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Judicial archives and the history of the Romanian family: domestic conflict and the Orthodox Church in the eighteenth century

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The present study explores the importance of judicial archives for the study of the family in the eighteenth century. In the absence of parish registers and of narratives of the self or other literary documents from the period, the judicial archives maintained by the ecclesiastical courts remain a unique source for the study of domestic conflict in the period. Amongst other instances of familial discord, divorce is the one which best reflects what was at stake both for the social agents and for the Church. In spite of the frequently reiterated claim that the wedding is an inviolable sacrament, in practice the Church, which had jurisdiction over family conflicts, allowed a growing number of couples to embark upon the arduous road to separation. On the other hand, it also manifested its reserve in some divorce cases. The present analysis looks at the narratives presented by the claimants as well as at the dossiers built during court hearings in order to identify the arguments invoked for or against separation and divorce.[1]

Keywords: divorce; domestic conflict; litigation; family; women; sexuality

Judicial archives are almost the only sources available to the historian of family life in old-regime Romania.[2] Record-keeping started as soon as a tribunal was created within the Metropolitanate of Bucharest (Wallachia) in the early eighteenth century. An ecclesiastical tribunal was created in the neighbouring province, Moldavia, around the same time (Ungureanu, 2004). These initiatives belonged to the powerful metropolitans heading the Churches of the two provinces in very unstable times: the ruling princes, appointed by the Ottoman Porte, never lasted longer than three years on the throne, and often less, if they were deposed by the suzerain power.

At the same time, the State was undergoing a process of reform and centralization, which continued throughout the century, in an attempt to control the subjects and extract increased tax revenue.[3] State and church control over the family was, therefore, of paramount importance. A series of church laws, canons and decrees embedded the individual in a nexus of rules and obligations which meshed with the unwritten prescriptions of customary law and with the traditional Christian norms.

The creation of an ecclesiastical tribunal in Bucharest does not mean, however, that the documentation it assembled together ensures a thorough understanding of matrimonial practices or domestic conflicts. Although the archives comprise an impressive number of year-by-year legal records, they remain severely limited due to lack of communication between centre and periphery, to the poor levels of literacy among parish priests, as well as

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to the subjects' contrasting views on the 'usefulness' of a church tribunal. The fact that lawsuits in family disputes could now be heard in one place, the capital city, may have been useful for the Church, but was not necessarily perceived as such by the rest of the population. Aside from the travel and accommodation expenses incurred by the parties, it was the inherent value of the institution that was being questioned. Marriage, and implicitly separation, did not necessarily presuppose the involvement of the Church; when a couple started living together, their union was seen as legitimate. In the same way, the very act of a spouse abandoning the matrimonial home triggered what people commonly called a 'separation', without any institutional involvement. Aside from their kin, people consulted with the local notables, more accessible than the central authorities in Bucharest. The local authorities thus inserted themselves in between the central power and the subjects and mediated in family disputes without keeping and leaving behind any written records. The Metropolitan Antim Ivireanul (Antim of Iviria, 1708–1716) tried to find a remedy for what the church deemed to be a serious situation when he required the parish priests – as local representatives of the central authority – to steer the faithful towards the church tribunals, the only institution officially authorized to deal with family litigation (Antim Ivireanul, 1997, pp. 338–339).

The present study aims to explore family disputes, and in particular divorce, by looking at the three key stages involved: the petition [Rom. *jalba*], the 'damnation letter' [Rom. *cartea de blestem*], and the inquest. Each of these stages and the relevant documentation throw light upon the litigants, upon the construction and deconstruction of a case and upon inquest procedures. Their exploration reveals what was at stake in each case, as well as the negotiations and compromises made in search of a peaceful resolution. The resulting picture offers insights into matrimonial practices, family life, and the role of the Church in legitimizing relationships and promoting moral values. It is noteworthy that matrimonial litigation came to dominate the cases heard in the church tribunals: their increased frequency reflected what the Church identified as a serious moral crisis at the end of the century. In this study, we will analyze the types of documents involved with their specificity and limitations, the main of which being the fact that they are almost the sole sources available to the historians of ancien-regime lives. For a better understanding of their role, they are presented here via a number of case studies apt to illustrate the ways in which they were embedded in daily practices.

The actors and their stories: the petition

Summoned before the court, couples often compiled short 'narratives' of their lives together, in an attempt to explain why the marriage did not work and why the relationship broke down so completely. Such narratives had the twofold aim of providing the litigants' own perspective on the situation and of justifying their actions. At the same time, in order to convince the court, the litigants made reference to aspects of marital and community life which would have been lost otherwise.[4]

The petition marked the opening of the court hearing. It could be verbal or written: petitioners often indicated this by explicitly mentioning that their petition was submitted 'by letter' [Rom. prin răvaş]. A petition could be accompanied by a counter-petition, submitted by the defendant. The route such papers took could be rather convoluted: it was not submitted directly to the court, but to the court secretary [*logothete*], who often had to be cajoled or pressurized into receiving it or into 'fast-tracking' it. However, the petition alone could not ensure the completion of a judicial procedure. Upon receiving the petition, the Metropolitan, head of the Orthodox Church and implicitly president of the court,

opened an inquest *in situ*. The inquest was conducted by the parish priests who, upon collecting information in the local community, drew up a report (Ghiţulescu, 2004). The petition and the counter-petition could be lodged at the same time at the metropolitan chancellery: this was either because the two parties were so unhappy with their situation that they started proceedings at the same time, or as a result of an attempt to subvert the facts and confuse the witnesses.

Lawsuits revolved around a community's moral values, around what was 'permissible' or not. As such, the petitions throw light on family conflicts or collective tensions involving members of the same community. Gossip and rumour disseminated in the village or suburb could anger individuals. Abuse and calumny became objects of complaint. Suspicion could escalate into rumour and could result in confrontation and even in fights in the village square. Economic competition could oppose parents to children, brothers to sisters, and could expand beyond the family circle. Disputes between in-laws could add to the economic conflicts. Retrieval of dowry assets often led to scandals which had to be mediated in court. Conflicts between spouses also represented a significant number of cases heard by the church tribunals.

Petitions were seldom written by the litigants themselves. The parish priests and court clerks were the main artisans in the 'manufacturing' of conflicts. In other words, each story has come down to us through the filter of an intermediary agent. Our explorations of a large sample of petitions (in cases of divorce, seduction, abduction and rape, sodomy, disputes over property and inheritance, etc.) have shown that the court clerk only intervened in the narrative to stylize or to purge texts of unacceptable or vulgar terms. Thus, swear-words were often rendered as 'base language' or 'shameless and unworthy talk', while unsocial behaviour and attitudes were often described as 'devilish and gross conduct'. Thus, the 'fiction' presented in such documents, to use the term proposed by Zemon (1987), was the creation of the petitioner. The clerk merely embedded this fictional narrative within a formulaic template with identical beginnings and endings. Another feature of such documents was their orality, especially in cases where the author was the provincial parish priest, not fully conversant with the strategies of case-building.[5]

Petitions routinely started with a formula eliticing the compassion of the authorities: 'Your Highness, with scalding tears I beseech Thee', 'I implore Your mercy and kindness, Your Holiness', 'Most Holy Father Metropolitan, in all humility I submit this petition', 'Most Holy Father, with scalding tears I implore Your mercy'. They concluded in the same style: 'Your Highness' servant Răducan Titean, postelnic at Titu, county Dâmboviţa', 'Your Highness' servant Ruxandra of this place, daughter of the late Negoiţă third logothete'. In between was embedded the transcription of the oral petition, with the occasional embellishments of the clerk. In search of 'justice', these social actors resorted to the courts. A trivial daily detail which might have been lost in obscurity with the passing of time acquired importance because it was turned into an object of litigation. Once it became an event, the conflict went to court and divided the community. Arguments between spouses, cases of rape or disputes between neighbours were ordinary, daily occurrences, but had a major role in the construction of sociability and solidarities (Muchembled, 1987, p. 32).

Who resorted to the legal mediation of the authorities in the eighteenth century? Most of the petitions were submitted by humble people, often from the lowest, poorest strata: peasants and small artisans from the suburbs: clothiers, belt-makers, tanners, shoemakers, builders, barbers, joiners, locksmiths, etc. Immediately after this category came the lower echelons of civil servants, equally poor: an army of clerks, secretaries, gendarmes and functionaries.[6] Lower-rank boyars and merchants are equally well-represented in the records kept in the

Metropolitan court registers. Higher-rank boyars are less numerous, not because they did not petition for divorce, but because in their case the proceedings were not recorded and the divorce decree was handed directly to the person who won the lawsuit. In addition, naturally, their number was small in comparison to the rest of the population.

The women represented in these documents were predominantly housewives who sometimes complemented the family income by taking on work such as knitting, embroidery or offering laundry services to local customers. If employed, they had domestic jobs in boyars' or merchants' houses or worked as pub landladies, washerwomen or shopkeepers.

The actors in these archival narratives form a diverse sample: they were peasants and suburbanites unhappy with their spouses, priests and monks accused of seduction and even rape, boyar ladies who tried to gain more independence from the patriarchal system, abandoned women, widows left in the street without their dowry assets, fallen women, etc. The greatest number of petitions was recorded for the capital city, Bucharest, which attracted a large number of migrants from the countryside. Absconding wives hid in its suburbs, men sought a haven in its pubs and brothels, young women sought jobs in the homes of the well-to-do. This is the reason why the new arrivals to the capital presented themselves in the records as being 'of this place', even though they may have come from elsewhere. For example, a couple travelling to Bucharest for the divorce proceedings and living in the Biserica Albă suburb, represented themselves as being natives of the city and, initially, did not make any reference to their actual place of origin. Only when they were asked to provide evidence in support of their claims did the spouses mention that they had been living in the capital only for one week and that, in fact, they were better known to their neighbours in Crângaşi, county of Ilfov, where they had lived for the eight months after their marriage (BAR, ms. 638, ff. 81r–82v). No further details were given or requested because the members of the tribunal were only interested in identifying a period for which testimonies could be collected rather than in the parties' specific location. Ultimately, it mattered little whether the spouses were from Bucharest or from Crângaşi, for they belonged in the area where they started divorce proceedings. Similarly, husbands away from home in search of work considered themselves as residents in the suburbs, while their wives supplied the addresses of their marital homes in a different location. Such imprecision is problematic, not least because of the difficulties in establishing the actual urban/rural ratio among those involved in divorce cases. Nevertheless, Bucharest remains the city with the greatest number of recorded divorce petitions also because it was the site of power and the suburbanites had easy access to the authorities, even for trivial matters.

Peasants from villages around the capital city found it easy to resort to the authorities. This was less easy for the residents of the Gorj and Dolj regions. Presumably, many of the latter's claims were submitted to the local authorities, more specifically to the *banate* of Oltenia, or to the local church authorities, even though the local bishoprics did not have jurisdiction over cases of divorce or termination of engagements. However, at least in the first half of the eighteenth century, these local notables were involved in cases of domestic mediation and issued the relevant documentation. After repeated admonitions and sanctions, such practices dwindled in the latter part of the century.

Theoretically, anybody could have recourse to the mediation of the ecclesiastical tribunal. In practice, however, access was limited by an individual's economic resources, degree of social awareness and education, geographical distances and other factors. In its turn, the state's centralizing attempt at making the ecclesiastical tribunal the sole custodian of matrimonial law faced the same difficulties, which weakened the tribunal's legitimacy and the enforcement of its decisions.

A "miserable life": Lazăr the cloth-maker vs. Maria

The petition lodged by Lazăr the cloth-maker opens with: '. . . thus started their miserable life together for she, through no fault of his, but on the advice of his mother-in-law Păuna, left him, unwilling to look after her man'. This is how the man summed up eleven years of marriage, the last three of which were spent in mutual recriminations and protracted court hearings. His wife, Maria, constructed her petition differently: she catalogued each stage in a marital life which gradually deteriorated and turned into a nightmare: 'the aforesaid Lazăr duped her mother into agreeing to the marriage by giving his word that he had his own shop and that he had set aside 200 *thaler* for the wedding, apart from the money he had invested in the trade. Which his associate confirmed, to convince her mother. Three days after the wedding, creditors came and took even the coat off his back, as well as a mirror and 15 golden coins that she had brought in as betrothal money. Lazăr himself took the golden coin necklace off her neck and gave it to the creditors; and because she cried, he beat her up there and then. And subsequently during their life together he did not provide for her, not even her daily bread, so she had to ask her mother for food. But because her mother had four other children to feed, she [Maria] had had to take domestic employment in the house of the late *Vornic* Pârşcoveanu'. (ANR, ms. 143, f. 215r–217v, 27 June 1793).

Domestic violence was a routine occurrence, judging from the petitions addressed to the ecclesiastical tribunal: it was, in fact, the main ground for divorce in a majority of the cases under study.[7] Our sample comprises 420 divorce cases, in which 269 petitions were lodged by women and 151 by men. Almost all of the 269 petitions refer to marital violence, even though only 168 of the wives mention a 'miserable life' or an 'inimical life' explicitly as a ground for seeking divorce.[8] In addition, when they put their petition together, both women and men listed a wide range of reasons meant to convince the court that separation was the only way out. Whereas adultery was at the top of the list, women also mentioned marital violence, as well as poverty and alcoholism as factors which disrupted conjugal harmony. But how did the social actors define marital violence? We cited a few examples from the divorce case of Lazăr the cloth-maker and his wife Maria. Husband and wife viewed their problems differently and constructed their 'defence' differently in their attempt to justify their actions in the clerical court. For Lazăr, the perturbing factor was his mother-in-law and his wife's excessive dependence on her blood family. It is an element frequently cited in divorce petitions: men often accused in-laws of recurrent and sometimes aggressive intervention in the couple's life.[9] In contrast, Maria emphasized marital violence and an unsatisfactory domestic life. Her minimum requirement for the continuation of the marriage was a 'peaceful life' together. The wife also insisted that the husband had to provide for the maintenance of the home and that he had to adopt an honest, open conduct in their daily life together.[10] Maria and many wives in her situation[11] often cited the deterioration of the family's economic circumstances and especially the squandering of their dowries, a woman's key asset which often became a bone of contention (Vintilă-Ghiţulescu, 2010, pp. 528–545). A woman's role was constructed round the family home and the management of assets provided by the husband. The fact that Maria had had to seek paid employment as a servant was further proof of the husband's economic incompetence: in spite of the mother-in-law's repeated intercessions with protectors, the husband was unable to run a profitable business.

The majority of the cases under scrutiny here involved families from the lower strata of society and were therefore mainly nuclear families, comprising parents and children and at most one or two maidservants. The survival of this nucleus, at least in the first year after

marriage, depended on the economic contribution of both partners. It could hardly have been otherwise, given the early age of marriageable partners: girls were married at the age of 14, and their young husbands, at the age of 19 or 20, had to be in paid employment to be able to support the home. This contrasted significantly with the situation in Western Europe, in the 'lost' world discussed by Laslett (1969, pp. 92–93). In the Romanian province of Wallachia, a marriage was the work of parents, who had absolute powers in the selection of partners and in the negotiation of economic settlements. The written law was clear on these points: '*a girl may not be married without her parents' consent'* (BAR, ms. 4024, f. 190, Art. 254). Young men, too, needed their parents' consent for marriage (*Îndreptarea legii, 1962,* p. 195). The parents' tyrannical authority over their children's lives was increasingly contested towards the end of the eighteenth century (Vintilă-Ghiţulescu, 2011a). However, when this contestation became a litigious matter, the Church dismissed the notion of consensual marriage and consulted with the parents, looking into their ability to support their children's household economically.[12] The economic security of the new household was founded on the woman's dowry and on part of the family inheritance allocated to a young man when he left his parents' home. The parents' important economic role, especially via the provision of a dowry, justified their intrusion into their offspring's marital lives.

Marital violence was often cited in disputes over the mis-management of family wealth. Violence had many forms and, when it took centre stage in divorce 'narratives', the petitioners often drew comprehensive pictures of jealousy, frustration, precariousness, alcoholism, calumny as well as verbal and sexual abuse (Foyster, 2005; Phillips, 2004, Leneman, 1998; Hardwick, 2006; Gowing, 1996; Muravyeva, 2008). This is how Maria describes the daily violence she was subjected to: 'once he brought home some meat and there was no wood to make a fire to cook it, therefore he locked the house and mercilessly beat her up, leaving her without the use of one arm to this very day'. On another occasion, 'he asked to be fed and clothed at his wife's expense, and because she did not always have the wherewithal for it, he beat her' (BAR, ms. 143, ff. 215r–217v). Women generally accepted violence as an expression of the nexus of male authority and female submission. But for violence to be accepted as a form of correction it had to be kept within certain bounds and be associated to the woman's acknowledged guilt. Instances of extreme violence were possible because, in the ethos of the period, by marriage a woman became the man's 'property', to be disposed of as he thought fit: the male and female discourses on this theme were complementary. Husbands would often boast in the pub of their right to kill their wives, to set them on fire or strangle them, because they belonged to them and nobody could stop them; in their turn, wives would often say that they had put up with the beatings and the abuse - easier perhaps to bear in the early years of a marriage – because they owed submission to their husbands as the lords and masters. For instance, Ruxandra Picătură wished to make it clear that she had only resorted to the authorities in order to seek defence against her husband's aggression rather than be separated from him. 'I did not marry my husband in order to divorce him', she explained (BAR, ms. 3932, ff. 68^{v}–69^{v}, 21 April 1800). Similarly, Ana sought support from the authorities in finding a way towards an acceptable family life: 'let the court help him wizened up and tell him that he has to bring his earnings home, and not spend it on drink. And he is not to beat me without guilt, as is his wont, which everybody in the neighbourhood knows and can vouch for', she wrote on 25 October 1791, as she summed up the behaviour of Niţu the shoemaker (BAR, ms. 640, ff. 81^{r-v}).

When beatings 'without guilt' exceeded the tolerance threshold accepted by the community, husbands were likely to lose the community's support.[13] In the afore-mentioned

case, Maria managed to enlist support when the violence reached intolerable limits. For instance, on 6 November 1791, there was a gathering of boyars in the house where the couple rented a room. The screams and noises of the domestic argument made them intervene, but the husband, Lazăr, had 'bolted the door from the inside' and continued the abuse of his wife. Finally, there was forced entry as 'the afore-named broke the door down and prised him off her' (BAR, ms. 143, ff. 215r–217v).

Domestic conflict and its witnesses: the 'damnation letter' and the neighbours

The damnation letter was part of the legal process in eighteenth-century ecclesiastical courts. It was issued by the Church to litigants on demand and could be bought from the metropolitan or from a bishop. For instance, in 1805 the boyar Mihai Bărbătescu paid three and a half *thaler* to logothete Mihalache, a clerk at the Metropolitanate, who issued him with a damnation letter.[14] Damnation letters could also be issued by the great patriarchs, in which case the fees to be paid were commensurate with that prelate's reputation. Because of the high fees involved, these documents were rarely used in divorce cases. Usually, they were requested and/or purchased by high-rank boyars in litigations over property.

The enquiry often started with the public reading of a damnation letter in the neighbourhood or village where the litigants lived. Sometimes the letter was read out aloud in the parish church as a way of imparting due solemnity to the act. The priest in charge of the enquiry had to read the damnation letter aloud for everybody to hear: '*on order of His Holiness the Metropolitan this damnation letter of was read out so that the people of the neighbourhood of Brezoianu and the priests from these parts know of the awe-inspiring malediction contained therein'*. The letter was not targeted at specific individuals, but at anybody who knew the parties involved and who might have heard, for instance, '*rumours and* [knew] *whether they were true or not*' or who might have been a witness to the '*ways of milady*' or to those of the '*aforementioned husband'*. The ostensible objective of such documents was to uncover the truth of the claims made in the case.

A terrible curse was placed on those who hid the truth or lied under oath. The damnation letter read like this: 'This letter was written and sent unto you bearing a terrible curse. If, fearing God and hoping for the salvation of your souls you will tell the truth, you will be forgiven and blessed, but those of you who live in these parts and know of the ways of this woman and of her life with her husband, and she might be a whore, and you will deny the truth, let you be cursed by our lord Jesus Christ and the 318 holy fathers from Nicea and by the Holy Church and by Us, God's humble servant. Stones and iron might melt, but your bodies after death will not decay and will not be released. You will find a home with Arius, you will be afflicted with the scabs of Giza and will be smitten by Cain's guilt. And until you tell the truth, there will be no forgiveness for you. Written by us on this day, Grigore of Ungrovlachia. (BAR, ms. 637, ff. 38v–39r).

This important act was meant to: 1. ensure the collection of relevant information for establishing the guilt of the parties involved, and 2. guarantee a measure of 'objectivity' in reports on the incidents under investigation. Those targeted by the letter were likely to tell the truth for fear of being excommunicated or of incurring a punishment after death. Aside from the consequences of the terrible curse in the after-life, the damnation also triggered more immediate consequences: the individual's exclusion from the Christian community. For a specific period only or indefinitely, the individual concerned had no access to church and to the rites normally performed by the priest throughout a Christian's life. Some people were genuinely convinced of the spiritual implications of a damnation letter and,

although they accepted to testify, would not accept the curse itself. Unwilling to burden their souls with the weight of the curse issued by the Church hierarchy, these individuals refused to testify under oath. Others lied under oath, oblivious of what might be in store for them in the after-life.

This type of morally binding document sheds light on the way society operated. The damnation letter coerced the members of a community into declaring what they saw or heard and into relaying the daily gossip which came their way. In other words, the parishioners were 'invited' to observe, intervene, denounce. Their statements were collected by the person in charge of the investigation – usually the parish priest – and were written down 'on the reverse of the damnation letter'. For greater clarity, the witnesses were then asked to appear in court, confirm their versions of the events and endorse or not the litigants' claims.

Tudor vs. Zmaranda: testimony and solidarity

The community was an informal institution. Neighbours took part in daily street fights, in domestic disputes, they watched, they showed compassion and emotion, they denounced, they penalized. In other words, the community was 'a major actor in the drama unfolding in its midst' (Farge & Foucault, 1982, p. 36). Neighbours knew everything, saw everything and were aware of everything that happened around them even when not directly involved. There was no escape: gossip always spread. The neighbours were there, in the background of every petition addressed to the authorities, and the litigant parties often referred judges to the community's opinion with the words '*as the neighbours know well*' or '*as everybody who was there could see*'. The case built up gradually from fragments of incidents known to each of the actors and as related first by the spouses and then by witnesses from the community. In many cases neighbours lived in close proximity to the couple. Many young couples did not have enough money to buy a home, so they rented rooms here and there for short periods or until they ran out of money and had to move on. Some were lucky enough to have a godparent, a kinsman or a neighbour who would put them up until they found a place of their own. This type of mobility, characteristic of busy places such as the suburbs of Bucharest, but almost unknown in the countryside, contributed significantly to the difficulties in couples' lives.

The neighbour-landlord watched over the good behaviour of the young family and was the witness of choice in lawsuits. He or she also had a role in the young couple's social integration, but solidarities and, ultimately, networks of 'affection' (Garrioch, 1986, p. 16) took time to build. Trust had to be earned, it was not simply given to newcomers, and newly-arrived couples had to show that they were worth it. Thus the social actors – the couple and the community – engaged in a little 'dance' of sociability for weeks before bonds could form.

Records often have gaps in them. As he put together his final report on the case, the court clerk used wax or tar to glue disparate documents together in a single file: the petition, the damnation letter, the witnesses' statements, records of oath-taking, and any additional documents lodged in support of the case, such dowry papers, property deeds, valuations and expert testimonies. In time, some of the documents were lost, which means that researchers often have to re-create a case imaginatively on the basis of similar narratives. Such is the case of the lawsuit involving Tudor the cloth-maker and Zmaranda from the suburb of Mântuleasa. The records of their divorce proceedings provide a good example of the ways in which solidarities were built around witness testimonies. Records of the hearings, which took place in the summer of 1781, speak of a bustling, inquisitive community. What were the facts of the case? Tudor the cloth-maker and Zmaranda had

lived for two months in rented accommodation in Mântuleasa, a suburb of Bucharest. They paid their rent in services, looking after the house and garden. From witnesses' descriptions, the neighbourhood appears to have been a busy hub of retail businesses, tailors' and cloth-making shops, as well as residential buildings. The conflict involved the two communities in which the spouses had lived before their marriage: the husband's suburb of Mântuleasa, and the wife's suburb of Toţi Sfinţii ['All Saints']. Tudor had been known to many in the area since childhood and his early years as a cloth-making apprentice. On the basis of the trust thus earned, he had managed to find the house which was to become an object of daily disputes and finally a serious ground for divorce. The husband's concern for the maintenance of the house grew as he feared that he might lose it and have to look for another landlord and another place to live, and he started making excessive demands on his wife. As he was away most days working in another suburb in the cloth-making business, Tudor left his young wife in the care of neighbours. Only seven months into the marriage, Zmaranda still had close links to her blood family and she divided her day between the two suburbs, Mântuleasa and Toţi Sfinţii. Her parents and siblings were part of her daily life and shared all her experiences, her frustrations and her problems. As the pears in the garden of her marital home ripened, her sisters' visits became more frequent, and the pear tree was overwhelmed by the repeated harvesting. Consequently, fearing that they might be chased from their home, Tudor demanded observation of certain social conventions, among which was a dilution of his wife's ties to her parents and siblings, and she challenged him. Upon returning from work one day, Tudor found the pear tree bare of fruit and broken and started admonishing his wife loudly in the courtyard. As the tone of his voice grew angrier, neighbours gathered around fences. The first to arrive was Ivan the tailor, a neighbour sharing the courtyard with the couple. Others came out of their neighbouring shops and houses: the wife of Alecsie, a grocer, Constantin, a copyist and Bogdan, a civil servant. The argument escalated. Waving a tell-tale branch of the savaged pear tree, Tudor blamed his wife for 'allowing her sister in the garden, when she knew full well that they lived there without paying rent and their landlady could tell them off any time'. The reply was prompt: everybody could hear Zmaranda 'having a go at him', calling him names and declaring loud and clear that she had married 'beneath her'. Faced with this torrent of insults, Tudor hit his wife: he was 'playing' to the audience, in an attempt to defend his male honour and authority, attacked in front of the community. His use of violence to defend male authority was neither judged nor condemned, but simply noted by those present. By challenging her husband's authority in public, the woman had shown herself to be rebellious and, in their eyes, the correction was, therefore, justified.

The argument died down, but gossip spread. Upon his return from work, Alecsie the grocer learned everything from his excited wife. She told him in a single breath about how Tudor returned home, and about the broken pear branch, the argument and the beating. As he had not witnessed the events himself, Alecsie subsequently made a distinction between 'what I saw with my own eyes' and what 'I learned from others'. He, however, added another 'scene' from the neighbours' marriage: one day around Pentecost, Zmaranda had called him into the house, where he found Tudor 'speechless' with a priest administering the last rites, while his wife tried to prise his lips open and pour some brandy down his throat to 'revive' him. Whereas Zmaranda claimed that her husband's state was due to an epileptic fit, Alecsie believed it might have been a drunken stupour, but left the issue open-ended: 'I wouldn't know whether he was sober or drunk'.

After the pear tree incident, the conflict widened. Waiting for Tudor to leave for work, Zmaranda hurried to her parents' house. With her kinsfolk's full support, she returned to

the marital home and, defying the neighbours, quickly grabbed her dowry and other belongings and went back 'home'. In the meantime, her brother was looking for Tudor to 'put a knife in his back' and avenge Zmaranda's honour.

Act two of the drama was played out in the suburb of Toţi Sfinţii. Tudor went three times 'to demand his wife's return from his father-in-law's house'. The last visit degenerated into scandal and Tănase the grocer testified that he had heard the two men 'swear at each other and use base language'. The entire community now became involved in the conflict opposing Tudor to his in-laws. The brother-in-law brandished a knife again, while the mother-in-law shouted at him to 'get out of our home' and the father ran off to *Ban* Dudescu, a local notable, to ask for help against the troublesome son-in-law. In his turn, the husband threatened murder if his wife did not willingly return. The arrival of the gendarmes put an end to the dispute, but signalled the start of judicial procedures. In court, neighbours from Mântuleasa sided with Tudor, whom they described as a good man and his behaviour without blemish. 'I have known him since he was a boy and from his apprenticeship days and over the last seven months since he married Zmaranda, being his neighbour again, *I saw that every day he brought his earnings back home and provided for the upkeep of the house'*, ran the testimony of neighbour Bogdan, a civil servant. The wife, however, was guilty of having challenged male authority and, consequently, this community's appraisal was negative: 'for as long as they lived together since they were married, I have known her to be a wicked woman, for I *have heard with mine own ears* how she called him a little man and that he was unworthy of her', said another neighbour, Constantin, a copyist.

In contrast, neighbours from the other suburb, Toţi Sfinţii, emphasized his death threats, which might have placed the young wife's life in danger: 'I *myself heard* Tudor threaten that, should he see Zmaranda again, either he was going to kill her, or she him', said Dimitrie, a sheepskin-maker. Tănase the grocer, who lived next door to Zmaranda's parents, added that 'the afore-mentioned Tudor boasted that he was going to kill her, or she him' (BAR, ms. 636, ff. 69v–71v, 23 August 1781). The period's law included prescriptions for the accuracy of a testimony as well as penalties for perjury (*Pravilniceasca Condică, 1957*, pp. 123–124). The use of the damnation letter was an attempt to eliminate bias and ensure a 'truthful' account of the facts. But what was 'truth'? It could vary from one individual to another, from one account to another. Ultimately, people did side with someone they knew well, in recognition of the fact that experience was fragmentary and that their information was one 'possible' among others.

Bodies and souls: the role of expert witnesses

Starting with the second half of the eighteenth century, the courts introduced the use of 'expert' witnesses, qualified individuals apt to supply specific, 'technical' information in lawsuits. Such early experts included merchants, doctors and midwives. Traders possessed valuable economic expertise: they could perform valuations of items on dowry lists or could assess the price of a piece of land under litigation. The elder of the merchants' guild was often called upon in lawsuits involving property or dowry assets. Husbands were legally responsible for returning the full value of the dowry to their estranged wives[15], but in the course of a couple's married life, many of the items themselves were sold. The initial dowry list was, therefore, subjected to the analysis of a merchant, who established the monetary value of the missing items.

Doctors, too, could offer tribunals their expertise in matters of illness and treatments. Their role was often crucial in lawsuits. (Porret, 1998, pp. 121–126; Pastore, 2006) In the petitions under study here, the litigants refer to midwives, 'doctor's assistants', witch-doctors

and traditional remedies. As medicine was still in its infancy and doctors were expensive urban professionals, they were only called to testify in lawsuits involving very serious matters. Thus, for instance, Ruxandra repeatedly called for a Dr. Marco to be present in her many court appearances. He had treated her for syphilis and had even prescribed a 'diet' for her. In court, the woman offered details about this 'diet', which she claimed to have strictly observed. The same treatment had been prescribed to her husband who, however, had rejected it and, as a result, had re-contaminated her. She resorted to the tribunal in order to secure the support of the clerics in determining the man to follow the treatment rather than in order to obtain a divorce. However, the testimony of the doctor was not requested and what had started as a 'medical' case ultimately turned into a domestic case in which, as the accumulation of petitions made clear, violence on both sides topped the list of accusations. (BAR, ms. 3932, ff. 68^{r}–69^{r}, 21 April 1800)[16].

Even though midwives were considered as possible 'expert witnesses' in some cases, they were rarely summoned to appear in court. Sometimes, in cases of seduction and abandonment, the courts called on the 'expertise' of nuns, requiring them to offer their assessment of the possibility of deflowerment. For example, on 3 March 1794 the ecclesiastical tribunal heard the 'expert' depositions of nuns at the small local monastery in the case of the merchant Sfetco vs. Anastasia. The latter had accused the man of having seduced her daughter under promise of marriage. However, the nuns 'examined' the girl and found her to be a virgin, although no details were provided on the nature of the examination (ANR, ms. 140, f. 141v–142v).

The clerical court often called in experts in complex cases or to assess visible 'signs' presented as evidence of marital violence. The presence of experts is recorded in 35 of the lawsuits under study, in which the medical condition of one of the spouses was the key issue. Divorce on the ground of illness was relatively easy to obtain and a decision was often reached in the first hearing provided some of the following conditions were met: the spouses had already agreed on separation; the patient wished to spend the rest of their life in a monastery; illness affected the economic viability of a couple; there was concern for keeping sexual consummation within the marriage. Often, the clerics did not necessarily take the petitioners' claims at face value and required the presence of the ill spouse in court. They needed tangible proof of someone suffering from a medical condition who might subsequently need appropriate care. Two further situations involved conditions for which separation was specifically sought: the court had to establish when the illness started and whether it incapacitated the sufferer in the performance of their conjugal duties. In cases of epilepsy, for instance, judges needed to establish the onset and stage of the disease and whether the sufferer was seriously incapacitated physically. The patient had to be there to offer living proof for the claims made. The presence of family members was often required in such cases: for instance, Costandin from the village Tătărani, county of Dâmboviţa, accompanied his wife to the county capital Târgovişte to offer evidence to the *protopope* that she had suffered from a 'damaged hip joint' for the last six years, which 'had so enfeebled her that she had to crawl on all fours'. (BAR, ms. 637, ff. 19^{r}–19^{v}, 8 August 1784). Her mother and 'other kin' were present in court, hoping either that the judge will not grant a separation, or hoping to retrieve the dowry assets if divorce was granted and they were ordered to take the ill woman under their care.

Insanity vs. melancholy

When Joiţa Pârşcoveanu demanded a separation from her husband Gheorghe Jianul, a former high-rank *medelnicer*, saying that he was insane and she could no longer 'abide' him, the court decided to launch what was practically a debate on the nature of insanity. If Jianu was indeed insane, what mattered were the causes of this condition. When the two

had married seven or eight years earlier, he had shown no sign of the illness. In other words, it was the death of children and the pressures of life which had brought the condition about. In addition, there were various degrees of insanity, the court heard, and Gheorghe Jianu may have been a hypochondriac, but was by no means insane to the point of endangering himself or others. Consulted over his behaviour, neighbours testified that he was never abusive or violent. Having obtained this 'evidence', the court decided that there was no ground for divorce. The man's body was there, it was invited to 'speak' in court, it was subjected to scrutiny and 'expert' observation, but witnesses concluded: '*when he visited we did not see any sign of madness, maybe just a tired demeanour and some weakness, but there is no proof of the lady's claims*'. But insanity and hypochondria, madness and melancholy were very different things.[17] As a melancholy hypochondriac, Gheorghe Jianu needed to be in his wife's care. As a wife – so the ecclesiastical tribunal decided - Joiţa had to submit to her husband and look after him until death (ANR, ms. 140, ff. 144^{v}–145^{v}, 17 September 1794).

The Church used similar arguments in cases involving women displaying signs of 'derangement' in various degrees. In such cases, the 'expert witness' was the husband and, in most cases, his claims were not verified by a 'specialist', i.e. a doctor. The tribunal, exclusively composed of clerics, pronounced on the seriousness of certain conditions on the basis of witness depositions, or through examinations of the body (or mind) touched by illness. Let us look at the example of Marica from the village of Costeşti, Dâmboviţa county, who had been married to Gheorghe for 12 years. Having suffered from fits of 'lunatic frenzy' from her early childhood, as an adult Marica still had recurring episodes of extreme anger and violent behaviour. 'On a Tuesday morning just after Holy Easter, in the year 1782', just out of bed, the woman attacked her husband with an axe in a violent frenzy which left him with serious wounds to the head. Having served four weeks, she was then freed, on the forgiving husband's request. However, their life together became a nightmare: the woman could not control her body during fits of insanity and was a constant danger to her spouse and child. She herself admitted that she could not control such states of 'frenzy': 'I grabbed an axe and hit my husband as he slept, once at the back of the neck, and a second time in the chin. And then I woke up after a while, shaking off that evil spell, and found myself with my hands tied at the back.' In this case, as in the previously mentioned one, experts were not called upon to give evidence, and the clerics relied on the facts as narrated by the spouses in court. The woman took refuge behind her blood kin in order to save her soul from the sin of possible murder. She was the one who took the initiative and asked for separation. The husband supported this, fearing the possible outcome of the 'evil spell' under which she often came. The clerics, however, approached the case differently: they required the couple to maintain the family unit, considering that the wife's insanity did not exceed 'acceptable' levels. But, as the couple refused, the court granted a divorce and found against the wife by reference to section 205, article 3 of the Law Code which read: 'should the wife make an attempt against her husband's life, let them by all means be separated'. The decision was taken in spite of depositions from the couple, who both spoke of her violent fits as expression of a malady rather than of temperament (BAR, mss. 640, ff. 21r–22v, 28 iulie 1791)[18].

In the absence of coherent policies and institutions capable of taking such persons into care, the authorities attempted to make families aware of their responsibilities so that the disabled, lepers, handicapped, blind and, in our cases, the insane and the epileptics, should not swell the ranks of the destitute in the streets. Whenever there was a family, the courts attempted to have patients cared for by their next of kin. Separation from one's spouse may have looked like a 'return' to the blood family, but this was a return negotiated with

parents, siblings, aunts and uncles, who had to take on the 'burden' of an ailing relative needing attention and, quite often, onerously expensive treatment.

Conclusions

Petitions, damnation letters, witness and expert statements were often copied and summed up in a final decree (*anaphora*) which was recorded in a register. This summation of claims and counter-claims was a means of control over the population, but it also constituted a body of antecedents to be incorporated into judicial practices. This corpus of law documents can also be read as the 'diary' of a society's mores and moral prescriptions, as that society grapples with definitions of acceptable and unacceptable behaviour.

The attempt to make the recording of such documents compulsory was an important step forward for the Orthodox Church. The centralization of matrimonial court cases at the tribunal of the Metropolitan Church in Bucharest can be construed as an intrusion into the private lives of subjects whom the church needed to discipline and control. The investigations around the cases resulted in an ongoing negotiation between petitioners and clerical judges. The latter were primarily interested in achieving three key objectives: keeping the couple together, defusing conflict and redeeming damages. Divorce, even though allowed by the period's legislation, was not very easy to obtain. Solid reasons were needed in order to obtain not simply the *séparation de corps*, but a divorce, which allowed the partners to re-marry. Domestic violence was not always enough for a petitioner to be able to secure a divorce. The lawsuit opposing Lazăr the cloth-maker to his wife Maria is a case in point. Heard for the first time on 13 February 1791, the case was re-opened and re-considered several times, on 6 November 1791, 27 June 1793, 26 September 1793 and 30 November 1793 (ANR, ms. 140; f. 125v–127v, ms. 143, ff. 215v–217v). Each time, the clerical judges offered the two sides a compromise: they thought that the husband might change his ways, hoped that violence had not reached the accepted threshold, or required the wife to submit to her husband while keeping her distance from her own kin. Only threats of suicide – which many women used – or the risk of murder could convince the judges to grant a separation. But separation could take many forms: a *séparation de corps* could be granted for a limited period (six months or a year), while divorce itself did not have the same implications for those involved. Depending on the guilt and responsibilities established during the hearings, the partners could lose or keep the right to re-marry. All these decisions were recorded in a letter, alongside prescriptions for the status of the woman's dowry, the couple's joint assets, parental responsibilities and even for canonical penance in some cases. This letter was to be kept by the parish priest who assumed responsibility for the implementation of the central tribunal's decisions, as the guarantor of social order in his parish. The archives of the ecclesiastical court contain an impressive number of such written pledges, far exceeding the number of court cases we have studied. In the present study we have looked only at court cases in which a sentence was actually passed. We have, however, also relied on the information contained in these 'letters of commitment' whereby couples in marital crisis resorted to the mediation of the ecclesiastical authorities. The Church was only too happy to be seen as a mediator, to offer or impose a resolution and keep a written record of it. Such documents whereby the litigants pledged to improve their wayswere recorded in the registers of the metropolitanate. Some of the plaintiffs stated that they only accepted the pact mediated by the court (Rom. *zapis de împăcare*) in order to evade the 'due punishment', which could range from public beating, the payment of a fine or the restitution of the dowry to the obligation of providing for children.

The evidence shows that the population often had a different interpretation of these church policies. Whereas the church managed to steer individuals towards the ecclesiastical tribunal, it was less successful in making them comply with decisions taken in Bucharest. As they returned home, few of the individuals concerned actually heeded the decisions inscribed in the decrees. Many re-married, even when they had not been granted that right or were still in an interim period of *séparation de corps*. Others refused to return dowry assets to their former wives or to assume their parental responsibilities. For many such individuals, it was back to court. By contrast, the population in rural areas far from the 'centres of power' (i.e. the capital city, Bucharest) was far more likely to observe the customary prescriptions. In such areas, where gossip was powerful and the parish priest still had authority, being grabbed by the long arm of the law entailed considerable loss of prestige and reputation.

Towards the end of the eighteenth and in the early decades of the nineteenth century, the family and society's mores went through a lengthy period of crisis. As the number of divorces increased at an alarming rate, the State appealed to the Church to step up the moral supervision of its flock. In its turn, the Church issued a number of encyclicals which reminded the faithful that marriage was an inviolable sacrament. However, as it was itself caught up in processes of modernization and secularization, the Church was often forced to accept a *fait accompli*: 'the abomination which comes from the growing number of married couples seeking separation is spreading like an epidemic, engulfing the great and the humble alike', the Metropolitan Veniamin Costache wrote on 5 March 1839. He requested the intervention of the secular authorities, more specifically the ruling Prince, as the only means of putting an end to 'this heinous evil' (APR, 1898, IX/II, pp. 464–465).

Notes

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2. In old-regime Romania parish registers were not kept and records of births, marriages and deaths were not a routine practice. It was only in the early nineteenth century and especially around 1830 that a series of organic laws made the recording of census data compulsory. Initially, such data were to be recorded by the Church, but its failure to do so meant that ultimately the modern state had to step in. Research into family history is, therefore, possible almost solely due to the availability of judicial documents, alongside private family archives comprising estate deeds, wills, correspondence and dowries. On the uses of such archives for research purposes, see Jianu, 2009, 189–205; Vintilă-Ghiţulescu, 2011b, 141–160.
3. In the same period, the Russian Orthodox Church underwent a similar process of centralization (Freeze, 1990).
4. For a comparative overview of petition formats, see *Droit et Cultures, 19, 1990*; Zemon-Davis, 1987.
5. For comparisons see Métayer, 2000; Farge & Foucault, 1982; Stone, 1993; Seidel Menchi, Quaglioni, 2000; Leneman, 1998.
6. They had titles such as postelnik, armaş and lesser armaş, logothete and lesser logothete, vistier, ceauş, zapciu, serdar, pitar.
7. In accordance with Orthodox canon law, a couple could separate for a number of reasons, of which the most important and the most frequently invoked in the litigants' petitions were the following: a »bad« or an »inimical life«, abandonment, adultery, immorality, disease, and spouses deciding to take monastic vows. Theoretically, there were numberless reasons for divorce, and the penal code *Îndreptarea legii* (The Correction of the Law, 1652) allowed ample entries for each, but in practice the above-mentioned were the reasons most frequently given in court. However, legislative criteria are not necessarily the people's criteria, and the actual cases

involve categories of reasons that may appear frivolous, but which were closely linked to the daily life of ordinary people. Two reasons, however, were dominant: domestic violence and adultery, followed at a long distance by the other.

8. Many of these reasons were cited in Russia in the same period. See Bisha, 2003, 229; Freeze, 1990, 723–744. In Western Europe divorce as a social phenomenon manifested itself much later, in the wake of changes triggered by the French Revolution, modernization, industrialization, etc. West-European countries practiced marriage annulment and the *séparation de corps*, which both differed in meaning from 'divorce' as such. Here are a few recent contributions on the topic: (Philips, 2004; Bailey, 2003; Seidel Menchi, Quaglioni, 2000; Leneman, 1998; Stone, 1992; Ronsin, 1990, Lombardi, 2001).
9. The wife's mother appeared frequently as a character in court 'narratives'. Often the ecclesiastical tribunal listened to these complaints and required the mother-in-law to keep her distance: 'let my mother-in-law stay away from my home lest she causes further ado', read the request of Mihalache in response to a petition lodged by his mother-in-law on behalf of her daughter (BAR, ms. 636, f. 96^{r}). Relations between wives and their mothers-in-law could be equally fraught with tension, even though they were cited less frequently in petitions. In both cases, the tribunal often attempted to isolate the in-laws in order give the young couple some space. In many cases, the young couple rejected the court mediation and sided with their blood families. This was the case in the divorce proceedings between Anastasia Creţulescu and Nicolae Fălcoianu. Anastasia cited daily skirmishes with her mother-in-law, whom she described as a 'wicked, terrible woman'. In court, Nicolae Fălcoianu was asked to keep his mother at a distance and put his own family first. But he refused, saying that he would 'never until death leave his mother' (*Acte judiciare*, p. 906, 1780).
10. Many authors point to the importance of economic provision for the stability of the family: Amussen, 1988, 76, 119–12; Ingram, 1987, 184; Capp, 2003, 42–68.
11. For further examples, see Vintilă-Ghiţulescu, 2009.
12. It is interesting to compare the manner in which consent to marriage and clandestine marriages operated in other societies. Cf. Fillon, 1985, I, 53–55; Lombardi, 2008, 45–50; Bisha, 227–242.
13. Elizabeth Foyster mentions the fact that often men would try to exercise some self-control over the degree of violence they used so that they should not be branded as 'wife-beaters' (2005, p. 67). It is interesting to see first the text of the law defined "inimical life". Sections 183, 184, 185 and 220 describe in a series of articles "inimical life" and the ways in which it could be invoked by men and women alike. Article 1 of Section 183 reads as follows: "The woman can seek permission from the ecclesiastical judge to separate from her spouse when the latter beats her up and causes her bodily harm with weapons". The terms "beating" and "bodily harm caused by weapons" were also explained: it was clear that the occasional slap on the face could not be a serious reason for divorce. Article 2 explains that "genuine beating" was only that which caused such disability that the woman "was no loner able to speak and tell the judge her complaint"; if the "beating was not of that nature, divorce could not be granted" (Îndreptarea legii, 1962, p. 180, 181). Separation was allowed only if the wife had indisputable evidence to prove that "cruelty and aggression" were repeated and could have led to death. However, the community's attitude to domestic violence depended on other criteria. The extent to which neighbours felt it was their duty to intervene depended on the reputation of the couple and on the degree of the violence involved, if it was deemed dangerous for the community.
14. From the account books of the same boyar we know what could be done with 3.5 *thaler*: he purchased a pair of peasant sandals with 1 *thaler* and paid the tailor 1 *thaler* and 24 *para*s for a shirt. 1 *thaler* and 30 *para*s was the price of a pair of breeches and 3.5 *thaler* that of a pair of women's boots. The secretary was paid only 2 *thaler* for two months' work (Lombardi, 2001, please provide full details of this reference Grecianu, II, 1911, p. 85).
15. The law prescribed that, no matter how poor, the husband had the obligation to return the dowry: 'If a man should be poor, he will have to pay back the dowry taken' (*Îndreptarea legii,* 1962, p. 266). If he had chased his wife away or if the separation occurred through his fault, it was the husband's duty to 'feed' the wife over the entire period that she spent 'away from the marital home': 'The man is duty bound to feed the woman if he chased her away' and 'if they separated through some fault of the man's, he will pay for all the expenses she incurred for food while away from home (*Îndreptarea legii,* 1962, p. 185). The period referred to be the time they lived separately without, however, having a divorce decree issued by the Church. Fornication and adultery led to the loss of the dowry and of the pre-nuptial gifts by the wife. Chapter 215,

article 1 reads: 'A woman who committed adultery will lose not only her dowry, but also the gifts given to her by her husband, which will be returned to him' (*Îndreptarea legii,* 1962, p. 221).

16. Syphilis was cited in many court cases in the eighteenth century. Referred to in petitions as 'worldly ailment' or "sfrânţie" (French ailment), syphilis was clear evidence of illegitimate intercourse, but was rarely treated as such either by the social actors or by the courts. The judges often ignored it completely, placing the emphasis on other elements of the case. Cf. Stone, 1993, 36. In one case, petitioner Gheorghe mentioned a Dr. Derviş who had successfully treated him for impotence (ANR, Fonds Mitropolia Ţării Româneşti, CCCLXI/3). But impotence was a life event on which anybody in the community, from family to clerical judges, felt free to have an opinion (Vintilă-Ghiţulescu, 2012).
17. Similar arguments were presented in court in a case of insanity heard at the Patriarchy of Constantinople in 1748. The author of the study shows that the Orthodox Church in Constantinople was tolerant of divorce. (Papagianni, 2001, pp. 243–257).
18. Cf. the cases discussed by Arlette Farge and Michel Foucault, in which insanity was interpreted by the litigants as the result of a depraved character. As an 'aliéné d'esprit', the defendant was a danger to the family, and implicitly to the community. Only intervention by the king and the sectioning of the defendant could reestablish order (Farge & Foucault, 1982, pp. 52–55). In Wallachia, too, plaintiffs would insist on obtaining protection against anyone whose behaviour threateneed the community as a result of mental illness. The authorities, however, and more specifically the Church, prioritised the integrity of the family unit, downplaying the potential danger.

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