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### Research Article

# THE EVOLUTION OF UKRAINIAN JUSTICE UNDER THE INFLUENCE OF THE CHURCH: FOR THE 30<sup>TH</sup> ANNIVERSARY OF UKRAINE'S INDEPENDENCE

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**Summary:** 1. Introduction. – 2. The Influence of the Church on the Formation of Domestic Legal and Political System. – 3. The System of Justice in Matters within the Jurisdiction of the Orthodox Church. – 4. The Scope of Ecclesiastical and Judicial Jurisdiction in Kyivan Rus. – 5. Features of the Church-Judicial Process. – 6. Conclusions.

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# THE EVOLUTION OF UKRAINIAN JUSTICE UNDER THE INFLUENCE OF THE CHURCH: FOR THE 30<sup>TH</sup> ANNIVERSARY OF UKRAINE'S INDEPENDENCE

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**A**bstract *This article examines significant factors that influenced the formation of the Ukrainian legal system, the structure of the judiciary, in particular, and political development in general. The main focus is the influence of the Orthodox Church.*

*The normative provision of ecclesiastical jurisdiction, which was formed in the first centuries after Christianisation, was reflected in the complex of sources of law. The symbiosis of national and foreign, ecclesiastical and secular regulations, as well as the need to understand Greek sources, gave rise to the need to create their own codification collections called *Kormcha Books*, which became the main source of law for ecclesiastical practice in Ukraine.*

*The jurisdiction of the Orthodox Church in the Ukrainian territories included the administration of justice in specific categories of cases, which are analysed in detail in this article. Subsequently, the separation of jurisdiction between church and secular authorities formed the basis for the formation of tense state-church relations, which provided each other with political support. The influence of the Orthodoxy on the formation of the judiciary is analysed, as the church institution becomes one of its structural elements, as well as the influence on the legal system because religion is a catalyst for the formation of new legal norms that meet the principles of justice and morality. As a result, the influence of the church on the formation of civil society in modern Ukraine, which should operate on religious and ethical values, becomes obvious.*

*The structure of the church judiciary in Kyivan Rus had a three-tier system, which can be assessed as a prototype for the formation of the later secular system of justice in modern Ukraine.*

*The article also analyses the jurisdiction of the ecclesiastical court in Kyivan Rus, which was clearly defined, enshrined state origin in the sources of ecclesiastical law, and remained unchanged throughout the existence of the state.*

*Additionally, it traces the process of consideration of cases in the ecclesiastical courts of the Kyivan Rus state, which had special features. The first is that in Kyivan Rus, slaves and servants who were not subjects of secular legal relations had the right to take part in the process. It seems probable that the change in approaches to determining the circle of participants in the church-judicial process was due to the need to spread Christian ideas, precepts, and principles to the general public, including servants and slaves. For the Orthodox Church, which promoted its doctrine and came under the rule of polytheism, the priority was to gain recognition and public support, to conduct missionary and educational activities, and to use cultural and educational influence to root its religion and canonical precepts in all parts of the Kyivan Rus state.*

**Keywords:** *justice, judiciary, church jurisdiction, Kyivan Rus state*

## 1 INTRODUCTION

The thirtieth anniversary of Ukraine's independence prompts us to look at the place of legal, religious, and moral factors in the development of the state from a different angle. Problems related to the disunity of Ukrainian Orthodoxy and the existence of religious communities centred in the aggressor country are now particularly acute. Threats of an ideological nature have become obvious, and the support for anti-state, separatist sentiments has become clear, which, in turn, cause not only social unrest but also created direct threats to national security and hinder the institutional development of the independent Ukrainian Orthodox Church.

Under these conditions, the steps of state authorities aimed at the consolidation of Orthodoxy in Ukraine and the formation of a local Orthodox Church of Ukraine have become quite logical and historically motivated. At the same time, new challenges have arisen, inciting religious enmity between existing Orthodox churches. Their solution is found in promoting the consolidation of society around the values of the Ukrainian people, which have been formed throughout the history of national law and the state. Their evolution can be traced through knowledge of individual industries and institutions, including the justice system. The justice system had special features in matters belonging to the Orthodox Church and was immediately formed in Kyivan Rus according to a three-tier structure of the judiciary, which would, in the future, become a prototype for the formation of a secular, democratic system of justice.

## 2 THE INFLUENCE OF THE CHURCH ON THE FORMATION OF THE DOMESTIC LEGAL AND POLITICAL SYSTEM

One of the most important institutions of the political system of the Kyivan Rus state after the adoption of Christianity was the church. As the state religion, Christianity met the ideological needs of the princely power, justifying, on the one hand, its divine origin, and on the other, ensuring the obedience of its subjects. In turn, the Grand Prince (Knyaz) of Kyiv generously shared with the church significant property rights and administrative powers, allocating land plots to it, granting significant tax preferences, and allowing it the administration of justice in some cases. As the Kyivan Rus researcher I. Belyaev rightly said about this symbiosis in the nineteenth century: 'The Church and the Prince were one indivisible power, and the clergy and the army became its main tool... The first acted by conviction and moral influence on the laity, and the second – by force of princely power'.<sup>1</sup>

## 3 THE SYSTEM OF JUSTICE IN MATTERS WITHIN THE JURISDICTION OF THE ORTHODOX CHURCH

Justice for ecclesiastical offences in the Kyivan Rus state was administered through a new institution, namely, the ecclesiastical court. A significant number of pre-revolutionary and modern researchers have been interested in the problems of its functioning. However, given the small number of original sources, the conclusions of these researchers are not consistent. In addition, many researchers unconditionally transfer the Byzantine jurisprudence, covered

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<sup>1</sup> ID Belyaev, *History of Kyivan Rus legislation* (Typo-lithography of SA Petrovsky and NP Panin 1879) 85.

in detail in the sources, to the church-judicial process in Kyivan Rus, which, in our opinion, is unjustified. Therefore, in this study, we aim to analyse the evolution of the domestic justice system in matters within the jurisdiction of the Orthodox Church.

The boundaries of ecclesiastical jurisdiction in Kyivan Rus were determined by a set of regulations of domestic and foreign origin, both ecclesiastical and secular. In periods of the relative centralisation of Kyivan Rus, the primacy belonged to the Grand Prince of Kyiv, under the conditions of feudal fragmentation, it belonged to separate princes, and, in the period of Mongol domination, it belonged to the Golden Horde khans.<sup>2</sup>

The nature of our research in this part of the work requires a focus on the structure of the judicial system, the scope of competence of each link, and the organisation of the church-judicial process. Some researchers of ecclesiastical law, when analysing the ecclesiastical judiciary, transfer the structure of the ecclesiastical court of Byzantium to the legal basis of Kyivan Rus, referring to the rules of the Ecumenical Councils.<sup>3</sup> We are convinced that the legal reality of pre-Christian Kyivan Rus created favourable conditions for laying the foundations of an original system of ecclesiastical justice that often differed from the Byzantine one. As I. Berdnikov said

The functioning of the ecclesiastical court in Kyivan Rus was determined by the Nomocanons, but in the Kyivan Rus church these principles were perceived somewhat differently than in the Greek one, because of the low level of public consciousness in the newly baptized Kyivan Rus people and the high moral and educational mission of the Kyivan Rusn clergy among the people.<sup>4</sup>

Modern researchers of ecclesiastical law, including A. Gerashchenko, M. Levchuk, and I. Pristinckaya, concluded that the first court in Kyivan Rus was the ecclesiastical eparchial court. At the same time, scholars acknowledge the significant territorial sizes of dioceses, due to which a large portion of court powers had to be transferred in practice to local auxiliary bodies, namely, governors, archimandrites, abbots, and archpriests, who were considered representatives of the bishop.<sup>5</sup> However, in the nineteenth century, researchers took a different view. Sharing their opinion, we believe that the lowest level of the ecclesiastical courts in Kyivan Rus was the court of the presbyter, the middle was the episcopal court, and the highest was the court of the Metropolitan Archbishop of Kyiv.<sup>6</sup>

Although the Grand Ducal Statutes of Volodymyr and Yaroslav indicated the existence of two courts (the lower was the court of the bishop, the higher was the metropolitan),<sup>7</sup> A. Popov rightly argued that the practice of justice was not so unambiguous in terms of the sequence of judicial units in Kyivan Rus. According to him, the first link of the ecclesiastical court belonged to the presbyters, while in Byzantium, it belonged to the bishops. His position is based on the fact that at the time of adoption of Christianity by Kyivan Rus and in the first years thereafter, the number of dioceses was insignificant, and the territory covered by its jurisdiction was vast. Under such circumstances, the bishop could not control church life in certain parishes of his diocese. It is plausible that local ecclesiastical justice was carried out not by bishops but by priests.<sup>8</sup>

2 IA Matseliukh, *Sources of church law during the Ukrainian Middle Ages* (Talkom 2015) 101-102.

3 MV Levchuk, 'Church Court in Kyivan Rus (historical and legal research)' (Candidate of law thesis 2010) 113.

4 IS Berdnikov, *Brief course of church law of the Orthodox Church* (Imperial University Printing House, 1913) 109.

5 IO Pristinckiy, 'Diocesan courts as ecclesiastical courts of first instance' (2011) 3 *Law Forum* 634-638.

6 IK Smirnov, *On the church court system in ancient Russia* (II Glazunov Typography 1874) 19.

7 Matseliukh (n 2) 242, 244.

8 A Popov, *Court and punishment for crimes against faith and morality under Kyivan Rus law* (Typography of the Imperial University 1904) 48-49.

In the process of our research, we were able to find chronicle evidence that indicates a lack of church hierarchs.<sup>9</sup> In order to fill vacancies in church institutions, Prince Volodymyr was even forced to equip an embassy to Constantinople, which was to recruit dignitaries for church service.<sup>10</sup> The lack of church hierarchs in Kyivan Rus made it impossible for the bishop's court to function as a court of first instance. That is why this mission was transferred to the lower clergy, that is, to the presbyters.

I. Popov's theory is confirmed by the early sources of ecclesiastical law, namely, the 'Sacred Teaching to the Newly Ordained Priest,' which is contained in the Sofia edition of the Kormcha Book. It directly indicates the responsibilities of presbyters: 'to teach, to correct the actions of the community, to prohibit sinful acts, to impose penances, and to ban the disobedient from the church.'<sup>11</sup> Information about the parish priest's court was found in the 'Episcopal Teachings of the Council of the Diocesan Clergy' of the thirteenth century, which noted the importance of the presbyter's court, which was under the supervision of the diocesan bishop. The teaching says

If anyone does not understand you, ask me, and I will not be lazy and I will tell you; if anyone opposes your judgment, tell me, I will expose and ban... you must understand how to keep spiritual children: neither weakly, lest they be lazy, nor cruel, lest they despair... Understand who should be banned from the body and blood of the Lord, who should be expelled from the church, and for how long... perform hard service with trepidation.<sup>12</sup>

The existence of presbyter courts as the lower ecclesiastical court is directly pointed out by the pre-revolutionary church leaders. Thus, Metropolitan Macarius claimed that 'in addition to the court of the eparchial bishop, in Kyivan Rus, there were auxiliary judicial bodies in the local areas and in the districts.'<sup>13</sup> The main source on which the metropolitan relied was the Kyivan Rus chronicles, which preserve information about the existence of numerous parables with presbyters who were part of the Desiatynna Church in Kyiv. Among them was the senior archpriest, who headed its ecclesiastical court.<sup>14</sup>

Independent of the presbyter's courts, ecclesiastical courts functioned at monasteries, which received appropriate gifts from the central or local authorities. They gave the abbot of the monastery the right to prosecute monks, parishioners, and lay attendees who lived in the territory subordinate to the monastery.<sup>15</sup> When there were complex cases, a council of senior monks was convened to help make a fair court decision.<sup>16</sup>

Thus, in contrast to the Byzantine Empire, where historically the first and lowest instance court was the bishop's, in Kyivan Rus, there was a different practice. The lowest instance in the structure of ecclesiastical justice was the court of the presbyter and abbot of the

9 T Barsov, *Patriarch of Constantinople and his power over the Kyivan Rus Church* (Typography of PA Remezov 1878) 338-353.

10 P Stroev (ed), *Sophia Times or Kyivan Rus Chronicle from 862 to 1534*. Part 1 – from 862 to 1425 (Publishing House of Semen Silivanov 1820) 87.

11 *Russian Historical Library published by the Archaeographic Commission: In 40 volumes*. Vol 6 – Monuments of Ancient Russian Canon Law. Part 1 – Monuments of XI-XV centuries (Typography of the Imperial Academy of Sciences 1880) 107.

12 *ibid*, 114.

13 M Bulgakov (Macarius, Bishop of Kharkov), *History of the Russian Church: In 12 volumes*, 2nd ed. Vol 1 – History of the Russian Church in the period of its complete dependence on the Patriarchate of Constantinople (988-1240) (Typography of YA Bokram 1868) 29-30.

14 *ibid*, 30.

15 Smirnov (n 6) 37.

16 *ibid*, 39.

monastery. Each of them managed their parish and performed judicial functions in the affairs of parishioners under the jurisdiction of the church. The church clergy themselves came under the jurisdiction of the eparchial bishop, who was the audience of first instance for this category of cases.

The second link in the system of ecclesiastical jurisdiction of Kyivan Rus was the bishop's court in each diocese. Complaints against the presbyter court rulings and cases against the clergy of the district were considered here. The bishop's court was characterised by independence and autonomy. It was independent of the secular administration, and other church hierarchs were forbidden to interfere in its work. 'And this should not be violated by my children, grandchildren, or my whole family forever, not to change church people, not to interfere in their courts', as was said in the church Charter of Volodymyr.<sup>17</sup> The bishops conducted the proceedings in person, assisted by representatives of the *kliros* (administrative-judicial body of church administration, which included the clergy, church elder, and individual parishioners). In the absence of the bishop or the impossibility for other reasons of carrying out judicial proceedings, the governor who issued the corresponding court decisions was temporarily appointed.<sup>18</sup>

The highest court in the system of ecclesiastical courts was the Metropolitan of Kyiv. He was responsible for considering the most high-profile cases concerning the protection of the foundations of the Christian faith and the church system, as well as appeals against decisions of diocesan courts. Only he could carry out proceedings against the higher clergy, like bishops, abbots of large monasteries. The following court cases of Kyiv metropolitans over bishops are well-known in history: in 1280, Metropolitan Cyril III banned Bishop Ignatius of Rostov; Metropolitan Maxim dismissed Bishop Yakov from the Volodymyr Chair in 1290, and in 1311, Metropolitan Peter deprived Daniyil of the rank of Bishop of the Saray Chair.<sup>19</sup>

Traditionally, the metropolitan made decisions alone, but in particularly difficult cases, he convened a local council. It included the Metropolitan of Kyiv, diocesan bishops, governors of the largest monasteries, and individual representatives of the white clergy. Sometimes the Grand Prince of Kyiv was invited. The council was headed by the metropolitan, and the decisions made were unconditional for the Kyivan Rus Orthodox Church.

Sources indicate isolated cases of convening councils, as the remoteness of dioceses made it difficult to convene them. Instead, in Kyivan Rus, the practice of holding 'private or domestic councils' consisting of the hierarchs of the nearby dioceses was established. According to pre-revolutionary researchers, the Metropolitan of Kyiv convened a congress of bishops of the St George, Pereyaslav and Belgorod *cathedras*. Resolutions of such councils were advisory in nature, and the metropolitan made the final decision.<sup>20</sup>

As the position of the bishop of Kyiv in the metropolitanate of the Kyivan Rus state was absent, the metropolitan was obliged to carry out an episcopal court within the diocese under his jurisdiction. As we can see, the powers of the second and third courts of the Orthodox Church were combined in one person.<sup>21</sup>

Given that the Kyiv metropolitanate was part of the Patriarchate of Constantinople, the Patriarch of Constantinople and its council were the highest court. He could file lawsuits against Kyiv metropolitans. In practice, the patriarchs of Constantinople, as a rule, did not

17 Matseliukh (n 2) 242.

18 Smirnov (n 6) 25-27.

19 Archpriest Volodymyr Vakin, 'Ukrainian canonical heritage: Cathedral of 1274 in Volodymyr on Klyazma' (2015) 3 *Volyn Herald* 141.

20 Smirnov (n 6) 19-24.

21 I Skvortsov, *Notes on church law* (University Typography 1857) 69.

interfere in the church-judicial system of Kyivan Rus, so the latter retained full autonomy.<sup>22</sup> Sources record only a few cases of appeals of Kyivan Rus metropolitans for help to Constantinople, in particular, in terms of coordination of court decisions on the most high-profile cases.<sup>23</sup> Thus, in Kyivan Rus, as in Byzantium, a three-tier system of ecclesiastical justice was formed, but there were differences between them: in Byzantium, the lower court was the bishop's court, but in Kyivan Rus, it was the court of presbyters and abbots. The second link of the ecclesiastical court in Kyivan Rus was the court of the bishop, and in Byzantium, it was the court of the metropolitan. The functions of the third instance in Kyivan Rus were concentrated in the Metropolitan of Kyiv, who either made his own decisions, convened a local council, or sought the help of the Patriarch of Constantinople.

#### 4 THE SCOPE OF ECCLESIASTICAL JURISDICTION IN KYIVAN RUS

Each of the above-mentioned courts considered cases of crimes against the church, morals, and marital and family relations within its competence. In the Byzantine Empire, the scope of ecclesiastical jurisdiction was constantly changing and underwent a long evolution of its formation, but in Kyivan Rus, immediately after the introduction of Christianity, the ecclesiastical statutes of the Grand Princes of Kyiv clearly defined the jurisdiction of the ecclesiastical court.

Following the pre-revolutionary scholar I. Berdnikov, the modern researcher M. Levchuk expressed an opinion on the division of jurisdiction of the ecclesiastical court of the Kyivan Rus state in the range of jurisdiction into personal, territorial, and substantive.<sup>24</sup> Personal jurisdiction was determined by the subject of the commission of a church offence and was determined by the special legal status of the population as 'church people'.<sup>25</sup> The Charter of Grand Prince Volodymyr and the Charter of Prince Lev Danylovych of Halych-Volyn named all those who fell into this category. Thus, the list of church people included: metropolitan, abbot, abbess (head of the monastery), priest, deacon, deaconess (a priest's wife) and their children, and those who are in the *krilos*, monk, nun, *proskurnitsa* (a person engaged in baking church bread), *palamar*, reader, blind, crippled, foreigner, pilgrim (a person travelling to holy places), doctor, and lunatics.<sup>26</sup> Accordingly, civil and criminal cases involving church support staff, temple beggars, maimed persons, pilgrims, doctors, and lunatics were heard by a court of first instance. Any cases brought against the clergy, members of their families, monks, and ministers of the church were considered by the court of the bishop.<sup>27</sup>

The provisions of the statutes not only reflect the personal jurisdiction of the ecclesiastical court but also demonstrate the continuity of the legal system of the Kyivan Rus state. The duplication of the provisions of the Charter of Volodymyr by the head of the Halych-Volyn state testifies to the inseparable connection, the complete acceptance by Halych of the political, cultural, and legal tradition of Kyivan Rus.

22 R Lashchenko, *Lectures on the history of Ukrainian law*, Part 1: Princely era (Prague, Circulation of the Ukrainian University, State Printing House 1923) 138.

23 Smirnov (n 6) 19.

24 Levchuk (n 3) 64-110, 167.

25 Lashchenko (n 22) 80.

26 OI Chistyakova (ed), *Russian legislation of the X-XX centuries: In 9 volumes*, Vol 1 – Legislation of Ancient Russia (Legal Literature 1984) 139; *Akta grodzkie i ziemskie z czasow Rzeczypospolitej Polskiej z archiwum tak zwanego bernardynskiego we Lwowie w skutek fundacyi*, Vol 1 / sp. Alexandra hr. Stadnickiego (Galicyskiego wydzialu krajowego 1868) 97.

27 Berdnikov (n 4) 509.

Territorial jurisdiction delineated the jurisdiction of the ecclesiastical court to hear subordinate cases between homogeneous courts depending on the territory to which their jurisdiction extended. According to the principle of territorial jurisdiction, a case was to be considered by the ecclesiastical court within which the relevant offence was committed or at the place of residence of the ecclesiastical community or 'church people'. In determining the territorial jurisdiction, we should take into account the relevant deeds of gift issued by the princes. Along with land awards, the clergy were given the right to judge the people who lived there. These courts had a medieval feudal nature of patrimonial subordination. Thus, the abbots of monasteries and temples who owned lands and settlements had the right to judge their slaves and servants. The jurisdiction of the patrimonial ecclesiastical court concerned civil and criminal cases, in addition to murder, robbery, and 'litigation'.<sup>28</sup> In addition, during the disintegration of the centralised Kyivan Rus state, there are deeds of gift that limit the territorial jurisdiction of the ecclesiastical court. For example, 'By the letter of the Halych prince Lev Danilovich to the monastery of Saints Peter and Paul in the land of Peremyshl' from 1299,<sup>29</sup> lower clergy and abbots of the monasteries were released from the jurisdiction of the local bishop and fell under the jurisdiction of the nobleman Kostkov Berezhnysky. For military service, the prince gave him not only territory with a monastery, subjects, and their duties, but also the right to conduct spiritual and secular trials over them.

Thus, territorial jurisdiction was determined by the boundaries of dioceses and the boundaries of parishes. It could be adjusted by appropriate deeds of gift, as a result of which the proceedings against people living in this area were transferred to the abbots of temples and monasteries, as well as laypeople. In the Byzantine Empire, this practice was absent, which indicates a redistribution of jurisdiction between secular and ecclesiastical justice in Kyivan Rus in terms of its decentralisation.

Subject jurisdiction covered a range of cases referred by the legislation of the Kyivan Rus state to the ecclesiastical jurisdiction. The charters of Volodymyr and Yaroslav provided an exhaustive list of them. Thus, criminal cases included: crimes against the faith and the church (confessions of polytheism or performance of pagan rites, heretical acts, contempt for the temple or worship, blasphemy, sorcery, sacrilege, etc.); crimes against family and morals (bride abduction, arbitrary divorce, adultery, fornication, incest, violence between parents and children, birth of an illegitimate child, abortion, intentional murder by the mother of a new-born child, bigamy); crimes against personal freedom and honour (kidnapping of a girl for the purpose of marriage, rape, murder at a wedding, insult of honour, fights between women, infliction of bodily harm to another's wife, etc.); certain property crimes (theft of hemp, flax or other grain; theft of white clothes or cloth and pieces of cloth; theft of wedding attire or other property prepared for the wedding).<sup>30</sup> In civil cases, the ecclesiastical court was responsible for marriage and family disputes over the validity of marriage, divorce, engagement, dowry, cases of illegitimate children, adoption, and inheritance.<sup>31</sup>

During the period when Kyivan Rus was a vassal of the Golden Horde, the sphere of ecclesiastical jurisdiction was significantly expanded by khan's labels. Thus, the 'Label of Khan Mengu-Tymer, issued to Metropolitan Kirill' included the whole family of the priest who lived with him in the circle of church people. 'And whoever lives with the priest and the deacon in the same house and eats the same bread, we also welcome them', says one of the

28 O Kupchynsky, *Acts and documents of the Halych-Volyn principality of the XIII-XIV centuries. Research. Texts* (Shevchenko Scientific Society 2004) 516.

29 *ibid.*, 619.

30 Berdnikov (n 4) 513.

31 Berdnikov (n 4) 515.



provisions of the label.<sup>32</sup> In addition, the metropolitan and the bishops were given the right to include any of the laity in the church at their own discretion. 'If the metropolitan wants to accept other people who want to pray to God, then let them do their will,' as was said in another part of the document.

The 'Label of the Uzbek Tsar, Peter, Metropolitan of All Kyivan Rus' in 1313 made changes to the scope of the substantive jurisdiction of the church. The first hierarchy was now allowed to prosecute all criminal and civil cases in which the parties were so-called church people. 'The metropolitan must judge his people in any case,' the source says, 'and in robbery, and in litigation, and in all cases.'<sup>33</sup> Thus, in addition, the khan referred to the ecclesiastical court jurisdiction all criminal cases against 'church people' who did not fall under the jurisdiction of the church.

The jurisdiction of the ecclesiastical court was established immediately after the introduction of Christianity by the ecclesiastical statutes of the Grand Princes of Kyiv. Crimes against religion and the church, against family and morals, personal liberty and honour, and crimes against some types of property belonged to its jurisdiction. The sphere of ecclesiastical jurisdiction in civil matters was limited to marital and family matters and certain inheritance disputes. The ecclesiastical court in Kyivan Rus did not have jurisdiction over disputes of a private law nature between secular persons, which was characteristic of Byzantine justice in the period of early Christianity. Instead, the range of criminal cases in Kyivan Rus was much wider.<sup>34</sup>

## 5 FEATURES OF THE ECCLESIASTICAL-JUDICIAL PROCESS

The study of ecclesiastical justice cannot be complete without clarifying the procedural component. Unfortunately, there are few princely legislative regulations that would dictate the procedure for the ecclesiastical court's consideration cases, and they do not produce a complete picture. Prince Volodymyr's Charter prohibits the presence of outsiders during a court hearing. 'To judge the metropolitan and the bishops in the absence of the laity,' is required by Art. 11 of the said law.<sup>35</sup> We find a similar norm in the church Charter of the Halych-Volyn prince Lev Danilovich.<sup>36</sup> Therefore, the trial was held behind closed doors in the absence of representatives of the local community or outsiders in the courtroom. This is the only known legislative instruction of the princely power that objectively concerned the church-judicial process.

In this uncertain situation, the opinions of scholars on the organisation of ecclesiastical justice in Kyivan Rus were divided. Some researchers, including M. Levchuk, claim that

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32 LV Cherepnina (ed), *Monuments of Russian law*. Issue. 3 – Monuments of law of the period of formation of the Russian centralized state of the XIV-XV centuries (State Publishing House of Legal Literature 1955) 467-468.

33 VV Grigoriev, *On the authenticity of labels given by the khans of the Golden Horde to the Russian clergy* (University typography 1842) 113; N Novikov, *Ancient Russian vivliophics, containing a collection of Russian antiquities, to the history, geography and genealogy of the Russian concerning*, 2nd edition. Part VI (Typography of the printing company 1788) 11-12.

34 IA Matseliukh, 'On the problem of church judiciary in the Kyivan Rus state' (2018) 31 *Scientific Bulletin of the International Humanities University*. Jurisprudence series 8-10.

35 Chistyakova (n 26) 139.

36 Akta grodzkie (n 26) 97.

The legislator did not need to issue its own laws and create its own norms in this area, as ecclesiastical justice was sufficiently defined by the canons of the Eastern Christian Church, namely Rules of the Holy Apostles, resolutions of the Ecumenical and Local Councils, which were reproduced in the nomocanons and became the basis of the *Kormchaia* books, which were used in Kyivan Rus, primarily due to the Greek metropolitans.<sup>37</sup>

Instead, other researchers minimised the influence of the Byzantine process on the legal system of Kyivan Rus. M. Suvorov explained it as follows

The ecclesiastical process of the Eastern Roman Empire did not have a perfect, complete form, and therefore could not affect the procedural law of the Kyivan Rus state, instead, domestic procedural ecclesiastical law immediately after the introduction of Christianity became a direct reflection of secular court practice.<sup>38</sup>

The modern Russian researcher E. Belyakova speaks about this identification. Based on the analysis of the sanctions applied by the ecclesiastical courts, she comes to the following conclusion

Since the practice of applying penalties was borrowed by the ecclesiastical court from the secular court, then the process of consideration of the case, the appointment of such punishment had to comply with the principles of the latter.<sup>39</sup>

In expressing these considerations, researchers are guided by the principle of probability rather than legal and historical facts. In our opinion, this approach is misguided for the following reasons. The prescriptions of the *Ruska Pravda*, as the main source of secular law governing the organisation of the proceedings, are of an accusatory and adversarial nature, where the duty to investigate, prove guilt, and execute the decision rested with the victim, and the judge was only a mediator. This cannot be said of the ecclesiastical court of the Kyivan Rus state. According to the content of the *Kormcha* Book, its task was to 'teach, correct, forbid', and it had the authority to initiate the case, consider it, and make appropriate decisions.<sup>40</sup> The second difference between secular and ecclesiastical courts was that the former was public, and the latter was closed. The third difference was traced via the existence of a three-tier system of ecclesiastical justice, which is not inherent in the secular court, which did not have a clearly defined hierarchical structure. In addition, the Greek metropolitans and bishops were closer to the Byzantine model of ecclesiastical justice than the practice of secular justice in Kyivan Rus. Consequently, there were polar differences between secular and ecclesiastical courts.

In the discussion we started, an important evidence base is contained in the work of a researcher of the nineteenth century, Gustav Rosenkampf. Analysing the content of the *Kormchaia* Book, the author drew attention to the activities of the local council of the Kyiv metropolitanate. One of the issues on the agenda of his work was the consideration of the case. It took place as follows: the presiding or trusted bishop began the meeting, and he interrogated the defendant, the victim, and witnesses. This was followed by a face-to-face dispute between the parties to the process. The provision of evidence was entrusted directly to the defendant and the victim, who confirmed their legal positions. Then the case passed to the stage of court debates, during which the members of the council expressed their views on the merits. The resolution was adopted by a majority vote and declared chairman of the council. If the offender committed a crime that simultaneously violated secular law, he was

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37 Levchuk (n 3) 126-139.

38 NS Suvorov, *Course of ecclesiastical law*. Vol 2 (Typography GV Falk 1890) 181.

39 EV Belyakova, *Church court and problems of church life* (Typography Science 2004) 89.

40 Russian Historical Library (n 11) 107.

transferred to the secular court so that it could consider the case and impose additional punishment.<sup>41</sup>

The description of the process resembles the Byzantine practice of considering the case. However, we do not share the opinion of scholars about the unconditional, direct reception of Eastern ecclesiastical procedural law. Our disagreement is prompted by the mention in a chronicle source of an event that took place in 1155. It is a case initiated by a church court on the claim of a slave and domestic servants against Luke, Bishop of Novgorod. According to Byzantine law, such persons had no right to address in court,<sup>42</sup> and the legislation of the Kyivan Rus state did not consider them subjects of legal relations.

The domestic ecclesiastical court process was certainly built on the principles of the Byzantine model of ecclesiastical justice and was based on the Nomocanons.<sup>43</sup> Yet, it was not an identical reproduction of it because the socio-political and historical conditions of the society's development made adjustments, laying the foundations of their own tradition of ecclesiastical justice. These circumstances are related to the different ways ecclesiastical courts functioned in the two legal systems. The Byzantine legal system provided for the struggle against violators of canonical precepts, but the activity of the ecclesiastical court in Kyivan Rus had an educational character. For the Orthodox Church, which came under the rule of polytheism (paganism), the priority was to win their place through missionary and educational work,<sup>44</sup> where the ecclesiastical court was an element in the mechanism of spreading Christian ideas and principles to the whole public, not excluding servants and slaves.

The ecclesiastical court occupied an important place in the political system of the Kyivan Rus state. Its main task was to protect the church order based on Christian morality, which, for the most part, rested on the shoulders of hierarchs and presbyters. They were the ones who had to set an example of piety, morality, the Christian way of life, and the observance of church rites and canons. In this way, the main tools were persuasion, preaching, and only then coercion, which was ensured by the authority of the ecclesiastical court. Church hierarchs, who were judges at the same time, raised the authority and affirmed the status of the Orthodox faith and its church in the Kyivan Rus state.<sup>45</sup> At the same time, the head of the Kyivan Rus church played a consolidating, political role. According to the nineteenth-century scholar F. Leontovich, the metropolitan was the only unifying centre of all principalities, which had 'all-Kyivan Rus power' in the absence of a common political centre of the fragmented Kyivan Rus state.<sup>46</sup>

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41 G Rosenkamp, *Review of the Kormchaia Book in historical form* (University Typography 1829) 217; N Turchaninov, *About the cathedrals which were in Russia from the time of introduction of Christianity in it to reign of John IV Vasilyevich* (Typography of Medical Department of the Ministry of Internal Affairs 1829) 54; Smirnov (n 6) 20.

42 *Complete collection of Russian chronicles: In 43 volumes* Vol. 1. Lawrence and Trinity Chronicles (Typography of Eduard Prats 1846) 148.

43 IA Matseliukh, *Legal responsibility in the church law of medieval Ukraine* (Talcom 2018) 253-254.

44 O Lashchenko, *Cultural life in Ukraine* (Section of Artists, Writers and Journalists UNO in Prague 1941) 8-10.

45 Nikolai (Yarushevich), *Church Court in Russia before the publication of the Conciliar Law of Alexei Mikhailovich in 1649* (Petrograd 1917) 226.

46 FI Leontovich, *The national question in ancient Russia* (Warsaw 1895) 36.

## 6 CONCLUSIONS

Justice for ecclesiastical offences in the Kievan Rus state originated in the era of Christianity and the spread of ecclesiastical law. The incorporation of ecclesiastical justice into the legal system of the Kyivan Rus state was a difficult task. The difficulty was due to the need to combine two established legal traditions: Christian-Byzantine practice on the one hand and the extant pagan customs on the other. In these circumstances, a symbiosis developed, creating a new model of ecclesiastical justice, which included the entire system of its provision, including the source base, the judiciary, the powers of the judicial enforcement, and the procedural component based on local grounds. In the presence of gaps that had no analogues in Kyivan Rus law, the church turned to the experience of organising the judicial system of the Byzantine Empire.

In this way, Kyivan Rus created its own ecclesiastical and legal tradition, which had a number of unique features. These include the formation of a three-tier system of ecclesiastical justice, which became a prototype for the formation of a secular system of justice. The next feature concerns the procedural component, where slaves and servants who were not subjects of secular legal relations had the right to take part in the courts. We are convinced that the change in approaches to determining the circle of participants in the church-judicial process was due to the need to spread Christian ideas and principles to the general public, including servants and slaves.

Thus, it is not difficult to see the interpenetration between the two institutional spheres of church and state. They have been closely intertwined for two thousand years, so the impact is obvious. The study of the analysed socio-cultural, state-church relations will allow us to better understand the traditions and stereotypes of Ukrainian society that have formed over the centuries and, in turn, understand the basic principles of justice, which will contribute to effective reform of the judiciary.

A tithe church built on Starokyivska Hill in Kyiv in 989-996. It is considered to be the first stone church in Kyivan Rus. It was destroyed during the Mongol assault on Kyiv in 1240.



*'Kyiv. The city of Volodymyr'. Diorama from the Archaeological Museum of the Institute of Archeology of the National Academy of Sciences of Ukraine (fragment), which contains a reconstruction of the Tithe Church.*



*Viche*, Painting by A.M. Vasnetsov, 1909.



*Nomocanon (Kormcha Book) – Moscow: Printing House, 1653.*

*Such collections recorded state and church legislation.*

*Photo from the Museum of Rare Books of the Library named after M.O. Lavrovsky of Mykola Gogol Nizhyn State University.*



*A miniature depicting the baptism of Prince Volodymyr in the Crimean Korsun, decorated with the text 'The Tale of Bygone Years' in the Radziwill Chronicle of the fifteenth century. 'The Tale of Bygone Years' was a chronicle from the period of Ukraine-Kyivan Rus, compiled in the eleventh-early twelfth century.*

## REFERENCES

1. Belyaev ID, *History of Kyivan Rus legislation* (Typo-lithography of SA Petrovsky and NP Panin 1879) 85.
2. Matseliukh IA, *Sources of church law during the Ukrainian Middle Ages* (Talkom 2015) 101-102.
3. Levchuk MV, 'Church Court in Kyivan Rus (historical and legal research)' (Candidate of law thesis 2010) 113.
4. Berdnikov IS, *Brief course of church law of the Orthodox Church* (Imperial University Printing House, 1913) 109.
5. Pristinsky IO, 'Diocesan courts as ecclesiastical courts of first instance' (2011) 3 *Law Forum* 634-638.
6. Smirnov IK, *On the church court system in ancient Russia* (Il Glazunov Typography 1874) 19.
7. Popov A, *Court and punishment for crimes against faith and morality under Kyivan Rus law* (Typography of the Imperial University 1904) 48-49.
8. Barsov T, *Patriarch of Constantinople and his power over the Kyivan Rus Church* (Typography of PA Remezov 1878) 338-353.
9. Stroev P (ed), *Sophia Times or Kyivan Rus Chronicle from 862 to 1534*. Part 1 – from 862 to 1425 (Publishing House of Semen Silivanov 1820) 87.
10. *Russian Historical Library published by the Archaeographic Commission: In 40 volumes*. Vol 6 – *Monuments of Ancient Russian Canon Law*. Part 1 – *Monuments of XI-XV centuries* (Typography of the Imperial Academy of Sciences 1880) 107.

11. Bulgakov M (Macarius, Bishop of Kharkov), *History of the Russian Church: In 12 volumes*, 2nd ed. Vol 1 – History of the Russian Church in the period of its complete dependence on the Patriarchate of Constantinople (988-1240) (Typography of YA Bokram 1868) 29-30.
12. Vakin, Archpriest Volodymyr, 'Ukrainian canonical heritage: Cathedral of 1274 in Volodymyr on Klyazma' (2015) 3 Volyn Herald 141.
13. Skvortsov I, *Notes on church law* (University Typography 1857) 69.
14. Lashchenko R, *Lectures on the history of Ukrainian law*, Part 1: Princely era (Prague, Circulation of the Ukrainian University, State Printing House 1923) 138.
15. Chistyakova OI (ed), *Russian legislation of the X-XX centuries: In 9 volumes*, Vol 1 – Legislation of Ancient Russia (Legal Literature 1984) 139.
16. *Akta grodzkie i ziemskie z czasow Rzeczypospolitej Polskiej z archiwum tak zwanego bernardynskiego we Lwowie w skutek fundacyi*, Vol 1 / sp. Alexandra hr. Stadnickiego (Galicyskiego wydziału krajowego 1868) 97.
17. Kupchynsky O, *Acts and documents of the Halych-Volyn principality of the XIII-XIV centuries. Research. Texts* (Shevchenko Scientific Society 2004) 516.
18. Cherepnina LV (ed), *Monuments of Russian law*. Issue. 3 – Monuments of law of the period of formation of the Russian centralized state of the XIV-XV centuries (State Publishing House of Legal Literature 1955) 467-468.
19. Grigoriev VV, *On the authenticity of labels given by the khans of the Golden Horde to the Russian clergy* (University typography 1842) 113; N Novikov, *Ancient Russian vivliophics, containing a collection of Russian antiquities, to the history, geography and genealogy of the Russian concerning*, 2nd edition. Part VI (Typography of the printing company 1788) 11-12.
20. Matseliukh IA, 'On the problem of church judiciary in the Kyivan Rus state' (2018) 31 Scientific Bulletin of the International Humanities University. Jurisprudence series 8-10.
21. Suvorov NS, *Course of ecclesiastical law*. Vol 2 (Typography GV Falk 1890) 181.
22. Belyakova EV, *Church court and problems of church life* (Typography Science 2004) 89.
23. Rosenkampf G, *Review of the Kormchaia Book in historical form* (University Typography 1829) 217.
24. Turchaninov N, *About the cathedrals which were in Russia from the time of introduction of Christianity in it to reign of John IV Vasilyevich* (Typography of Medical Department of the Ministry of Internal Affairs 1829) 54.
25. *Complete collection of Russian chronicles: in 43 volumes*. Vol. 1. Lawrence and Trinity Chronicles (Typography of Eduard Prats 1846) 148.
26. Matseliukh IA, *Legal responsibility in the church law of medieval Ukraine* (Talcom 2018) 253-254.
27. Lashchenko O, *Cultural life in Ukraine* (Section of Artists, Writers and Journalists UNO in Prague 1941) 8-10.
28. Nikolai (Yarushevich), *Church Court in Russia before the publication of the Conciliar Law of Alexei Mikhailovich in 1649* (Petrograd 1917) 226.
29. Leontovich FI, *The national question in ancient Russia* (Warsaw 1895) 36.