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Đorđe STEPIĆ, LL.M.*

CHURCH THEFT IN MEDIEVAL SERBIAN LAW

Since ancient times, theft of sacred objects has been recognized as a qualified form of theft, as a typical property crime, but also as an act of sacrilege. In medieval Serbian law, the canonical and secular regulations are found in the two typikons and the Zakonopravilo (Nomocanon) of Saint Sava, as well as in the later compilations of Rhomaian (Byzantine) law of the Serbian redaction during the reign of emperor Dušan – Matthew Blastares' (Abbreviated) Syntagma and the so-called Law of Emperor Justinian. Between these two great waves of reception of Rhomaian law, King Milutin's Banjska and Gračanica charters summarily regulate church theft.

The aim of this paper is to conceptually separate the church theft from other crimes against church property and to gain a better understanding of church theft in medieval Serbian law through analysis of the available sources.

Key words: *Sacrilege (ιεροσυλία, sacreligium). – Church theft. – Zakonopravilo (Nomocanon) of Saint Sava. – Syntagma of Matthew Blastares. – Medieval Serbian and Rhomaian (Byzantine) law*.

* Teaching Assistant, University of Belgrade Faculty of Law, Serbia, *djordje.stepic@ius.bg.ac.rs*, ORCID iD: 0009–0004–0422–9686.

If the illegal appropriation of property belonging to other people is condemned, it must be condemned to an even greater extent when one allows themselves to appropriate that which belongs to God.

Nikodim Milaš (Milaš 2005, 465)[1]

1. INTRODUCTION – CHURCH THEFT AND OTHER OFFENCES AGAINST CHURCH PROPERTY

All religious communities, including the Christian Church, have sought to regulate property issues within their own frameworks, in order to accomplish their mission "in worldly circumstances".[2] Among others, the protection of church buildings and holy places in a broader sense (e.g., cemeteries) and objects of worship is particularly important.

Objects of worship require a twofold approach in said protection – they are viewed as having both religious and property value. Therefore, the concept of an act of sacrilege (*svetotatstvo*, *ἱεροσυλία*, *sacrilegium*) primarily implies the desecration or destruction of things considered sacred or their unlawful appropriation.[3] The first form of sacrilege – sacrilege in the broader sense – is most often consumed by the latter, which involves the theft of consecrated

[1] All of the quotes from the Slavonic-Serbian legal sources, as well as the ones from relevant literature in Serbian, used in this paper have been translated by the author.

[2] A comprehensive consideration of the numerous property issues regulated by the church would go far beyond the modest goals of this paper. For the sake of clarity, these issues are mainly related to the acquisition, maintenance, management and disposition of church property. From the point of view of civil and criminal protection of property, the canons of the Christian Church incriminate property acts of its believers and clergy against third parties (theft, robbery, extortion, usury, etc.) or against the church itself (sacrilege). The Church assesses its jurisdiction according to the (mentioned) personal and real criterion – whether certain acts are committed by believers or clergy and whether within the framework of the church as an institution. When Christianity was established as the official religion of the Roman Empire, these incriminations also entered secular legislation, either through the appropriate application of earlier regulations on temple property (which already recognized the aforementioned forms of sacrilege), or through completely new, Christianized Roman law, as well as in later canons. For the church treatment of "offenses against the property of others" (Milaš 2005, 451–467).

[3] Similarly, although somewhat more broadly, this crime is defined in Đorđević (2023, 27): "Therefore, sacrilege is the desecration of sacred objects, which can be performed by destroying, damaging, stealing, or misappropriating sacred assets."

or sacred objects (vessels, vestments, shrouds),[4] typically from a church. Thus, depending on the manner of commission, Milaš (2005, 404, 465–467) considers sacrilege, as an act against various protected objects, to be *svetotatstvo* (sacrilege) in the case of offenses against religious veneration, and *svetokradstvo* (church theft) in cases against property.[5] However, the latter variant, as a special type of theft qualified by the object and (most often) the location where said crime took place, appears far more often in sources. Consequently, in this paper, the narrower meaning of this act will be used (equating *svetotatstvo* and church theft), unless otherwise indicated in the paper.

Church theft has similarities with other crimes against property punishable by the Church; thus, it is necessary to first distinguish them from each other. Desecration and grave robbery, and sacrilege itself in a broader sense, repeat the aforementioned dichotomy within the same act – the grave is attacked as a sacred place, but also as a source of material value for the thief. The obvious difference is the object of the unlawful attack and the place of commission.[6] In the case of usurpation or desecration of churches, one can also speak of sacrilege, but not of church theft.

Also, Roman law recognizes a certain similarity, and in a similar way regulates *sacrilegium* and *peculatus*, i.e., the unfounded appropriation, theft of temple/church or "national" (state) property, respectively, as well as

[4] On the subjects of this and related works, which are protected by church legislation, see *in extenso* the meaning of "sacred"/"holy" in Popović (1999, 652, translated by author): "Sacred, on the other hand, is everything that is dedicated and belongs to God and his saints and that serves or is intended for the purpose of sanctification: temples, churches, icons, sacred books, sacred vessels (liturgical objects: chalice, diskos, candlesticks, etc.). Sacred are the vestments in which divine services and holy rites are performed, curtains; graves and cemeteries are sacred, holy are the holidays in memory and honor of saints. In a word, sacred is everything that has the function of spiritual enlightenment and elevation. The opposite of that is sacrilege, desecration of the sacred, sin against that which is sacred, holy places, sacred objects, saints or against that which belongs to the sacred. This is precisely expressed by the terms sacrilegious, desecrator of a sacred place, or one who appropriates church property. From this the term sacrilege (church theft) is derived." Of course, on the narrowing of the subject of this work – see in the main text.

[5] Milaš makes the aforementioned conceptual distinction, calling the theft of sacred objects from the church "svetokradstvo", while using "svetotatstvo" mainly in its more comprehensive meaning (Milaš 2005, 404, 453).

[6] For more details on the criminal act of desecration of graves in medieval Serbian law, see Stepić 2024.

related acts (Milaš 2005, 456–457). The Digest of Justinian (D.48.13) devotes the same title to these acts: *Ad legem Iuliam peculatus et de sacrilegis et de residuis*.[7]

Those clerics who, in addition to fraudulently spending funds, also sell church vessels and estates outside the appropriate procedure, and thereby illegally reduce church property, may also be called to account before the local council of the church. This is stated in several canons (Council of Carthage canons 26 and 33, Council of Antioch canon 25, etc.), which are part of the Zakonopravilo of Saint Sava and the Syntagma of Matthew Blastares (chapter E-16). Although each of the previously mentioned acts undoubtedly diminishes the property of the Church, or attacks its sanctity, these acts lack at least one of the necessary elements of *svetotatstvo* (church theft), and are not *the theft of sacred objects from the church.*

2. CHURCH THEFT IN THE LEGAL WORKS OF SAINT SAVA OF SERBIA

The first preserved acts in medieval Serbian law that mention sacrilege are the Hilandar and Studenica typikons of Saint Sava.[8] Namely, the Hilandar Typikon (HT) mentions church theft in several places (in chapters 21, 24 and 37). They are translated chapters 19, 22 and 37 of the typikon of the monastery of Theotokos Euergetis (the Benefactress) in Constantinople (ET). In two places[9] that speak of the inalienability of monastery property (chapters 19 and 37 ET), Greek expressions are used to indicate the act, or the perpetrator of the act of sacrilege – *ἱεροσυλία* and *ἱερόσυλος* (Rakićević, Anđelković 2020, 102, 124).

[7] The text of the Digest used in the rest of the paper will be cited according to Mommsen, Krueger (1870).

[8] As the Studenica Typikon is a later version of the Hilandar Typikon, these references were analyzed according to the text of the Hilandar Typikon (Ćorović 1928) and the Evergetid Typikon, its direct model (Rakićević, Anđelković 2020, 51i140).

[9] The third case (ch. 22. ET and 24. HT) it is about the prohibition of any unlawful appropriation from the monastery (theft, plunder) – *ὁ δέ τι νοσφιζόμενος ἀπὸ τῆς μονῆς* (ET); similar in the Serbo-Slavonic translation: *аще оукрадаѥ wд(ь) манастыра҃ нѣщо* (HT). For this, if the perpetrator does not repent, he is threatened with expulsion from the monastery. However, interestingly, this case was not treated as sacrilege, probably due to the principled prohibition of unlawful seizure of monastery property, not sacred objects or donations, as in the previous and subsequent cases, which will be discussed below (Ćorović 1928, 109–110; Rakićević, Anđelković 2020, 106).

In the first case, it is about the prohibition of alienating sacred things (vessels, icons, books, etc.), as well as immovable property, with the exception of special circumstances. Anyone who disobeyed this was subject to legal condemnation[10] for sacrilege. The second, monks leaving that monastery or even monastic life as such are prohibited from demanding the return of the property they donated to the monastery. Ch. 37 ET justifies this prohibition: "it should not be given to him, regardless of what it is, because what is once dedicated to God is inalienable, and the one who takes it away [becomes] a church thief, and everyone knows what the punishment is for the one who commits sacrilege, even if we do not say [it]." (Rakićević, Anđelković 2020, 125). Here, the reference is to *epitimia* (penance), an ecclesiastical punishment, which is well-known and severe, so that it does not even need to be explicitly mentioned.

The exact same approach is retained in the Hilandar Typikon, with the only difference being that the terminology is not uniform. In the first spot, *ἱεροσυλία* is translated as *цр҃ь кѵ҇е покраденїе*, and in the second, the verb *с ѵ҇е ѡ҇ є покрастн* is used to denote this criminal act (Ćorović 1928, 105, 132). Neither the Rhomaian nor the Serbian typikons, in both the mentioned case, specify the punishment for sacrilege; it is secular in the first and ecclesiastical in the second. In both places, they are treated as notorious, since the canons and laws regulating this act are known.

Christian tradition attributes the canons relating to church thieves to the Apostles, and they would be followed in subsequent centuries by Gregory of Nyssa, as well as the Holy Fathers of the Council of Constantinople in 861. All the aforementioned rules would be adopted in similar contexts: either independently or as part of the general incrimination of theft, or in connection with sacrilege and other violations of church property. The first Nomocanon in the Serbian written tradition, the Zakonopravilo of Saint Sava, contains these canons, collected in its canonical part.

The Rules of the Holy Apostles prescribe the penalty of excommunication for those who steal wax or oil from the church (Rule 72) and for those who take church vessels and cloths (curtains and shrouds – Rule 73)[11] for their

[10] The expression *ἐπὶ τούτῳ νομίμοις εὐθύναις ὑπόδικος ἔσται* indicates that the typikon refers to secular laws, not (only) canons.

[11] The canon itself mentions "cloth" as a general term, with the aim of encompassing all fabrics intended for the rites and services in temples. Sava (2004, 151) does not find the addition *нлн поставь злать нлн навлака* ("neither the gold lining nor cover") in the Greek manuscripts he examined, which leaves the possibility that this is the redactor's (Sava's) explanation of what is meant by this term. Cf. Milaš 2004a, 146–147.

own needs, thus committing church theft in the narrower sense. In both cases, it is prescribed that the perpetrator is to be punished by excommunication and required to return the confiscated items, also provided that, according to Ap. 72, the stolen wax and oil would have to be compensated fivefold.[12]

The purpose of both punishments is, first of all, to return items necessary for performing liturgy. Johannes Zonara's interpretation of Rule 73 explains that these objects are considered sanctified by their very bringing to the church, without the need for special rites "since all of this is presented to God and it is prohibited to take them for one's own use, because of which one is subject excommunication" (Sava 2004, 151).[13]

Further punishments for church thieves are mentioned by Gregory of Nyssa in his final, 8th canon, after he prescribed them for ordinary thieves and robbers in the sixth. Stating that "Sacrilege – that is to steal from the church" is equated with murder in the Old Testament and carries the penalty of death by stoning, he notes that the rule that such a thief must be punished less than an adulterer, originates from the Church, continuing:

> *под⟨о⟩баѥть же вь всацѣмь грѣсѣ покаıаниıа тепла смотрити а не врѣмене.*
>
> ("with all sins one should look at the disposition of repentance and not the time") (Sava 2004, 585).[14]

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[12] Petrović (2002, 34) finds that in Ap. 72, the redactor of the Zakonopravilo cited the abbreviated (synoptic) canon, and gave the full text of the canon as an interpretation. In the following, Ap. 73, the full text of the rule is cited in the appropriate place, as well as Johannes Zonara's interpretation (Petrović 2002, 37).

[13] Similar to the example in fn. 8, the redactor of the Zakonopravilo notes that according to Rule 73 even a sacred vessel that is merely hung in the church is considered consecrated, which is repeated in the later interpretation of the canonists (Sava 2004, 151).

[14] Regarding this continuation, Milaš states that it is "the conclusion of all eight rules or the Epistle of Gregory" (Milaš 2004b, 468). Therefore, when determining the length of church punishments, it is a general instruction that the quality must always be taken into account, not only the time of repentance, which can be shortened at the discretion of the priest. Basil of Caesarea makes a similar statement, prescribing that the time of repentance can be shortened for those who sincerely and contritely repent (Rule 74), while for those who continue to sin in this way, penance must be maintained or the sinner must be abandoned completely, so as not to jeopardize the priest's own salvation. For the text in Zakonopravilo, see Sava 2004, 538, 542. See also Milaš 2004b, 414–415, 419–420.

Since it also dealt with issues of church property, among other topics, the issue of theft of church property was also regulated by the canons of the Council of Constantinople from 861. Namely, in Rule 10 the fathers of this council refer to the apostolic canons, as well as the canon of Gregory of Nyssa on sacrilege. The motive for adopting this rule was a controversy that arose in church criminal law.

Namely, as mentioned above, the punishment of excommunication was provided for taking sacred things from the church, regardless of the nature of the perpetrator of the act and the object. Accordingly, both a layman and a cleric would be subject to the same (milder) type of church punishment, same as the one who steals, say, a candle and one who steals a chalice or diskos. Recognizing the problem in the broad formulation of Ap. 73, it was specified that those (from the clergy) who steal sacred things that are typically found in the altar "for their own gain or for an unholy use" are subject to the stricter punishment of dethronement and excommunication,[15] explaining in reverse order *ѡвѡ оубѡ ѡскврьнѩющє ѡвѡ же сѵ(є)щєнаꙗ крадоуще* ("for these who desecrate, and these who steal the sacred [objects]") (Sava 2004, 495), thus encompassing both aspects of sacrilege.

Therefore, although they recognize the difference between sacrilege and church theft, the fathers of this council decided to impose stricter punishments on the perpetrator, who, in the case of the theft of sacred altar vessels, is assumed to be a cleric, to whom these objects are more accessible due to the nature of his ministry, and is therefore subject to excommunication (loss of the right to perform clerical duties), which can only be imposed on him.

A milder punishment of minor excommunication remains prescribed for forms of this criminal act that are not predominantly motivated by gain. These are appropriations for unholy use of vessels and fabrics that are kept outside the altar, for the purpose of personal use and gifting to others. However, even such a perpetrator of a lesser crime can be convicted of church theft,

[15] An excommunication (*odlučenje*) in church penitential law means denying a certain person participation in church rituals and can be limited in time as well as in terms of subject matter – whether access to communion, liturgy, or other acts. The most severe form of this punishment is a final excommunication (*konačno odlučenje*), in which "the person who has been excommunicated loses all rights, in the full sense, in the Church that belonged to him as a member of the Church" (Milaš 2005, 203, translated by author). Dethronement or final excommunication implies that a cleric, in the broadest sense an "ordained person", is deprived of his right to perform clerical duties (Milaš 2005, 261), and the degree of this punishment depends on which external rights of the punished cleric's calling are left to him. Alternatively, see Milaš 2005, 190–206, 261–326.

if he "takes/snatches away completely". This conceptual distinction between the act of ordinary theft and "snatching" (*rapina*, *grabež*) is necessary as justification for this stricter incrimination.[16]

Thus, for the most part, the canons regulating the theft of church property have been exhausted. Naturally, after the Christianization of the Roman Empire, secular legislators also decisively stepped out against church theft, regulating it as a particularly serious form of theft, repeating the already mentioned qualifying circumstances of commission, while prescribing severe penalties. Part of these laws would also be borrowed in the Zakonopravilo. Although their origin is in the law and opinions of jurists from the Principate period, the era of pagan emperors, with appropriate changes, they could also protect Christian sacred objects. As such, the detailed norms on church theft in Justinian's Digest,[17] transplanted from the civil laws of the Nomocanon in 14 titles (II, 2), are included in Chapter 47 of the Zakonopravilo and, in the translation into English (based on the original text, as well as Petrović's translation in Sava 2004, 705–706) read:

"The punishment for a church thief is either more lenient or severe, depending on the person in question, and depending on the guilt, and the time, and age and nature, for some are to be handed over to wild beasts, some burned, and some hanged. The measured punishment is when a night church thief is handed over to the beasts; for a daytime one, it is somewhat lenient, because the one who steals from a church during the day is sent to be imprisoned and dig gold ore."[18]

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[16] The verb *вьсхыщати* for the action leads to the perpetrator of this act (*хыщьникь* is the translation of the Greek *αρπαξ* or Latin *raptor*, meaning that the act in question is *rapina*, the violent seizure of someone else's property, or "*grabež*" in Slavic law) (Taranovskiĭ 2020, 189, 197; Čvorović 2018, 85; Šarkić 2023, 456–457). In narrative and legal sources, *хыщьникь* most often means a robber or brigand, since in medieval Rhomaian and Serbian law robbers did not have to use force directed against a person, or against another's property (Soloviev 1928, 198). On the conceptual distinction between the aforementioned delicts against property (Čvorović 2018, 83–89). On robbery in Dušan's Code, see Čvorović 2018, 116–118, 129–145.

[17] Although Ch. 47 of the Zakonopravilo is entitled *ωт⟨ь⟩ разлнчныхь титьль. рекше граньи. Иоустиниана ц⟨ѣ⟩с⟨а⟩ра новыхь заповѣдии* ("from different titles, that is branches [of] the new decrees of Emperor Justinian"), the text at hand is a selection of civil laws from the Nomocanon in 14 titles (branches), which come from the entire *Corpus iuris civilis*: Digest, Codex, and Novels. The passages examined are taken from the Digest.

[18] This norm from the Zakonopravilo is based on D.48.13.7(6) – the punishment for a nobleman who committed this act was exile (Mommsen, Krueger 1870, 832). For the English translation of the said fragment, Watson 1998, 346.

"And thieves of honorable and great churches are cut down with the sword. Church thieves are those who steal from large public churches, and those who steal from private and small churches that are not guarded, of course, are punished less than church thieves, and more than ordinary thieves who steal. An outsider who steals from a church is punished with the punishment of a church thief. And one who is entrusted with the guarding and watching over a church, if he takes something from it, is not subject to this law."[19]

"If someone puts a person in a chest and places the chest in a church, and if that other person, having come out of the chest, steals something belonging to the church, the guilt for church theft is equal to that of the accomplice who brought the chest into the church, because the property taken from the church will be claimed from them."[20]

In just these few paragraphs, several forms of (church) theft are recognized. According to the time of the commission, there are daytime and nighttime church thefts; according to the object – thefts of public (large) churches and private (small) churches; and according to the connection of the perpetrator with the robbed church – "external" and "internal" thefts, i.e. by those who had the duty to watch over and guard that church, with the latter not being considered a *svetotatac* (a church thief in earnest).

Finally, a special form of sacrilege was prescribed: theft from a chest, committed as an act of cunning, in which the bearer of the chest is also liable as an accomplice (more precisely: a helper), although it seems only in terms of damages. All these fragments are found in the same chapter of the Digest (48, 13), and are minimally adapted to the new, Christian imperial legislation. What once referred to theft from pagan temples now refers to theft from churches.

In *Zakon gradski* (City Law, the Serbian translation of the Prochiron), Chapter 55 of the Zakonopravilo, when punishing sacrilege, the norm from the Ecloga (XVII, 15 = Proch. XXXIX, 58)[21] is fully adopted. According to it, the circumstances that were legally relevant for Roman jurists in the

[19] This norm from the Zakonopravilo is based on D.48.13.11(9), 1–2 (Mommsen, Krueger 1870, 832–833). For the English translation of the said fragment, Watson 1998, 346–347.

[20] This form of theft is mentioned in D.48.13.12(10, 1) (Mommsen, Krueger 1870, 832–833). For the English translation of the said fragment, Watson 1998, 346–347.

[21] In medieval Slavic laws, this norm was first reflected in the Zakón Súdnyi Liúdem (Законъ соудьныи людьмъ), with some changes to the punishments: the punishment for the more serious form is not blinding, but being sold into slavery, and for the less serious form, the perpetrator's exile is specified with the following remark *по ѕемли посълаѥтьсѧ, ꙗко нєтьстивъ* (Bobčev 1903, 91). The literal translation

aforementioned places in the Digest, such as the time, place, and manner of the act, no longer affect the punishment. Čvorović (2021, 156–157), citing Elena E. Lipšic, states that all of them are changed by the "principle of the sanctity of the place", i.e., whether the stolen sacred object was stolen from within or outside the altar. In the former case, the perpetrator faces the penalty of blinding, and in the latter – beating and shearing, and finally, exile from the territory where the act was committed.[22]

It is interesting that the "sanctity of the place", as a qualifying circumstance recognized in the Ecloga from the first half of the 8th century, was repeated as such in the decisions of the First-and-Second Council from 861 and in the Prochiron from the 870s. This shows an enviable continuity in the norming of the essence of this criminal act, as well as a completely logical interpenetration of secular and church legislation in penalizing acts against the property of the Church, bearing in mind the role of the Rhomaian emperors as its protectors. The emperors acted in force and legislated strict punishments for the perpetrators, as in many other cases of criminal acts in which the Church[23] was victimized, at least in part. Such an example, as can be seen above, would be followed by medieval Serbian law, as well as other countries under Byzantine cultural influence.

3. CHURCH THEFT IN THE CHARTERS AND DUŠAN'S LEGISLATION

After exhaustive regulation in the Zakonopravilo, which was completely taken over from canonical and Roman/Rhomaian secular law, theft from the church is mentioned in medieval Serbian law in two monastery charters of King Milutin. The mere mention of this work in the (preserved) particular legislation speaks of its importance, since the largest number of borrowings

can be understood, in the spirit of the Ecloga, "and let him be expelled from the land as a godless man." More in Nikolić 2016, 72. On this legal monument and the hypotheses about its origin, in summary, see Nikolić 2016, 3–10.

[22] For the Slavonic-Serbian text and translation into modern Serbian, see Sava 2021, 210.

[23] Čvorović states that "similar to grave robbing and church theft – although it represents only one form of the crime of theft – in the Ecloga's system of criminal law protection, it belonged to a large group of crimes against the faith" (Čvorović 2021, 153). In Prochiron, however, the punishments for both of these acts (XXXIX, 57 and 58) are set out in the section concerning crimes against property. This is how it is recognized in both Taranovskiĭ (2020, 191) and Soloviev (1928, 195).

from Rhomaian to Serbian law comes and is attested only through compilations in which they are collected (the Zakonopravilo, the Syntagma of Matthew Blastares and the so-called Law of Emperor Justinian).

In the Saint Stephen Chrysobull, King Milutin granted certain villages, as *baština* (patrimonial land), to his subjects, who are obliged "to keep them under this church" (*држе оу црьквь сиє*), i.e., under the monastery in Banjska, as their manor lord. He then confirmed the inviolability of property:

> *догдѣ соу вѣр҃нн цр(ь)кви и крал(евь)с(твоу) ми и по м҃нѣ г(о) с по дьствоующоумоу и догдѣ се не wбрѣтоу татиє цр ь ков҃нии да соу имь и нхъ дѣти по нихъ оу башиноу в҃сегда.*
>
> ("as long as they are faithful to the Church and to my kingdom, and to those ruling after me and unless they are found to be church thieves, let this be theirs and their children's patrimony for all time") (Mošin, Ćirković, Sindik 2011, 464).

Therefore, for the holders of *baština* there is an obligation of loyalty to both the ruler and the Church, i.e., the orderly fulfillment of class obligations and loyalty. Immediately after it, a typical example of church "*nevera*" (breach of faith, treason) is given – church theft.

This arrangement could have arisen under Rhomaian influence, where it was considered that "church theft (sacrilege) is a sin similar to the treason against the emperor".[24] The equating of treason against the state and towards the Church has two dimensions, since the Church here acts as both the secular lord of the manor and the spiritual authority, which stands on an equal footing with the secular one, according to the principle of symphony.

The relevant provisions on the very essence of sacrilege and the jurisdiction for this act are found in the Law of Church People (*ꙁ конь люд(є)ми цр(ь)ков҃нымь*) in the Banjska Chrysobull, or in the Old Law of the Serbs (*Ꙁаконь стары Срьблемь*) in the Gračanica Chrysobull. The former defines the act of church theft as follows:

> *И аще к҃то оукраде ч҃то вьноутрь цр ь кве до свѣще воска или тьминана да моу се коуща распе.*

[24] In Serbian medieval law, this rule is found in chapter I-1 of the Syntagma of Matthew Blastares (both in the complete and abridged versions). For the text of the rule, see Novaković 1907, 325; Florinskii 1888, 407. The translation in Vlastar (2013, 235) is somewhat different – "The crime of sacrilege is equal to insulting the emperor". The rule is taken from the Basilika, and comes from Ulpian's fragment in D.48.4.1.pr. *Ulpianus libro septimo de officio proconsulis: Proximum sacrilegio crimen est, quod maiestatis dicitur* (Mommsen, Krueger 1870, 802).

> ("And whoever steals anything from within the church, whether it be a candle, wax or incense, let his estate be confiscated") (Mošin, Ćirković, Sindik 2011, 465).

This norm is reminiscent of the Rules of the Holy Apostles, especially Rule 72, since it cites the theft of less valuable items from the church as an example. The Serbian legislator was not influenced by subsequent nuances on the forms of this criminal act, in terms of various qualifying circumstances, from later canons and the Ecloga and the regulations based on it, which recognized only church theft within or outside the altar. He explicitly stipulates that sacrilege is any theft within the church, regardless of the value and nature of the stolen item, and imposes the penalty of *rasap* (complete confiscation of the property of the house/family), which is a typical punishment for *nevera* in medieval Serbian law. Thus, the Saint Stephen Chrysobull provides a comprehensive concept of this crime, constructed simply, with slight reliance on ancient Church and later Rhomaian tradition, linking it to the class obligation of loyalty, but without unnecessary detailing and too much room for interpretation.

The issue of jurisdiction for this act is undoubtedly regulated by the subsequent Gračanica Chrysobull, which was issued by the same ruler: "And a person who steals from the church and commits murder, what says His Majesty the King [let it be done]" (Mošin, Ćirković, Sindik 2011, 503). Here, the act of church theft, together with murder, is listed as a typical *reservata* of the ruler's court, probably because of its connection to treason, judging by what has been discussed previously.[25]

The rules on sacrilege (mainly church theft) are also compiled in Dušan's Code, which adds little new to the already existing material. A short chapter in the abbreviated Syntagma (AS,the previously mentioned I-1, and also the complete Syntagma) is devoted to it, and one article of the so-called Law of Emperor Justinian, a Serbian compilation created from several Eastern-Roman laws and legal miscellanies,[26] speaks about church theft, which essentially repeats Ecl. XVII, 15, i.e. Proch. XXXIX, 58.[27]

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[25] However, Mirković (2002, 8) views it only as a form of theft (*tatba*).

[26] Regarding the sources, content and redactions of the Law of Emperor Justinian, see Marković 2007, 32–41.

[27] "These provisions of the AS and LJ have pretty much exhausted the subject in question. That is why the DC. cannot speak of sacrilege, even if it is a criminal act of great importance" (Soloviev 1928, 196). Đorđević believes that these acts can also include the destruction of a church during a military campaign, prescribed in Art. 130. Dušan's Code, Đorđević 2023, 31–32, which is certainly an act of sacrilege in a

In the complete Syntagma (CS), the relevant chapter contains the aforementioned canons, Ap. 72. and 73, Const. 10, as well as canon VIII of Gregory of Nyssa,[28] and several secular laws. All the canons are retained in the abbreviated Syntagma, with the last one being shortened to only the first sentence – that sacrilege in the Old Testament is considered equal to murder.[29] Of the laws, only the first one is retained – that sacrilege is equated to imperial treason – and the last one, taken from Basilika (12. Bas. LX, 45). "The other three [should be 'two' – author's note] laws were removed from the AS, probably because they are not true criminal norms with the usual sanction, but rather reasoning about the concept of sacrilege, that ordinary theft includes both the theft from a church of objects not dedicated to the service of God, and the theft of consecrated[30] objects from buildings not designated for the service of God" (Soloviev 1928, 195). It is possible that these abstract distinctions were superfluous for the Serbian legislator, and that they were implied by the basic understanding of this act – the theft of church items from church buildings.[31]

broader sense – here a sacred place is desecrated, not a sacred movable object. Of course, these cases of desecration of churches and sacred places are also punished by canonical and secular Roman law. In summary, Milaš 2005, 401–403.

28 The differences between the texts of these canons in the Zakonopravilo and the Serbian redaction of the Syntagma mainly stem from the translation and have no greater legal significance. However, it is interesting that in Ap. 72 and 73 in the Zakonopravilo the perpetrator *оукрадєтъ* ("steals") (72) and *вьѕмєтъ (что на свою потрѣбоу* ("takes something for his own need") (73), while the Syntagma in the relevant place condemns *отємшаго* ("he who has snatched") and *на свою потрѣбою посвоѥающа* ("he who has appropriated for his own need"). The somewhat softened terminology and awareness of the later legal development of this institute, and the connection between theft of church property and sacrilege require additional clarification: "even if it is not for church theft, he is guilty of a law violation and is subject to excommunication" (Novaković 1907, 324; a slightly different translation in Vlastar 2013, 235).

29 For the text, see Novaković 1907, 325.

30 Soloviev makes an error here – confusing sacred and consecrated objects. If a certain object is dedicated to God in a special rite, wherever it is stolen, the culprit is liable for sacrilege (Novaković 1907, 325). Also, Soloviev does not mention that the first removed law extends liability for church theft to an accomplice in the act, which, with reference to the case of theft from the coffin, was already stated in Roman (Rhomaian) legislation (see above the borrowing from the Nomocanon in 14 titles (II, 2) in the Zakonopravilo, Ch. 47).

31 Florinskii also considered this, with less detailed explanations: *Изъ гражданскихъ законовъ взяты только два – самые важные – первый и послѣдній. Опущены остальные, касающіеся разныхъ тонкостей оцѣнки священнотатства* ("From the civil laws, only two were taken – the most important ones – the first and the last. The rest, which touch on various subtle assessments of sacrilege, have been left out") (Florinskii 1888, 406).

From the previous analysis of King Milutin's charters, it is obvious that the concept of sacrilege as treason was known to Serbian law (at least) several decades before the creation of the Syntagma and Dušan's legislative work, which in turn indicates the great influence of Rhomaian law and legal reasoning in medieval Serbia. The one remaining law in the AS compromised between the reasoning of postclassical Roman and Rhomaian law after the Ecloga, reintroducing several qualifying circumstances for church theft.[32] Church thieves were punished with the death penalty if, cumulatively, they stole or desecrated objects dedicated to God from the altar at night, and with beatings and exile if they stole "a little something" (likely an unconsecrated church object) within the church – but outside the altar – during the day, and just because of their poverty. This means that the circumstances mentioned in the Digest of Justinian (the time of commission, status of the injured party, etc.) and the Ecloga (place of commission and nature of the object) were all taken into consideration, which created a synthetic concept of this crime.

However, a somewhat modified, stricter form of sacrilege from the Ecloga/Prochiron appears in Article 28 of the Law of Emperor Justinian (LJ), in almost all manuscripts of the older redaction,[33] seemingly competing with the norm from Basilika from the Syntagma. Entitled *ѡ крагїи*, it reads:

> *Аще кто оукрадеть что ѡт црькве или вь ношти или вь дьне да се ослѣпить Аще ли на дворѣ цо црьковно оукрадеть да се бїе и ѡсмоуди и проженет ѡт тоган мѣста.*
>
> ("If anyone steals something from the church. either at night or in the day, he shall be blinded. If anyone steals something ecclesiastical from the court, he shall be beaten and singed and exiled from that place.") (Marković 2007, 60).

The differences in relation to Ecl. XVII, 15, i.e. Proch. XXXIX, 58, which clearly served as a model for this norm in terms of structure and language, concern the place and object of the theft, as well as the punishment. Instead of distinguishing forms of sacrilege according to whether they are committed within or outside the altar, here the act is normalized as being committed in the church or "at court". The stolen objects are not defined as sacred, but as "something ecclesiastical" – which could just be a simplification by the local legislator or, alternatively, it could mean any item stolen from the church. Finally, the punishments for the lighter form are beatings, singeing, and

[32] For the text of the rules, see Novaković 1907, 326; Florinskii 1888, 407.

[33] The only exception to this numbering is the Rakovica Manuscript, where it is Article 25, but with identical content (Marković 2001, 105).

then exile, instead of the beating, shearing and exile referred to in the Zakon gradski. This is likely an adaptation of this rule to the Serbian environment, where the punishment of singeing appears as a shameful punishment similar to shearing.

What is the relationship between these two provisions from the AS and the LJ, and does the latter regulate sacrilege? Soloviev believes that these are similar subjects: "We believe that this must be understood not as church theft, but as other types of serious theft. This refers to the theft of ordinary objects from the church and the theft of objects dedicated to the service of God from outside the church building. Neither is sacrilege in the strict sense of the word (that is why Article 28 is entitled "On Theft"), yet due to disrespect for the church, in both cases the penalties are much greater than for ordinary theft" (Soloviev 1928, 195–196).[34] For his part, Šarkić (2023, 446) believes that Article 28 of LJ speaks of sacrilege. Both of these scholars, almost a century apart, recognize the same source of the norms from this article (Ecl. XVII, 15, i.e. Proch. XXXIX, 58), but they come to opposite conclusions.

There are two possible explanations. The first is either the Serbian legislator, having adopted the meaning of sacrilege as treason (*nevera*) from the Basilika (even before the Syntagma of Matthew Blastares, through King Milutin's "legislation", as well as their later precise incrimination of this act), used the earlier regulation from the Prochiron as a basis for punishing other serious acts against church property, which, nevertheless, did not constitute sacrilege. The second is that the legislator regulated the same matter in the AS and LJ in parallel, which is not uncommon, with minor amendments and simplifications of the mentioned sources of Art. 28. LJ. However, the hereditary connection and great similarity between the sources that, unequivocally, concern sacrilege, seem to weigh in favor of the latter option.

Looking at the evolution of the regulation of the act of sacrilege in medieval Serbia, one can notice a certain hesitation regarding the (normative) concept of sacrilege, as well as a pronounced interweaving of the influence of earlier sources of law on the Serbian legal tradition: from the earliest canonical to the subsequent secular Rhomaian (from Digest of Justinian, the Ecloga and Prochiron, to the Basilika and the Syntagma). The Zakonopravilo makes a selection from Justinian's legislation in Chapter 47, and adopts the entire Prochiron as the City Law in chapter 55. Milutin's charters define the act of

[34] This position is only reiterated by Marković (2001, 105), who considers this act only as theft from the church, according to the provisions of the Law of Emperor Justinian.

church theft and determine the sanction and jurisdiction for it, and Art. 28 of the Law of Emperor Justinian introduces certain changes compared to its prominent sources.

However, this legal syncretism reaches its peak during a period that it beyond the chronological framework of this paper, since it is found in the later ("younger") redaction of Dušan's legislation. Namely, almost all of these sources would leave their mark on the regulation of the act of church theft in the Law of Emperor Constantine Justinian (LCJ), in Article 52.[35] It begins with a description of the crime, which resembles Ap. 72. and 73, but with the punishment from the Old Testament:

> *Аще кто въземеть ѡт цркве свѣщꙋ или оулиꙗ или сасꙋд или ризꙋ или ино что и пронађет се ѡ нием. Каменїем да побїен бꙋдет ѡт народа.*
>
> ("If anyone steals a candle, or oil, or a vessel, or a vestment, or anything other from the church, and it is found on him. Let him be stoned to death by the people")

The explanation of such a strict repercussion is that, by stealing from the house of God, the thief is in fact stealing God, i.e. by stealing from the church and God, he is stealing from all Christians.[36] The other two forms of the crime are punished much more lightly and their stylization most closely resembles the revisions of Article 29 of LCJ (revised according to Article 28 of LJ) and the last law from I-1 of the AS:

> *Аще ли извань цркве что въземет се да платит троином и да въсадит се въ тамнїцꙋ вї дни аще ли оубожства ради что въземет тачїю то едно да платить.*
>
> ("If it is outside the church that something is stolen, let him pay three times and be put to prison for twelve days: if he has stolen due to his poverty, he must repay only once") (Marković 2007, 90)

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35 Theft from the church is also mentioned in Art. 29, which is a more detailed reworking of Art. 28 from the older version. The only difference is in the punishment for theft outside the church: the perpetrator pays triple the value of the stolen item, instead of having his hair and beard sheared, after which he is beaten and exiled. Cf. Marković 2007, 60, 82.

36 For all the variations of this explanation in the transcripts, see Marković 2007, 90.

Thus, church theft in old Serbian law ends up as an impractical amalgam of biblical, canonical and Rhomaian secular traditions, with great symbolic significance. Its final form, preserved in the LCJ, combines numerous reflections of several norms that regulated said crime, but almost all the nomotechnical finesses and dilemmas that was known to older legislators – were lost.

4. CONCLUSION

Despite the seemingly simple concept by which sacrilege can be defined in a narrow sense – the theft (of sacred things) from the church – numerous dilemmas accompanied its development, in canon law and later in Roman and Rhomaian law. Its path of development began with the Apostolic Canons, only to later be integrated into the tradition of Roman secular legislation – and to be equated in severity with treason against the ruler.

Many of its elements were controversial. Was every appropriation for profane use sacrilege? Was every theft of a sacred object sufficient to constitute this act, or did the object have to be consecrated? Must it be done in the church, within the altar or outside it, or did stealing a sacred object outside the temple render the perpetrator a church thief? All these controversies, especially considering the adoption of the canon at the Third Council of Constantinople in 681, were of practical importance and contributed to the completion of the canonical concept and punishment for sacrilege. For its part, the new Christian Roman legislation – from the Digest, the Ecloga and the Prochiron, and with small changes in the Basilika – resolved these issues. When these canonical and legal norms entered into Serbian law, through the reception in the Zakonopravilo and the Syntagma of Matthew Blastares, they were already adopted as a finished product, perfected for centuries in the Roman setting.

When the Serbian legislator regulated theft from the church and the sanction and jurisdiction for this act, independently, in charters, he did so with simple vocabulary, without finesse or room for quandary: "Whoever steals anything from the church", "let his house be confiscated", "what says the king". However, when he makes changes to the transplanted norms, they are minimal – such as minor clarifications of the canons in the Zakonopravilo, and the punishment of singeing instead of shearing in Art. 28 of LJ.

Sacrilege contained two aspects: as an act against faith, it consisted of an act of desecration, an attack on the house of God; as an act against property, it showed the particular impunity of the perpetrator who stole a sacred thing. As mentioned at the beginning of this discussion, unlike most similar acts, it entered Serbian legislation through both legal collections and

charters, and in the latter case it quickly became recognized as one of the most serious criminal acts: as ecclesiastical treason (*nevera*). As such it was on a par with treason against the ruler, but without the Rhomaian graduality in punishment, which included confiscation of property and the loss of class privileges, and was adjudicated by the ruler. The crime of sacrilege serves as another example of the importance of protecting the Church in medieval Serbian law, as well as the scope of the interpenetration and assistance between secular and ecclesiastical authorities.

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