

STATE-LEGAL FOUNDATION OF MEDIEVAL SERBIA IN THE PROVISIONS OF DUŠAN'S CODE

ABSTRACT: This paper represents a synthesis of knowledge acquired by the author through studying Dušan's Code. It analyzes the provisions reflecting the state-forming ambitions of Emperor Dušan. Considering the fact that he was aware of the size and strength of his state, which was legally grounded, the Code had to meet the Emperor's expectations. The critics of his authoritarian rule cannot deny that he had purposefully limited his own (legal) power. Thereby, the legislative technique being used was fully in the spirit of the time and space in which the Code was to be applied. Therefore, it is the author's intention to point out the provisions of Dušan's Code in which the original sources of Serbian statehood could be traced back. The issue of originality of Dušan's Code will be discussed contextually regarding the content of certain regulations. This is hindered by the fact that Dušan's Code was transcribed over twenty times, and the contents of those transcriptions were not fully identical. Therefore, the originality of the provisions in Dušan's Code should also be evaluated in relation to its previous legal monuments.

Keywords: *Dušan's Code, principles, punishment, discrimination, the Middle Ages, Serbia.*

* Full professor, Faculty of Law for Commerce and Judiciary in Novi Sad, The University of Business Academy in Novi Sad, Serbia, e-mail: ijoksic@hotmail.rs



© 2022 by the authors. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

1. Introduction

The foundation and the development of Serbian medieval state were primarily studied through the lens of historical science. These studies based their knowledge on referential sources that allowed for a realistic overview of all circumstances preceding the foundation of a country. Of course, the political situation was specific and had crucial impact on other aspects of government functioning in a certain time and space. Such approach is visible even when studying the foundation and the development of medieval Serbia. In this context, an effort was made to determine the connection of various circumstances necessary for the foundation of the first Serbian state and its subsequent functioning. The aforementioned circumstances were an important criterion in the periodization of Serbian history, especially for the span of time prior to the Ottoman rule in the Balkans.

A complete familiarization with the character of medieval Serbia, its political, military, cultural and other aspects is not possible without determining the basis of its laws. Written legal monuments and records of their contemporaries that show traditional regulations in force, the majority of whom were church dignitaries, play a crucial role in this. In the catalogue of legal monuments, the most significant and the most deserving position belongs to Dušan's Code. The fact that Serbian state was the most powerful during this period serves as additional confirmation for this argument. However, Dušan's Code should not be seen as an isolated legal document, considering it contained and applied other legal documents, especially those preceding it being written. Those documents were not Serbian in source, but they made up an important segment of Serbian statehood through their application. In fact, they completed the legal segment of medieval Serbia, and were crucial to its functioning. In fact, the importance of the historical role of certain legal documents should be seen in this aspect, meaning, from the modern perspective, thus viewing them as legal monuments in the period prior to the ascension of Emperor Dušan. We can point out *Syntagma Canonum* by Matthew Blastares and Code of Justinian.

Considering the diversity of the articles in Dušan's Code regulating various segments of social and everyday life, we will focus on the norms protecting the state and its authority. Their sources and authenticity needs to be aged according to earlier legal monuments. Thereby, it is challenging to legally measure the real influence of Serbian common law, written legal documents and Byzantine law on the content of the articles and the extent of which the aforementioned sources shaped the spirit of Dušan's Code.

It receives the epithet of the founding legal document of medieval Serbia precisely based on the provisions regulating the basic postulates and principles of state governing, its bodies of authority and the ruler as the furthest point of their application. The self-limiting character of Dušan's power is present precisely in these provisions of his Code, which is an additional motive for their further study. Finally, historical and legally profiled term 'Dušan's legislature', originated from Florinski in 1888, and serves as a signal that the statehood of the provisions in Dušan's code is partially connected with the provisions of earlier legal monuments, such as *Syntagma Canonum* by Matthew Blastares and the Code of Justinian.

2. Historical and societal circumstances in (before) Dušan's Serbia

The foundation and the development of medieval Serbia was marked by societal turmoil. This was, in great measure, caused by the relationships with neighboring countries that had territorial disagreements with the newly-formed Serbian state. In parallel, the first inequalities began to emerge in Serbian society as a result of those particular tendencies. The differences relate to property, political convictions, national and religious differences, as well as other specificities in people who collectively influenced normal functioning of medieval Serbia.

Friction among rulers that often ended with open war of Serbian kings contributed to the stagnation of Serbian society, and created a particular management system in dealing with foreign enemies. By fighting for power amongst them, Serbian rulers often found allies in the countries that had territorial ambitions towards the very country being so unsuccessfully governed. However, during the reign of Stefan Nemanja, the first crowned king, Serbia became a kingdom with independent Church. Such individuality of Serbian state and Church set the foundations for future political ambitions of its rulers. Due to the efforts of Stefan and Sava, a symbiosis of state and church authority was established, which places them among the dignitaries of their time (Ćorović, 1997, p. 110).

The situation in Serbia prior to Emperor Dušan taking the throne was marked by its specific relationship with Byzantium. What followed were changing periods of good and bad relationship that greatly depended on the ability of Serbian rulers to stay clear of Byzantine aspirations. An important moment is the renewal of Byzantium in 1261, which revived certain conflicting sentiments towards Serbia. Serbian rulers became a part of anti-Byzantine

coalitions and political alliances. Such political tendencies are related to King Milutin, who contributed to greater identification of the Serbian people in the relationship with Byzantium. In the context of newer Serbian-Byzantine relationship, Byzantine territories were conquered by Serbia and thus, it expanded its territory into the traditionally held Byzantine areas. However, in the first half of the 14th century, there was a period of political and social disintegration of Byzantium, which benefited the strengthening of medieval Serbia. The aforementioned circumstances in the foreign political scene contributed to Serbia strengthening its presence in Byzantium during the age of King Milutin (Maksimović, 2007, pp. 372-373).

Internally, medieval Serbia showed certain weaknesses exhibited by visible animosity amongst Serbian nobles. In their mind, here was no place for central government authority to which they would (un)willingly submit. This has shown to be one of the main obstacles to further strengthening of the state and its foreign positioning. However, the crowning of Stefan Dušan has led to far more regulated relations within medieval Serbia and a period of general societal flourishing began. The fact that Serbia kept its historical legacy did not prevent Emperor Dušan to improve Serbian society based on the model of developed societies of other European countries (Joksić, 2015, p. 195).

3. The establishment of Dušan's reign and his codification

Medieval Serbia flourished when Stefan Dušan came to power. He was a ruler who came to power at just the right time, when establishing an authoritative leadership of state was evidently necessary. We purposefully use the term authoritative and not authoritarian, since, regardless of the fact that his manner of governing was strict and cruel, Stefan Dušan based his rule on personal relationship with his subjects. He primarily inspired awe with the population due to the strength of his personality and physical appearance. Such characteristics of Stefan Dušan were crucial to the manners of governing, maintaining and reordering the state government. Thereby, Emperor Dušan created suitable conditions for better army organization, which served as a backbone of his rulership. Time has shown that many centuries later, the desire for territorial expansion and the liberation of Serbian population from Austrian and Turkish rule had also required the formation of well-armed and modern military (Terzić, 2018, p. 45). The aforementioned testifies to the importance of good military organization. Considering he was aware of this fact, Emperor Dušan made substantial efforts to strengthen the military management system by putting it into legal framework.

The particularity of Dušan's reign can be seen in the new direction of his foreign policy, particularly towards the neighboring countries. The first years of Dušan's reign were marked by interchanging periods of war and tentative peace. He exhibited his ambitions through two, equally important levels of state governing: political and legal. There is a general impression that he achieved this by modeling his government after the Byzantine system of government. This can be seen, among other things, through his visible efforts to expand his throne to Serbs and Greeks.¹

- a) Emperor Dušan achieved his political ambitions by going on (successful) conquest campaigns. These successes have made the most significant contribution to the idea of imperial Serbia. Emperor Dušan demonstrated his arrogance in leading the state by establishing unlimited authority. The Emperor's pride and uncompromising rule reached as far as to secure the hereditary title of the Roman-Byzantine Empire for himself. By following his ambitions, he signed his name in Greek charters as autocrat of Serbia and Romania (Ferjančić-Ćirković, 2005, p. 56). He achieved his political ambitions by being crowned as Emperor in 1346 in Skopje. Aware that the title of the Emperor can be given by the church patriarch, Emperor Dušan elevated Serbian church from archbishopric to patriarchate. The Archbishop of Ohrid, the Bulgarian Patriarch, the Prot of Mt. Athos as well as abbots of monasteries on Mt. Athos were present at his crowning. Emperor Dušan's political abilities can be seen through his establishment of a type of state camaraderie with Byzantium, led by John Kantakouzenos. However, as all political alliances, it changed and grew into open hostility resulting in a new political friendship between Emperor Dušan and John V.
- b) Legal ambitions of Emperor Dušan grew and matured alongside his successes in running the state. He was aware that a strong and powerful country, as was the case with the Roman Empire, is not possible without sound legal foundation. Therefore, he engaged in substantial legislative activity. This was preceded by the specific legal situation

¹ By working on the fulfillment of his ideas and guided by practical needs, Emperor Dušan met all expectations in both form and content. He gradually grew closer to Byzantium, meaning to conquer it by doing so. Extensive reforms that included all segments were done in order to improve Serbian society.

Emperor Dušan gave his officials the titles of despot, sebastokrator and kaisar in the areas conquered from Byzantium. They were Serbs who had familial connections with the royal family (Blagojević, 2000, pp. 52-53).

of medieval Serbia that incorporated traditions, charters, international contracts, and Serbian and Byzantine ordinances. Additionally, traditional rules rest on unwritten social behaviors, rooted in tradition and morality. On the other hand, charters are merciful acts granting certain rights by the emperor, which can *stricto sensu* be realized within the limitations of the emperor's will. International contracts regulate trade relations with Dubrovnik and the Republic of Venice.

Serbian and Byzantine regulations applied in medieval Serbia were the predecessors to Dušan's Code. An important position in the catalogue of Serbian legal regulations during the Middle Ages belongs to *Saint Sava's Nomocanon*, known as *Zakonopravilo*. The Code is a set of related legal norms, taken from *Nomocanon* and Byzantine law, and represents a symbiosis of secular and ecclesiastic rules. Their origins should be viewed in the context of earlier (secular and ecclesiastic) regulations applied in this legal area. Saint Sava based his work on *Zakonopravilo* on the following sources: 1) *Nomocanon* (50 titles); 2) *Nomocanon* (14 titles) – *Nomocanon of Photius*; 3) Interpretation of Aristinos and Zonaras; (4) translation of the *Proheiron* – City Law. *Zakonopravilo* was transcribed twelve times, which speaks in favor of the importance of this legal monument in medieval Serbia. Wishing to preserve the original authenticity of *Zakonopravilo*, Saint Sava ordered the transcriptions to be done from the original. That was the reason why later transcribers did not alter the integral text of *Zakonopravilo*.

An important legal document that first preceded Dušan's Code and later became incorporated in the Codex in shortened form was *Syntagma Canonum* by Matthew Blastares from 1335. It is important to point out that the so called shortened *Syntagma* is included in Dušan's Code and it excluded Byzantine and ecclesiastic rules. The shortening of the original text of *Syntagma* reduced its original 303 sections to current 94. Dušan's Code includes the translation of a compilation of Byzantine laws made up of 33 articles, taken from Byzantine Farmer's Law. This document is called the Code of Justinian in our literature. These were the circumstances in the time when Emperor Dušan promulgated his Code in 1349, which was supplemented in 1354 in Serres. All manuscripts of the Code, at least in the first version, are forwarded by the shortened *Syntagma* (of Matthew Blastares) and the Code of Justinian (Fajfrić, 1999, pp. 69-70).

In its articles, *Dušan's Code* regulates various segments of religious and state matters. It attempts to improve the existing system of regulations by clearly defining the relationship of church and state. It contains solutions that

he deemed the most expedient in a moment when Serbia reached a significantly stronger and favorable position in relation to neighboring countries.

4. Division of power in Dušan's code

Dušan's Code belongs in a group of modern European criminal codices. It contains basic postulates of governing based on the unity of religious and secular authority. Their relationship is based on determining full legal protection granting the freedom of religion, church officials, which must not be a cover for interfering with state matters. The significance of Dušan's Code can be seen in establishing legal framework regarding the division of authority into secular and ecclesiastic, and within the state authority it specifies the authorizations and responsibilities of its bodies.²

A) Regulating church authority in Dušan's Code

Church matters in Dušan's Code are regulated by a large number of articles. They clearly determine various segments and relations within the Church. The significance of the Church and the Christian Orthodox faith for the people and court can be concluded based on the fact that the initial provisions in Dušan's Code are dedicated to this matter (Article 1-37). They incriminate various actions that bring into question the practice and unity of Orthodox faith. The furthest application of these provisions is focused on the population that deviates from the traditional confession of the Orthodox faith and on church officials that sin against the religious code. This is testified by the provision of Article 4 (*On Spiritual Matters*) that originally states the following: "And in spiritual matter, every man shall show submission and obedience to his archpriest. And if any person be found committing a sin against the Church, or transgressing against any rule of this Law willingly or unwillingly, such a one shall yield and submit himself to the Church. If he disobey and evade the discipline of the Church and be not willing to follow the orders of the Church, he shall be excommunicated."

Any form of sinning against the Orthodox Christian faith involving any form of heresy is separately incriminated in Dušan's Code. The aforementioned

² It is interesting to note that the ruling power in medieval Serbia was not exclusive the performance of legal or judicial functions. It recognized other authorities, such as the Church, and at the same time allowed other forms of government. So, for example, the nobility and the Church, independent cities, independent foreign organizations, all had their judiciary. State judiciary dealt with activities outside of the separate courts (Taranovski, 2002, p. 520).

is confirmed by provision of Article 6 (Regarding Latin heresy): “Christians, who have turned to the use of unleavened bread, shall return to the Christian observance. If any fail to obey and do not return to Christian Orthodoxy, let him be punished as is written in the Code of the Holy Fathers.”³

The preceding articles determine the framework of forbidden religious activity of the Orthodox. So, Article 10 (On Heretic) states: “And if any heretic be found to live among the Christians, let him be branded on the face and driven forth, and whoever shall harbor him, let him too be branded.” This provision clearly forbids heresy in Orthodoxy. In nomo-technical sense, articles 6-10 of Dušan’s Code are related to Latin heresy. It is evident that Emperor Dušan felt the greatest danger is the Orthodox embracing Catholic faith. Judging by this, other possibilities of heretical actions did not exist. Therefore, evident definition of the term and meaning of heresy is not evident, as it was exclusively related to one faith – Roman Catholicism, meaning Latin heresy (Čvorović, 2018, p. 26).

The provisions regulating the position of the Church can also be found in other parts of Dušan’s Code. They regulate the following matters: relations amongst nobility and the Church (Article 47), social status of clergy (Article 65), the manner of passing judgment in litigation regarding land belonging to the Church (Article 78), the relationship between the army and the Church in certain situations (Article 130), the manner of collecting fines within the Church, where it renounces the interference of imperial authority (Article 194), prohibition against spending the night in a Church, apart from the Empress and the Queen⁴ (Article 195), prohibition of cutting hair as punishment for men and women without the approval of the Bishop (Article 196). The aforementioned provisions show a substantial manner of regulating the relationship between the Church and the Emperor, particularly in relations to the judicial power of the Church. “Judiciary power of the Church in medieval Serbia had, in fact, indirect authority. The Church passed arbitration for the priesthood as court regulating a social class, for all those of the Orthodox faith for criminal actions against faith and in certain civil matters, but also for all inhabitants of church or monastery properties (Metohija) as patrimonial court. Patrimonial

³ This paragraph uses the Greek term *azimstvo*, which refers to the differences in the ritual of communion between the Catholics and the Orthodox. As opposed to the Orthodox, Catholics use unleavened bread for communion (Bubalo, 2010, p. 151).

⁴ As a reminder, the wife of Emperor Dušan, Empress Jelena was the only woman who had the right to stay on Mt. Athos. She visited the Holy Mountain in 1348. Following the historical thread of the time when Dušan’s Code was written (1349) and its subsequent annexation (1354), we could state that this move of the Empress was subsequently legalized in the provision of Article 195 of the Code.

church court had exclusive authority over the people belonging to the Church (peasantry) and other inhabitants of church and monastery properties. The Church, as feudal lordship, had the judicial authority over all men under its jurisdiction (Stojanović, 2022, pp. 5-6).

B) Regulating state authority in Dušan's Code

State authority in Dušan's Code is regulated by a large number of provisions. They regulate various matters regarding the activity of judges, imperial authority and the manner of acting in certain situation that were considered particularly dangerous at that time. Based on the stylization of the provisions regulating the activity of the judges and the courts, we can see that resolve of the imperial army in allowing the courts to act completely independently. The provision of Article 171 of the Code (On the Law) states: "Imperial order: If the Tsar write a writ either from anger or from love, or by grace for someone, and that writ transgress the Code, and be not according to justice and the law, as written in the Law, the judges shall not believe that writ, but shall only judge and act according to justice." Emperor Dušan places the decision of the Emperor under the legal authority of the Code, which further shows the importance of making legal and right decisions. In this case, the provisions of the Code have more legal validity and should be used by the judges to make decisions. Furthermore, in the provision of Article 172 of the Code (On Judges), he decidedly states the following: "All judges shall judge according to the law, rightly, as is written in the Code, and shall not judge out of fear of the Tsar." Here, Emperor Dušan purposefully *de iure* rejects the possibility of interfering in the work of courts and the decisions of judges. The division of state authority is legalized in this manner and a line is drawn between them, which prevents interference.⁵

Starting from the historical fact that every authoritarian government narrows its executive branch, thus creating a funnel of power and influence,

⁵ In that sense, we can state without exaggeration that the foundations of modern European Serbia were made in medieval Serbia of Dušan's time. These foundations were used to build modern European political and legal thought in the center of which is the division of legal independence of the state authority. In similar manner, by highlighting the importance and the content of Rousseau's (enlightening) and political thought, framed by Constant's (Benjamin Constant de Rebecque) temporal and political distance, Terzić concludes: "Historical memory, found at the root of Rousseau's belief, has shown that the accumulation of power had always occurred in the hands of one man or a group of men. That is why, in that age, no thought was given to the possibility of accumulation of enormous power in the hands of precisely those who opposed unlimited authority – the majority" (Terzić, 2016, p. 49)

then this, in fact, shows the extent of which imperial Serbia belonged to a group of modern states of its time. This is why the argument of a certain number of foreign and domestic scholars dealing with historical and political debate that Emperor Dušan was an autocrat who was cruel in his dealing with his subjects does not stand. Protić, for example, places Emperor Dušan in the framework of humanity and divinity, believing that he is somewhere between the two (Protić, 1986, p. 194). Eminent literary persons discussed the personality and rulership of Emperor Dušan in this light, as well as the situation in this capital city – Prizren.⁶

By accepting the importance of eliminating corruption and other forms of legally inappropriate actions of judges, Emperor Dušan clearly introduced prohibitions that eliminate such possibilities in the Code.⁷ His resolve to deal with the potentially corrupt actions of judges, Emperor Dušan stated in the provision of Article 110 of the Code (On Judges): “A judge travelling anywhere across imperial lands and his own area, shall not be authorized to take a meal by force, nor anything else save gifts given him by someone of their free will.” Aware of the possibility that a judge ‘earns’ honor from other people, Emperor Dušan allows for the judge to receive symbolic gifts, but draws a clear line in how far such behavior can be tolerated. Judging by the situation of the time, symbolic gifts could be a jug of good wine or spirit, but in no case can it be money or other valuable item with evident monetary value (gold, jewelry, etc.). Apart from that, any form of public shaming of judges and their honor was strictly forbidden (Article 111 of the Code). This further ensures the conditions necessary to perform judicial duty.

There is a provision present in Dušan’s Code that guarantees the legal validity of a judicial decision, meaning a solution in litigation against thieves and brigands. It cannot be refuted or changed by the will of the Emperor, the

⁶ “In the vision of Prizren by Dučić, it is refined and welcoming, a noisy and classy city: *All day long the sunny bells are ringing, Prizren opened all its city doors*. In Serbian folk and literary poetry, imperial Prizren was a very complex symbol. It is a city of culture and legacy, and Dušan is his living *promoter and initiator of change*. Dušan’s culture, power and humanity will also inspire Desanka Maksimović to have a dialogue regarding his Code in a collection of poems *I seek amnesty*, where she reconstructs the values of Dušan’s time through a scientific and humanitarian lens. The absolute poet seeks amnesty for all, even the Emperor himself. The continuity of discussion with Emperor Dušan and regarding Dušan extends from oral epic poetry, through modern poetry, until today” (Đorđević, 2011, pp. 69-70).

⁷ It is our opinion that Emperor Dušan found the political and legal inspiration for the fight against corruption in previous emperors. By considering the causes of the fall of the Roman Empire, historians listed corruption as one of the main reasons. It appears that Emperor Dušan was partially instructed by the Roman experience, so he attempted to eliminate this option by providing adequate legislation.

Church or the nobility (Article 148 of the Code). All judicial documents must be neatly kept, thus ensuring their validity (Article 163 of the Code). The specificity of judicial duty is seen in the provision of Article 175 of the Code (On Judges), which states as following: "The judge who is in the court of the Tsar, when any evil occur, let him pass judgment. If the litigants happen to be in the court of the Tsar, let the court judge pass judgment on them, and no one shall be summoned to the court of the Tsar outside the competence of the judges appointed by the Tsar, but let everyone go before his one judge."

Respecting judicial decisions starting from the summons until the final legal resolve to the litigation is ensured by mandatory actions of the prefects and the lords. Otherwise, they will also been seen as insubordinate and be placed in the category of persons who do not honor judicial decisions (Article 178 of the Code). However, the Code allows for a person whom was inflicted with great injustice to seek justice in the Emperor's court. These are truly rare situations, when the damaged party could not achieve justice and his interest in regular court manner.⁸

However, the independence of judiciary in Dušan's Code is severely jeopardized, and thus brings into question the aforementioned, in the provisions that proscribe the possibility of final legal outcome of certain litigation. In these cases, the Emperor was a kind of source of appellation that would give the final resolution. There was no refuting of the Emperor's will after that. This is testified by the provision of Article 181 of the Code (On litigation before the Emperor): "Imperial order to the judges: If there be a weighty case and they cannot decide it and pass judgment, however great the court may be, let one of the judges go with both litigants before the Tsar. And whatever the judges shall wish to try, let them write down each judgement, that there be no mistake, that it be proceeded according to the Law of the Tsar." In this manner, the Emperor distances himself from litigating in cases led by regular judges. They have the so called original, or as understood today, primary jurisdiction, while Emperor's authority is seen exclusively in the final resolution of the matter. This is explicitly stated in the provision of Article 183 (On Shepherds): "The shepherds of the Tsar shall go before the judges when they have disputes among themselves: for fines, for brigandage, for theft, for harboring alien people, for murder, for land."

⁸ This legal option did not have a general meaning, but it was applied only when the damaged party was free men. Slaves and serfs not allowed to participate in these situations, as they were denied this option in Dušan's Code.

The aforementioned provisions provide enough grounds for the opinion that Dušan's Code, in the sphere of litigation, is a legal successor of resolutions from Byzantine law. In that spirit, Solovjev based his conclusions regarding the position and independence of judicial authority in Dušan's time by pointing to the solutions present in the provisions of his Code. He believes that the legal understanding that the ruler has the right to personally pass judgment in any litigation is in force. That is why the ruler represents supreme judicial authority and is addressed by 'regular' courts to notify him of litigation and to ask for resolutions. According to this, and similarly to Byzantine law, the Emperor can 'pass' any judgement where he has the role of appellate jurisdiction (Solovjev, 1998, pp. 241-242). Furthermore, Emperor Dušan ensured himself the legal exclusivity in passing judgement in three cases – on treason, on murder and on kidnapping of a noblewoman where the perpetrators are litigated before the Emperor (Article 192 of the Code).⁹

A system of trial by jury was introduced in medieval Serbia dating back from the time of King Milutin. Dušan's Code confirms trial by jury in provisions of Articles 151-154. Serbian jury consisted of 24, 12 or 6 jurors, provided by both parties in equal number. Following the official oaths, the litigation was resolved by a majority vote. However, the jurors were not the court, but a means of evidence crucial for the judge's decision (Solovjev, 1998, p. 242).¹⁰

The necessity of complete regulation of state authority can be seen in the section related to the ruler himself. Namely, the Emperor is authorized to prevent any form of obstruction of the lords and prefects during detention of convicted persons. In favor of this is the provision of Article 184 of the code (On Prefects): "Lord and prefects of the Tsar who hold the towns and market-towns, none of them may imprison a man without a writ of the Tsar. If any such do receive him without the command of the Tsar, let him pay five hundred perpers." The following Article 185 of the Code (On Prison) that amends the previous article in a concise manner states: "In the same way, he who holds the

⁹ It is interesting to note that Emperor Dušan titles this provision *On True Court*, which additionally adds to the hypothesis of it being the supreme judicial instance.

¹⁰ The literature on this topic debates whether in the litigation involving Saxons there was the possibility of them proposing jurors from their groups. According to Jireček's interpretation of Article 123 of the Code in case of litigation between a noble Orthodox Serb and a Saxon Roman-Catholic, nowhere does it state that half of the jurors would have to consist of Serbs and half of Saxons, but instead that half of the jury would be formed of people that belonged in the same social class as the lord, while the other half of persons that share the social status of the Saxon. According to one interpretation, listed by Katančević, Dušan's Code did not allow for the Saxons in dispute with Serbs to have the right to half of the judges or jurors (Katančević, 2015, p. 114).

prisons of the Tsar shall receive no one, nobody's man, without a writ of the Tsar." Namely, Dušan's Code apostrophizes the emperor, as a body of central and supreme power, who has the legal authority to litigate in all segments.¹¹

Within the scope of the discussion on substantial provisions of Dušan's Code, particularly ones regulating state authority, there is an issue where this codex is a constitution in the material sense. Taking from the stance of the doctrine that we can view constitution in the formal and material sense, we can state that Dušan's Code is a legal act *sui generis*. It contains norms regulating the organization and the authority and supreme state bodies as well as the principles of the entire legal order. In this manner, the Code regulates the functioning of the state founded on Byzantine state and legal order. As a result, valuing the opinion of Lukić, an academic in this field, in terms of determining the material aspect of the constitution, Dušan's Code can be considered a constitution in the material sense (Đurđev, 2000, p. 215).

5. The state as an instrument of "unequal" right to punishment (*ius cogens*)

The right to state sanctioned punishment (*ius cogens*) is a basic feature of Dušan's Code. In a manner of speaking, punishment is the purpose of its existence. The provisions in Dušan's Code are centered on a specific and cruel form of punishment towards those who defy the articles of the emperor's Codex. *Lato sensu* a large number of provisions is dedicated to criminal law, where, among other things, we find the innovated term of guilt (*sinning*). This includes transgressions against government norms and moral commandments, which are also aimed against divine law in Byzantine legal systems.

The system of punishments and their execution is taken from Byzantine law, except the punishment of castration. What distinguishes Dušan's Code is the evident discriminatory manner in treating the lower and higher social classes. Namely, different punishments are proscribed for the same offense for those belonging to different social classes. Among others, this can be seen in the provision of Article 94 (On Homicide): "If a lord kill a commoner in a town, or in a district, or in a summer pasture hut, he shall pay one thousand

¹¹ As a reminder, Dušan's Code proscribes two bodies of supreme authority: the Emperor and the State Assembly. Therefore, "the inhabitants of the cities did not enter the composition of state assemblies, as a kind of class assemblies, which existed in the monarchies of western Europe" (Šarkić, 2011, p. 19).

perpers. But if a commoner kill a lord, both his hands shall be cut off and he shall pay 300 perpers.” Dušan’s Code makes a certain step in the right direction compared with the more advanced Byzantine law by gradually transitioning to one legal type of punishment. So, for example, the fines proscribed for those committing lighter criminal offenses are paid to the state rather than to the damaged party as was the case prior to this (Joksić, 2019, pp. 40-41).

The death penalty was relatively common in medieval Serbia. The manner of execution contributed to the terrifying character of the death penalty. The catalogue containing the ways the penalty could be done contains: stoning, throwing off a cliff, hanging, burning, decapitation, dismemberment, strangulation. We can find various methods of execution in Dušan’s Code. The provision of Article 95 of the Code (On Insult) proscribes the following: “Whoso insults a bishop, or a monk, or priest, shall pay 100 perpers. Whoso be found to have killed a bishop, or a monk, or priest, let him be killed and hanged.” When punishing bandits and thieves, it is proscribed for them to be blinded first, and then hanged (Article 149 of the Code). A somewhat different manner of execution is provided in Article 96 of the Code (On Homicide): “Whose be found to have killed his father, or mother, or brother, or his own child, let that murderer be burnt in the fire.”

Many kinds of corporal punishments that are executed in a cruel manner are proscribed in medieval Serbia. Using the classification of medieval corporal punishments on those that disfigure the culprit and on those that only inflict pain, we can point out the following corporal punishments: cutting off hands and feet, cutting off noses, cutting off ears, ripping and cutting off the tongue, removing the eyes, blinding, beating of hands and legs, beating, putting in chains, branding (Joksić, 2015, pp. 200-201).

Dušan’s Code contains several cases for which a corporal punishment could be used against the culprit. Mutilating the culprit (by cutting off hands and nose, extracting the eyes, etc.) was a common way of punishment for various offenses. So, for example, the provision of Article 88 (On Intentional Murder) proscribes the following corporal punishment: “Whoever commits homicide without intention and violence, let him pay 300 perpers. If a man kill intentionally, both his hands shall be cut off.” Corporal punishment was applicable even with persons whom, from the viewpoint of modern legislature, committed an offense with necessary accessory. This is seen in Article 54 of the Code () that proscribes the following: “If a noblewoman commit fornication with her man, let the hands of both be cut off and their noses slit.” Such manner of punishment is, in great measure, the specificity of Dušan’s Code, and it became recognizable based on this in Serbian legal history.

6. Conclusion

Serbia built its statehood on the division of various eras dominated by the aspirations of conquest in its neighbors. In such circumstances, it is necessary to distinguish a catalogue of known legal monuments that frame its state and legal foundation. Emperor Dušan achieved the glory of a statesman and the halo of a strict ruler through his wise and moderate politics. These were the foundations upon which the Serbian Empire was established spanning vast territories, which today include several countries.

Enormous military and state successes of Emperor Dušan were accompanied by active codification. It was crowned by the promulgation of Dušan's Code, a legal symbol of medieval Serbia. It contains provisions regulating an entire catalogue of state matters. *Prima facie* we can take note of advanced legal technique seen through conditional stylization of legal provisions. The system of government authority is stated quite clearly, in accordance with the time and the legislative spirit of medieval understanding.

The specificity of Dušan's Code can be seen in the fact that the Code could be considered a constitution of medieval Serbia. Thereby, this is in regards to the material understanding of constitution, which is (not) identical to its formal definition. The provisions of Dušan's Code ensure the state the right to proscribe punishments (*ius cogens*). However, on the state and legal scene, we have a system of selective justice that provides far greater protection to those belonging to higher social classes, while being much harsher towards the lower classes.

Joksić Ivan

Pravni fakultet za privredu i pravosuđe u Novom Sadu, Univerzitet Privredna akademija u Novom Sadu, Srbija

DRŽAVNO-PRAVNO UTEMELJENJE SRPSKE SREDNJOVEKOVNE DRŽAVE U ODREDBAMA DUŠANOVOG ZAKONIKA

REZIME: Rad predstavlja sintezu saznanja do kojih je autor došao proučavajući Dušanov zakonik. Analiziraju se odredbe u kojima se ispoljavaju državotvorne ambicije cara Dušana. Budući da je bio svestan

veličine i snage države, koja ima svoje pravno izvišće, Zakonik je morao ispuniti careva očekivanja. Kritičari njegove autoritarne vlasti ne mogu osporavati da je ciljano (pravno) ograničio sopstvenu vlast. Pritom je legislativna tehnika bila potpuno u duhu prostora i vremena u kome se Zakonik trebao primenjivati. Zato je namera autora da ukaže na odredbe Dušanovog zakonika u kojima se mogu prepoznati originalni izvori srpske državnosti. Pitanje originalnosti Dušanovog zakonika biće razmotreno u kontekstu sadržaja određenih odredbi. Na tom putu stoje činjenice da je Dušanov zakonik doživio preko 20 prepisa čiji sadržaji nisu u potpunosti podudarni. Stoga, originalnost odredbi Dušanovog zakonika treba ceniti i u odnosu na njemu prethodeće pravne spomenike.

Ključne reči: *Dušanov zakonik, načela, kažnjavanje, diskriminacija, srednji vek, Srbija.*

References

1. Bubalo, Đ. (2010). *Dušanov zakonik [Dušan's code]*. Beograd: Zavod za udžbenike i Službeni glasnik
2. Blagojević, M. (2000). Reforma državne uprave i Dušanov zakonik [State administration reform and Dušan's code]. U: *Dušanov zakonik – 650 godina od njegovog donošenja: zbornik radova sa naučnog skupa [Dušan's code – 650 years since its adoption: collection of papers from a scientific conference]* (pp. 51–70). Banja Luka: Akademija nauka i umjetnosti Republike Srpske
3. Čvorović, Z. (2018). *Dušanov zakonik u ruskom ogledalu (prilog uporednoj srpsko-ruskoj pravnoj istoriji) [Dušan's code in the Russian mirror (a contribution to the comparative Serbian-Russian legal history)]*. Beograd: Catena Mundi
4. Ćorović, V. (1997). *Istorija srpskog naroda [History of the Serbian people]*. Beograd: Ars Libri
5. Đorđević, A. (2011). Prizren i srpski modernisti: projekcija nasleđa kao vrednosti [Prizren and the Serbian modernists: the projection of heritage as a value]. *Baština*, (30), pp. 67–77
6. Đurđev, A. (2000). Dušanov zakonik kao ustav u materijalnom smislu [Dušan's code as a constitution in the material sense]. U: *Dušanov zakonik – 650 godina od njegovog donošenja: zbornik radova sa naučnog skupa [Dušan's code – 650 years since its adoption: collection of papers from*

- a scientific conference] (pp. 213–217). Banja Luka: Akademija nauka i umjetnosti Republike Srpske
7. Fajfrić, Ž. (1999). Zakonik cara Dušana [Codex of Emperor Dušan]. *Glasnik advokatske komore vojvodine časopis za pravnu teoriju i praksu*, 71 (3), pp. 67–76
 8. Ferjančić, B., & Ćirković, S. (2005). *Stefan Dušan, kralj i car 1331-1355* [Stefan Dušan, king and emperor 1331-1355]. Beograd: Zavod za udžbenike i nastavna sredstva
 9. Joksić, I. (2015). *Dušanov zakonik–socijalni kontekst i pravna nasleđa* [Dušan's code – social context and legal legacies]. *Nacionalni interes*, 24 (3), pp. 189–207
 10. Joksić, I. (2019). *Krivično pravo – opšti deo* [Criminal law – general part]. Novi Sad: Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe
 11. Katančević, A. (2015). Da li su Sasi imali privilegije u mešovitim sporovima u srednjovekovnoj Srbiji? [Did the Saxons have privileges in mixed disputes in medieval Serbia?]. *Anali Pravnog fakulteta u Beogradu*, 63 (2), pp. 107–118
 12. Maksimović, Lj. (2007). Srbija i ideja univerzalnog carstva [Serbia and the idea of a universal empire]. *Zbornik radova Vizantološkog instituta*, 44 (1), pp. 371–379
 13. Protić, P. (1986). *Sumnje i nadanja. Prilozi proučavanju duhovnih kretanja kod Srba u vreme romantizma* [Doubts and hopes. Contributions to the study of spiritual movements among Serbs during Romanticism]. Beograd: Prosveta
 14. Solovjev, A. (1998). *Istorija slovenskih prava – Zakonodavstvo Stefana Dušana cara Srba i Grka* [History of Slavic Law – Legislation of Stefan Dušan, Emperor of the Serbs and Greeks]. Beograd: Službeni list SRJ
 15. Stojanović, S. (2022). Patrimonijalni crkveni sud u Dušanovom zakoniku [Patrimonial ecclesiastical court in Dušan's Code]. *Glasnik Advokatske komore Vojvodine: časopis za pravnu teoriju i praksu*, 94 (1), pp. 4–50
 16. Šarkić, S. (2011). Gradsko stanovništvo u srednjovekovnoj Srbiji [Urban population in medieval Serbia]. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 45 (2), pp. 17–27
 17. Taranovski, T. (2002). *Istorija srpskog prava u Nemanjićkoj državi* [The history of Serbian law in the Nemanjic state]. Beograd: Lirika
 18. Terzić, P. (2016). Konstanova kritika Rusoovog shvatanja narodne suverenosti i pokušaji ograničavanja vladavine većine [Constant's

- criticism of Rousseau's understanding of popular sovereignty and attempts to limit majority rule]. *Kultura polisa*, 13 (29), pp. 45–57
19. Terzić, P. (2018). Odnos vojske prema političkoj modernizaciji u doba vladavine Milana i Aleksandra Obrenovića [The attitude of the army towards political modernization during the reign of Milan and Aleksandar Obrenović]. *Kultura polisa*, 15 (37), pp. 43–54