

SACRILEGE IN SERBIAN MEDIEVAL LAW

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Abstract. *The paper analyzes the crime of sacrilege in Serbian medieval law. The author provides a legal-historical analysis of church and secular rules on this criminal offence, which was envisaged in the most important sources of Serbian medieval law: Saint Sava's Nomocanon, monastery charters, as well as the landmark legal documents that make up the so-called Dušan's legislation: Matthias Blastares' Syntagma, Emperor Justinian's Law, and Dušan's Code. In particular, the significance of the reception of the Byzantine law in medieval Serbia was emphasized on the example of the criminal offence of sacrilege.*

Key words: *sacrilege, Serbian medieval law, Byzantine law, reception, St.Sava's Nomocanon, monastery charters, Dušan's Code, Matthias Blastares' Syntagma, Emperor Justinian's Law, Dušan's Code*

1. INTRODUCTION

The Serbian medieval law regulated the criminal act of sacrilege, which was designated as "*свѣтомѣсто*" (sacrilege). It implied desecration or violation of the sacred place of worship, an offense against the holy place, sanctuary, sacred objects, saints or the holy place property. In particular, the term sacrilege refers to the desecration of the sanctuary, theft of sacred objects from the church or appropriation of church property (Ћирковић, Михаљчић, 1999: 652). Therefore, sacrilege is the desecration of sacred objects, which can be performed by destroying, damaging, stealing, or misappropriating sacred assets .

The origins of the crime of sacrilege may be traced back to Roman law, where it was called *sacrilegium* (Lat. *sacrum*- sacred, consecrated thing, and *legare* - to pick, collect, take). The crime entailed the theft of consecrated things (*furtum sacrorum*) or things intended for the cult of the deceased (*res religiosae*). It was punishable by death penalty. In the post-classical period, the term *sacrilegium* acquired the meaning of disobedience, disobeying the emperor's decisions and orders, because everything that was directly connected with the emperor was considered sacred and inviolable (Romac, 1989: 313).

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Upholding the tradition of Roman law, Byzantine law also regulated the crime of sacrilege (ιεροσυλία). The Byzantine Eclogue contains one provision dedicated to this crime. Article 15 of Title XVII (On Criminal Matters) prohibited stealing from the church: "He who enters the altar during the day or at night and steals something shall be blinded, and if he steals in the church outside the altar, he shall be beaten as an ungodly person, his hair shall be cut and he shall be sent into captivity." (Николић, Ђорђевић, 2013: 105). This provision was later incorporated in the Byzantine law collection Prochiron (Πρόχειρος Νόμος).

The oldest Slavic legal document, the Law on the Trial of People (Old Slavic, *Законъ соудьныйи людьмъ/ Zakon sudnyi ljudem*) was created on the basis of the reception of the Byzantine Eclogue. Yet, in the Slavic document (LTP), the aforementioned Article 15 of the Eclogue was modified, as follows (Article 28 of the LTP): "Whoever enters the altar day or night and takes something from the holy vessels or vestments, or any other thing, he shall be sold. If he takes something from the church outside the altar, he shall be beaten, his hair should be cut off and he should be allowed to wander the earth as an unholy person" (Николић, 2016: 72). Thus, in comparison with the Eclogue provision, the punishment for was modified in the Slavic law (LTP). Pursuant to the Eclogue, the culprit was to be blinded for stealing from the altar; in case of stealing outside the altar, he was to be beaten, had his hair cut and sent to prison. Under the Slavic law (LTP), the culprit was to be sold into slavery in case of stealing from the altar; in case of stealing outside the altar, the culprit was to be beaten, had his hair cut and "let him wander the earth as an unholy one" (Николић, 2016: 42).

In Serbian medieval criminal law, sacrilege was regulated under the influence of Byzantine law, primarily by Saint Sava's Nomocanon (*Zakonopravilo*), monastery charters and Dušan's legislation, which included the Matthias Blastares' Syntagma, Emperor Justinian's Code, and Tzar Dušan's Code.

2. ST. SAVA'S NOMOCANON (*ZAKONOPRAVILO*)

The Nomocanon of St. Sava (Srb. *Zakonopravilo, Krmčija*) was the most extensive medieval Serbian manuscript which illustrates the first reception of secular and ecclesiastical Byzantine law. The term "*Zakonopravilo*" is a translation of the Greek compound nomokanon (νομοκάνων), which essentially means a mixed collection of church laws, canons (κανόνες) and secular, civil laws (νόμος). On his return from Nicaea, Sava stopped at Mount Athos, and then in Thessaloniki, where he wrote the Nomocanon (1219), a collection of the most important pieces of legislation received from both secular and ecclesiastical Byzantine law. This collection included the Synopsis of Stephen of Ephesus with the interpretations of Alexios Aristenos, Photius' Nomocanon from 883 with comments by Jovan Zonara, the Byzantine law collection Prohiron, called "City Law" in the Code of Laws, a selection from Justinian's novella in 87 chapters (*Collectio LXXXVII capitulorum*), and three novellas of Emperor Alexius I Komnenos. St. Sava's Nomocanon is structurally organized into 64 chapters, twenty of which cover secular law and 44 cover church law.

St. Sava's Nomocanon (*Zakonopravilo*) contains ecclesiastical and secular provisions on the criminal act of sacrilege. Church rules include: rule 72 rule and rule 73 of the Holy Apostles, rule 10 of the First and the Second Councils held in Constantinople in the Holy Apostles Church, and rule 8 of St. Gregory of Nyssa.

Rule 72 of the Holy Apostles reads: "Let the one who steals wax or oil from the church be judged and lay fivefold" (Петровић, 2004: 150). This rule is followed by the interpretation

of Alexios Aristenos: "If any priest or layman steals wax or oil from the church, he must return what was stolen and contribute five times as much, and then make up his mind." (Петровић, 2004: 150-151).

Rule 73 of the Holy Apostles provides: "A golden or silver vessel consecrated that is hung in the church, or a curtain, or a golden setting, or a covering - no one should take any of these for his own needs. And if anyone is found committing such iniquity, let him be punished by decision" (anathema) (Петровић, 2004: 151), a formal decision to condemn or formally excommunicate the culprit. Aristenos interpreted this provision as follows: "What is set apart for God should not be defiled, because it is sanctified, whether it is a vessel or something else, whether it is a curtain, or a golden lining or a cover, whether it is oil or wax, because all of this is in the Church of God he consecrates. Therefore, neither wax nor oil should be taken from the church, nor any other vessel, nor curtains, nor lining, nor bedspread, nor rice, nor linen, since all these are dedicated to God and it is not permissible to take them for one's own needs; having stolen what was not yet offered to God, nor consecrated, but only promised, the culprit is subject to decision (anathema) but he still received the punishment; he had to be stoned with the entire family" (Петровић, 2004: 151).

Rule 10 of the First and Second Councils prescribes: "Those who steal the official holy chalice, or saucer, or spoon, or take anything from the priest's vessels or from the altar coverings for their own benefit, and repurpose them for profane use, let them be banished for defiling or stealing sacred assets. And if they appropriate some items outside the altar, church vessels or curtains, or vestments hanging in the church for unsanctified use, or give the stolen assets to others, let them be condemned by anathema. And if they are proven thieves, let them be condemned under the rules of the Holy Fathers" (Петровић, 2004: 495). Therefore, the basic church punishment for sacrilege was anathema, a formal decision on condemnation and excommunication.

From the Byzantine secular regulations governing this matter, St Sava's Nomocanon included one rule, envisaged in Chapter 47 (Петровић, 2004: 705-706). This provision is particularly interesting because it regulates different types of theft from the church. Thus, church thief at night was punishable by death penalty ("handing over to the beasts"), while theft at daytime was punishable by life imprisonment and forced labour in a mine. Stealing from large public churches was also punished by death penalty, but the punishment was more lenient for theft in smaller churches.

The secular regulations on blasphemy were also contained in the Prohiron (City Law), as an integral part of the Code of Laws. Article 58 of Chapter 39 of the City Law took over the provision from Article 15 (item 17) of the Eclogue. In St. Sava's Nomocanon, the provision envisaged blinding the culprit for theft in the altar. In case the theft was committed in the church but outside the altar, the punishment was beating, having one's hair cut and ex-communication (Дучић, 1877: 130).

3. DUŠAN'S LEGISLATION

Dušan's legislation is a generic term that includes Dušan's Code, Mathias Blastares' (Abridged) Syntagma and the so-called Emperor Justinian's Law. In all older copies, these three collections always went together and formed a unique tripartite collection (*codex tripartitus*). This was pointed out by A. Soloviev as early as 1928, in his doctoral dissertation titled "Legislation of Stefan Dušan, Emperor of the Serbs and Greeks". The rules on sacrilege are

contained in all three legal collections: the Blastares' Syntagma, Emperor Justinian's Law, and Dušan's Code.

3.1. Matthias Blastares' Syntagma

The Syntagma is a nomocanonical collection from 1335, compiled by Matthias Blastares, a monk from Thessalonica. It was translated into Old Slavic-Serbian in 1347 or 1348. It covered ecclesiastical and secular law, which was organized in 24 sections according to the Greek alphabet. The collection had a total of 303 chapters. In medieval Serbia, Tzar Dušan's legislative efforts yielded a shortened (abridged) version of the Syntagma, which contained 94 chapters, because most Church law provisions were deleted from the original Matthias Blastares' Syntagma.

In the Syntagma, Blastares combined parts of apostolic rules 72 and 73, and part of Aristenos's interpretation. Thus, the Syntagma reads: "Pursuant to rule 72 and rule 73 of the Holy Apostles, the one who took a candle or oil from the church, and also a holy vessel made of silver or gold or a curtain appropriated for his own needs, and uses it, even if it is not for sacrilege, he is guilty of breaking the law and is to be punished by decision (anathema). And Aħar who took what was promised to God, but was not yet given to Him or sanctified, shall receive the ultimate punishment; he shall be stoned with his entire family." (Суботин-Голубовић, 2013: 235).

The meaning of this provision is clearly explained in rule 10 of the First and the Second Council, which reads: "Those who appropriate the vessels and vestments that are outside the altar, as well as the candlestick or curtains that are consecrated to decorate the church, and use them for their daily needs or give them to others, let them be judged under the apostolic rules, which we (the Council) shall abide by. And those who steal the holy chalice or discus, or the chalice or the firebox or the sacred altar coverings in the altar, or steal any sanctified item from the altar, the holy vessels or vestments, for their own needs, or use them for secular needs (and thus desecrate the holy objects), they shall be subject to complete demotion as those who have committed an impious act." (Суботин-Голубовић, 2013: 235). Blastares made an observation that theft of a sacred object is equivalent to the desecration of holy items.

All the mentioned church rules may also be found in St. Sava's Nomocanon. After the church rules, the Nomocanon includes four secular rules under the title Law.

The first secular rule reads: "The offense of sacrilege is tantamount to insulting the emperor" (Subotin-Golubović, 2013: 235). Therefore, sacrilege is equated with insulting the emperor. As stated in the Serbo-Slavic text of the Syntagma, it was the criminal act of faithlessness (Novaković, 1907: 325).

The second one prescribes the application of the rules on sacrilege: "The law on sacrilege applies to the one who stole a sacred item from a holy place, or did it for his own needs, or fraudulently assisted in such an act" (Суботин-Голубовић, 2013: 236).

The third secular rule provides a criterion for distinguishing ordinary theft from sacrilege. Thus, "the thief of what has not yet been consecrated to God is to be judged as a common thief; if private property is stolen from the sanctuary, it is not sacrilege but common theft. The one who steals an item that is consecrated to God, even if it is stolen from a private place, is guilty as a perpetrator of sacrilege. Since some holy objects are not dedicated to God, such as our personal icons, which are not displayed in churches or monasteries, as the law says, the place of the commission of the crime will be the decisive factor in determining whether it is theft or sacrilege; for, the one who steals the holy icon

from our house is not a perpetrator of sacrilege but a common thief. If it were not so, we would have to say that the one who steals a gold coin with a representation of Christ or the Holy Virgin should be tried as a blasphemer, which is fully improper and untrue" (Суботин-Голубовић, 2013: 236).

The fourth secular rule envisages different types of sacrilege: "The perpetrator of sacrilege who enters the holy altar at night and desecrates holy objects dedicated to God or steals them shall be punished by sword; he who steals a small item from the church at daytime, due to poverty, shall be flogged and banished." (Суботин-Голубовић, 2013: 236).

3.2. Sacrilege in the so-called Emperor Justinian's Law

The Law of Emperor Justinian is a unique Serbian legal compilation, comprising 33 articles, which was created on the basis of several Byzantine legal texts. The main sources of Emperor Justinian's Law were the Agricultural Law (Νόμος γεωργικός), the Eclogue of Leo III the Syrian (717-741) and his son Constantine (741-775), the Prohiron of Basil I of Macedonia (867-886), the Basilicas of Leo VI the Wise (886-912), novellas of Byzantine emperors, and some other legal collections (Марковић, 2007: 32). It mainly regulates agrarian relations, as most of the provisions were taken from the Agricultural Law.

Emperor Justinian's Law contains a provision that regulates theft in the church. Article 28 (titled "Theft") reads: "If anyone steals anything from the church either by night or by day, let him be blinded. If he steals something belonging to the church in the courtyard, he should be beaten and scolded and banished from that place." (Марковић, 2007: 69). This provision was taken from the Eclogue (Article 15. 17) and subsequently received in the Law on the Trial of People (*Zakon sudnyi ljudem*) (Article 28) and the Prohiron (Article 58. 39).

3.3. Sacrilege in Dušan's Code

Dušan's Code is the most important Serbian medieval legal document. It was adopted on 21 May 1349 at the council in Skopje in the presence of Emperor Stefan Dušan, Patriarch Ioaniki, church dignitaries and rulers. It was supplemented at the council in Serres in 1354. The original Dušan's Code has never been found but the text of the Code was preserved in later copies. The Code includes a total of 201 articles, comprising provisions on religion and the church, the position of the sovereign and the subjects, the organization of courts and judicial procedure, and criminal law, while there are very few norms on private/civil law.

Since sacrilege was predominantly regulated through the reception of Byzantine law, and embodied in St. Sava's Nomocanon, Matthias Blastares' Syntagma and the Law of Emperor Justinian, it was not necessary for Dušan's Code to pay special attention to this criminal act. Nevertheless, the Code contains only one provision that has elements of the criminal offense of blasphemy. The prescription of this provision was largely caused by new socio-political circumstances, specifically frequent wars. In particular, the demolition of a church during a military campaign was incriminated by Article 130 (On the Church) of Dušan's Code: "Whoever in an army destroys a church shall be killed or hanged." (Радојчић, 1960: 124). This article has no precedent in Byzantine law in a strict linguistic and logical sense, but it fully complies with the spirit of Byzantine law: demolition of a church is an act of sacrilege.

The aforementioned provision of Dušan's Code protects church buildings during a military campaign. The essence of this article was best explained by T. Taranovski: "The punishment for the destruction of churches during a military campaign was undoubtedly

caused by the horrors of continuous wars and was intended to prevent acts of terrible vandalism, which could ruin the reputation of the Serbian army and the state in front of the Greeks, whose opinion was particularly valuable to Dušan. There is no doubt that the essence of the criminal offense was the breach of faith, and it is impossible to assume that it was a criminal offense against property, or even against public peace and order" (Тарановски, 2002: 364).

According to Dušan's Code, this criminal offense could only be committed in a certain situation - during a military campaign. Emperor Dušan feared that churches could be destroyed during his wars of conquest, especially in Byzantium. In order to prevent such actions, the Code envisaged death penalty for the one who destroys a church during a military campaign. The punishment was envisaged as an alternative ("to be killed or hanged"), except in the Prizren transcript, which prescribed a cumulative punishment: "to be killed and hanged" (Стојановић, 2021: 104).

4. CONCLUSION

In Serbian medieval law, the criminal offence of sacrilege was undoubtedly regulated under the direct influence of Byzantine ecclesiastical and secular rules. Church rules governing this matter (rule 72 and rule 73 of the Holy Apostles, rule 10 of the First and Second Council, and rule 8 of St. Gregory the Low) were also included in St. Sava's Nomocanon and Matthias Blastares' Syntagma. The applicable law on sacrilege also included several secular law provisions: one Justinian novella and one criminal law provision from the Prohiron on theft in the church, the last of which was a reception from the Byzantine Eclogue. The rule about theft in the church was also included in the Serbian legal compilation known as the Law of Emperor Justinian. In addition to the aforementioned church rules, Matthias Blastares' Syntagma included four secular law rules, but the compilers of the abridged version of Syntagma kept only two rules. All the aforementioned provisions that exhaustively regulate sacrilege were taken from Byzantine law. That is why Dušan's Code contains no provisions on this criminal act, except for Article 130 which regulates a special form of sacrilege - the demolition of a church during a military campaign. Article 130 of Dušan's Code is an original provision of the Serbian legislator, which has no counterpart in Byzantine law but is entirely in the spirit of Byzantine law.

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SVETOGRĐE U SRPSKOM SREDNJOVEKOVNOM PRAVU

Rad analizira krivično delo svetogrđa u srpskom srednjovekovnom pravu. Izvršena je pravnoistorijska analiza crkvenih i svetovnih pravila o ovom krivičnom delu u svim najvažnijim izvorima srpskog srednjovekovnog prava. To su Zakonopravilo Sv. Save, manastirske povelje, kao i pravni spomenici koji čine tzv. Dušanovo zakonodavstvo - Sintagma Matije Vlastara, Zakon cara Justinijana, i Dušanov zakonik. Naročito je istaknut značaj recepcije vizantijskog prava u srednjovekovnoj Srbiji na primeru krivičnog dela svetogrđa.

Кljučне речи: *svetogrđe, srpsko srednjovekovno pravo, vizantijsko pravo, recepcija, Zakonopravilo, manastirske povelje, Dušanovo zakonodavstvo, Sintagma Matije Vlastara, Zakon cara Justinijana, Dušanov zakonik.*