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In the Preface to the Nomocanon of Govora, Meletius the Macedonian, the abbot of the Govora Monastery (in the then Romanian country, today's Romania), wanted to make more precise that “the divine Nomocanons do not leave the incompetent ones [uneducated] as pagans [the unknowing ones — the author's note], and that the respective clergyman, who “will keep firm and with judgment and with agreement the teachings of the Church,” will save both “himself” and “those who will listen to him.”¹ Therefore, in the view of a theologian and canonist Meletius the Macedonian (a Romanian to the south of Danube river) who has drew up and printed this Nomocanon, the very act of Salvation — personal and collective — is conditioned by the guarding and the proper confessing the teaching of the Orthodox faith, to which the Nomocanons were bringing a considerable contribution.

According to the testimony left by the Nomocanon of Govora, “in conformity with God's teaching [...] no one [should] defeat the priest” as far as the knowledge and the confessing of the teaching of Orthodox faith

¹ MELETIUS THE MACEDONIAN: Preface to all the leaders of the Holy Church — *Pravila bisericească de la Govora (The Nomocanon from Govora)*, diortosită de pr. Gh. I. Petre-Govora, Casa de Presă și Editură Tribuna, Rm. Vâlcea 2004, p. 15.

is concerned. “And of the simple men [unlearned as far as the theology is concerned], neither the boyars, nor the low ones [the ordinary men], should conquer [overcome] the priest, in order for the unenlightened ones to be raised to the light [by the priest].”² Thus, the priest was required both in matters of Orthodox faith and as far as the canonical and nomocanonical legislation and doctrine was concerned, to be “the light of the world,” that is, a teacher, the marriage and the Christian family which results from it included.

As far as the Christian teaching on the unity and indissolubility of the spouses resulting from the Matrimony is concerned, the Nomocanon stressed that “the woman has no power over her body. Likewise, the husband has no power over his body [...]. Since they both are a body, because that which was united by God, the man should not divide. Therefore, division [separation, i.e. divorce] should not be at all between the husband and the woman.”³

But, what also has to be mentioned is the fact that the Nomocanon of Govora — which is in fact a nomocanon with articulated ascetic-monastic content — accepts the second marriage, but prevents the priest from “going to the wedding reception when the second marriage is performed [so]. If he will go to bless them at the church, he shall not go to their houses, to that second marriage.”⁴

The Nomocanon of Govora vehemently condemns the rigorism of the old times Novations (Cathars), who were condemned by the Fathers of the First Ecumenical Synod (in accordance with canon 8): “The one who is disgusted by the Marriage to get married, or the second woman with her husband, or the second husband with his woman, and if someone will say that they are not competent [...] let them be anathema some like them” — the Nomocanon concluded.⁵ Also, in conformity with the words of the Govora Nomocanon, “the woman, if she leaves her husband, if she hates to mate with her husband, but she wishes to behave as a prostitute, let him be anathema. The woman, if she does not obey her husband and does not behave as he wants, as the Apostle [Paul] speaks, let her be anathema.”⁶ Most certainly, these excerpts from the text of the Nomocanon of Govora are illustrative as far as the view of its makers on Marriage and, as a consequence, on the relation between the two sexes (husband and wife) is concerned.

² *Pravila bisericească de la Govora (The Nomocanon from Govora)...*, p. 20.

³ *Ibidem*, p. 25.

⁴ *Ibidem*, p. 60.

⁵ *Ibidem*, p. 63.

⁶ *Ibidem*, p. 65.

We also find in the Nomocanon of Govora the teaching concerning the “mixed marriages,⁷ that is the marriages contracted between Christians and non-Christians and vice-versa. In accordance with the Nomocanon, “it ill behoves the faithful Christian to marry the non-Christians, and if this will happen, anyhow, the Apostle Paul speaks about this that the unbelieving woman is saved by her faithful husband and the unbelieving husband by the faithful woman. Therefore — the Nomocanon concludes — it is not proper to separate them,” but “the faithful husband [must pray] for his unbelieving woman [...] until God will bring her back into the true faith, likewise, the faithful woman for her unbelieving husband.”⁸

As it may be noticed, the Nomocanon duplicates almost word for word the text of the First Epistle to the Corinthians, chapter 7, verses 12—14, where we are told that “if any brother has a wife who does not believe, and she is willing to live with him, let him not divorce her. And a woman who has a husband, who does not believe, if he is willing to live with her, let her not divorce him. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband; otherwise your children would be unclean, but now they are holy.”

The enunciated principles by the Pauline text concerning the mixed marriages which in fact are also asserted by the canonical legislation from the first millennium (in conformity with can. 14 of the Fourth Ecumenical Council; 72 of the Synod in Trullo; 10, 31 of Laodicea; 21 of Carthage) are, thus, reasserted by the text of the nomocanonical legislation printed in Romanian language in the 17th century.

In the text of the three Nomocanons printed in the Romanian language, a special place is occupied by the Impediments to Marriage, and this reality proves the fact that those who prepared the Nomocanons were aware not only of the importance of knowing and respecting them, but also by the consequences of lack of respect toward them for the children born of a wedding of whose parents have ignored their kinship relationships and, by the fact itself, the kinship degrees and the impediments to marriage.

Among other things, the Nomocanon of Govora also demanded, the parents “to raise their sons in the fear of God,” and to advise them to pay respect to the impediments to marriage, since those from the same kinship degrees should “avoid to marry among themselves, up until the fourth degree of kinship. And if possible even in the fifth one, they should not marry amongst their cousins, because they are mixed blood.”⁹ There-

⁷ See, N.V. DURĂ: “The Mixed Marriages in the light of the Orthodox canonical teaching and practice.” *Orthodoxia* XL (1988), no. 1, pp. 92—113.

⁸ *The Nomocanon from Govora...*, pp. 72—73.

⁹ *Ibidem*, p. 26.

fore, in accordance with the Nomocanon of Govora, consanguinity produced an impediment to marriage up until the fourth degree (the first-degree cousins), but even the fifth degree was considered an impediment (the second-degree cousins).

On the three kinships: physical (resulted from giving birth and becoming an in-law), religious or spiritual (resulting from assisting as godparent at the baptism and at the matrimony ceremony), and the moral one (resulting from the religious betrothal ceremony, adoption or affiliation act or guardianship act), the Nomocanon of Govora provided that “among them marriage should not take place,”¹⁰ that is, the administering of the Holy Wedding was forbidden to the persons in a prohibited kinship degree, which has resulted from the three kinds of kinships (physical, religious and moral). But, we find this kind of prohibitions in some of the Byzantine nomocanons, as well as, for instance, the one written and printed by Matthew Vlastares in the year 1335, and which also was widely used in the Romanian countries, as it is in fact confirmed by the Nomocanon of Govora. Of course, these kinship degrees and impediments provided by this nomocanon peremptorily attest to the truth that its writers have closely followed the Nomocanon of Matthew Vlastares.

In the Romanian nomocanons from the 17th century we find the same kinds of kinship provided by the canonical ecumenical legislation of the first millennium,¹¹ yet their classification differs. For instance, in accordance with the Nomocanon of Târgovişte, the kinship is divided “into five rows: first is the blood one. The second is by becoming related as in-laws, that is of two families. The third is of the third relation, which is to become related as in-laws of three families. The fourth is of the Holy Baptism. The fifth is about the spiritual sons, that is the child he takes without him understanding the holy prayers and becomes truly his son as much as are his children” (The Straightening of the Law = SL, rule 190).¹² Consequently, the Great Nomocanon distinguishes five kinds of kinships.

¹⁰ Ibidem, p. 84

¹¹ That is, the blood kinship (natural), religious and moral kinship. For the blood kinship, see the following canons: 19 Apostolic, 54 in Trullo, 75 and 87 of St. Basil the Great, 11 of St. Timothy of Alexandria, etc. For the religious (spiritual) kinship, see the canons: 31, 53, 59, 78, 88 and 95 of the Synod in Trullo, 1, 47, 91 of St. Basil the Great. For the moral kinship, see the canons: 98 of the Synod in Trullo, 22 of St. John the Faster, etc.

¹² In some texts of the Great Nomocanon, in the marginal notes there appear the words: “to Matthew” (*Îndreptarea Legii* — hereinafter: The Straightening of the Law (SL)). Ed. Pelerinul român, Oradea 2002, pp. 1082—1083. In our opinion, these words come to indubitably confirm the fact that the writers of the Nomocanon of Matei Basarab have had as the main source the Syntagma of Matthew Vlastares, which has also made more precise the canonical doctrine concerning the kinship.

According to the Roman law definition, *Nuptiae sunt conjunctio maris et feminae consortium omnis vitae, divini et humani juris communication*¹³ (Marriages are the connections between a man and a woman, a unity for the whole life, a mutual participation in the divine and human law). This definition of the famous Roman juriconsult Modestin (2nd century AD) on the “matrimony” was in fact adopted by the Byzantine jurists and canonists who have asserted that this is the “relation (συνάφεια) between a man and a woman and the community (συγκλήρωσις) of the whole life,”¹⁴ but by adding the clarification that it is a “Holy Mystery” instituted by our Saviour Jesus Christ at the wedding from Cana in Galilee (in accordance with the Gospel of John, chapter II).

Yet, we find the contents of the definition given by Modestin (II ec.) even in the text of the canon 1055 of the Code of Canon Law published in 1983. According to this canon, “a man and a woman establish between themselves a partnership of the whole life [*totius vitae consortium*]” by *matrimoniale foedus* (the matrimonial covenant) which “is ordered by its nature [*sua naturali*] to the good of the spouses and the procreation and education of offspring.” The same canon mentions that this *matrimonial foedus* “has been raised by Christ the Lord to the dignity of a Sacrament (*ad Sacramenti dignitatem*) between the baptized.” And the canon adds that “for this reason, a valid matrimonial contract [*matrimonialis contractus validus*] cannot exist between the baptized without it being by the fact a Sacrament” (can. 1055).¹⁵ But, as a canonist of the Catholic Church pointed out, until now the theologians and the canonist of the Latin Church “failed to resolve a troubling problem resulting from the Church’s teaching, enshrined in canon 1055 § 2, that the marital contract and the marital sacrament are inseparable in the marriages of the baptized. If the total absence of faith in one or both parties to a marriage prevents them from entering a sacramental marriage, it also prevents them from entering into a valid marriage.”¹⁶

The Great Nomocanon printed in Târgoviște, the capital of the Romanian country, in the year 1652 — which took over Modestin’s definition from the Byzantine jurists and canonists defined the marriage as the mating a husband and of a woman, “that is involvement, or involvement and

¹³ MODESTIN, lib. I, reg. (I, I Dig. de ritu nupt. 23, 2), apud N. MILAȘ: *Dreptul bisericesc oriental*. Trans. D.I. CORNILESCU și V.S. RADU. revised by I. MIHĂLĂCESCU. București 1915, p. 473.

¹⁴ Apud L.P. MARCU: “Dreptul familiei.” In: *Istoria Dreptului românesc*. Vol. I. București 1980, p. 505.

¹⁵ Apud Codex Juris Canonici, Libreria Editrice Vaticana, 1989.

¹⁶ J.P. BEALL: “Commentary of the Canon 1055.” In: *New Commentary of the Code of Canon Law*. Eds. J.P. BEALL et al. New York 2000, p. 1248.

inheritance for their whole life, and for the righteous man drawing near to God” (SL, rule 203). But, as it may be noticed, the only new element brought into the Nomocanon’s definition is the clarification of the relation between the right man and God, which is in complete agreement with the spirit of the Orthodox Christian teaching. In other words, we may say that the definition of marriage — given by the Roman and Byzantine jurists — was fully Christianized.

In fact, the same Nomocanon continued to make more precise that “the marriages acknowledged as legal are those which are contracted according to the divine Nomocanons; the husband should be in accordance with the law and the woman acceptable for the husband, that is the young man to be over 14 years of age and the young lady to be over 12 years of age” (SL, rule 203).

In the same vein, based on the provisions written down in the Straightening of the Law, that is in the Great Nomocanon, only the marriages entered into in conformity with the dispositions provided by the nomocanons, which for writers of the Great Nomocanon have a divine character — are legal, that is, in conformity with the “law.”

Regarding the canonical age for marriage — 14 years for husbands and at least 12 years for the female — the Great Nomocanon did not do anything else but repeat the provisions of the alphabetical Syntagma of Matthew Vlastares. As a matter of fact, in the marginal note to the rule 203 from the Nomocanon of Târgoviște, the name Matthew is mentioned, which is no other than Matthew Vlastares, whose alphabetical Syntagma was employed also by the writers of the Great Nomocanon.

The Christian religious marriage — that is the Wedding Mystery — was always preceded by the entering into the religious engagement, which also born the juridical-canonical consequences. Thus, the fiancé could “complain to the judge [...] against the one who would have sworn [...] his fiancée, and even for the oath of an engaged daughter he may complain to the judge against her father and her fiancé and even against his father-in-law, as long as her oath, that is of the daughter, passes to all others, and maybe each one of these men of the daughter, one by one, may go to complain at the judge and to admonish the curser, and this one to understand when will be the curser to know all of them and how she is engaged” (The Romanian Teaching Book = RTB, chapter 46, 7).¹⁷ Consequently, in accordance with the Nomocanon of Vasile Lupu, not only her fiancé, but also her father and her father-in-law, could complain to the “judge” against the defiling or offenses brought against his fiancée by

¹⁷ *Cartea Românească de învățătură* (The Romanian Teaching Book, hereinafter: RTB), 1646. București 1961, p. 154.

a “curser” who should have been “reproved,” that is, punished, but on the condition that this one would have known that she was engaged.

Based on the canon 14 of the Fourth Ecumenical Synod — which prohibited those from the class of the clergy (inferior and superior) “to marry a heterodox woman” and their children to marry “a heretic [...], except for the case that a person who wants to become a relative (through marriage) with the Orthodox one has promised to convert to the Orthodox Faith” — the Nomocanons also have maintained the different religious faith as an impediment to marriage. But, even though at that time were not allowed the marriages between the faithful belonging to diverse Christian denominations,¹⁸ but only the marriages between Orthodox and heterodox or non-Christians, which, according to can. 14 of the Fourth Ecumenical Synod (at Chalcedon, 451), were “the heretic,” “the Jews” (sic!) and “the pagan,” however, the repetition — even a partial one — of this canon of the Ecumenical Synod’s text remains a proving testimony for the fact that such marriages also have taken place in the Romanian countries in the 17th century. But this reality fully attests to the spirit of great religious tolerance¹⁹ which was animating the Romanians of the time, who were educated in the humanist-Christian spirit,²⁰ the biblical and patristic origin, which was asserted in olden times — at the European level — by the exponents of the older times Romanians, such as, for instance, St. John Casian²¹ (+435) and Dionysius Exiguus²² (+545), the father of the canon law of the first Christian millennium.

¹⁸ On this kind of marriages — which are also a part and parcel of the “mixed marriages” — see N.V. DURĂ: *The mixed marriages...*, pp. 92—113.

¹⁹ See I.V. DURĂ: “La tolerance religieuse en Valachie et en Moldavie pendant la seconde moitié du XVIIe siècle.” *Irenikon* LVII (1984), 1, pp. 52—58; 2, pp. 176—195.

²⁰ See, N.V. DURĂ: *Valorile religioase creștine și moștenirea culturală, religioasă și umanistă a Europei.* “Laicitate” și “libertate religioasă.” Ed. Vasiliana ’98, Iași 2005, pp. 19—35; IDEM: “Christianity in Pontic Dacia. The ‘Scythian Monks’ (Daco-Roman) and their Contribution to the Advance of Ecumenical Unity and the Development of the European Christian Humanist Culture.” *Revue Roumaine d’Histoire* (1—4) 2003, pp. 5—18.

²¹ See C. MITITELU: “Saint John Casian the Founder of Occidental Monasticism.” *Christian Researches* VI (2011), pp. 32—49.

²² See in details the works of Professor Rev. NICOLAE V. DURĂ: “Străromânul Dionisie Exiguul și opera sa canonică. O evaluare canonică a contribuției sale la dezvoltarea Drep-tului bisericesc.” *Ortodoxia* XLI (1989), 4, pp. 37—61; IDEM: “Un daco-roman, Dionisie Exiguul, părintele dreptului bisericesc apusean” *Studii Teologice* XLIII (1991), 5—6, pp. 84—90; IDEM: “Denis Exiguus (Le Petit) (465—545). Precisions et correctifs concernant sa vie et son oeuvre.” *Revista Espanola de Derecho Canonico* L (1993), pp. 279—290; IDEM: “Dionisie Exiguul și Papii Romei.” *Biserica Ortodoxă Română* CXXI (2003), 7—12, pp. 459—468.

Among other things, the Nomocanon of Vasile Lupu prohibited the adopter to marry the adopted daughter, arguing that “it is a Nomocanon that neither this one nor his son might marry the one they have nourished and have raised now” (RTB, rule 42, 11). Thus, the Nomocanon was allowing neither the one who has adopted nor his son to marry the adopted daughter, by considering that they were within a degree of moral kinship, which was an impediment to marriage. But, it may also be learned from this interdiction that the writers of the Nomocanon mentioned the same impediments to Marriage, on the grounds of adoption, which had also been provided by the nomocanonical (Byzantine) legislation,²³ according to which “the legally adopted one enters with her adopting father into the same kinship relation as the one given to her by her blood relatives.”²⁴

The Great Nomocanon mentions as well a family relationship which established “that catching of brotherhood,” that is of the “family relationship equal to the one which is founded by the act of being born from the same mother.”²⁵ In the south-east European Orthodox space, this kind of family relationship was known as “cross brotherhood,”²⁶ and it had — similarly to adoption — a character of moral kinship. This “cross brotherhood,” which was born or was established “between two individuals who belonged to the same sex and with no family relationship among them,” have been blessed by the Church and it enjoyed a certain divine service.

The Great Nomocanon, which has categorically prohibited both the practice and the order of the ritual of the “blood brotherhood,” recounts to us that this was done by oath taken “on the Holy Gospel, and many time with priestly prayers,” in order for the adherents to become “fully brothers in the Holy Church, and after that [...] they were leaving the brotherhood [...] and were getting married and they were getting united into wedding [...]. That is why, seeing that the divine Fathers considered that it is a dishonest thing and as it is not proper to be done, they have cut off this practice and prohibited it. Therefore, as the writers of the Great Nomocanon made more precise — they have mended and have ordered that [...] catching into brotherhood to be prohibited, and if they will come to do it, then it should be considered untrue, as if it had been never done, it has to be counted as this [...]. But as many as are making

²³ Cf. Basilicale, XXVIII, 4, 24; 5, 8; M. VLASTARES: *Sintagma Alfabetică*. B, 8 (published in the *Athenian Syntagma*, vol. VI, p. 136).

²⁴ N. MILAȘ: *Dreptul bisericesc oriental...*, p. 507.

²⁵ I.N. FLOCA: *Drept canonic orthodox. Legislație și administrație bisericească*. Vol. II. București 1990, p. 80.

²⁶ *Ibidem*, p. 81.

them brothers nowadays, let them undergo penance, and the priest who will read prayers for them, if they catch them, let him be punished [sic] by defrocking” (rule 210).

Accordingly, those who were going on to doing that “catching of brothers” or “cross brotherhood” were harshly punished, but the Nomocanon does not make more precise how they were punished and by what kind of punishments. On the other hand, it is made more precise that the priest who accepts to read the customary prayers for that religious ritual were deprived the grace of priesthood, that is defrocked.²⁷

The Nomocanon of Vasile Lupu prohibited the “kidnapper” to get married with the “kidnapped daughter,” since “the wedding done after the kidnapping is not good at all, it is a thing which is as if it was not done, [...] and if he has kidnapped and married her, that wedding is not good at all, since he will be reproved as a kidnapper” (RTB, rule 32, 9 and 11). The marriage entered into after the act of kidnapping was illegal, and the kidnapper was punished by the Nomocanon with the capital punishment, since “the only punishment for the kidnappers — as the Nomocanon provides — is death” (rule 32, 2).²⁸

We find out from the Matei Basarab’s Nomocanon that marriage between individuals found on different social positions was prohibited. For instance, “slaves might not marry their masters” (SL, rule 199). Likewise, “neither the prince’s officer nor his son might marry the poor one whose master he is, up until his function will cease,” and “neither the fiddler, who plays the violin or the lute in the market place and at the wedding might marry the daughter of a good man or of the boyar, since this kind of men are the mockery of God and men” (SL, rule 200).²⁹ Of course, these interdictions properly render the mentality of the epoch not only as far as the categories and the social positions are concerned, but also of some professions, such as the one of bandsman or fiddler, considered to be unworthy before God and men. And, unfortunately, some reminiscences of this mentality seem to be residual up until today.

The Nomocanons from the 17th century³⁰ — printed in the Romanian language — provided some dispositions regarding the dowry of the

²⁷ Concerning the punishment of defrocking, see in great details at N.V. DURĂ: “Clarifications concerning some notions of the Canon Law.” Part I. *Ortodoxia XXXIX* (1987), 2, pp. 84—135; Part II. *Ortodoxia XXXIX* (1987), 3, pp. 105—143.

²⁸ RTB, p. 129.

²⁹ The Straightening of the Law (SL). București 1962, p. 211.

³⁰ As far as the juridical and canonical institutions regulated by these Nomocanons, see at large at Cătălina MITITELU: “Elements of matrimonial law in the Romanian Nomocanons, printed, from the 17th century.” *Dionysiana* 1 (2008), pp. 412—419; IDEM:

young woman, by specifying even the conditions under which she might lose it. For instance, the Nomocanon of Iassy (1646) provided that “the woman who has committed fornication” shall not lose “only the dowries,” but “the gift offered by her husband, also, and he will take all of them back [...] if he will leave her” (RTB, gl. 16, 1—2). Hence, in case of a wife, the conjugal infidelity was harshly punished as it is proved by the above case, in accordance with which the woman who was proved to be unfaithful was losing not only the dowry brought by her to marriage, but also the gift received by her from her husband.

The same Nomocanon provided that, when “the husband will catch the wife committing adultery,” the woman was losing “the entire dowry she may be having,” even when it “will be found that the woman is not wedded to the husband, but will live illegally and they will be able to leave each other at any time” (RTB, rule 16, 3). Yet, this text remains an obvious proof that the wife proved to be unfaithful was losing her dowry even when she was not religiously married to the man with whom she lived. In fact, the Nomocanon of Iassy provided that “the woman who loses her dowries will not be allowed to ask from her man not even something to eat, because she has committed adultery” (RTB, rule 16, 5).

On the other hand, the Nomocanon of Vasile Lupu also provided the sanctions against the husband guilty of conjugal infidelity. For instance, the Nomocanon says that “when a husband commits adultery, then his wife will leave him and will take with her the entire dowries, those which are hers and those given to her as gifts by the husband, clothing and other things” (RTB, rule 16, 7).

The Matei Basarab’s Nomocanon — known also as *Pravila cea Mare* (The Great Nomocanon) — also paid due attention to the procedure regarding the guarding and the transfer of the spouses’ dowry. For instance, in the rule 265 — suggestively titled “On the pricing of the dowries and un-pricing; and for the outside dowries” — it is provided that the husband who is proven to have done damage to the goods brought by his wife as dowry, “is obliged to pay her. The interest and the damage of the dowries, taken by the husband, are his obligation. Even though

“Elements of successional right in the Romanian Book for teaching and the Straightening of the Law” In: *Omagiu profesorului N.V. Dură la 60 de ani*. Ed. ARHIEPISCOPIEI TOMISULUI, 2006, pp. 1442—1446; IDEM: “Some Aspects concerning the Individuals in the Nomocanon of Vasile Lupu and in the Straightening of the Law.” *Analele Universității OVIDIUS Constanța/Seria Drept și Științe Administrative* 1 (2005), pp. 235—241; IDEM: “The successional regime in the Romanian Book for teaching and the Straightening of the Law.” *Analele Universității OVIDIUS Constanța/Seria Drept și Științe Administrative* 1 (2004), pp. 157—163; IDEM: “Elements of Penal Law in the Romanian Nomocanons printed in the 17th century.” *Dionysiana* 1 (2010), pp. 419—430.

the husband is poor, he has to pay for the dowry he has taken” (SL, rule 265).

According to the Christian teaching, the goal of marriage is to establish and consequently give birth to children. That is why we cannot talk about marriage without referring to the materialization of its major goal, that is the perpetuation of the human race,³¹ which is done by giving birth to children resulted from marriage which gives life and full consistence to a family.

The Nomocanons always related to marriage, by its foundation and finality, to family, which obviously presupposes the existence of children, to whom they have expressly referred, since they categorically prohibited the child from complaining to the judge for bad treatments experience by him/her from his parents, grandparents, or even his/her other relatives. “Neither the son nor the grandson up until the eight degree will be able to ask for judge — provided the Nomocanon of Vasile Lupu — to reprove his father or his uncle and other faces like these, because they have sworn at him or have beaten him, as long as the judge believes as father and the uncle and the others as them have sworn at them and have beaten them to teach them and not because of wickedness. This is to be understood when the beating and the hurting will be in the measure, since if they overcome the measure, then the one who has beat or hurt will be bodily reprovved, and it depends on the will of the judge to legislate whether or not it is in the measure or if it is harmful” (RTB, rule 43, 19—20).

Consequently, a child could be reprovved and even punished with beating both by his father and by his grandfather and his relatives, since, in the view of this epoch, they were considered as being part of the instructive process of him. However, it must be remarked the fact that the writers of the Nomocanon have been animated by a retributive spirit of human origin, since they have left it to the “judge’s” latitude to evaluate whether the bodily beating and hurting have not gone beyond measure. In case he had found out that these punishments were administered to the child “not for instructing,” but out of “wickedness,” the judge would have been obliged to “bodily” punish their authors, that is they had to undergo corporal punishments, which were, incidentally, another form of valid manifestation of violation of human rights.³²

³¹ The biblical account tells us that God made “husband and wife” and “blessed them, saying: be fruitful and multiply, fill the earth and subdue it...” (Gen. I, 27—28).

³² See at large at N.V. DURĂ: “The main organisms and international organizations with preoccupations and attributions in the field of promoting and insuring the juridical protection of human rights.” *Dionysiana* I (2007), pp. 18—25; IDEM: “The rights of the Persons who lost their autonomy and their social protection.” *Journal of Danubius Studies and Research*, II, 1 (2012), pp. 86—95.

With regards to the relation between parents and children, the Nomocanon of Govora (1640) had additionally asserted that all the children were obliged — by divine commandment — to honour their father and their mother (Exodus, 20, 12; Eph. 6, 1—2), since, in conformity with Christ's Law, the one “who strikes his father or his mother shall surely be put to death [...] whoever kidnaps one of the children of Israel and overcomes and sells him, and he is found with him, let him surely die” (Exodus, 21, 15; 17). Merciless with the “son” who told “his parents bad words, and without justice,” the Nomocanon provided that this should be punished by death. Under the terms of the Nomocanon, “he has to die by death, since his parents have given him light and life — the Nomocanon (n.n.) argued. But if he regrets his deeds, he should be given a canon of penance after years, in order for him to be forgiven by his father and his mother, and if he has taken a club in his hand to strike his father, let his hand be cut. If the son disgusts his mother, it would have been better for him not to have been born.”³³ These are, certainly hard words pronounced by the Nomocanon against children who have not paid respect to their parents or have not honoured them. And, despite this, this evil was not broken off, as it may be found out — in singular or isolated cases — not even in our days, and from this derives the obligatory character of human society not to be satisfied barely with the provisions of penal law, but to try to propagate the religious-moral values in the area of secular school.

The Nomocanon of Iassy (1646) also talked about the obligation of children to pay respect to their parents. In the case in which a child dared to offend his parents, his/her father could “urge the judge to reprove his son who has sworn at him, even if the oath was a little one” (RTB, rule 43, 22). At the father's request, the judge could thus punish the son who offended him, regardless of the weightiness of the insult, which was called by the Nomocanon an “oath.” But the same Nomocanon of Iassy makes an explicit reference to the demotion from the parental rights, which could have taken place in two situations: (a) when the father has not cared for the ill son and has sent him to a hospital establishment (usually a monastic one), where there were some people suffering from Black Death, or cholera patients, etc.; (b) when he has sent or urged his own daughter to fornicate. With regards to the first situation, the Nomocanon was providing that “the one who sends his ailing son to the hospital, that one will lose his parental power over his son”; (RTB, rule 9, 15). It is likewise interesting to mention the fact that this Nomocanon was making more precise that, in case in which the respective son killed his father, “the one who kills his father shall not be reprovved as a killer who

³³ *The Nomocanon from Govora...*, p. 25.

commits a quick homicide.” However, the Nomocanon added the clarification that “thus in this way should suffer this son as the one who shall send his father to hospital” (RTB, rule 9, 16).

Therefore, we find out of these provisions of the Nomocanon that the legislator of the time was condemning the father who exhibited such a behaviour as compared to his son with the demotion from the parental power. Moreover, in case the son had killed his father who would have thrown him into such a hospital establishment, he would not have been punished for murder committed against his father, but for murder committed under the urge of wrath, which is expressed by the Nomocanon through the syntagma “quick murder.” But, the same legislator wanted to make more precise that the same punishment will be undergone by the son who sends his ailing father into such a hospital establishment.

Of course, in those provisions of the Nomocanon we have to see the concern of the legislator for respecting the human dignity, particularly for the natural and fundamental right of man, which is the right to enjoy a respectful treatment even in the situation when one is sick, be he young or aged. This concern — which additionally had been an object of legislation by the two basic institutions of the Byzantine Empire, the State and the Church — was, hence, reasserted by the Nomocanons printed in the Romanian language and appeared in their texts. Yet, this thing makes fully evident the fact that the Romanian legislator, of that respective epoch, was animated by the desire to assert the necessity of respecting the image of God in man, and, by the fact itself, of the human dignity, even though the mentality of the respective epoch was grasping and expressing it in a way completely different from the one we perceive today³⁴.

Cosidering the second of the enumerated situations, in which one of the parents was demoted from his/her parental power, because he/she sent away his/her daughter or urged her to fornicate. In this case, the Nomocanon of Visile Lupu provided that the “fornication done with the parents’ permission is worse and a thing full of shame and of a greater shame than the one done among strangers. Therefore, any father who sends his daughter to fornicate, first shall lose his parental power and to have pressure from the judge as to give her more diligently all the dowries she has from her father and to get separated from him as if she was never his daughter. Secondly, all the goods he has let them be taken from him, all of them to be taken by the reigning prince, as long as he lives. If he dies, then they will be of those who will be his inheritors; the third

³⁴ See, N.V. DURĂ: “The right to human dignity (*dignitas humana*) and to religious liberty. From ‘*Jus naturale*’ to ‘*Jus cogens*’.” *Analele Universității Ovidius*. Seria: Drept și Științe Administrative 1 (2006), pp. 86—128.

let him be sent to forced labour, to be tormented for all his life” (RTB, rule 30, 1). From this text, which is still of relevance today, especially for those who are called to watch over the moral health of human society, we may retain the following things: (a) the prostitution which was committed by children with parents’ permission was much more worthy to be condemned than the one which was done among strangers; (b) any father who sent or urged his daughter to turn to prostitution was demoted from the parental power and obliged by the “judge” to give her all the goods that made up her dowry; (c) from such a father all of his wealth was confiscated and it was taken into possession of the reigning prince. After his death, his wealth was given to his inheritors; (d) the respective father was punished by life imprisonment.

The authors of the same Nomocanon kept adding the clarification that “these new Nomocanons give teaching to the father who would sent his daughter to turn to prostitution to be decapitated. Likewise, the same reproof should undergo the brothers who would make their sisters to act as prostitutes, or some other relatives of theirs who are consanguineous, which reproof should be taken into account for such a great sin, as it is kept by the Byzantines’ Nomocanon up until today, even though at some places they are reproofed by the prison throughout their life or a number of years and they were carried on the donkeys and beating them while naked on all the narrow streets; but their true reproof is death” (RTB, rule 30, 2).

We can also learn from this text that the creators of the Nomocanon of Vasile Lupu knew well both the old Byzantine legislations and the new Nomocanons, such as the one of Matei Vlastares (14th century) and the one of Manuel Malaxos (16th century) which they have fully used in its text. Moreover, we find out that the authors of the Nomocanon adopted the disposition provided by these nomocanons concerning the punishment for the father who would make his daughter turn to prostitution, namely, the capital punishment by decapitation. Even more so, they reasserted the punishment provided by these nomocanons for the brothers or for other blood relatives who have contributed to the “prostitution” of the daughter. In fact, they demanded that the rules provided by the “Byzantines’ Nomocanon,” according to which the “pimps” were punished by death, were still in force. Therefore, we ought to keep in mind that they have not accepted the life imprisonment and their humiliation, that is “the carrying on a donkey, completely naked,” and being beaten in public, as it was practiced in some places, but they have subscribed to the death punishment provided by the Byzantine legislation.

We may also learn from the same Nomocanon that the mother who sold her daughter for money to be a prostitute, was punished, but not in

the same manner as her father. “That mother who sells her daughter for money to fornicate with somebody — provided the Romanian Teaching Book — let her nose be cut; and if it is found out that she did not make a deal to take money, but only agreed with the will of her daughter, then she will be reprovved in accordance with the judge’s will; but if the mother has committed a big mistake because of great need or because of poverty, she shall not be strictly reprovved as long as the judge shows mercy while seeing her poverty and her need” (RTB, rule 30, 3). The daughter’s mother was, therefore, punished with the cutting of her nose. But, even in the case in which she has not contributed to the fall of the daughter into the sin of fornication, she was punished in accordance with the consideration of the “judge.” Finally, in the case she pushes her daughter into prostitution for poverty reasons, the mother was not punished “so strictly” that is in conformity with the law, but with a certain understanding of reality by the judge.

Amongst the Romanians from the 17th century, the dissolution of marriage was done only “in cases of grave misunderstandings, after the sponsors and the relatives failed in their attempt to reconcile them,”³⁵ since, in that time, the divorce was not a fashion or a usual thing as it is today.

Since, at the time, the marriage was usually orchestrated by the parents, its dissolution was considered not only a defiance of their will — which more often than not led to enmity and revenge among families — but also to an encroachment of the divine commandment, which has established the monogamous character of marriage.³⁶ Therefore, it is no wonder the fact that the Nomocanons printed in Romanian language in the 17th century speak about “the wrath ordered on those who disunite the husband from the woman, and the woman from the husband, with no word for blame” (SL, rule 213).

In reminding that “the couples are made by God’s commandment,” the Great Nomocanon commanded: “let them not become disunited without guilt, or to take gifts, or other interest or bribe. And the one who will be proven guilty for the dissolution of the legal marriage, that one is called Antichrist, because Christ and our God commands us to leave our father and our mother and get united with our women and to become one body with them. And the Lord only has put law that the man should not be powerful to disunite the husband and the woman without guilt. And the one who will disunite without guilt, only to take bribe or gifts,

³⁵ L.P. MARCU: “Despărțirea și recăsătoria.” *Istoria Dreptului românesc*. Vol. I, p. 514.

³⁶ See I. CHELARU: *Căsătoria și divorțul. Aspecte juridice, civile, religioase și de drept comparat*. Iași, f.a., pp. 237—287.

that man is not only Satan, he is also the Antichrist, and a lawbreaker, as he would trespass the God's law, and he is an enemy against His commandments, which will fall suddenly from this life and will inherit eternal labour" (SL, rule 213).

Thus, from the beginning, the Great Nomocanon made more precise that the unions through marriage are done by God's commandment, from where come the obligations for the judges — civil or ecclesiastical — not to give a verdict for its dissolution without the foundation provided by the Divine law and canon law. Therefore, the Nomocanon interdicted the judges from pronouncing a divorce sentence just to have undue gains (money, goods etc.). Even more so, those who were admitting the divorce with no strong reason were called "Antichrists," and they were not even considered human beings, but devils, breakers of the divine law, enemies to God's law, and because of these things they will inherit the eternal torments.

It may also be learnt from the analysed text that, in the Great Nomocanon's makers' conscience, the marriage of husband with the wife was ordered by God, and it cannot be undone by men. Indeed, in conformity with the teaching of faith of the Orthodox Church,³⁷ this relationship or union for life of the two — willed by God — shall cease for only two reasons, which are physical death and moral death (adultery). This is why, in this text of the Great Nomocanon we must notice, in fact, the affirmation of the doctrine of the Orthodox Church concerning the marriage and its indissolubility. Depicted by this teaching of Orthodox faith into a full unity, in accordance with the image of relationship between Christ and His Church (Eph. 5, 31—32), — the Christian Marriage — on which the Christian Family is founded — cannot be, however, undone except for the "sin of adultery for which one of the spouses is guilty," and by "death," but this one only "temporarily, [...] since they shall be again united, for eternity, in the life hereafter."³⁸

The same Nomocanon makes reference to the dissolution of marriage by that *libellum repudii*, that is by having announced by one of the spouses that he/she is no longer willing to remain in the conjugal connection, or by that *divortium ex consensu*, when both spouses reached a common agreement (*communi consensu*) for undoing the marriage (cf. SL, rule 213).

In the Great Nomocanon (*Pravila cea Mare*), printed in the year 1652, the book which the husband sends to his spouse with the goal of "leaving his wife" is edited in three languages: Latin, Greek, and Romanian.

³⁷ See *Învățătura de credință ortodoxă*. Craiova 1952, p. 162.

³⁸ *Învățătura de credință creștină ortodoxă*. Publishing House IBMBOR, 1982, p. 284.

“*Repudium* in Latin and in Greek it is called *diazighion*, and in Romanian it is called the book for separation of husband and of wife” (SL, rule 213). Yet, the fact that this “separation book” is named in three languages, might be not only a proof that the Great Nomocanon’s authors have used the Byzantine nomocanons, but an obvious proof that they very fluent in the three languages, that is Latin, Greek, and Romanian.

Both methods of divorce — inherited from the Roman and Byzantine worlds³⁹ — have not been accepted by the Church, and it was required an insistent and of a long duration step from her part until “she succeeded to determine the Greek-Roman civil legislation to take position as against this kind of undoing the marriage.”⁴⁰ Indeed, only during the emperor Justinian’s reign “*divortium ex consensu* was officiated and at the same time was decided that only for some reasons, on the base of some judicial sentence, marriage can be undone.”⁴¹

That these methods of divorce — provided by the Roman law — have continued to be applied, is confirmed even by a Novel⁴² of the same emperor Justinian, from the year 566, by which the old law was reactivated, “in conformity with which the marriage could have been undone by accord (κατὰ συναίνεσιν). Three more centuries needed to pass before the opinion of the Church on divorce was fixed in the Greek-Roman civil legislation.”⁴³ Indeed, only in the Collections from the 9th and 10th centuries, that is in the *Prohiron*, published in the year 870, commissioned by the emperor Basil I the Macedonian — by which have been restored “those parts of the Roman-Byzantine law, which have been mutilated or removed by the *Eclogue* issued by 130 years before”⁴⁴ — and in the *Basilicals* — the monumental Roman-Byzantine law collection published in the years 910—911 — was also introduced in the state legislation the canonical doctrine of Orthodox Church on divorce, in conformity with which “the divorce by mutual accord was allowed only for a justified cause (εὐλογίος αἰτία) when especially the spouses were striving for a life more perfect, which [...] consisted in their retreat to monastery.”⁴⁵

³⁹ See *Codex Justinianus*, V, 17, 9.

⁴⁰ N. MILAȘ: *Dreptul bisericesc oriental...*, p. 518.

⁴¹ *Ibidem*.

⁴² In fact, by the Justinian’s Novels was done “the step from the old Roman law to the proper Byzantine law, their great majority being redacted in the Greek language or only in the Greek language and less in the Latin language” (I.N. FLOCA: *Drept canonic orthodox...*, vol. I, p. 101).

⁴³ N. MILAȘ: *Dreptul bisericesc oriental...*, p. 518.

⁴⁴ I.N. FLOCA: *Drept canonic orthodox...*, vol. I, p. 103.

⁴⁵ N. MILAȘ: *Dreptul bisericesc oriental...*, p. 519.

We can clearly see from this concise presentation that the Christian family was perceived and expressed by the authors of the nomocanonical legislation printed in the Romanian language in the 17th century, in conformity with the precepts of faith teaching and of the legislation and canonical doctrine of the Eastern Orthodox Church, which have found in the Roman and Byzantine law their juridical sources and foundation. Yet, exactly these things do make of the three Nomocanons (of Govora, 1640, of Iassy, 1646, and of Târgoviște, 1652) a documentary reference source for those who wish to know one of the old Christian institutions, namely the Family, which takes life through the religious Marriage, that is through the Christian Wedding, by which the spouses (the husband and the wife) receive “la grace sacramentelle,” which “ne s’identifie pas a la grace sanctifiante.”⁴⁶ Finally, we can say that these Nomocanons help us to understand better not only the Eastern Church’s official teaching on Family and, *ipso facto*, on Marriage, from that epoch (17th century), but to take into consideration also the contemporary challenges regarding these ancient juridical and canonical institutions.

⁴⁶ Jean-Philippe REVEL: *Traité des Sacrements*, vol. I, Les Editions du Cerf, Paris, 2005, p. 149.

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CĂTĂLINA MITITELU, BOGDAN CHIRILUŞĂ

The Christian Family in the Light of the Nomocanonical Legislation Printed in Romanian Language in the 17th Century

Summary

In the Nomocanons of Govora (1640), Iassy (1646) and Târgovişte (1652), that is in the three nomocanons written and printed in the Romanian language in the 17th century — which are, in fact, representative for the apogee of the juridical-canonical medieval culture from the Romanian countries — the juridical-canonical institution of the Family and, consequently, the Marriage — the one which gives life to it — have received from their authors a special attention.

A close examination of the three Byzantine nomocanons texts — even a succinct one — made obvious the fact that for the Romanian society of the respective epoch (the fifth and sixth decades of the 17th century) the Family was one of its juridical-canonical institution, where from we can also notice the evident preoccupation of the then theologians, canonists, and jurists to put in hand of their contemporaries not only a canonical or nomocanonical guide concerning the rights and the obligations of their members, but a theological exposition with regard to the teaching of the Eastern Church on the Family and its constituent element, the matrimony, with all the conditions and impediments which have been provided by both the canonical Legislation of the Eastern Church from the first millennium and by the norms of the Roman and the Byzantine law.

CĂTĂLINA MITITELU, BOGDAN CHIRILUȚĂ

Famille chrétienne à la lumière des Nomocanons imprimés en roumain au XVII^e siècle

Résumé

Dans les Nomocanons de Govora (1640), ceux de Jassy (1646) et ceux de Târgoviște (1652), c'est-à-dire dans les trois Nomocanons écrits et imprimés en roumain au XVII^e siècle qui sont représentatifs pour l'apogée de la culture juridico-canonique médiévale des États roumains, les auteurs dirigent une attention particulière sur l'institution conjugale à caractère juridico-canonique et sur le mariage même. L'analyse approfondie de ces trois « Nomocanons byzantins » permet de constater que pour la société roumaine de cette époque-là (c'est-à-dire des années cinquante et soixante du XVII^e siècle), la famille était une des institutions juridico-canoniques dont les théologues, canonistes et juristes prenaient un soin particulier. Son but était d'offrir aux gens d'alors non seulement des vade-mecum canoniques ou nomocanoniques concernant « les droits » et « les obligations » des membres de familles, mais également une présentation théologique de famille conforme à l'enseignement de l'Église orientale sur ce sujet, y compris les conditions et les empêchements au mariage établis par la législation canonique de l'Église orientale du premier millénaire, ainsi que par les normes du droit romain et byzantin.

Mots clés: nomocanons, droit byzantin, droit romain, institution conjugale

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La famiglia cristiana alla luce dei Nomocanoni stampati in lingua rumena nel XVII secolo

Sommario

Nei Nomocanoni di Govora (1640), ed anche nei Nomocanoni di Jassy (1646) e Nomocanoni di Târgoviște (1652), ossia nei tre Nomocanoni scritti e stampati in lingua rumena nel XVII secolo che sono rappresentativi per l'apogeo

giuridico-canonico della cultura medioevale degli stati rumeni — l'istituzione giuridico-canonica della famiglia e di conseguenza, anche del matrimonio — godono della particolare attenzione degli autori. Un attento esame di questi tre “Nomocanoni bizantini” permette di affermare che, per la società rumena dell'epoca rappresentata (ossia la quinta e la sesta decade del XVII secolo), la famiglia era una delle istituzioni giuridico-canoniche a cui prestavano particolare cura i teologi, i canonisti e i giuristi. Il suo fine era quello di offrire alle persone contemporanee delle guide, non solo canoniche o nomocanoniche, riguardanti i “diritti” e i “doveri” dei membri delle famiglie, ma anche di presentare teologicamente la famiglia in conformità con l'insegnamento della Chiesa Orientale in tal merito, inserendovi le condizioni e gli ostacoli stabiliti al matrimonio, sia da parte della legislazione canonica della Chiesa Orientale del primo millennio, sia da parte delle norme di diritto romano e bizantino.

Parole chiave: nomocanoni, diritto bizantino, diritto romano, istituzione del matrimonio