

**Doc. Sanja Gligić,\* LL.D.,**  
Assistant Professor,  
Faculty of Law, University of Belgrade

ПРЕГЛЕДНИ НАУЧНИ РАД  
10.5937/zrpfno-28664

UDK: 271.2-58  
271.2-472

Раџ примљен: 01.10.2020.  
Раџ прихваћен: 02.12.2020.

## **RESPONSIBILITY OF MONKS IN THE CONTEXT OF LAW AND SOCIETY\*\***

**Abstract:** *In the course of history, ecclesiastical life has been imbued by secular beliefs, embodied in human endeavour to get a strong foothold in the Church. Since Emperor Constantine's era, the idea that matured in the ecclesiastical consciousness was that the fundamental principle underlying the organization of ecclesiastical life lay in the domain of law. Nevertheless, in contrast to positive law, canon law is not an expression of the will of an individual or the congregation; instead, it comprises rules deriving from the nature of the Church. The Church, just like any other organism, is governed by two tenets: the static organization, and its dynamic life function. Thus, the responsibility of monks can be perceived either in line with canonic law or within the social context, whereby these tenets are inalienable since there can be no life without organization, nor can there be organization without life. In case a member abandons an organization, regardless of the reasons behind such action (be it voluntary or through the power of law), positive law prescribes that all ties between the said organization and its former member are to be dissolved. On the other hand, in case a penalized monk is obliged to leave the monastery due to the gravity of the pronounced sanction, he is entitled (as a former member) to preserve the status of a Christian. This point derives from the fact that baptism constitutes an indelible fact of spiritual life. This paper examines the subject matter of monks' responsibility for violation of canon law, by comparing the mediaeval and contemporary sources of the Serbian canon law, in view of identifying changes in the said period and drawing the most accurate conclusions.*

**Keywords:** *monk, sanctions, disciplinary-criminal jurisdiction, responsibility, St. Sava's typika, decree on monastic life.*

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\*gligic@ius.bg.ac.rs

\*\* The paper is the result of scientific research within the project »Identity Transformation of Serbia«, the Faculty of Law, University of Belgrade.

\*\* The paper was presented at the International Scientific Conference "Responsibility in the Legal and Social Context", held at the Faculty of Law, University of Nis, on 18 September 2020.

## 1. Introduction

The responsibility of monks fully aligns with the legal maxim “*Nullum crimen, nulla poena sine lege*.” This type of responsibility is determined by the Church Court. However, since the (static) structure and (dynamic) life functions of the Church are inseparable canon law principles, the judge must take into account the social responsibility of monks because: “to judge means to appropriate shamelessly the right of God, and to condemn means to ruin one’s soul” (Lestvičnik, 2008: lesson 10). At the same time, given that the purpose of punishment can be *talionis* (“I punish you because you sinned”) and *praevenire* (“I punish you so that you would not sin”), it is important to point out that another view is accepted in the Canons.<sup>1</sup> Prevention is achieved by punishment, given that the goal of retribution (*τιμωρία*) is to better the monk in order to regain the lost goodness (virtue) that can only be found in monastic life.

Legislation prescribes specific conditions that must be met in order to find a defendant liable, impose sanctions and punish the perpetrator for the committed act. This paper provides an analysis of medieval Canon law sources, such as: the Karyes *Typikon*, Saint Sava’s Hilandar Monastery *Typikon* and Studenica Monastery *Typikon*,<sup>2</sup> *Syntagma Canonum* of Matthew Blastares,<sup>3</sup> and Tsar Dušan’s Code.<sup>4</sup> Thus, the paper provides a comprehensive overview of landmark documents regulating monastic life and punishment of monks during the reign of

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1 The first point of view, retaliation, was characteristic of the earliest legal codes, which implied *talionis* punishment («an eye for an eye, a tooth for a tooth»).

2 Saint Sava first wrote the *Typikon* for the Karyes hesychasty (1199/1200), which was the fruit of his independent legislative creative work; then, he wrote the Hilandar *Typikon* (1199/1200) and the Studenica *Typikon* (1208) which contain «The Life of St. Simeon.» Notably, monks in the Karyes cell live a solitary life, unlike the monks in Hilandar and Studenica who live in the monastery.

3 The Syntagma of Matthew Blastares, a monk of Mount Athos, was compiled in 1335 in Thessaloniki; it is a collection of Byzantine laws, which included *Prochiron*, *Vasiliki* and *Novella*, written during the Macedonian dynasty. The Abridged Syntagma is an integral part of Tsar Dušan’s Code, demonstrating the influence of the reception of Byzantine law on Serbian law. In the Abridged Syntagma, the monastic life is depicted in Chapter M-7. This paper presents the provisions of the Complete Syntagma, which regulates the monastery life and punishment of monk in Chapter M-15. Such a presentation was necessary because a large number of provisions relating to monastery life and punishment of monks were deleted from the Abridged Syntagma. In order to get a comprehensive insight into Tsar Dušan’s legislation, the concluding remarks point to the provisions of the Complete Syntagma, which are preserved in the Code and the Abridged Syntagma.

4 In the period between the creation of the *Typikon* and these two landmark legal documents from the XIV century, St. Sava wrote the *Nomocanon* (Rulebook), thus rounding off the legal organization of the Serbian church. This ecclesiastical law document is not treated in this paper because it is highly specific in many ways.

the Nemanjić Dynasty (1168-1371). The reason for including Matthew Blastares' *Syntagma* and Dušan's Code in the analysis is that the issue of punishing monks is also related to the wider problem of Byzantine-Roman law reception among Serbs and its harmonization with legal knowledge and inherited norms of Serbian customary law. Today, punishable acts of monks and sanctions are in accordance with the Canon Law prescribed by the Constitution of the Serbian Orthodox Church (2007), Rulebook on Church Court Proceedings (2008), and the Decree on Monastic Life (2008).

## 2. Punishing Monks: Rules and Procedures

According to the Rulebook on Church Court Proceedings (2008), punishing a monk for committing a crime under the Criminal Code or other statutory legislation does not exclude him from his ecclesiastical guilt.<sup>5</sup> This means that a monk can be held legally liable twice: under positive law and under Serbian Canon Law. However, if we consider the punishment of monks under Serbian Canon Law, we will notice a multifold purpose of punishment: 1) individual prevention: the competent entity punishes the monk in order to persuade him to better himself; in addition to legal responsibility, it also encourages social responsibility because the monk is made to think about his guilt and subject it to the judgment of his conscience; 2) general prevention: realizing his social responsibility, a monk influences not only other monks from the fraternity but also novices (the first-reformed) and pious people who may have thought about becoming monks, so as not to deviate from the path of righteousness, i.e. not to put themselves in a position where they can be found liable; and 3) educational function: punishment protects the reputation of the monastery; the legal responsibility of monks is equated with social responsibility; one who has decided to dedicate his life to God cannot give this kind of life up so easily and thus belittle the reputation of the monastery providing the nonbelievers with a reason not to respect the will of God.

The punishment for monks prescribed by the medieval and modern-day sources of Serbian Canon Law can be divided in two groups: corrective (disciplinary) and vindictive (retaliatory, punitive).<sup>6</sup> The forms of punishment falling into the first group are less harmful as they serve to better the perpetrator, while those falling into the second group serve to retaliate against the perpetrator of a more serious act which can lead to the monk losing all or certain rights granted to him upon admission to the religious order. It can be noticed that the disciplinary

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5 Art. 4. Rulebook on Church Court Proceedings (2008).

6 Art. 56 of the Rulebook divides the punishment into disciplinary and other punishments for church offenses.

punishments provided for in medieval legal documents are less stringent; the least stringent among them are warning, reprimand, and penance. In the contemporary sources of law, they are mentioned only in the Decree on Monastic Life.<sup>7</sup> The Decree stipulates that the Abbot (head/superior of a monastery), alone or in front of the brotherhood, first imparts milder measures (advice, warning, or penance); the stricter ones are imposed only after careful consideration, taking into account that punishment is a means and not an end.<sup>8</sup> The most stringent punishment is excommunication, perhaps not so much in a physical sense as in a psychological sense because the culprit is excluded from participating in worship services for a period of time and is denied the secret of the Holy Eucharist (communion) due to his unworthiness (Granić, 1998: 221-222).

In modern day Canon Law, this punishment is designated as temporary revocation of certain church rights and honors, which can include: excommunication, exclusion from common prayer with the believers, ban on carrying out a memorial service, deprivation of church ranks, deprivation of service by monastic authorities, membership in associations, revocation of the right to sit at a table in the monastery so that no one from the fraternity can meet, talk or pray with the punished monk (Art. 58. Rulebook, 2008; Art. 71 Decree, 2008). In modern canon law, life-long deprivation of monasticism is a form of disciplinary punishment which is especially emphasized, which was not the case with medieval canonical documents where this punishment was considered vindicative (Granić, 1998: 222). At the same time, modern day sources impose a sentence of deprivation from monasticism jointly with vindicative punishments: expulsion from the church community for a period of time (*suspensio*),<sup>9</sup> and final exclusion from the church community (*degradatio*). In medieval sources, these forms of punishment were referred to as excommunication and denunciation (*anathema*). In the former case, the culprit was deprived of only certain rights received through service

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7 Notably, in medieval sources, warnings and reprimands were aimed at reproaching and rebuking the monks who had to correct their behavior, and reprimanding the recidivists with a threat of a more strict punishment, while penance was applied in the form of stricter fasting, repetition of a large number of *metanoia* (bows) or complete starvation with confinement in a cell. On the other hand, in modern canon law, these forms of punishment are mostly provided for clergy, and penance is to be endured at a monastery determined by the Bishop (Article 57 of the Rulebook, 2008). The Decree mentions warning and reprimand, and penance is broken down into several forms of punishment (penalties).

8 The Decree stipulates some stricter measures, such as: standing in a church or at a table, strict fasting on dry and raw food, multiple bows, strict fasting on dry and raw food with large bows, monastic silence combined with multiple bows, excommunication, and prohibition of communion (Article 71 of the Decree, 2008).

9 This punishment can be imposed for a period ranging from 3 to 10 years, but if the culprit becomes terminally ill and sincerely repents, he may be pardoned by the Archbishop (Article 58 of the Rulebook, 2008).

and his hierarchical rank; in the latter case, the punishment deprived him of all the rights received during his ordination as a servant of God.

The medieval canon law provided for a one-tier trial process for monks by the so-called external monastery court of the abbots (*forum externum*),<sup>10</sup> whose decision could not be appealed, nor could the monk claim any other legal remedy; all decisions of the *forum externum* on the violation of internal monastic discipline immediately became legally binding and enforceable (Milaš, 2004: 529). The Hilandar *Typikon* prescribes that the trial of a monk in the Karyes cell, due to the specifics of his solitary life, is performed by the Abbot and the fraternity of the Hilandar Monastery (Chapter 42 Hilandar *Typikon*, Богдановић, 2008: 101-102). In accordance with this rule, the *modus procedendi* and the judicial body responsible for the trial of the Abbot is collegial, comprising the most senior monks from the monastery brotherhood.

Modern day canon law sources provide for a two-tier trial process: in the first instance, a more lenient disciplinary penalty is imposed by the diocesan Archbishop;<sup>11</sup> a more stringent one is imposed by the Diocesan Ecclesiastical Court in a collegial composition;<sup>12</sup> in the second instance, depending on the legal remedy, it is imposed by the Grand Ecclesiastical Court. Given that the Diocesan Archbishop presides over the Diocesan Church Court, decisions made at sessions he did not attend must be submitted to him for consent. In case of disagreement between the Archbishop and the Court, the execution of the decision of the Diocesan Court is suspended until the decision of the Grand Church Court is passed (Article 128 of the Constitution of the Serbian Orthodox Church, 2007). The second instance judgment is final and enforceable (Article 87 of the Rulebook, 2008). However, although it is not explicitly mentioned anywhere in modern day sources, it can be said that today there is a three-tier judiciary. Namely, as in the Middle Ages, the Abbot is the first one to investigate the violation of monastic rules. This is evidenced by the provisions saying that, in order to establish the truth, a monk or a novice can present to the Abbot all the evidentiary facts that

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10 Since the Abbot can also exercise his judicial power over secular persons when they come to confession, a distinction should be made between that procedure and the court procedure for accused monks who may need to be punished. In the first case, it is about the internal monastery court (*forum internum*) where sins are confessed.

11 Art. 108, Point 19 of the Constitution of the Serbian Orthodox Church, 2007 prescribes that the Archbishop may impose punishments: warning, reprimand and penance. These sentences are immediately enforceable.

12 The members of the Diocesan Church Court make a decision by a majority vote. Anyone who does not agree with the decision has the right to file a separate reasoned opinion in writing (Article 127 of the Constitution of the Serbian Orthodox Church, 2007). Penalties imposed by the Diocesan Ecclesiastical Court are subject to consideration and trial by the Grand Ecclesiastical Court (Article 79 of the Constitution of the SOC, 2007).

they know about the accused who is a member of their fraternity. Saint Basil the Great ordered: "Do not hide your brother's sin so that he does not turn his brother's killer instead of the one who loves his brother!" At the same time, no one can be punished by any ecclesiastical punishment without a prior hearing (Article 218 of the Constitution of the Serbian Orthodox Church, 2007) and the Abbot has the right to impose measures in accordance with the canons. Anyone who faults out of ignorance should be forgiven but, despite the presented and applied measures, if it is believed that the Monk is guilty, it is necessary to initiate proceedings before the competent Archbishop (Articles 72-74 of the Decree, 2008).

The procedure is initiated and conducted *ex officio*, except for the proceedings which can be prosecuted in a private lawsuit, as prescribed in the Rulebook.<sup>13</sup> Just like positive law, canon law provides for a trial in the absence of a fugitive monk, and a summary judgment in case of failure to respond to summons (Article 66 of the Rulebook, 2008). Aggravating and mitigating circumstances are taken into account when sentencing (Article 59 of the Rulebook, 2008). Also, canonical legislation prescribes that anyone who intentionally induces, encourages, or aids another to commit a church offense will be punished as if he had done it himself (Article 7 of the Rulebook, 2008).

The right to punishment by disciplinary sanctions has a five-year statute of limitation if the perpetrator is not punished within 5 years from the time when he committed the act, provided that he did not commit any other offence during this time (Article 60 of the Rulebook, 2008). Regardless of the committed offense, corporal punishment of monks is prohibited by canon law (Art. 73 of the Decree on Monastic Life, 2008)

### 3. Types of punishable acts committed by monks

Positive law systematically prescribes criminal offences and sanctions, which is not the case with canon law. Chapters of *typikons*, articles of the Church Constitution, laws, decrees, and rules regulating various aspects of monastic life usually include provisions on offenses against orders and prohibitions, as well as appropriate sanctions. Unlike modern day canonical legislation, in the Middle Ages, church authority did not interfere with the autonomy of monasteries<sup>14</sup> and

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13 An example of initiating proceedings as a private lawsuit could be when a monk was in charge of movable or immovable property, designated for monastery use, which he embezzled. The ecclesiastical court can make its decision only following a private lawsuit filed by the interested party, based on the available evidence, since it examines the whole matter (Article 75 of the Rulebook, 2008).

14 The Hilandar *Typikon* (Chapter 12) defines the autonomy of monasteries, in the sense that Hilandar is free from Rulers and *Protas* (from Mount Athos), and from other monasteries and

the organization of monastic life: instead, the standardization of this matter was completely left to the monastic statutory legislation. In case of legal gaps, customary law was most likely applied as a corrective measure, and the abbot was probably an interpreter of penal norms. In accordance with his role, his social responsibility was large and his legal responsibility was stricter.

If it turned out that the abbot was unsuitable and incapable of administration, or if it was established that he acquired some property while managing the monastery, that property was confiscated in favor of the monastery and the fraternity had the right to remove him from the monastery administration. The same provision was prescribed for the ruthless and condescending trial of an abbot (Chapters 14 and 19 of the Hilandar *Typikon*, Богдановић, 2008:73-75, 80-81). In the Syntagma of Matthew Blastares, the punishment was specified only in case an abbot acted contrary to the rules for performing tonsures. In the same legal monument, excommunication was prescribed as punishment if the abbot did not investigate the reason for the monk's escape and did not return him to his flock: "because he heals a sick lamb with appropriate remedies." (Rules 3 and 5 from Chapter M-15 of the First-Second Parliament, Blastares' *Syntagma*, SANU, 2013: 293-294, 297). According to the Hilandar *Typikon*, excommunication was also a punishment for an abbot who unjustifiably and unnecessarily disposed of monastic things and money (Chapter 20 of the Hilandar *Typikon*, 2008: 81-82), while Blastares' Syntagma prescribed the punishment of penance for an abbot who was not ordained as a priest (Rule 19 from Chapter M 15, Blastares' *Syntagma*, SANU, 2013:: 295). In Dušan's Code, a stricter punishment was prescribed for the abbot who was placed at the head of the monastery by bribery. In that case, both the abbot and the one who appointed him were to be excluded (anathematized) from the church community, but the exclusion of the abbot was not to be done without the participation of the church (Articles 13 and 14 of Dušan's Code) (Novaković, 1898: 17-19). In the Studenica *Typikon*, Saint Sava especially emphasized that the abbot was not to be expelled, unless his guilt was over a grave matter, or it could not be remedied, or it was a matter for which he was rebuked in front of everyone, or he could not repent for his deed (Chapter 13 of Studenica *Typikon*, Богдановић, 2008: 111-118). In modern canon law, Article 53 of the Rulebook points out that the autonomy of the monastery is violated when the Abbot/Abbess is punished by being deprived of monasticism due to accepting someone into the fraternity/sisterhood without the approval of the competent Archbishop or for a bribe, or if he/she is a mentally impaired

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from personal rulers (persons distinguished by high position or great wealth), and that the monastery must not come under the right of disposal or imperial or ecclesiastical authorities, or any private persons. In a similar way, the freedom of the monastery is emphasized in Chapter 12 of the Studenica *Typikon*.

person, or if he/she is bound by marriage, or if he/she does not supervise the fraternity/sisterhood, or if he/she treats someone inhumanely or does not adhere to monastic rules (Article 53 of the Rulebook, 2008).<sup>15</sup>

If we compare the Hilandar *Typikon* with the Studenica *Typikon*, we can see observe differences in a few provisions only. In the former, exclusion from the monastic community was prescribed in case someone wanted to endanger the freedom of the monastery. In addition to the punishment of excommunication, the Studenica *Typikon* mentioned that the culprit should be cursed. The Hilandar *Typikon* explicitly stated that the culprit should be anathematized, without mentioning excommunication. In the Hilandar *Typikon*, exclusion was also envisaged in other cases: for violation of the vow of obedience, for recidivism after the repeated imposition of milder punishments, and for first-time offenders where no prior disciplinary punishment was awarded. If the monk argued with the Abbot, did not wait for his orders, or was not satisfied with the place he was given at the table, he was to be excluded after the third warning. If a monk was late for prayer or dinner, he was pronounced a penance; if he repeated his transgression, the monk was to be punished by expulsion. The same provision applied to those who did not get up on time for the morning service; they were to be expelled after the third penance. However, those monks who were "lawless" had to be expelled instantly, at the cost of leaving behind only a few of monks in the monastery (Chapters 9, 25 and 28 of the Hilandar *Typikon*, Богдановић, 2008: 65-67, 85, 87). Blastares' *Syntagma* stated that those who abandoned their children under the pretext of asceticism (joining a monastic order) were to be punished with anathema: "If someone does not care about his family, he has renounced his faith and is worse than a non-believer." (Rule 13 from Chapter M-15 of Blastares' *Syntagma*, SANU, 2013: 298).

In modern day canonical documents, final exclusion (as the most serious vindictive punishment) is provided for those monks who violate the church order, work against church interests or the church in general (Article 49 of the Rulebook, 2008). Article 47 of the Rulebook specifies that monks who renounce obedience to the diocesan ecclesiastical authority, rebel or conspire against it, deny it due respect, insult it, slander it, humiliate it, do not recognize it or will not carry out its decisions or orders, do not accept the competent parish priest, or generally neglect their religious and ecclesiastical duties may be punished by disciplinary action; in more severe cases, they can be punished at the discretion of the court. The possibility of awarding disciplinary measures is also prescribed for those who engage in cheating, arbitrary dissolution of the marital union, inhuman

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15 In modern canonical legislation, the autonomy of the monastery has been violated but, unlike the medieval legislation, gender equality has been fully respected.



treatment of relatives or other persons; in more serious cases, the prescribed punishment is anathema (Article 51 of the Rulebook, 2008).

The basic elements of the monastic system are the vows of the one who consecrates himself, pledging that he will a life of celibacy,<sup>16</sup> poverty and obedience (Grigorian, 2011: 36). Every crime against these elements requires punishment of monks. According to the medieval canonical documents, the validity of these obligations ceased to exist either by an arbitrary act of leaving the monastery or by the decision of the abbot who decided on one's deprivation of the monastic rank. Blastares' *Syntagma* stipulates that, if a monk left a monastery and moved to another, and it turned out in the meantime that he owned some property, the property was to belong to the first monastery (Blastares' *Syntagma*, SANU, 2013: 303-304). Violation of the vow of poverty is even more difficult to punish when it comes to theft. The Hilandar *Typikon* prescribes that the culprit who steals items used for worship should be punished according to the law (without further specification). It also remarks that it is possible to alienate such property in cases of *vis maior* (e.g., fire or earthquake), but then the abbot cannot decide alone but only in agreement with more senior monks (Chapter 21 of the Hilandar *Typikon*, Богдановић, 2008: 82). The rule from the Euergetism *Typikon* was probably applied here; thus, in case of theft of monastery property, exclusion was pronounced after a warning (Gautier, 1982: 63-66). This claim can be supported by the rule that "whoever takes, be it one coin or fruit," will be punished with penance in line with the monastic rules, and if "he steals from the monastery and does not better himself", he will be excluded (Chapter 24 of Hilandar *Typikon*, Богдановић, 2008: 84). Thus, medieval canonical sources provide for warning of the monks, penance, or having them expelled, depending on the gravity of the offense and the type of items that are illegally taken from the monastery.

In accordance with the medieval rule stating that in case of violation of the vow a monk will be punished by deprivation of monasticism, modern day canonical sources prescribe that this punishment shall also be imposed on those who establish a monastery without the approval of the competent Archbishop, or a monastery from the Church, or release monks/nuns voluntarily from Archbishop's authority, or start a mixed-gender monastery where monks and nuns live together (Article 52 of the Rulebook, 2008). Deprivation of monasticism is prescribed for someone who violates the vow of poverty: commits theft, embezzlement, or evasion (Article 22 of the Rulebook, 2008). Disciplinary penalties are provided for those monks who appropriate monastery money or property,

<sup>16</sup> Given that celibacy implies a voluntary vow of sexual abstinence and remaining unmarried, the *Syntagma* envisaged that those men and women who vowed to virginity and did not wear monastic clothes were punished with penance if they renounced their vows and entered into a legal marriage (*Syntagma*, SANU, 2013: 300).

handle it improperly and to the detriment of the church, keep books and forge documents incorrectly or destroy them, lose or alienate property without the approval of the church authorities. If the court deems it necessary, more severe punishment may be imposed for the commission of these acts (Article 48 of the Rulebook, 2008).

The vow of obedience is perhaps the most important one. According to the monastic legal order, every act contrary to this vow is considered *ipso iure* null and void. As Jesus Christ said, "He that eateth my flesh and drinketh my blood abideth in me," and "If you do not eat my flesh and drink my blood, you have no life in you" (John 6:56; 6.53). Relying on these words, in the Studenica *Typikon*, St. Sava envisaged the punishment of excommunication for anyone who does not approach fully or does not approach at all the mystery of the Holy Eucharist (communion) within the specific period of time<sup>17</sup> because he did not cleanse himself of shameful thoughts, words, and gossips, or anyone who lies or who is wrathful, abusive, or consumed by passion (Chapter 12 of the Studenica *Typikon*). Excommunication was also prescribed for monks who arbitrarily distribute or unjustifiably take for themselves monastic property (Chapters 5 and 20 of the Hilandar *Typikon*, Богдановић, 2008:57-58, 81-81). As the Studenica *Typikon* insisted on the monastery autonomy and right to monastery property, anyone who wanted to take something from the monastery was punished by excommunication and cursed, even if he were in power: "Three times he is miserable and three times cursed" (Chapter 12 of the Studenica *Typikon*, Богдановић, 2008: 110-111).

The *Syntagma* prescribes excommunication in case a monk leaves the monastery on his own initiative and moves to another one or starts living secularly. In this case, the one who received the monk would be punished with the same punishment (SANU, 2013: 297-298). This is in accordance with the previously mentioned rule on the exculpation of the abbot who is not able to return the fugitive monk. Dušan's Code builds on the Chapter of the Hilandar *Typikon* dedicated to the monastic care for the poor, prescribing the punishment of excommunication from the "dream" (deprivation of monasticism) (Novaković, 1912: 367).

Unlike the medieval rules, in modern-day canonical sources, one can find the provision envisaging excommunication of a fugitive monk; but, if he returns and repents, he receives the blessing again that he can wear a monastic suit (Article 58 of the Decree, 2008). Therefore, in the Middle Ages, there was no possibility of repentance for this type of disobedience but only the punishment

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17 As emphasized in the Studenica *Typikon*, a monk who does not receive communion within a 40-day period is subject to a one-year expulsion from participation in worship services (Granić, 1998 c: 222).

of excommunication. The modern-day provisions also state that a monk will break the vow of obedience if he goes to indecent places (cafes, bars), engages in usury, ridicules the helpless, fights, plots, slanders, lies, bribes, swears, and cheats; for these offences, one can be punished with disciplinary penalty; in more serious cases or in case of recidivism, one may be punished at the discretion of the court (Article 25 of the Rulebook, 2008). The same applied to monks who associated with infamous persons, fornicators, bullies, drunkards, squanderers, gamblers, criminals); thus, should a monk incite or assist such persons in committing immoral deeds or crimes, conceal or befriend such persons, the monk shall be punished by deprivation of the monastic rank (Article 26 of the Rulebook, 2008). Given that monks can may be held responsible both under positive law and canon law, Articles 27, 46 and 50 of the Rulebook specify that anyone who falsely testifies or commits murder or perjury, falls into heresy, schism or blasphemy, engages in witchcraft or spiritualism, gets involved in usury, engages in capricious litigation, engages in some other type of employment outside of the monastery without the consent of the Archbishop, or goes hunting with fire weapons, is to be punished with a disciplinary penalty, or more severely at the discretion of the court.

#### **4. Conclusion**

The diversity of monastic rules testifies about the vigilance of the church to prescribe different rules in different epochs and under various conditions. These rules regulated the relationship between monks and the vows they voluntarily made, as well as the legal/social responsibility that they willingly took upon themselves. Starting from the period of St. Sava through all historical turbulences (such as: the pressure of Islamization during the Ottoman conquest of the Balkans, unification and major migration processes that threatened the stability and the functioning of monastic communities, as well as the general spiritual state of being), there was a need to interpret and modernize monastic rules as evidenced in the modern day sources of Canon law.

Although canons are a unique true expression of the authority of the church, they cannot replace the church, which has the power and responsibility to adopt new canons when necessary. In that light, throughout its history, the Serbian Orthodox Church has also passed new provisions on church court proceedings which were binding on its members. The church finds nothing inappropriate in constantly renewing and adapting the judicial tradition to the specific needs of each epoch. In judicial theory and practice, it is generally accepted that the Orthodox canonical tradition encourages constant renewal and free adaptation of the Canon essence to the special problems that arise in each epoch because

that adaptation reveals *par excellence* the spiritual and dynamic character of canon law.

Both medieval canon law and modern-day canon law first prescribe disciplinary penalties for a monk who sins. In medieval documents, they are less stringent probably because there was a one-tier decision-making process (performed by the abbot); so, the monk bettered himself more easily among his fellows. More severe forms of punishment were received only in exceptional cases, when a monk showed persistence in his sin even after being issued a warning. On the other hand, the Serbian Orthodox Church Constitution, the Decree on Monastic Life, and the Rulebook on Church Court Proceedings have taken over some rules from positive law (such as consideration of aggravating and mitigating circumstances); thus, in most cases, modern-day canon rules prescribe disciplinary penalties, primarily because the monk's legal responsibility is closely associated with his social responsibility. However, an anathema may be imposed for the committed act if the court deems it necessary.

Exclusion, as a vindicative punishment, was pronounced in the Middle Ages for those who violated the autonomy of the monastery. Today, it is imposed on those who undertake something against the church order. The development of Serbian Canon Law through history may be observed through some of the earliest written documents and how they envisaged the autonomy of Serbian monasteries. In the Hilandar *Typikon* and the Studenica *Typikon*, the autonomy of the monastery was envisaged as possession of unlimited legal and business capability and complete administrative independence and the exclusion of any authority of church and state authorities in this sphere. In the Hilandar *Typikon*, autonomy was protected from any secular and spiritual authority; in the Studenica *Typikon*, Saint Sava placed trust in the ruler and entrusted him with preserving the autonomy of Studenica Monastery. For this reason, we can observe slightly different regulations on monastery life and punishment of monks in these two documents. In the Hilandar *Typikon*, the process of choosing the Abbot was internal (he was chosen by the *collegium* of monks); in the Studenica *Typikon*, it was an external process (he was chosen by the ruler, bishop and Abbots of other monasteries). The approach presented by St. Sava in the Studenica *Typikon* is closer to the one we find in modern-day canon law sources.

Given that monasticism is a special and very important form of church rank, which significantly differs from other ranks in a number of voluntarily given vows (celibacy, poverty and obedience), monks live in accordance with these vows until the end of their lives. As stated in Canon IV of the Fourth Ecumenical Council (451 AD): "Let those who truly and sincerely lead the monastic life be counted worthy of becoming honor".

In order for a monk to constantly reside in a blessed state of calm, he is required to always show unquestioning obedience to his abbot, and to ask for his blessing for everything he does, in line with the vows he made when he received the holy skhima. Hence, as St. Sava specified, the one who does not confess and does not take communion should be “thrown out of the monastery and cut off like a festering limb, and removed and discarded as a wound that is difficult to heal or a completely incurable.” However, St. Sava gave up this kind of punishment and prescribed penance, as a punishment for those who do not take communion.

Violation of monastic rules can result in punishment. The spiritual character of church penalties in the canonical tradition is inextricably linked with the character of the sacramental experience as a whole. Church penalties that have the Eucharist (communion) at their center, one of the most important Christian sacred secrets, express the spiritual content of the church laws: for this reason, such penalties cannot be compared to sanctions of punitive nature. Church penalties help a person who a transgressor to get back on the right path. Thus, the multiple purpose of punishment (expressed through triple prevention) constantly encourages monks to take legal and social responsibility. Individual prevention directly encourages the monk’s social responsibility through legal responsibility; namely, it is only if he is punished that the monk regains the lost goodness that he can only find in the monastery life. The general prevention is aimed at making the monks and those who intend to become monks think carefully about whether they will leave the monastery; thus, due to his social responsibility, the monk also takes into account the legal responsibility. Finally, the deductive function may be observed in the fact that a legally and socially responsible monk protects the reputation of the monastery; thus, someone who has decided to dedicate himself to God cannot give up his monastic life so easily. A monk who is ultimately excluded from a monastery forever, or affected by the anathema, does not remain permanently excommunicated from the church community due to the fact that he was baptized. Given that monasticism is the “second baptism”, it renews the grace of baptism.

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**Др Сања Глигић,**  
Доцент Правног факултета,  
Универзитет у Београду

## **ОДГОВОРНОСТ МОНАХА У ПРАВНОМ И ДРУШТВЕНОМ КОНТЕКСТУ**

### **Резиме**

*Током историје у живот Цркве продирао је људска воља, желећи да се у њој утврди. Од епохе императора Константина у црквеној свести стасава идеја да се основно начело организације црквеног живота налази у сфери права. Међутим, за разлику од позитивног права, канонско право не представља израз воље појединачних особа или црквеног народа, већ су то правила проистекла из природе Цркве. Пошто Црква, као и сваки организам, поседује два начела: статичко – своје устројство и динамичко – своје животне функције, може се сагледати одговорност монаха у складу са канонским правом, а може и у друштвеном контексту. Притом, ова начела су неодвојива, будући да нема живота без устројства нити устројства без живота.*

*Позитивно право налаже у случају изласка члана из неке организације, без обзира на разлог (добровољно или по сили закона), да сви односи између ње и бившег члана бивају прекинути. С друге стране, уколико кажњени монах, због тежине изречене санкције, мора да напусти манастир, он и као бивши члан остаје хришћанин. Ово произилази из тога да крштење представља неизбрисиву чињеницу духовног живота.*

*У раду се питање одговорности монаха сагледава поређењем средњевековних и савремених извора српског канонског права, да би се у одређеном периоду могле уочити промене и извели што прецизнији закључци.*

**Кључне речи:** монах, казна, дисциплинско-казнена јурисдикција, одговорност, типичи Светог Саве, Уредба о манастирском животу.