

Penalties and Sanctions Imposed Upon Orthodox Priests and Parishioners in the Balkans During the 17th – 18th Centuries (On Ottoman Documentary Material)

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The history of the Orthodox Church in the Balkans in the 17th and 18th centuries was marked by some crucial events for its future development. The new phenomena in the social and political life of the Ottoman Empire, the change in the international political balance, the expressed proselytism in the policy of the Roman Curia, the spirit of the Balkan revival is just part of the signs of an extremely dynamic in its political, social and religious dimensions.

On the other hand, the 17th century is a century of not only political opposition, but also a time of distinctive religious clash of Christianity and Islam and tension in the public atmosphere. This is the century in which Islamic religion is imposed not only as a unifying center of the Ottoman rule, but also as a major division of the society, and the struggle for the soul of man becomes a fundamental imperative of both Christianity and Islam. It would not be exaggerated to say that it was in the 17th century, and the next century as well, that the Orthodox Church has activated all possible mechanisms to discipline its parishioners. Doubtlessly among them are the penalties and sanctions, as witnessed in both the hagiographic and the Damascene literature, as well as in the Ottoman documents directly related to the status and functioning of the Orthodox institutions.

The church punishments and sanctions against the clergy and laymen are one of the most sufficient aspects of the development of Christianity, since the formation of the Christian church, worship and cult. They are also directly related to the legal jurisdiction of the Christian Church – “as old as the church itself”, as the studies suggest. It is enough to point out that in the letter of Apostle Paul to the Corinthians, by defining the rules that regulate the relationship between Christians, he condemns those who turn to unfair and disloyal secular (state) judges to resolve their conflicts¹.

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1 Nikolaos Pantazopoulos, *Church and Law in the Balkan Peninsula during the Ottoman Rule*, Thessaloniki, 1967, p. 35. In his letter to the Corinthians Apostle Paul, by defining the rules that regulate the

The Church is attempting to impose the Patriarchate's law i.e., its decisions and to conduct its legal norms precisely by inflicting ecclesiastical sanctions and penalties²:

-penances (fasting, prayer, pilgrimage);

-temporary and complete excommunication from the Church: temporary excommunication (temporary exclusion, which could be interrupted after more or less continuous penitential punishment) and anathematization (complete excommunication from the Church).

Temporary excommunication during which the excluded person was deprived of participation in the rites of the Christian worship and the right to Eucharist was forbidden to those subjected to it, could be terminated after the expiration of the penitential penalty, usually up to 3 years. It is believed that very rarely is practiced the so-called "anathematization", e.g., complete excommunication, which the church applies only in extreme case of the most serious crimes³.

The Church penalties and sanctions, on the other hand, are directly related to the judicial jurisdiction of the Christian Church and the institutions for the imposition of church law:

-first, these are metropolitan and episcopal courts in the provinces and a Patriarchal court in Constantinople. (The structure of the of the bishops' courts differs according to the time and place. In some places the bishop judges alone, in others – along with the clergy or with some of the laity.) They have exclusive jurisdiction over the issues concerning personal conflicts related to religion, as the Church is also trying to extend their jurisdiction over civil cases based on the presumption of competence.

-second, the Holy Synod presided by the Patriarch⁴.

The positions of the church courts and the judicial jurisdiction reach their culmination after the fall of Constantinople and the establishment of the Latin Empire, when the state authority is taken over by the Church. Even after the

relationship between Christians, he condemns those who turn to unfair and disloyal secular (state) judges to resolve their conflicts.

2 Pantazopoulos, *age.*, p. 35.

3 More details on the church penalties and sanctions for laymen and clergy see: Nikodim Milash, *Pravoslavno Tsarkovno Pravo*, Sofia, 1904, s. 488–500.

4 Pantazopoulos, *age.*, p.53.

restoration of the empire, the state never turned to full judicial and legislative reorganization⁵. Doubtlessly, of a great importance is the fact that with the time passing the judicial jurisdiction of the Church covers all cases of private law. During the last years before the fall of Constantinople, as Pantazopoulos observed, the Church felt so strong that through its ecclesiastical punishments it was possible decisions issued by the imperial court to be reversed, as well as it was able to offer a solution to the relevant contradictions according to its own views⁶.

In other words, during the last two centuries before the fall of Constantinople, the Church apparently has begun to replace the state in the execution of the judiciary⁷. Thus, Sultan Mehmed II (1444–1446; 1451–1458), who, after the fall of Constantinople in 1453, regulated the status of Christian church structures and legally guaranteed their powers in complying with specific constraints⁸, in fact legitimized an already existing situation.

Since the reign of Mehmed II, dates not only the beginning of the unification of politics towards the non-Muslim, but also the beginning of documenting the activities of the non-Muslim religious structures. The preserved archival material from the Episcopal chancellery (literary *Piskopos kalemi*), which had lasted as part of the *defterhane* until the end of the 18th century, gives a real opportunity for a complete study of the history of Orthodoxy on the Balkans at a macro and micro level.

Within many unpublished documents from the “*Piskopos kalemi*” fund of Başbakanlık Osmanlı Arşivi – İstanbul – patriarchal and metropolitan pleas (*arzuhal*), public petitions (*mahzar*) and various types of Sultan’s orders (*ferman*, *hukm*, etc.), as well as in large part of the published patriarchal and metropolitan *berat* and *ferman* could be found a concrete, provocative and to some extent unique information about the implementation of one of the oldest mechanisms for regulating the relations

5 Pantazopoulos, *age.*, p. 38.

6 Pantazopoulos, *age.*, p. 41-42.

7 Pantazopoulos, *age.*, p. 43.

8 In more detail on these controversial issues, see: Krasimira Mutafova, *Religiya i Identichnost (Hristiyanstvo i Islam) po Balgarskite Zemi v Osmanskata Dokumentatsiya ot XV–XVIII vek, Veliko Tarnovo*, 2013, s. 35–40, 44–45. See also: Halil İnalçık, “The Status of Greek Orthodox Patriarch Under the Ottomans”, *Turcica*. T. XXI–XXIII, 1991, p. 407–408, 415; Ergan Yavuz, “Türkiye’de XV. ve XVI. Yüzyıllarda Gayrimüslimlerin Hukuki, İçtimai ve İktisadi Durumu”, *Bellelen*, c. XLVII, Ekim 1983, Sayı: 188’den ayrınbasım. Türk Tarih Kurumu Basımevi – Ankara, 1984.

between laymen and clerics in the history of the Church and church law – the church penalties and sanctions.

The comparative analysis of this complete information and the cases of Orthodox canonical law, especially the nomocanons of the 17th and 18th cc., gives the opportunity to comment in details the different types of ecclesiastical punishments and sanctions imposed on laymen and clergy (priests and bishops) in respect to:

- problems encountered in collecting church taxes and fees;
- different type of “deviations” from moral-ethical Christian norms and canonical requirements;
- the family-marriage relationships of the parishioners;
- detected offences of ecclesiastical and secular nature, requiring intervention by the central and local Ottoman authorities.

Above all, I will mention that the question of the effective imposition of church sanctions and penalties and their universal character in all dioceses of the Orthodox Church on the Balkans is directly related to the perimeter of its powers in religious, family and marital and property terms towards the central Ottoman authority and towards its dependent flock.

Doubtlessly, a direct expression of the powers granted are the Sultan’s *berat* and *ferman*, owned by the Orthodox hierarchs. Supporting the above mentioned also could be the numerous Patriarchal pleas (*arzuhal*), compiled on the issuing, renewing or recovering of lost *berats*, the earliest of which date back to 1686 and the latest ones are from the 1780s. With a higher density of the information are distinguished the Sultan’s explanatory orders, issued regarding the compliance of the terms specified in the *berat*.

Among this, relatively unified source material, with doubtlessly valuable information, stand out the excerpts from the patriarchal *berats*, consisting contractual terms for their issuance, compiled before 4 *rebiülahır* 1132 (14.02.1720)⁹.

The document is intended to examine the legal status of the Orthodox bishops and their dependent flock, as far as it includes both legal cases in the old contracts of the Orthodox patriarchs of Constantinople, albeit without a date of their

9 Cumhuriyet Başbakanlığı Devlet Arşivleri Başkanlığı Osmanlı Arşivi (BOA), *Piskoposluk Kalemî Defterleri*. (D. PSK), 8/52.

compilation, and the terms of the *befats* fixed in the high *ferman* from 25 *şaban* 1136 (19.05.1724).

All these metropolitan *berats* and *fermans* and the patriarchal and metropolitan pleas addressed to the Sultan, reveal not only the entire register of the imposed church penalties and sanctions in response to the different offences of the clergy and the laymen – from penances to temporary excommunication and anathematization of the guilty ones, as well the peculiarities of the applied church law. The commented documents furthermore provide an opportunity to trace the degree of effectiveness of the applied church sanctions and penalties in the 17th and 18th centuries and their general character in all the dioceses of the Orthodox Church in the Balkans.

A special place among the imposed sanctions and penalties has the significant “hair cutting” of the guilty priests who refuse to pay the *mir-i rüsum* – a punishment, which is inevitably featured in the commented metropolitan *berats* and *fermans* and the patriarchal pleas addressed to the Sultan in the 17th and in the 18th cc. Its earliest version (in the commented documents here) is testified in the plea of Patriarch Dionisii IV¹⁰ from 1686: “When the mentioned [bishop] according to our tradition punishes the priests, who refuse to pay *mir-i rüsum*, by cutting their hair, dismissing them and giving their churches to somebody else, let no one hinder him”¹¹.

Thus, the fixed penalties, which are repeated with minor differences in almost all patriarchal pleas of the patriarchs of Constantinople Dionysius IV, Kalinik and others, as well as the Ohrid and Serbian archbishops in the 17th and 18th centuries, correspond to the penalties imposed by rule 21 of the 6th Ecumenical (Trulski) council¹².

This rule applies to clergymen who have committed a serious canonical crime (έγκλημα), for which they have been “excluded” and permanently deprived of their religious rank (παντελει και διηνεκει καθαιρέσει υποβαλλομενοι/perfectae ac perpetuae depositioni subjecti), and hence of the grace (της χάριτος έμπεπτώκασι, a gratia exciderunt) they have been honored with at the ordination, thus they fall into the category of the laymen (εν τψ των λαϊκών άποθούμενοι τόψφ, in laicorum locum detrusi sunt), in which they were before their ordination.

10 Patriarch Dionisii IV (end of March 1686 – 12 October 1687) § for the fourth time on the patriarchal throne.

11 BOA, *D. PSK*, 1/65.

12 Nikodim Milash, yep. Dalmatino-Istriiski, *Pravila Svyatoy Pravoslavnoy Tserkvi s Tolkovaniyami*, Sankt-Peterburg, 1911, s. 494–495.

I.e., it is the most severe punishment to which a clergyman could be subjected, after which he ceases to be both a factual and a legal member of the clergy, is deleted from the list of the clergymen and goes to the category of the laymen.

In the interpretation of the 21st rule of the 6th Ecumenical council is clarified that if thus excluded priest repents for his sins, for which he was excommunicated and deprived of grace, the rule allows him to maintain his appearance as a priest, but nothing more. In the later interpretations (Teodor Valsamon's *Nomocanon*), the differences between the hair, haircut on the example of the clergy, and the haircut, like the laymen¹³.

Regarding the significant "hair cut" (literary "cutting off the hair"), fixed in almost all commented Ottoman documents, several clarifications are needed.

In the early centuries of Christianity, when the clergy did not differ in their appearance from that of the laymen, they were cutting their hair and shaving their beards as the laymen. The length of the hair has been repeatedly debated in the apostolic instructions and messages¹⁴. In the 4th century, the great saints of the church repeat the apostolic decrees, in which is ordered that no one should let the hair grow long and should carefully cut it, as well as there should not be any special sign of hair on the head – they should not braid a wreath nor cut their hair in a way it looks shaved. Not until the 6th century to the West were found the first traces of the hair cutting of the top of the head of the clergy – in the orders of the Third and Fourth (633) council in Toledo (Spain), when a (41) canon is issued. In the East, until the so-called Trull council in the monuments of the Eastern Church are missing any traces of the existence of the so-called "papalitra" or tonsura (lat. Tonsura, hair-cut space on the crown of the head), a symbol of denial of the public interests¹⁵. However, at the Trulli Council, all clergymen have a similar haircut which later is kept as a generally applied.

It is believed that most likely in the 15th century all Orthodox priests had a similar hair cutting of the crown. In the later sources after Theodor Valsamon (*Pardalio*/

13 Milash, *age.*, s. 495.

14 In the message of the Apostle Paul to the Corinthians, for example. long hair is not recommended for men (Even nature itself teaches us that it is a dishonor for a man if he leaves his hair grow). (First Epistle of Apostle Paul to the Corinthians, 11:14). Bible. Sofia, 1992, p. 1415. Ap. Peter also recommends the believers to shave their hair as a sign of humility, compared to the infidels, who boast with their long hair.

15 Milash, *Pravila Svyatoy*, s. 497.

the so-called Kormchaya), although there is no clear mention of the tonsure/papalitra, is noted the haircutting of persons who are entering the clergy, therefore it is considered to be characteristic of all Orthodox clergymen¹⁶.

It is questionable how far this manner of haircut, which allegorically resembles the thorn crown of Christ, was followed by the clergy of the Eastern Church in the 16th and the following centuries¹⁷.

In the researches dedicated to this problem is mentioned that most probably in the end of the 17th c. (A. Neselowski) or in the beginning of the 18th c. (E. Golubinsky) the long hair again is a sign of belonging to a clergy¹⁸.

The laconic text in the commented Ottoman documents does not allow a thorough interpretation of the type of the imposed penance – complete or partial, etc., since the standard repeating expression is only “cut their hair”, then “dismiss them and give their churches to somebody else”.

However, the similar penalties described in more than 50 documents, the earliest of which dates back to 1686 (*arzuhal* by Dionysius IV) and the latest of 1728 (*arzuhal* by the patriarch of Ohrid Joasaf)¹⁹, clearly show that by the end of the 17th and during the 18th century, clergymen apparently did not cut the hair on the top of their heads, and the “hair cutting” included in the punishment was a symbol of their excommunication from the clergy.

The penalties should be executed by the relevant metropolitan (such are the cases with the metropolitans from Silistra, Tarnovo, Odrin, Filibe (Plovdiv), Sofia, Anhialo and others) or by the patriarch’s representative if the metropolitan himself is blamed for a delay or refusal to pay the amount due from the church taxes and fees.

The comparative analysis from the 17th c. shows that there is no difference in the penalties, concerning committed infringements in the collection of the church

16 Milash, *age.*, s. 497.

17 The publishers of Pidallion, the so-called Kormchaya in the interpretations of the rule 21, note that the clergy of the Russian Church cut their hair like a cross, but not in the middle of the head. Cit. by Milash, *Pravila Svyatoy*, s. 497. E. Golubinski also notes that the custom of the papalitra was characteristic of the Russian clergy almost until the beginning of the 19th c. Evgénii Golubinskiy, *Istoriya Russkoy Tserkvi*, t. 1, Moskva, 1997, s. 578–580.

18 A. Neselovskiy, *Chiny Khirotesiy i Khirotoniy: Opyt Istoriko-Arkheologicheskogo Issledovaniya*. Kamenets-Podol'sk, 1906; s. 58–59; Golubinskiy, *age.*, s. 580, etc.

19 The Patriarch of Ohrid Joasaf II (6 of February 1719 – December 1745).

taxes within the boundaries of the Constantinople Patriarchy, the Archbishopric-Patriarchy of Peć or Ochrid.

During the 18th c., as many documents from the register of the Episcopal *mukata'as* show²⁰, more often are required sanctions and punishments of not only priests, but also of bishops, when they are refusing to pay *miri rüsum*. In the *arzuhal* of the Patriarch of Constantinople Jeremiah, compiled before 29 *zilhice* 1130 (23.11.1718), is recorded: “When [the metropolitan] punishes according to our rules the bishops and the priests, who stubbornly refuse to pay *miri rüsum* by cutting their hair, dismissing them or giving their churches to somebody else, let no one interfere with him”²¹.

A similar type of penalties also appears in the pleas, compiled by the Serbian Patriarch Moses²² (before 25 *receb* 1134 (11.05.1722)²³, the Patriarch of Ochrid (compiled before 30.03.1723) and others. There are no particular differences in the penalties applied in Herzegovina 20 years later, as pointed out in the *arzuhal* by the Patriarch of Peć Joanikii²⁴, compiled before 18.04.1742²⁵, concerning the appointment of the new Metropolitan in Herzegovina Teoklit: “Let no one interfere when [the Metropolitan] punishes according to the rules bishops and priests who persistently do not pay their *miri rüsum* by cutting their hair and giving them what they deserve”²⁶.

In the 18th c., though less often, in some documents can be found penalties, imposed due to the breaking of the church rules and canons or other deeds. A typical example is the *ferman* of sultan Ahmed III (1703–1730) from 2 *rebiülevvel* 1130 (03.02.1718), issued on the newly appointed metropolitan of the diocese of Belgrade-i arnavud (the diocese of Berat) – Nikifor (within the range of the Archbishopric-Patriarchy of Ochrid), in which literary is said: “When the mentioned bishop punishes priests, who stand up against the tax paying or do not

20 BOA, *D. PSK*, 7/114; BOA, *D. PSK*, 7/90; BOA, *D. PSK*, 7/134; BOA, *D. PSK*, 8/65; BOA, *D. PSK*, 12/143 and others.

21 Cumhurbaşkanlığı Devlet Arşivleri Başkanlığı Osmanlı Arşivi (BOA), *Cevdet. Adliye (C. ADL)*, File No 1657, doc. No 28.

22 Patriarch Moses (6 of October 1712 – before 5 July 1718; 18 of August 1718 – 1724).

23 BOA, *D. PSK*, 7/90.

24 The Patriarch of Peć Joanikii III (1739–1746).

25 BOA, *D. PSK*, 12/143.

26 BOA, *D. PSK*, 12/143.

obey the church rules, he cuts their hair, dismisses them or gives their churches to somebody else, let no one interfere”²⁷.

In the 18th c., as pointed out in several pleas (*arzuhal*) by the Patriarch of Constantinople Jeremiah from 1721-1722²⁸, the Church turns to one of the most extreme punishment measures for the guilty laymen – excommunication from the church. In the above-mentioned pleas literary is said: “Let no one interfere with the documents of the excommunication from the church, when some *zimmi* should be punished or reprimanded”; “If a person from the community of the *zimmi* should be punished, according to the requirements of our rules no one should interfere with the documents of the excommunication from the church.

Here I should mention that according to the studies the Church turns to that most severe punishment towards its parishioners – the so-called anathematization i.e., complete excommunication, only in extreme cases, for the most serious crimes and generally it is very rarely practiced²⁹. However, the imposed sanctions in the commented documents quite convincingly testify of its applying.

Due to the particular severity of this punishment, I would like to emphasize that for the Christian, especially during the Middle Ages and the Ottoman period, “the deprivation of eternal life is a greater misfortune than death itself”. Because, while death secured for him the release from the earthly sufferings, the excommunication deprives him of the consolation of eternal life, as many texts of that period “frighten”³⁰. Those who violated the Christian canon, were cursed in their life, excluded from the “flock of Christ” and alienated from all divine mercy blessings. When we are reading these horrible anathemas, we understand why excommunication represents the real knife of the Church with which it, figuratively speaking, “cuts off every disobedient Christian from its body”.

It is not by chance, that in the 17th century, and in the next century as well, when the Orthodox Church activates all possible mechanisms to discipline its flock, excommunication has become one of the effectively imposed ecclesiastic punishments.

27 BOA, *D. PSK*, 6/66.

28 BOA, *D. PSK*, 7/114; BOA, *D. PSK*, 7/91, regarding the collected church taxes from the *kazas* Vidin, Lom and Banya and Sozopol and Anhialo, etc.

29 More details on the church penalties and sanctions for laymen and clergy see Milash, *Pravoslavno Tsarkovno*, s. 488–500.

30 Pantazopoulos, *Church and Law*, p. 51.

In many cases, the metropolitan *berats* and *fermans* represent in detail the subsequent severe measures following the imposition of that extremely harsh measure. In the mentioned *arzuhal* by the Patriarch of Constantinople Jeremiah, for example is recorded: “It is against our rules the mentioned [excommunicated *zimmi*s] who are getting married to enter in a church. And later when one of the *zimmi*s excluded from the church dies, let the caddies, the *naibs*, the *zabits* and the important people not torture the priests by telling them: “You take him!”³¹

I.e., the excommunication of a layman, as required by the church canons, is followed by his deprivation not only of Eucharist and joint prayer, but also of the sacrament of marriage, as well as the right to have a church funeral.

Even more details are given about the sanctions imposed on the laymen and the clergy in the plea of the Patriarch of Constantinople Paisii II³² from 1726, compiled regarding the collection of church taxes from Silistra, Babadag, Tulcha and other *kazas*: “When some *zimmi* due to our traditions must be punished for edification, there should be no interference when sending the documents of the excommunication from the church. The entry of these [excommunicated] persons into a church to marry is contrary to our rules. When such a person dies, the *cadis*, the *naibs*, the *zabits* and other influential persons should not harass the priests, by saying, “Honor him!”³³

Such penalties were applied during the whole 18th century due to the plea of the Patriarch of Constantinople and the members of the Holy Synod from 1779³⁴, compiled regarding the pressure by the *cadis*, *naibs* and *zabits* locally over the Metropolitan of Prespa and the region – Isaiah.

The other type of ecclesiastical sanctions is related to the infringements of the family-marital law. Some of the most frequently “discussed” issues in the 17th and 18th centuries refer to the powers of the Orthodox metropolitans and bishops in

31 BOA, *D. PSK*, 7/114.

32 Patriarch Paisii II takes the lead of the Constantinople department four times: 20th of November 1726 – the middle of September 1732 for the first time; August 1740 – after the middle of May 1743 – second time; after 29 of November – until 2 of December 1743 – 28 of September 1748 – third time; the beginning of June 1751 – beginning of September 1752 – forth time. His patriarchy is a typical example of the problems in the Constantinople Department in the first half of the 18th century. For more details see: Pravoslavna Entsiklopediya pod redaktsiyey patriarkha Moskovskogo i vseya Rusi Aleksiy II i po blagosloveniyu Patriarkha Moskovskogo i vseya Rusi Kirilla. T. 37, Moskva, 2015, s. 239.

33 BOA, *D. PSK*, 8/116.

34 BOA, *D. PSK*, 28/52.

the family-marital cases of their dependent flock³⁵, constantly infringed by both the clergy and the representatives of the local Ottoman authorities. It is enough to quote some explanatory cases, evidencing the constant discrepancy between the theoretical concepts and their practical application: “When a *zimmi* is getting married or leaving his wife, he should ask the mentioned cleric and his bishops”, is noted in the *arzuhal* by the Patriarch of Constantinople Jeremiah from 1718³⁶.

Quite identical are the cases, concerning the family-marital matters of the laymen, in the plea of the above-mentioned Patriarch Jeremiah, compiled before 22.05.1722 regarding the collection of church taxes from the *kazas* Sozopol and Anhialo³⁷: “When a *zimmi* is taking a wife or leaving her without paying attention to the mentioned cleric (it is regarding the Metropolitan of Sozopol Joasaf) or his bishops, he is breaking the *mir-i rüsum* and this should be forbidden.”; “It conflicts with our traditions when some influential persons force the priests to marry this woman with that man, as well as dismiss priests and give their churches to others.”; “The priests should not marry infidels, who do not have a marriage permission by the mentioned cleric.”

In series of documents³⁸ from 1723 and 1727-1728, concerning to the collection of church taxes and fees in various dioceses of the Constantinople Patriarchy and the Archbishopric-Patriarchy of Ochrid, this type of decrees is repeated many times.

The attempts to stop the unlawful marriages or divorces by parish priests in the various dioceses, and especially turning to the “services” of the Sharia courts also have certain financial dimensions. As pointed out in so many Patriarchal pleas, this is causing “a shortage in the tax revenues due to the failure of paying a marriage fee”.

This matter has been debated in detail in the concept of *hüküm* from 07.03.1741³⁹, compiled in response to the “stamped *arzuhal*” sent to the capital by the Patriarch

35 The marriages and divorces of Eastern Orthodox people are the subject of a number of specialized studies: Olga Todorova, “Pravoslavniyat brak prez parvite vekove na osmanskoto vladichestvo i predizvikatelstvata na islyama” – V: *Religiya i tsarkva v Balgariya*, Sofiya, 1999, s. 330–346; Svetlana Ivanova, “Brak i razvod v balgarskite zemi (XVI–XVII v.), *Izvestiya na Narodna biblioteka „Sv. sv. Kiril i Metodiy“*, T. 22 (28), 1996, s. 159–193.

36 BOA, C. ADL. File N^o 1657, doc. N^o 28.

37 BOA, D. PSK, 7/91.

38 BOA, D. PSK, 8/34; BOA, D. PSK, 7/134; BOA, D. PSK, 7/135; BOA, D. PSK, 9/11.

39 BOA, D. PSK, 12/20.

of Constantinople Paisii⁴⁰, regarding the problems encountered in “the Episcopate of Chernovi and the *kaza* of Ruschuk”. The document deserves a particular attention as it comments in detail all cases related to marriage and divorce in the light of a particular dispute between the Red Bishop and the representatives of the local Ottoman authority: “When its Bishop – the cleric Klimi⁴¹ - has asked the Orthodox *reaya* the fees for first, second and third marriage, that should be paid under the terms of my high *berat* and according to the old custom, some have not paid. Thus, they not only caused shortage in the tax revenues, but also violated the old marriage rules by making the priests marry them without the Bishop’s permission.”

Widely debated in the second half of the 18th century is the fourth marriage, forbidden according to church canons. In the *arzuhal* of the Patriarch of Constantinople and the members of the Holy Synod, compiled before 23.07.1780⁴², for example, the question about the punishment of the offenders of marriage canons is firmly raised: “In the terms of the high *berats*, handed to the metropolitans, it is clearly stated that when someone from the community of the *zimmis*, contrary to the religious rules, wants to take a fourth wife and therefore goes elsewhere, he must be rebuked and punished.”; “... Such type of offenders in no case should be allowed to go elsewhere to get married, contrary to the terms of the high *berat* and our old traditions. And if that happens and the mentioned Metropolitan punishes them according to the requirement of our rules, and afterwards they go looking for support in a way that is inconsistent with our religion, the punishment imposed by the Metropolitan to be respected.”⁴³

This matter is laconically but clearly postulated in many of the commented 18th-century documents: “According to the traditions, one person of the community of the *zimmis* can only marry up to three times. More marriages are in contradiction with the established rules.”

A more special case is the detected crimes of ecclesiastical and secular nature, requiring the intervention of the central and local Ottoman authorities (mostly

40 Paisii II (August 1740 – after the mid May 1743), the Patriarch of Constantinople for the second time.

41 The same Klimi is also mentioned as a Bishop of Cherven in the *arzuhal* of the Patriarch of Constantinople Paisii II, compiled before 5 February 1741. (BOA, *D. PSK*, 12/26). The document provides additional information about this unfamiliar in the literature Bishop.

42 BOA, *D. PSK*, 28/104.

43 BOA, *D. PSK*, 28/104.

accusations of caused riots), for which, with its support, the Church was able to include in its arsenal also secular penalties. In such cases, the powers of the respective hierarchs are clearly defined: “When a priest, monk or nun should be arrested, with a court’s permission, it is done by the mentioned cleric”⁴⁴.

Almost without exception, in the commented documents is risen the question concerning the powers of the church courts. As the available resources and studies show, the Synodal Court not only examines the conflicts within the clergy; but also, between the clergy and the laymen; conflicts among the laymen; and moreover, between the Ottomans and Christian, against who the Ottomans raise their claims in the presence of the Patriarch.

Thus, in the end of the 18th c. and especially during the patriarchy of Samuil, the jurisdiction of the ecclesiastical courts gradually becomes clear, as it spreads from Constantinople to the provinces. Its concrete knowledge of the civil matters, as outlined by N. Pantazopoulos and as revealed and commented by the by the texts, the clergy has acquired mostly from the so called Hexabiblos, compiled in 1345 and the Nomocanon by Manuel Malacos, compiled in 1561. The available sources indicate that until in the middle of the 18th century, the Nomocanon of Malacos is widely used in practice because it is compiled in spoken language and includes extensive case studies on the church family law. However, in the middle of the 18th c. it is shifted/replaced by the Hexabiblos, published in 1744 in Vienna and printed 8 times until 1830⁴⁵.

The comparative analysis of the commented documents reveals not only the complete register of the applied church sanctions against the clergy and laymen, but also points out that in the whole Balkan Peninsula during the Ottoman rule the law applied by the Church was either Byzantine, introduced before the conquest in both Serbia and Bulgaria, or spread and extended in Greek, introduced in Wallachia and Moldova.

⁴⁴ BOA, *D. PSK*, 8/116.

⁴⁵ This wide use proves that the episcopal courts, as a successor of the official Byzantine legal tradition, apply in practice the official Roman law, since the Hexabiblos is a peculiar resume of the Byzantine law of Leo the Wise, which in its turn is a paraphrased form of the legislation, compiled in Latin by Justinian. Thus, according to N. Pantazopoulos the episcopal courts apply law, which despite the foreign Greek form, is in fact alien to the legal views of the people who apply it. Pantazopoulos, *Church and Law*, p. 46.

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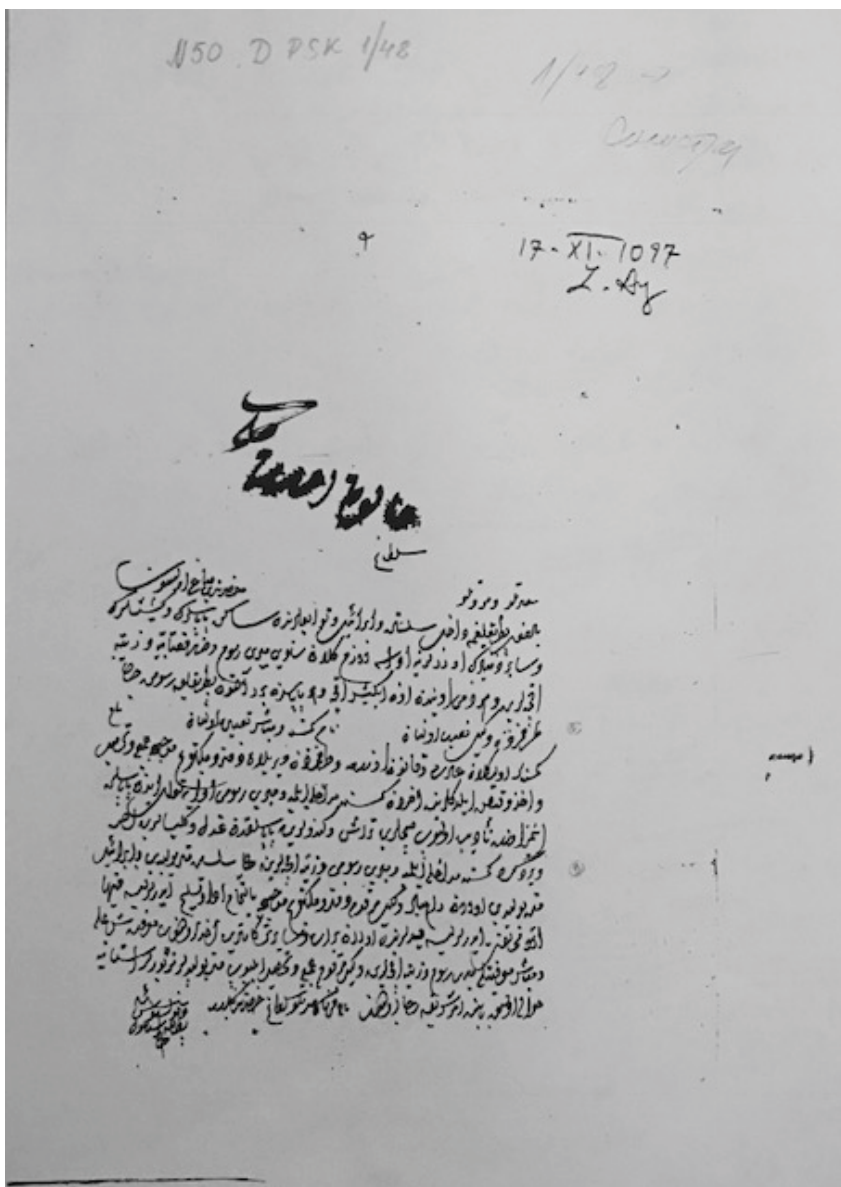
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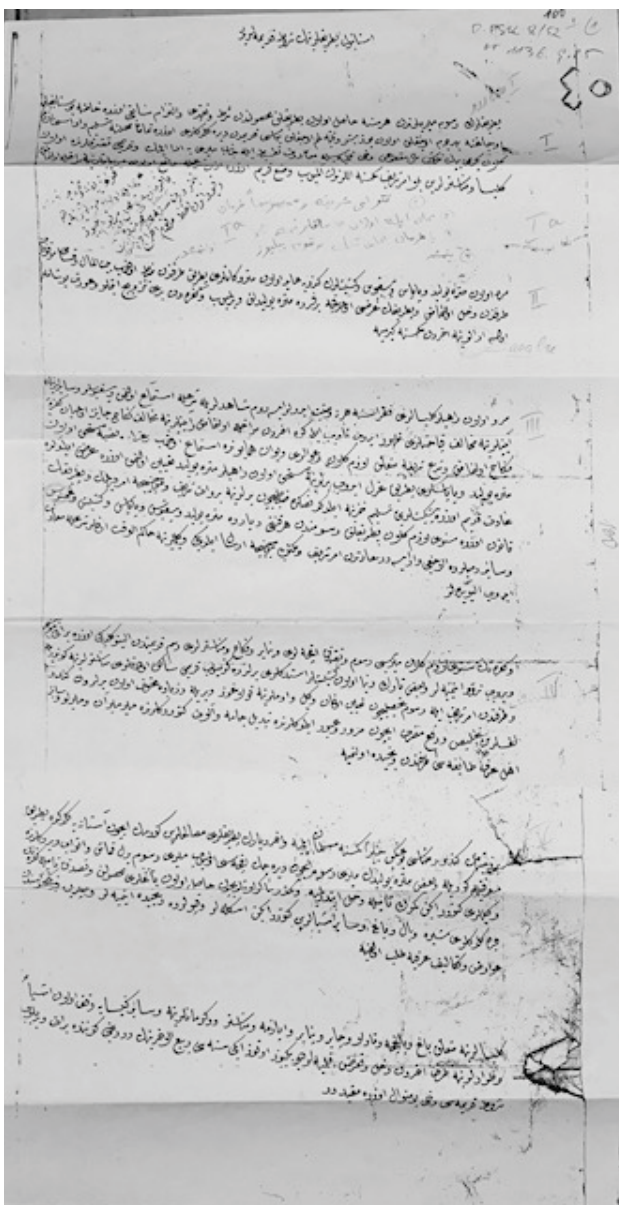
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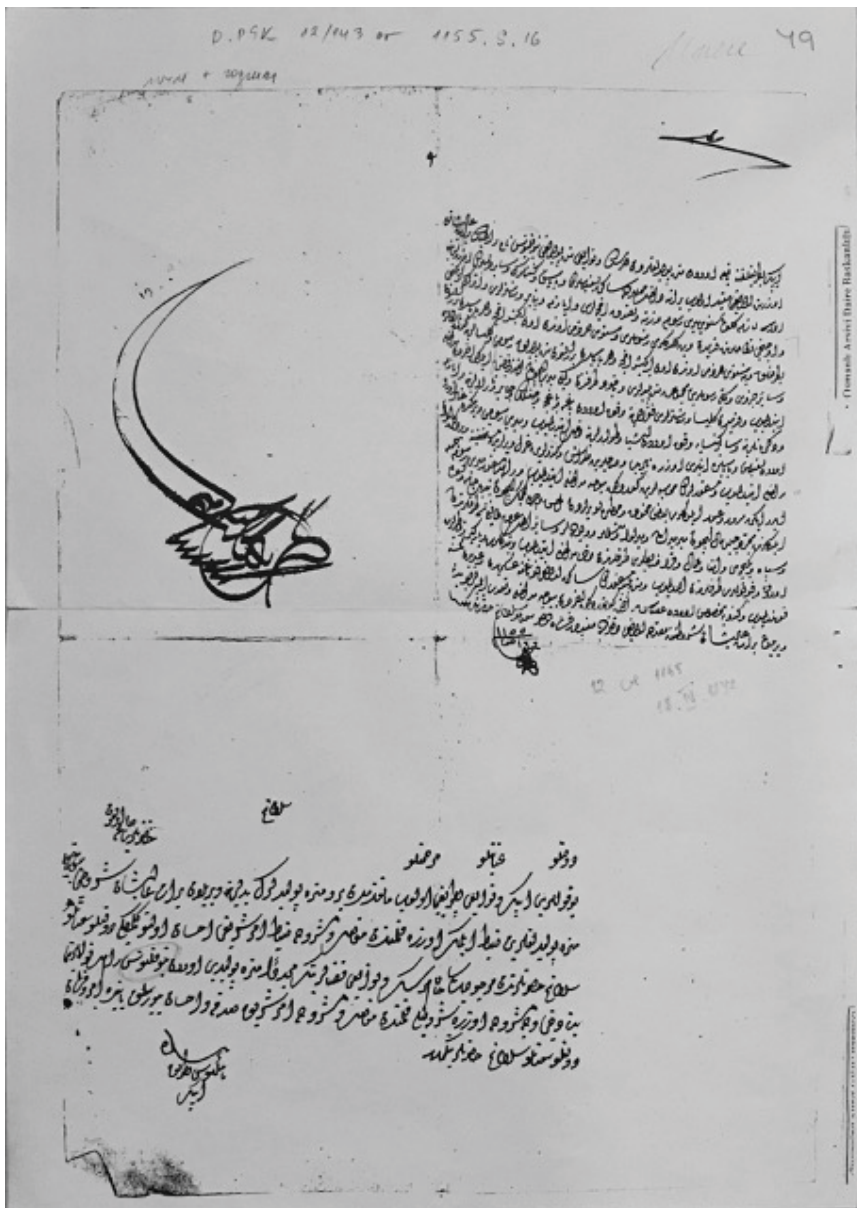
Appendices – Facsimiles of Some of The Commented Documents



Arzuhal of Patriarch of Constantinople Dionysius IV, compiled before 5. 10. 1686 r. BOA, D. PSK, 1/48.



Fragments of *defters* containing extracts from patriarchal *berats*, the earliest dates to 14.03.1720, and the latest is from (19.05.1724)
BOA, D. PSK, 8/52.



Arzuhul of the patriarch of Ipek Yoanikiy, with a reference from a chancellery from 18.04.1742. BOA, D. PSK, 12/14.