796 - 1797) – cunoscut sub numele de Pravilniceasca Condică – este rezultatul unei cercetări interdisciplinare, efectuate pe baza unui material documentar de primă importanță pentru istoria dreptului medieval românesc și a vechilor instituții juridice ale Țărilor Române. Una dintre aceste instituții a fost căsătoria, ce a ocupat un loc important în peisajul instituțiilor juridice, deși în unele Coduri și Colecții de legiuiri laice – cum este și cea din 1780 – găsim prevederi care privesc doar unele acte matrimoniale (dota, foaia de zestre, moștenirea testamentară etc.).

Întrucât, în literatura de specialitate nu exista niciun studiu interdisciplinar cu conținut istoric și juridic despre Codul lui Ipsilanti Vodă, și nici despre „foaia de zestre”, prin demersul muncii noastre de cercetare am reușit să aducem noi contribuții privitoare la geneza și statutul juridic al „foilor de zestre”, precum și la procesul de receptare a dreptului bizantin în arealul românesc la finele secolului al XVIII-lea.

INTRODUCTION

The *Code of laws of Alexandros Ypsilanti*, Prince of Wallachia (1774–1782; 1796–1797), also known as *Pravilniceasca Condică* (1780), includes both the provisions of the Roman-Byzantine legislation and some provisions of the legal customs of the country, which led to this institution being expressed in the spirit of “Jus Valahicum”, i.e., the Old Romanian Law¹, made up of its two constituent elements, that is “jus consuetudinaris” (customary law) and “jus scriptum” (written law), in which the “dowry” and the conclusion of “dowry deeds” had a bimillenary tradition in the Romanian space, also confirmed by the Romanian wedding traditions², including those that precede or succeed it.

In Romanian culture, this practice of prenuptial and nuptial gifts has taken the form of “agreements” between the parents of the young couple, which are attested even by those ordinances or “wedding rules”³ according to which “at first

¹ N. V. Dură, C. Mititelu, *Istoria Dreptului românesc. Contribuții și evaluări cu conținut istorico-juridico-canonic* [History of Romanian Law. Contributions and evaluations with historical-legal-canonical content], Bucharest, University Publishing House, 2014, pp. 45-84.

² See S. F. Marian, *Nunta la români. Studiu istorico-comparativ etnografic* [Romanian wedding. A historical-comparative ethnographic study], 2nd vol. I, Bucharest, Saeculum Vizual Publishing House, 2008, *passim*.

³ I. Mârza, *Regulile nunților* [Wedding rules], Huși, 1872, p. 10.

the women did not give dowries to the man; later, however, they did so, and if the couple divorced because of the man's fault, he had to return the whole dowry, ..., and if the divorce occurred due to the woman's fault, then the man had the right to withhold a sixth of the dowry for each child, and up to half the dowry"⁴.

In order to familiarize the reader with the topic of the work – which has an interdisciplinary content (historical and legal) – in the introductory part, we present some of the main ideas that have guided us in our scientific research, and which have given us the opportunity to make new enlightening contributions on the genesis and the application in the Romanian society of one of the old legal institutions, namely the *dowry*.

The old *Pravilas* of the Romanian Lands – the existence of which has been testified by Greek, Slavonic and Romanian manuscripts since the 15th–16th centuries – prove that the dowry was a legal institution in the Romanian society. That is why, in the pages of this work, we want to emphasize not only this reality, which is present to this day, although, both in the Civil Code of Alexandru Ioan Cuza (1864)⁵ and in the New Civil Code (2009)⁶, this ancient juridical institution is no longer related to the sacred act of marriage, which in the Christian world of the “*Pars Orientis*” including, therefore, the Romanian Principalities, was perceived as a Sacrament of the Church, and not as a *marriage covenant*⁷, a legal act assimilated by the two codes into a marriage contract, as it was defined by the famous Roman jurists of the classical era of Roman law (2nd–3rd centuries).

Although the dowry system had an ancient legal tradition in the Romanian Lands, which has its foundations both in the old customary law and in Roman law (old and new), this legal tradition of dowry was nevertheless eliminated from the Romanian legal landscape by Napoleon Bonaparte's Civil Code, promulgated in 1804, which was adopted in the Romanian Principalities in 1864, and was to be applied in “the other Romanian territories”⁸.

⁴ S. F. Marian, *Nunta la români ...*, vol. I, p. 107.

⁵ *Codul civil român* [Romanian Civil Code], edition C. Hamangiu, Bucharest, Carol Müller's Bookstore Publishing House, 1897, p. 310.

⁶ *Noul Cod civil. Comentarii, doctrină și jurisprudență* [The New Civil Code. Commentary, Doctrine and Jurisprudence], vol. I, Bucharest, Hamangiu Publishing House, 2012, p. 420.

⁷ D. Alexandresco, *Explicațiunea teoretică și practică a Dreptului civil român* [The theoretical and practical explanation of Romanian Civil Law], tom. VIII, pt. I, Bucharest, 1916, p. 156.

⁸ I. Niculescu, *Despre convențiile matrimoniale* [On matrimonial conventions], <https://www.juridice.ro/153816/despre-conventiile-matrimoniale.html> (Accessed on 08. 07. 2024).

In Romania, the dowry of the woman to be married was known “for almost a century (1865–1954)”⁹ under the name of *marriage convention*, but the provisions of the Romanian Civil Code of 1864 concerning marriage and matrimonial regimes were repealed by Decree no. 32 of January 31, 1954, which established “a single legal matrimonial regime”¹⁰.

In order to better understand the meaning of the rules concerning the institution of dowry, we will present, in the next chapter, the historical context in which this *Pravila* appeared, which, according to the assertion accredited by the Romanian-language literature, represents a happy synthesis between the customary law of the Country and Byzantine law.

However, according to professor Panagiotis Zepos¹¹, “the history of ancient Romanian Law is closely linked not to Byzantine law, but to the history of Hellenistic-Byzantine Law”¹², whose influence becomes – in his opinion – increasingly evident well before the 16th century, when collections of canonical and nomocanonical law in Greek and Slavonic were a reality in the Romanian area, as it is further attested by the numerous manuscripts of the *Syntagma kata stoicheion* (the Alphabetical Collection) of Matthew Blastares, published in 1395.

The same Greek jurist and Byzantinologist stated – among other things – that the Phanariot epoch is characterized by the adoption not of the Byzantine law in the Romanian Principalities, but of numerous Greek-Byzantine legislative texts and codes of laws, and that the impact of Greek-Byzantine law on the Romanian legislation of the Phanariot epoch, Alexandros Ypsilanti’s Code included, is – in his opinion – the only source for *Pravilniceasca Condică*. Certainly, such opinions are in total disagreement not only with the statements and opinions of Romanian scholars and editors, but also with the country’s historical and legal realities. For example, about the *Pravilniceasca Condică*, professor P. Zepos stated that the Romanians have allegedly declared that Wallachian customary law takes precedence over Byzantine customary law, and that the main sources of Ypsilanti’s Code are

⁹ *Ibidem*.

¹⁰ *Ibidem*.

¹¹ Prof. Panagiotis Zepos, a historian of Byzantine law, made some bizarre statements not only about the second edition of Alexandros Ypsilanti’s Code of Laws, published in Bucharest in 1936, but also about its sources (cf. P. Zepos, *L’influence du droit byzantin sur la législation roumaine de la période des princes phanariotes*, in “Studi in memoria di Paolo Koschaker. L’Europa e il diritto romano”, Milano, 1954, vol. 1, pp. 427-438).

¹² P. Zepos, *Βιβλιοκρισία: Legiuirea Caragea, Ediție critică - Pravilniceasca Conдика 1870*, critical edition, 1957, <https://ir.lib.uth.gr/xmlui/handle/11615/19617> (Accessed on 06. 07. 2024).

“Byzantine-Greek law”¹³ and “customary law of the Greeks”, and not “the impoverished Romanian customary law”¹⁴, which – in his opinion – cannot take precedence over Byzantine customary law.

In another study, professor Zepos stated that “the Phanariot Codes are the greatest glory of the modern history of Greco-Roman law”¹⁵, because this Phanariot epoch was a “true age of enlightenment for the two Danubian Countries”¹⁶, and that, at the same time, it was “a brilliant page in the history of the Hellenists”¹⁷. Hence his statement that the Code of Ypsilanti is of “Greco-Byzantine origin”¹⁸, and not Byzantine, although the Code had as its main source the customs of the Country and the Byzantine law.

ABOUT ALEXANDROS YPSILANTI, PRINCE OF WALLACHIA, AND THE DOWRY SHEETS. HISTORICAL FRAMEWORK

As a consequence of the establishment of the Phanariot regime, “princes from among the Greeks, or Greekized princes, were appointed directly by the *Sublime Porte (Ottoman Porte)* to the seats of Iași and Bucharest”, because they “presented more guarantees for the Ottoman power”¹⁹. In the 17th and 18th centuries, Ottoman rule, the Turkocracy, “became more oppressive in the Romanian Lands, and they moved even further away from the Western model ... and, although a few Western influences manifested themselves in the arts, a few boyars, or pretenders to the throne (3–4 in a century!) traveled to the West and were marked by that experience, these phenomena remained marginal and superficial, without any real impact on the «collective mind» of the country”²⁰.

This is the historical setting and context in which the Greek Phanariot Alexandros Ypsilanti arrived as a Prince on the throne of Wallachia. Nevertheless, “of

¹³ *Ibidem*.

¹⁴ *Ibidem*.

¹⁵ P. Zepos, *Byzantine law in the Danubian countries*, in “Balkan studies”, vol. 7, 1966, p. 356.

¹⁶ *Ibidem*, p. 347.

¹⁷ *Ibidem*.

¹⁸ *Ibidem*, p. 353.

¹⁹ C. Bălan, *Domniile fanariote în Țara Românească și Moldova* [Phanariote reigns in Wallachia and Moldova], in *Istoria Românilor* [History of the Romanians], vol. VI, Bucharest, Encyclopaedic Publishing House, 2012, p. 432.

²⁰ N. Djuvara, *Între Orient și Occident. Țările Române la începutul epocii moderne (1848)* [Between East and West. The Romanian Countries at the Beginning of the Modern Era (1848)], 7th edition, trans. from French by M. Carpov, Bucharest, Humanitas Publishing House, 2009, p. 9.

all the Orthodox peoples of Eastern Europe, the Romanians were the ones whose Westernization was the most rapid and, above all, the most spontaneous, favored by their belonging to the family of non-Latin peoples and ..., finally, by the almost obsessive affirmation of Latinity, which became a strong idea in the struggle for Europeanization”²¹. However, one should not ignore the fact that, through the Byzantine culture and spirituality, Romanians continued to find themselves – albeit indirectly – in the realm of European culture, which also facilitated the process of Westernization and implicit Europeanization.

About Alexandros Ypsilanti (1724/1726–1807), the Prince of Wallachia, historical sources testify that he had previously held the position of “Great translator of the Sublime Porte”, and that “he showed a wide range of interests, from physics to Hellenistic culture. During his years of service to the *Sublime Porte* in Istanbul, he had the opportunity to learn about the reform policy promoted by the «enlightened despots» (Frederick II, Maria Theresa, etc.) and to discuss with diplomats and merchants from the West”²².

In a manuscript (miscellanea) dated from 1782, “the coat of arms of Wallachia is drawn in pen, with the initials of Alexandros Ypsilanti” (*Ms. 3384*, Fasc. 151)²³, under whose signature the “*Pravila*” of 1780 was published. Furthermore, from a manuscript (miscellanea) dating from the 18th–19th centuries, we learn that “in Wallachia, Alexandros Ipsilant, who was a boyar (*postelnic*) in Moldavia, was made ruler” (*Ms. 3775* from B.A.R.)²⁴.

It has been said of the reform policy of the Phanariot Princes, including that of Alexandros Ypsilanti, that it “appears as a Romanian variant of the «enlightened despotism», characteristic of 18th-century Europe”²⁵. However, “the historical framework in which the measures of the European monarchs considered as enlightened despots and those of the Phanariot Princes were enacted was quite different”²⁶.

With regard to the legal status of the Romanian Lands, it has been said that, in the “fanariot age”, i. e., in the period between 1711/1716 and 1821, “no fundamental change took place, ..., but the status of tributary protection (*'ahd ad-*

²¹ *Ibidem*, pp. 9-10.

²² F. Constantiniu, *Reformele lui Alexandru Ypsilanti* [The reforms of Alexandros Ypsilanti], in *Istoria Românilor*, vol. VI, ..., p. 499.

²³ G. Ștrempel, *Catalogul Manuscriselor Românești. B.A.R., 3101-4413* [The Catalogue of Romanian Manuscripts. B.A.R., 3101-4413], Bucharest, Scientific and Encyclopaedic Publishing House, 1987, p. 108.

²⁴ *Ibidem*, p. 240.

²⁵ F. Constantiniu, *Reformele lui Alexandru Ypsilanti*, ..., p. 501.

²⁶ *Ibidem*.

dhimma) continued”, although after the Peace of Küçük Kaynarca in 1774, “the unilateral Ottoman protectorate started to be replaced by a double protectorate, through the legalization of Russia’s right to intervene in favor of the Danubian Principalities, ..., which was equivalent to the beginning of the internationalization of the legal status of these countries, a process completed in 1856 with the establishment of the status of collective protection”²⁷.

However, until the securing (*manu militari*) of the independence of the Romanian Principalities from Ottoman rule, in 1877, the Phanariot Princes continued to be appointed by the “*Sublime Porte*”, which invested them “with the insignia of power granted by the Sultan (the supreme source of law, and therefore of power) at the Topkapi Palace”²⁸, after which followed “the welcoming ceremony at the Ecumenical Patriarchate in Istanbul, where the ancient hymns of the coronation of the Byzantine emperors were sung to the new ruler”²⁹, and finally, the appointment and investiture of the new ruler in one of the Romanian Principalities was concluded with “the ceremony in the country, including his being anointed with myrrh by the metropolitan (at the Metropolitan Palace) and the reading of the order of appointment (at the Princely Palace)”³⁰.

According to historical testimonies, it was Prince Alexandros Ypsilanti who asked the Ecumenical Patriarch Sophronius II (1775–1780) to grant the metropolitan See of Ungrovlahia – occupied during the Phanariot epoch by Greek archbishops – the honorary title of “deputy of the throne of Caesarea of Cappadocia”³¹, which was not “the first in the series of metropolitan Sees dependent on the Patriarchate of Constantinople”³², but the metropolitan See of Heraclea Thraciae was and is still mentioned in the first place in the Diptychs of the Constantinopolitan See.

The legislative work of Alexandros Ypsilanti, embodied “in numerous Charters (Hrisoave), ..., was crowned by the first code of laws of the Phanariot period, the

²⁷ M. Maxim, *Statutul juridic al Țărilor Române față de Înalta Poartă (1711/1716-1821)* [The legal status of the Romanian Principalities in relation to the Sublime Porte (1711/1716-1821)], in *Istoria Românilor*, vol. VI, ..., p. 587.

²⁸ M. Maxim, *Statutul domnilor. Aspecte protocolare* [The status of Princes/Hospodars. Protocol aspects,], in *Istoria Românilor*, vol. VI, ..., p. 594.

²⁹ *Ibidem*.

³⁰ *Ibidem*.

³¹ M. Țipău, *Domnii fanarioți în Țările Române (1711-1821). Mică enciclopedie* [The Phanariot princes in the Romanian Countries (1711–1821). Little Encyclopedia], 2nd edition, Bucharest, Omonia Publishing House, 2008, p. 97.

³² *Ibidem*.

Pravilniceasca Condică, drafted in Romanian and Greek and promulgated in 1780”³³.

As regards the provisions of Ypsilanti’s Code concerning the dowry sheets drawn up before and after the wedding, it has been argued that they did not have the expected impact on the Romanian society of that time, because many marriages “negotiated in front of the court”³⁴ were not “durable”, and consequently, ended “with a scandal”³⁵.

For example, even after the appearance of this Code of Laws, many marriages broke up because, according to the testimonies of the time, the sons-in-law were not satisfied with the dowry received and, usually, although the agreement between the parties had been concluded, they sent their wives “to the parental house with the request to ask for more than what they had received”³⁶.

As for the dowry, the documents of the time – both historical and legal – also attest to the fact that, at the end of the 18th century, a woman could not marry “without a dowry”, i.e., “dowry proper (houses, estates, stores, money, etc.)”³⁷. Moreover, the sheets of dowry had to list all the movable and immovable objects and goods that the family gave to their daughter on the occasion of her marriage, which constituted her dowry, which was supposed to be “in no way inferior to the rank and wealth of the family”³⁸.

In some of his works, namely in the *Didahii* (Sermons) and in *Capete de învățătură* (Chapters of teaching), Anthim Ivireanul („the Iberian”, i.e. from Iberia, Georgia), the metropolitan of Wallachia (1708–1716), also left us important information “on the manner of drafting important acts that will govern ... the social life of the people. These are wills and dowry sheets”³⁹. Among other things, in these works, Anthim the Iberian stipulated that three witnesses and a priest must be present when drawing up these dowry sheets for them to be credible in court. It was also this metropolitan who attributed “the entire responsibility for drawing

³³ *Ibidem*, p. 500.

³⁴ C. Vintilă-Ghițulescu, *Focul amorului: despre dragoste și sexualitate în societatea românească (1750-1830)* [The fire of love: about love and sexuality in Romanian society (1750–1830)], Bucharest, Humanitas Publishing House, 2006, p. 111.

³⁵ *Ibidem*.

³⁶ *Ibidem*.

³⁷ C. Ghițulescu, *În șalvari și cu ișlic. Biserică, sexualitate, căsătorie și divorț în Țara Românească a secolului al XVIII-lea* [In shalwars and ishlik. Church, sexuality, marriage and divorce in 18th-century Wallachia], Humanitas Publishing House, Bucharest, 2004, p. 135.

³⁸ *Ibidem*, p. 136.

³⁹ *Ibidem*, p. 138.

up a dowry list to the priest”⁴⁰.

This order continued to be observed and applied in the life of Romanian society (civil and ecclesiastical) until the reign of Alexandru Ioan Cuza, when, by the provisions of his Civil Code, the *Mitrical* records of baptisms, marriages and deaths passed to the civil authority, and the dowry was replaced by the matrimonial covenants⁴¹.

About “some dotal sheets”, used in writing in the mid-seventeenth century, it has been noted that they are found “hidden under mysterious names among other types of documents, such as wealth registers (catastife/diate)”⁴². In fact, the earliest testimonies concerning the drawing up of dowry sheets are to be found in the *Pravilas of the Country*, which appeared long before Ypsilanti's Code, which proves that this legal institution was a reality in Romania before the Phanariot epoch.

The traditional practice of drawing up the dowry sheets is also testified by the collection of old books in the state and ecclesiastical archives (Patriarchate, dioceses and monasteries), which remains a first-rate source for historians and jurists alike.

PRAVILNICEASCA CONDICĂ. ITS GENESIS, SOURCES AND CONTENT

In order to better understand the contents of the provisions of this *Code of Laws of 1780* – known as *Pravilniceasca Condică* – we must also take into account the fact that, at that time, the two Romanian Principalities (Wallachia and Moldavia) were under the suzerainty of the Ottoman Empire, which did not allow them to exercise the right of issuing laws “without its approval”⁴³. But the peace treaty concluded between Tsarist Russia and the Ottoman Empire at Küçük Kaynarca in 1774 would give the Romanian Principalities the opportunity to claim their “old rights, the old “prerogatives” of the countries”⁴⁴, including the “right to issue laws

⁴⁰ *Ibidem*.

⁴¹ C. Mihailovici, *De la zestre la convenții matrimoniale* [From dowry to matrimonial covenants], in <https://notardebucuresti.ro/2022/06/29/de-la-zestre-la-conventii-matrimonialeiunie-2022/> (Accessed on 07. 07. 2024).

⁴² P. A. Lazăr, *Foaia de zestre în Moldova sec. XVI-XVIII: constituire și validare. Normele de întocmire ale unei foi de zestre, cuprinse în Prăvălioara de la Iași din 1784* [The dowry sheet in 16th–18th-c. Moldova: establishment and validation. The rules for drawing up a dowry sheet, included in the 1784 *Pravila of Iași*], in “*Studium*”, vol. 10, 2017, p. 6.

⁴³ *Pravilniceasca Condică 1780*, critical edition, Bucharest, Romanian Academy's Publishing House, 1957, p. 9.

⁴⁴ *Ibidem*, p. 5.

without foreign interference”⁴⁵.

This reality could also explain the fact that in *Alexandros Ypsilanti's Code of Laws* we cannot detect any “impact of the Ottoman factor on the status of women”⁴⁶. On the contrary, this Code of Laws presents some “particularities of the social and legal position held by women”⁴⁷ of that epoch, such as the “register of a wife’s dowry” or of the goods and revenues, “including the gifts given during the marital union”⁴⁸, as it was in fact foreseen by the provisions of the Byzantine law, whose principles were also reiterated by this Code, according to which the husband was “not to be entitled to the wife’s dowry, or its revenues”⁴⁹, but had “to guarantee the dowry’s safety-net”⁵⁰, as it was also foreseen by the Code of Calimah in chapter 31, “*On marital contracts*”, printed in 1817, that is 37 years after *Ypsilanti's Code of Laws*.

That it was not ignored in Ypsilanti’s Code (*Pravilniceasca Condică*) either, “the feminine side of Romanian history”⁵¹ is also attested by the fact that even “historical records” of the Romanian Principalities show that “women – especially those belonging to the high society – had many more privileges than those of other European countries”⁵².

As a result of the facilitations offered by this bilateral peace treaty (of October 23, 1775), Alexandros Ypsilanti promulgated – through a Royal Charter – the work entitled *Pentru rânduiala departamentelor de judecăți* (“For the organization of the departments of judgement”). Written and printed in Greek, the work was called “Ὁ νομος”⁵³ (The Law), translated in Romanian by the word “Pravila” at the time.

The use of the name “*Pravila*”, both for this work and for the *Pravilniceasca Condică* – approved in 1780 – was due to the fact that their authors had as a main

⁴⁵ *Ibidem*.

⁴⁶ L. Zabolotnaia, *The Impact of the Ottoman Factor on the Status of Women in the South-Eastern European Countries in the Middle Ages through Historiography Perspectives*. in “Codrul Cosminului”, XX, 2013, no. 1, pp. 127-140.

⁴⁷ Eadem, *Unveiling the private life of the 18th century. A divorce act of 1795*, in “Codrul Cosminului”, XXI, 2015, no. 1, p. 143.

⁴⁸ *Ibidem*, p. 145.

⁴⁹ *Ibidem*, p. 146.

⁵⁰ *Ibidem*.

⁵¹ L. Zabolotnaia, *Women's Power in Moldova (14th - 17th Centuries)*. *Gender Studies*, in “Codrul Cosminului”, XXIII, 2017, no. 1, p. 7.

⁵² *Ibidem*, p. 11.

⁵³ *Pravilniceasca Condică ...*, pp. 42-44.

source for their text the "Imperial *Pravila*", that is, the Byzantine laws promulgated by the emperors of the Eastern Roman Empire⁵⁴, which had been introduced in the Danubian-Pontico-Carpathian area (of contemporary Romania) since the time of the first Byzantine emperor, namely Emperor Justinian⁵⁵ (527–565).

Although the Romanian laws of the Phanariot epoch (1711–1821) aimed to be a "product"⁵⁶ of the local legal culture, some of these "*Pravilas*" were originally written in Greek and then appeared in bilingual format (Greek & Romanian). Such was the case of *Alexandros Ypsilanti's Code of Laws* of 1780, which, in 1957, the Collective for the Old Romanian Legislation of the Romanian Academy, led by Acad. Andrei Rădulescu, viewed as "the first of our newer codes"⁵⁷.

This Code of Laws was printed in Greek in the printing house of the Metropolitanate of Bucharest, but with "the title exclusively in Greek"⁵⁸, namely "Σύνταγματιον Νομικόν"⁵⁹, meaning a "Code of Laws", which was inaccurately translated into Romanian as "The Little Constitution" or "The Little Legal Order"⁶⁰.

In a document dated December 20, 1791, we see *Alexandros Ypsilanti's Code of Laws* under the title of "*Condică pravilnicească*"⁶¹, which we find again in the second edition of this *Pravila*, published in 1841 (Kluceru N. Brăiloiu), where this code has the same title, "*Pravilnicească Condică a Domnului Alexandru Ioan Ipsilant V.V.*". Conversely, from a manuscript (miscellanea) dated from the "18th–19th centuries" we learn that this Code of Laws had been originally entitled "*Mic manual de legi*" (Small legal manual). However, said manuscript lacks the "beginning and the end" (*Ms. 4143*, Fasc. 1-15, 212, 265-269, B.A.R.)⁶². But, since the text of this manuscript is only in Greek, it cannot lead us to believe that it was intended

⁵⁴ N. V. Dură, C. Mititelu, *The State and the Church in IV-VI Centuries. The Roman Emperor and the Christian Religion*, in "SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism", vol. I, 2014, Albena, pp. 923-930.

⁵⁵ N. V. Dură, *The Byzantine Nomocanons, fundamental sources of old Romanian Law*, in "Exploration, Education and Progress in the third Millennium", Galati University Press, Galati, vol. I, no. 3, 2011, pp. 25-48; C. Mititelu, *The legislation of emperor Justinian (527-565) and its reception in the Carpathian-Danubian-Pontic space*, in "Analecta Cracoviensia", vol. 48, 2016, pp. 383-397.

⁵⁶ *Pravilniceasca Condică ...*, p. 17.

⁵⁷ *Ibidem*, p. 18.

⁵⁸ *Ibidem*, p. 8.

⁵⁹ *Ibidem*, p. 37.

⁶⁰ *Ibidem*, p. 19.

⁶¹ *Ibidem*, p. 207 (doc. no. 15).

⁶² G. Ștrempel, *Catalogul Manuscriselor ...*, p. 349.

only for the use of the Phanariot Greeks in Wallachia, as it was also named “Prohiron ton Nomon” (Handbook of laws).

Compared to the Prohiron of Emperor Basil I “the Macedonian” (867–886), which had incorporated not only state-norms of Roman-Byzantine law, but also “numerous old state laws concerning church affairs”⁶³, Alexandros Ypsilanti’s Code of Laws was intended to be useful to the jurists of the country. Moreover, this Code was much smaller in terms of contents.

As for this title of *Prohiron ton Nomon*, it is not to be ruled out that it should have been chosen by the authors of *Alexandros Ypsilanti’s Code of Laws*, taking inspiration from the title of the work of Mihail Fotinopulos (Fotino), who, between 1765 and 1777, elaborated a work entitled *Nomikon Procheiron* (Legal Manual) in Bucharest. In turn, this “great legal expert of Wallachia of the second half of the eighteenth century”⁶⁴, that is, Mihail Fotinopulos, took the title *Nomikon Procheiron* from the Collection of Byzantine Laws that had appeared in 870 by the order of Emperor Basil I the Macedonian (867–886). In the text of his work, Fotino reproduces numerous “Byzantine laws, ..., cites classical works and authors of Byzantine law – the Basilika, Blastares, Harmenopoulos...”⁶⁵.

The Legal Manuals written by Mihail Fotinopulos (Fotino)⁶⁶, published in different years (1765, five Titles; 1766, eight Titles and 1777, Book I), served indeed as a model and a documentary source to the authors of *Alexandros Ypsilanti’s Code of Laws*. And according to certain scholars, Alexandros Ypsilanti would have appropriated from Fotino not only the titles of his textbooks, but also entire paragraphs on “the ruler, clerks and the organization of the Courts of law”⁶⁷. However,

⁶³ I. N. Floca, *Drept canonic ortodox. Legislație și administrație bisericească* [Orthodox canon law. Church legislation and administration], vol. I, Bucharest, Publishing House of Biblic Institutul, 1990, p. 103.

⁶⁴ V. Georgescu, *Un al treilea manuscris ieșean al Manualului de legi – Νομικὸν Πρόχειρον – din 1766 al lui Mihail Fotino (Fotinopulos)* [A third manuscript of Iași of the Legal Manual – Νομικὸν Πρόχειρον – from 1766 by Mihail Fotino (Fotinopulos)], in “Studii. Revistă de istorie” [Studies. Journal of History], no. 6, 1961, p. 1515.

⁶⁵ R. Theodorescu, *Pornind de la un Manual de legi* [Starting from a Legal Manual], apud <https://www.universuljuridic.ro/pornind-de-la-un-manual-de-legi/> (Accessed on 28. 09. 2023).

⁶⁶ G. Cronț, *Recenzie* [Review] for P. I. Zepos, *Manual de legi al lui Mihail Fotinopulos (București, 1765)*. Editat pentru întâia dată după codicele manuscris din Arhivele Statului din Iași, Atena, 1959, XII + 304 pages and 8 plates [Mihail Fotinopulos’s Legal Manual (Bucharest, 1765). First published after the manuscript codex in the State Archives of Iași, Athens, 1959], in “Studii. Revistă de istorie”, XIII, 1960, nr. 2, pp. 272-275.

⁶⁷ V. Georgescu, E. Popescu-Mihuț, *Organizarea de stat a Țării Românești (1765-1782)*.

Mihail Fotino had also taken a documentary material from the *Ecloga of the Isaurians*, published between 738 and 741, which served him “as the source of Book I of the 1777 Legal Manual”⁶⁸.

The authors of *Alexandros Ypsilanti's Code of Laws* also took over – through the work of Fotino – the chapter *Despre dotă (zestre)* (On dowry) from the *Ecloga*. According to the statement made by Jean Anselme Bernard Mortreuil, the *Ecloga of the Isaurian Emperors, Leo III (717–741) and Constantine V (741–775)*, was promulgated “some time before the death of Leo the Isaurian”, more precisely “in the years 740–741 of the era of Dennis the Little”⁶⁹. The two emperors turned to the text of Roman law offered by the Corpus of laws of Emperor Justinian, as stated in the title of the work itself, which was defined as a “Selection of laws” (Ἐκλογὴ τῶν νόμων), that is, from the Institutes, Digest, Code and Novels, which the authors of the *Ecloga* “corrected to be more humane”⁷⁰, that is, in the terms in which Emperor Justinian once expressed himself, establishing that “as a general rule, the establishment of an heir implies the granting of liberty”, which is why he promulgated an Imperial Constitution “... out of a new love of men” (*nova humanitatis ratione*) (*Justiniani Institutiones* lb. VI, 2).

As for marriage, the *Ecloga* stipulated that it could be accomplished by concluding a “dowry deed in the presence of three witnesses” (Tit. II, 2, 3)⁷¹, which is also provided in the text of *Ypsilanti's Code of Laws*. Therefore, these provisions of the *Ecloga* confirm that its texts were in fact a source of inspiration for the authors of the *Pravilniceasca Condiță* in matters of dowry, testamentary inheritance, etc., and not only in the organization of the judicial system.

From the text of *Alexandros Ypsilanti's Code of Laws*, we find that its authors were fully aware that such laws were necessary in “all areas”, and especially in the

Fragmente din proiectele de cod general sau manualele de legi redactate de Mihail Fotino în 1765 (cinci titluri), 1766 (opt titluri) și 1777 (cartea I) [State organization of Wallachia (1765–1782). Excerpts from the drafts of the general code or manuals of laws drawn up by Mihail Fotino in 1765 (five titles), 1766 (eight titles) and 1777 (book I)], critical edition, Bucharest, Romanian Academy's Publishing House, 1989, p. 254.

⁶⁸ *Ibidem*, p. 35.

⁶⁹ J. A. B. Mortreuil, *Histoire du droit byzantin ou du droit romain dans l'Empire d'Orient depuis la mort de Justinien jusqu'à la prise de Constantinople en 1453*, vol. I, Marseille, 1843, p. 365.

⁷⁰ A. Momferratos, *Ecloga Leonis et Constantini cum appendice*, Atena, 1888, p. 1.

⁷¹ *Ecloga Leonis et Constantini, Epanagoge Basilii Leonis et Alexandri*, ed. Zacharia von Lingenthal, Karl Eduard, Lipsiae, 1852, <https://archive.org/details/eclogaleonisetco00linggoog/page/n6/mode/2up> (Accessed on 21. 11. 2023).

courts of law, where “all the Ruler’s decisions (*anaforalii*) and books of judgment” were to be found (*Pravilniceasca Condică*, ch. II. *Pentru judecătoria a veliților boeri* no. 2)⁷², that is, for “the judgement of the great boyars”.

The main artisans of this “*Pravila*” were some of the country’s most prominent lawyers, knowledgeable about the Greek language, about Byzantine law and Romanian law (written and customary ones), such as, for example, the Chancellor (*logofăt*) Nestor, who proved to be a good connoisseur of the old Romanian law, Enechiță Văcărescu and Mihail Fotino (a naturalized Greek), who in 1765 published, by the order of the Prince of Wallachia, Ștefan Racoviță, a Legal Manual entitled “*Prohiron*”, in which he made express reference to the imperial laws, and especially to the monumental collection of Byzantine laws entitled the *Basilika*.

The authors of the Code of Laws promulgated by the Prince of Wallachia, Alexandros Ypsilanti, proved to have “... extensive legal knowledge; they were acquainted with the works of Montesquieu (*L’Esprit des lois*), Beccaria (*Dei delitti e delle pene*), the Instructions of *Catherine the Great*; they were familiar with the ideas of reform of the second half of the eighteenth century, and they included some fundamentally progressive principles long before other legislations”⁷³.

According to the established order of the Romanian Principalities, this Code of Laws “was subjected, according to the law of the country in the field of lawmaking, to the Public Council (*Sfatul de Obște*), which was composed of the Metropolitan, Bishops and great boyars”⁷⁴, then it was “reviewed by the Prince”⁷⁵, who promulgated it through his Royal Charter in 1780, where Alexandros Ypsilanti pointed out that this “*Pravila*”, i.e., the *Pravilniceasca Condică*, was drafted “as a source and guide to all those who will find themselves judging ..., so that, they may issue fair judgements, and that all those who have been damaged may find justice ..., and that justice may be shown to all our subjects, since the judgment ..., is the prerogative of God”⁷⁶.

Therefore, *Pravilniceasca Condică* had been written to be a “source” and a “guide” for all those who had to make judicial decisions on the basis of the *Pravila*, for “all subjects”⁷⁷.

The desire of the Prince Alexandros Ypsilanti was that, through these

⁷² *Pravilniceasca Condică* ..., pp. 50-51.

⁷³ *Ibidem*, p. 16.

⁷⁴ *Ibidem*, p. 8.

⁷⁵ *Ibidem*.

⁷⁶ *Ibidem*, p. 44.

⁷⁷ *Ibidem*.

“judgements”, all those who had been “wronged” should find their “justice”, which had to be “victorious” because the judgement actually came from “God”⁷⁸, and it must therefore “give to each one that to which he is entitled (ius suum cuique tribuens)” (*Justiniani Institutiones*, lb. I, 1).

As it is known, *Alexandros Ypsilanti's Code of Laws* was not “expressly” repealed by *Legiuirea Caragea* (the Caragea Legislation) of 1818, but only “tacitly repealed by contrary provisions written in the new law”⁷⁹, although *Pravilniceasca Condică* “had actually been used in writing the *Legiuirea Caragea*, in the composition of which many of the rules of the *Ypsilanti's Code of Laws* were used”⁸⁰.

For the most part, *Pravilniceasca Condică* remained in force until 1865, when the Civil Code promulgated in that year repealed not only the Calimah and Caragea Codes, but also the other previous civil laws (acc. to Art. 1912 of the *Civil Code 1864*).

The fact that the authors of the *Pravilniceasca Condică* (*Ypsilanti's Code of Laws*) used the old sources of Romanian law is confirmed even by the texts of its three annexes, namely: “*Annex I A*: Royal charters and books preceding the writing of the *Pravilniceasca Condică* or related to its promulgation and application”; “*Annex I B*: Royal charters, books and decrees and the anaphorales, which explain or modify the text of the *Pravilniceasca Condică*”; “*Annex II*: Case law” and “*Annex III*: Bibliographic information”.

PRAVILNICEASCA CONDICĂ AND ITS PROVISIONS ON THE “DOWRY DEED”

In a royal charter from 1775, entitled “For the organization of the departments of judgement”, Alexandros Ypsilanti, the Prince of Wallachia, said that he had also written “a Pravila” in Greek, which he would translate “in the Romanian language”⁸¹, and he would print it so that the judges could judge “according to the

⁷⁸ *Ibidem*.

⁷⁹ *Ibidem*, p. 16.

⁸⁰ *Ibidem*, pp. 16-17.

⁸¹ *Hrisovul lui Alexandru Ion Ipsilante Voevod cu privire la organizarea judecătorească a Țării Românești, în care se anunță și întocmirea Condiciei Pravilnicești* [The Royal charter of Alexandros Ion Ipsilante Voevod on the judicial organization of Wallachia, which also announces the drawing up of the *Pravilniceasca Condică*], in “*Pravilniceasca Condică*” ..., Annex I, p. 165.

Pravila and justice”⁸². This royal charter also announced the “drafting of the *Pravilniceasca Condică*”, whose content was of “pravilnic” (nomocanonical) nature⁸³, that is, it included both the State laws and the Church laws, as was the norm in the Byzantine empire.

About the criminal code of Alexandros Ypsilanti⁸⁴, published in 1775 – which circulated as a manuscript –, it has been said that its text included provisions on marriage, family, etc., which served the ecclesiastical judges of that time not only as a model and basis in the formulation of their decisions, but also in the resolution of cases concerning the “dowry deed”. Among other things, in the Decree of promulgation of his Code, the Prince of Wallachia, Alexandros Ypsilanti, stated that for the administration of “justice and truth”⁸⁵ we must judge “by the likeness of the Judge of all”⁸⁶, that is, according to the “judgement of God” (τὴν κρίσιν τοῦ Θεοῦ)⁸⁷.

For the purpose of ensuring human justice in the spirit of God’s judgment, Alexandros Ypsilanti – together with the *Divan* (Privy Council) and his legal counsellors (customary and civil law) – wished to endow the country and its inhabitants with a “*Pravila*” (*Code of Laws*), being aware that “a greater misfortune cannot be found among a people, and especially among people of good faith, than to live without laws, that is to say, to have no rules or to fail to follow those rules”⁸⁸, i.e., “κατὰ νόμου”⁸⁹ (according to the law).

Regarding the “people of Wallachia”, i.e., the Romanians, Alexandros Ypsilanti stated that they “sometimes follow the Byzantine imperial Laws, and other times the customs of the country, ... because they are of old times, ... But they did not respect the customs of the country either, because they invoked the provisions of the Byzantine imperial Laws, and at other times they opposed them with the power of the customs”⁹⁰. However, Prince Ypsilanti decided that the decision of a judge who “would oppose the Byzantine laws and the customs of the country,

⁸² *Ibidem*, p. 163.

⁸³ *Ibidem*, p. 161.

⁸⁴ See V. Georgescu, *Présentation de quelques manuscrits juridiques de Valachie et de Moldavie (XVe - XIXe siècles)* II, in “Revue des études sud-est européennes”, no. 8, 1969, pp. 335-365.

⁸⁵ *Pravilniceasca Condică ...*, p. 42.

⁸⁶ *Ibidem*.

⁸⁷ *Ibidem*, pp. 42-43.

⁸⁸ *Ibidem*, pp. 42-44.

⁸⁹ *Ibidem*, pp. 44-45.

⁹⁰ *Ibidem*, p. 44.

should have no power”⁹¹.

Above of all, the statements of Prince Alexandros Ypsilanti suggest that the legal custom of the country and the Byzantine imperial Laws were the two legal sources of Wallachia in the field of judgement, while acknowledging that, usually, Romanians preferred following their customary rules, to the detriment of the legal norms provided in the Byzantines laws, even the Basilika, which also circulated – in the abbreviated form – in the Romanian principalities.

In the First part of *Pravilniceasca Condiță*, reference is made to the institution of marriage by means of the chapter entitled “For dowry” (Περι Προικος)⁹², which provides that “the dowry of the woman”, which was to be evaluated “either before the wedding, or after the wedding, within forty days or no more than sixty”⁹³, was part of the “moving goods”, and the “dowry deeds” had to be recorded “in the ledgers,... (and) be kept safe in the great monasteries of the diocese that the wedding was held in, so that no persecutions and oaths would take place to destroy the dowry deeds”⁹⁴.

The dowry deeds were therefore to be recorded in “ledgers” (εἰς κώδικας) – that is, a kind of register of civil status of that epoch – which were to be deposited in the archive or library of one of the great monasteries in the diocese where the Holy Sacrament of Marriage was administrated, so as to avoid the issues that accompanied their drafting.

Those who wrote these dowry deeds and drew up those “Ledgers” were the clergymen of the Church and they continued to carry out this task and keep the deeds in the archives of Churches and Monasteries until 1865, when the Documents of civil status – known as the *Mitrical* records (records of baptisms, marriages and deaths) – passed into the possession of the State.

Alexandros Ypsilanti's Code of Laws provides that the woman's dowry be handed over to the groom, who had to sign the “dowry deed”, and then “strengthened”, i.e., confirmed, by the hierarchs “of the area or signed by trustworthy witnesses, so as to make for better proof”⁹⁵.

In this respect, *Ypsilanti's Code of Laws* reaffirmed the provisions of principle laid down by the Roman Law and the “Byzantine Imperial Laws”. For example, in the ancient Roman Law, we find many references about “prenuptial gifts or

⁹¹ *Ibidem*, p. 66.

⁹² *Ibidem*, p. 92-93.

⁹³ *Ibidem*, p. 92-94.

⁹⁴ *Ibidem*, p. 94.

⁹⁵ *Pravilniceasca Condiță ...*, p. 94.

dowry”, as it is also obviously shown by the Imperial constitution of February 21 428 of Emperors Theodosius and Valentinian, which expressly spoke about “pre-nuptial gifts or dowries” and, among other things, they foresee that “lack” of these makes the marriage “lack validity” (*Codex Theodosianus*, lb. III, tit. 7, 3)⁹⁶.

In the new Roman Law, that is, the Byzantine Law, it is also provided that “what brings the marriage about is not the dowries, but the mutual intention of the cohabitants” (Justinian, *Novels* 18, 4; 22, 3)⁹⁷. In the same law we also find the provisions about the necessity of having the “dowry deeds” signed by witnesses. For example, Emperor Justinian stated that “the men of illustrious rank” cannot enter “into legal marriage without making marriage contracts”⁹⁸ in the presence of “three or four of the church’s most reverend clergy, and make out a certificate..., but no fewer than three – are to sign it, to that effect”⁹⁹. Hence the mention that “the defender of that most venerable church is then to deposit such papyrus, carrying the said signed statements, among the archives of the same most holy church” (*Novel* 74, 4, 1-2)¹⁰⁰.

In *Pravilniceasca Condică* it was stipulated that both the “groom” and his “heirs” would return “that dowry in full, without any subtraction, that is, exactly at that value”¹⁰¹. But, if this “value” or evaluation was not established at the agreed time, neither the “man” nor his “heirs” were liable “... to return in full the dowry that was provided in the dowry deed, and the woman or her heirs were to take only that part of the dowry they could find”¹⁰².

From the text of *Pravila* it can also be noted that, although the legislator recognized a man’s right of “preference with privilege”, i.e., a right of priority conferred by the law, Ypsilanti’s Code of Laws still recognized some rights of women, which for that time was already a legal approach favourable to them, which the *Pravila*’s authors referred to by the phrase the woman’s “protimis” (priority) to the parental home.

Indeed, the *Pravila* mentions that “for the parental homes, for it has been

⁹⁶ *The Theodosian Code and Novels, and the Sirmondian Constitutions: A Translation with Commentary, Glossary, and Bibliography*, edited by C. Pharr, Princeton, Princeton University Press, 1952, p. 70.

⁹⁷ *The Novels of Justinian. A Complete Annotated English Translation*, edited by D. Miller, P. Sarris, vol. I, Cambridge University Press, 2018, p. 211 and 235.

⁹⁸ *Ibidem*, p. 528.

⁹⁹ *Ibidem*.

¹⁰⁰ *Ibidem*.

¹⁰¹ *Pravilniceasca Condică ...*, p. 94.

¹⁰² *Ibidem*.

decided that they should also be called home, which gives the family name of that family, (for not all estates shall be called homes), preference with privilege could be held in relation to such a home only by men, that is to say, their male heirs (who are called aniondes), up to the sons and grandchildren from sons, and other relatives up to nephews from brothers, so that the name of the family would not perish, and never by the female side, for they have not the right to ask for the parental home, lest it may lose its name, because the woman takes the name of her husband: but nevertheless she also has the right of preference over that home, provided that she makes this request in due time, for kinship"¹⁰³.

Therefore, although the male side had an acknowledged right of priority, because it carried on the name of the "parental home", the *Pravila of Ypsilanti* provided that the woman also had a "right of priority over that home", on condition that she request this right in due time.

The presence of the right of pre-emption, known in the Byzantine law under the name of "protimis", proves that in the Romanian society of that time there was really an innovative concept regarding the woman's right to her husband's inheritance.

The same *Pravila* also provided the right of brothers to endow their sisters if they remained unmarried upon the death of their parents¹⁰⁴. A "girl" could receive from her "brothers, from her parents' property, a dowry that was of lesser value than the dowry received previously by a sister while their parents still lived"¹⁰⁵.

In other words, a sister could not be endowed by her brothers with a dowry greater than that received by another sister while their parents lived. This is also highlighted by the Cassation Court in 1867, which had found that, in that case, the legislator "... had placed the hereditary benefits of children of any sex under parental providence"¹⁰⁶, and "rejected the possibility of an inheritance in which the brothers received almost everything, and the sisters almost nothing" (*Annex II*, Articles 2, and 3)¹⁰⁷.

In Chapter XXI, the *Code of Laws* of 1780 offered explicit clarifications regarding the inheritance of the property that is passed down to the wife after the

¹⁰³ *Ibidem*, p. 100.

¹⁰⁴ C. Mititelu, *Regimul succesoral în Cartea românească de învățătură și Îndreptarea legii* [The Succession Regime in the Romanian Book of Teaching and in the Straightening of the Law], in "Analele Universității OVIDIUS Constanța / Seria Drept și Științe Administrative", no. 1, 2004, pp. 157-163.

¹⁰⁵ *Pravilniceasca Condică ...*, p. 100.

¹⁰⁶ *Ibidem*, p. 213.

¹⁰⁷ *Ibidem*.

death of her husband, namely “the woman that has children with her husband, if their children live past his death, shall take from her man’s wealth only that share corresponding to her child, which she will use to procure food, and not rightfully own, that is to sell or to give away as she pleases”¹⁰⁸.

But this provision was also taken from the text of the “Byzantine Imperial Laws”, which made the *Pravila* of 1780 reiterate the provisions of principle laid down by the Roman law¹⁰⁹. At the same time, it was stated that “after the death of her husband”¹¹⁰, “the barren woman”, i.e., the woman with no children, “could also recover her dowry in full”¹¹¹. In other words, “gifts given before the wedding, but only when there was no debt incurred by the husband before the wedding, but not after the wedding”¹¹².

Pravilniceasca Condică allowed the widow, even if she had no children, to also receive what she had been gifted by her “husband the day after the wedding”¹¹³. In this regard, the authors of this *Pravila* had applied the provisions of the customary law of the country, as follows from a Decision of the Cassation Court dated November 17, 1925, according to which “the popular custom that the surviving spouse receive a share of the deceased spouse’s property – in Moldova, as well as in Wallachia – was consecrated in the “*Pravila*” of Alexandros Ypsilanti, which recognized the entitlement of the surviving spouse to a larger or smaller share, depending on the concurrent rights of their children, or brothers and sisters, or other kin”¹¹⁴.

In Chapter XIX of *Pravila of Ypsilanti*, entitled “On dowry”, it was stipulated that, after the death of the husband, the woman “... must be sure to make a registry separate from her husband’s property, and from her dowry, ... (and) from the heirs”¹¹⁵. In the event of the woman’s death, “then her heirs, if they have come of age, shall be able to claim their right to inherit her dowry”¹¹⁶. This testimony proves that the *Pravila* of Ypsilanti reaffirmed in fact the provision of principle of

¹⁰⁸ *Ibidem*, p. 102.

¹⁰⁹ C. Mititelu, *Matrimonium (Marriage) in Roman Law. The Impact of the Provisions of “Jus Romanum” on International and National Matrimonial Law*, in “Bulletin of the Georgian National Academy of Sciences”, vol. 14, no. 4, 2020, pp. 120-130.

¹¹⁰ *Pravilniceasca Condică ...*, p. 102.

¹¹¹ *Ibidem*.

¹¹² *Ibidem*.

¹¹³ *Ibidem*.

¹¹⁴ *Ibidem*, p. 213.

¹¹⁵ *Ibidem*, p. 96.

¹¹⁶ *Ibidem*, p. 98.

Novel 22 of Emperor Justinian¹¹⁷, which had been reiterated in the Ecloga of the Isaurians and in the laws of the Macedonian emperors (the Prochiron, the Ep-anagoge, the Basilika and the Constitutions of Leo VI the Wise).

As for the inheritance, *Ypsilanti's Code of Laws (Pravilniceasca Condică)* provides that “after a girl receives a dowry from her parents, she shall have no right upon the death of her parents to receive any of their inheritance but will be content with the dowry that she has received”¹¹⁸.

According to the provisions of *Pravilniceasca Condică*, women who after the death of their husband were married before the end of their year of mourning were deprived of all property, both testamentary and resulting from donations.

That the Byzantine Imperial Laws have also provided for the same ordinances is confirmed by the legislation of Emperor Justinian, who by three Imperial Constitutions (*Novel 2, 22 and 39*) categorically forbade a woman to remarry before one year after the death of her husband, and the woman who failed to comply with these provisions would find herself in the impossibility of claiming the right to inherit, even if a testament existed. And the punishment of the unfaithful woman who gave birth 11 months after her husband's death was being “deprived” of both her “prenuptial gifts” and her “dowry” (*Novel 39, 2*).

Pravilniceasca Condică has indeed appropriated the provisions of Justinian's legislation regarding both “pre-marriage gifts” and “post-marriage gifts”, including the case of the remarriage of a widow before the end of the year of “mourning”.

Pravilniceasca Condică also provided the obligation that the “testaments” and “dowry deeds” were to be written “by the chancellor (*logofețel*)”¹¹⁹, but “should also be signed by the archbishop, or, where no archbishop is available, for ease of issue, to be signed by the abbots of the great monasteries”¹²⁰. And, at that time, i.e., in the year 1780, “testaments” and “dowry deeds” were therefore still under the jurisdiction of both institutions of the country, the State and the Church, as in the former Byzantium.

In *Pravilniceasca Condică* – as in the *Legiuirea Caragea* – there are no provisions for marriages with foreigners, because in those times “... naturalization, in the absence of special rules, was achieved by tolerance and by the intention of

¹¹⁷ *Novellae Constitutiones*, ed. by R. Schöll, W. Kroll, in “Corpus iuris civilis”, vol. III, Berolini, 1954, <https://droitromain.univ-grenoble-alpes.fr/Corpus/Nov22.htm> (Accessed in 08. 12. 2023).

¹¹⁸ *Pravilniceasca Condică ...*, p. 98.

¹¹⁹ *Ibidem*, p. 78.

¹²⁰ *Ibidem*, pp. 78-80.

foreigners to remain bound to the land of the country, appropriating a part of it, provided that they were of the Christian faith”¹²¹.

By such provisions, the laws of the Phanariot epoch prove to respect both the “Law of the land” and the right to religion¹²², but not the right to change one’s religion¹²³, which was provided for by the international law in the last decades of the last century¹²⁴. This legal regime regarding the marriage with foreigners of Christian faith was legislated and perpetuated by the Phanariot rulers, so that they could take possession of a significant part of the country’s land, as would be confirmed by the reforms undertaken by Kogălniceanu during the reign of Alexandru Ioan Cuza.

CONCLUSIONS

The *Pravila of Alexandros Ypsilanti*, entitled “Σύνταγματιον Νομικόν” (Code of Laws), also unsuitably referred to as a “Small legal manual”¹²⁵, has been endowed with constitutional authority by the Prince of the Country through the Charter of its promulgation, thus following the procedure of the Byzantine emperors, and not that of the “Greek Byzantine law”, as some historians and jurists¹²⁶ tried to claim in a “nationalistic” spirit.

Although the “*Pravila*” of 1780 is a Code of Laws, its text also refers to the institutions of the Church, such as the diocese, archbishopric, metropolitan Church, monastery, etc., which attests that the “Byzantine Imperial Laws”, which

¹²¹ *Ibidem*, p. 214.

¹²² N. V. Dură, C. Mititelu, *The Freedom of Religion and the Right to Religious Freedom*, in “SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism”, Albena, Bulgaria, vol. I, 2014, pp. 831-838.

¹²³ N. V. Dură, *Proselytism and the Right to Change Religion: The Romanian Debate*, in “Law and Religion in the 21st Century. Relations between States and Religious Communities”, edited by S. Ferrari and R. Cristofori, Ashgate Publishing Limited, England, 2010, pp. 279-290.

¹²⁴ N. V. Dură, *The Right to Religion: Some Considerations of the Principal International and European Juridical Instruments*, in “Religion and Equality. Law in conflict”, edited by W. Cole Durham Jr. and D. Thayer, Routledge, UK, 2016, pp. 15-24; N. V. Dură, *The Right and its Nature in the Perception of the Roman Jurisprudence and of the Great Religions of the Antiquity*, in A. Sandu et al. (Coord.), “Rethinking Social Action. Core Values”, Bologna, Medimond, 2015, pp. 517-524.

¹²⁵ S. Longinescu, *Istoria dreptului românesc din vremile cele mai vechi și până azi* [History of Romanian law from the earliest times until today], Bucharest, 1908, p. 356.

¹²⁶ P. Zepos, *L'influence du droit byzantin ...*, pp. 427-438.

were its main source, attributed to it an eminently nomocanonical (*pravilnic*) content, that is of the State laws and of Church laws, as confirmed by the 1841 edition of this *Pravila*, accredited to Kluceru Brăiloiu, which bears the title "*Pravilnicească Condică a Domnului Alexandru Ioan Ipsilant voievod*", and about which Professor Ștefan Longinescu rightly remarked that *Pravilniceasca Condică* is "the title under which the Code of Ypsilanti was commonly known"¹²⁷.

From the examination and hermeneutic analysis of the text of the *Pravila* of 1780 it was possible to find out that the country's customs were the main source of this *Pravila*, as also pointed out by Ștefan Berechet, according to whom "it is not out of the question that the Legal Manual of Mihail Fotinopolos might have also been taken into account, ..., in 1765"¹²⁸.

With regard to *Pravilniceasca Condică*, it can also be noted that, with regard to the systematization of its contents, it differs from the Codes or Collections of laws previously published, such as those of "Iacob Ioanitul (1645) and Mihail Fotinopolos (1765), which followed the syntagmatic model or that of the Byzantine laws"¹²⁹, because in the text of the *Pravila of Ypsilanti* one can also see certain influences of the modern Western law. Regarding the collections of laws that appeared after the *Pravilniceasca Condică*, such as, for example, the Code of Calimah (*Codul Calimah*) of 1817 and the Caragea Law (*Legiuirea Caragea*) of 1818, it was said that they imitated "the Western legislators of the early nineteenth century"¹³⁰, but in fact, the presence of the provisions of the "Byzantine Imperial Laws" and of the customs of the country in the text of these collections of Romanian legislation from the beginning of the 19th century, made the influence of the collections of Western legislation still anaemic and inoperative in the landscape of the old Romanian law of that period.

From the text of *Ypsilanti's Code of Laws*, known as *Pravilniceasca Condică*, the reader of our paper will also find out that, for its authors, the institution of marriage was not a priority, but, as stated in the Royal Charter, the judicial organization, the organization of the Courts of law, the legal procedure, etc. were the determining factors of its occurrence, for which its authors turned to the Basilika of the Emperors of the Macedonian dynasty and the Hexabiblos of Constantine Harmenopoulos¹³¹.

¹²⁷ S. Longinescu, *Istoria dreptului românesc ...*, p. 358.

¹²⁸ S. Berechet, *Istoria vechiului drept românesc*, vol. I, *Izvoarele* [History of the old Romanian law, Vol. I, Sources], Iași, 1933, p. 222.

¹²⁹ *Ibidem*.

¹³⁰ *Ibidem*.

¹³¹ *Ibidem*, pp. 222-223.

Nevertheless, these considerations did not prevent the authors of this *Code of Laws* from also presenting the legal status of some of the main contractual acts, such as, for example, the dowry deed, the testament etc. in the spirit of the Byzantine matrimonial law and of the customary law of the Romanian country.

From the examination and the hermeneutic analysis of the text of Alexandros Ypsilanti's *Code of Laws* (Pravila), promulgated in 1780, we have found that the sources used by its authors were both the written law (Byzantine legislation) and the customary law of the Country, which contributed to their registration in the area of ancient Romanian law, i.e., of "Jus valahicum", whose origins go back to the customary law of our Thracian-Geto-Dacian ancestors and to the "Jus scriptum" of the other Fathers of our nation, that is, to the "Jus romanum", in which there are also specific provisions regarding the "dowry sheet", which were also reaffirmed – in their principle provisions – in the text of the Alexandros Ypsilanti's *Code of Laws* (*Pravilniceasca Condică*), and were in force until Alexandru Ioan Cuza's Civil Code.

Finally, from the pages of our study the reader will also find out that the provisions of Ypsilanti's Code of Laws concerning the dowry sheets governed the social life of our people until the epoch of Alexandru Ioan Cuza, and that Anthim the Iberian, the metropolitan of Wallachia, was the one who left us important information on the manner of drafting these dowry sheets, which had been preserved until 19th century.

Last, but not least, from our paper, in which we have made some emendations concerning the assertions of certain historians and jurists with regard to the Code of Laws of Ypsilanti, the reader will also find our scientific contributions regarding the genesis and the way of application in the Romanian society of one of the old legal institutions, namely the dowry, as well as regarding Alexandros Ypsilanti, one of the main actors in the historical framework of his epoch, i.e. the epoch of the Phanariot regime.

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