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THREE NOVELLAE OF ALEXIUS I COMNENUS IN THE NOMOCANON OF SAINT SAVA ¹

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Abstract. Chapter 46 of the Nomocanon of St. Sava was an important point in establishing the Christian model of marital and premarital relations in the newly founded Archbishopric of Žiža. Together with the rules laid down in Chapters 55, 56, 58, and 59, it was part of the mixed, canonical and secular materials regulating the topic. This paper presents and analyzes the content of Chapter 46, which contains a section with three laws promulgated by Byzantine emperor Alexius I Comnenus. The Novella of 1095 regulates the process of proving freedom for persons descended from “Bulgarians and the like” and introduces mandatory religious marriage, which the scholarship interprets as the full penetration of the Christian notion of grace into this sphere of life. The other two novellae (1084 and 1092) regulate lawful, “genuine” betrothal, per ecclesiastical and secular law. It was to precede marriage and required a religious ceremony of betrothal for persons of age. The Novella 1092 was enacted on the occasion of receiving an *oikonomia* from the previous requirements. These Novellae of Alexius I Comnenus were drawn up in response to the peculiar needs of the Byzantine state and society and the conflicting positions in this branch of law; they also directly led to the writing of numerous church treatises and polemics in Constantinople and the provinces. Some of those writings were included in the Nomocanon of St. Sava. Therefore, although grouped into a separate section, Alexius’ novellae should be seen in the context of other rules on betrothal and marriage adopted upon the establishment of the autocephalous Serbian Church.

Key words: Byzantine law, Saint Sava’s Nomocanon, marriage law, church law, Serbian medieval law.

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ТРИ НОВЕЛЛЫ АЛЕКСЕЯ I КОМНИНА В НОМОКАНОНЕ Св. САВВЫ ¹

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Аннотация. Глава 46 Номоканона Св. Саввы стала важным шагом в утверждении христианской модели брачных и добрачных отношений во вновь основанном Жичком архиепископстве. Вместе с правилами, изложенными в главах 55, 56, 58 и 59, оно входило в состав смешанных, канонических и светских, материалов, регулирующих предмет обсуждения. В статье представлено и проанализировано содержание 46 главы, содержащей раздел с тремя законами, обнародованными византийским василевсом Алексеем I Комнином. Новелла 1095 г. регламентирует процесс доказательства свободы лиц, происходящих из «болгар и им подобных», и вводит обязательный религиозный брак, который ученые интерпретируют как полное проникновение христианского понятия благодати в эту сферу жизни. Две другие новеллы (1084 и 1092 гг.)

регулируют законное, «подлинное» обручение согласно церковному и светскому праву. Оно должно было предшествовать браку и требовало религиозной церемонии обручения лиц, достигших брачного возраста. Новелла 1092 г. была принята в связи со случаем получения ойкономии, исходя из предшествующих требований. Новеллы Алексея I Комнина были составлены в ответ на особые потребности византийского государства и общества, и противоречивые положения этой отрасли права; они также прямо вели к написанию многочисленных церковных трактатов и полемике в Константинополе и провинциях. Некоторые из этих сочинений вошли в Номоканон Св. Саввы. Поэтому, хотя новеллы Алексея и включены в отдельный раздел, их следует рассматривать в контексте других правил об обручении и браке, принятых при учреждении автокефальной Сербской церкви.

Ключевые слова: византийское право, Номоканон Св. Саввы, брачное право, церковное право, сербское средневековое право.

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*In loving memory
of my grandfather Ilija Lavrnić
(16 February 1933, Komić, Lika –
6 March 2024, Belgrade)
and his sister Jovanka Šimunović
(15 May 1937, Komić, Lika –
2 March 2024, Podgora, Makarska)*

1. Rules on betrothal and marriage in the Nomocanon of St. Sava: An overview

The mixed, canonical-secular part of the Nomocanon of St. Sava of Serbia, which covers from Chapter 45 to Chapter 64, includes a translation of three writs issued by the Byzantine emperor Alexius I Comnenus (1081–1118). Chapter 46 brings the three novellae in the following order: the Novella of 1095 on the liberation and religious wedding ceremonies for slaves, the Novella of 1084 on legally binding betrothal (engagement), and the Novella of 1092 on the dissolution and legal nature of betrothal. The common theme in all three laws is specifying the church-legal jurisdiction in betrothal and marriage, with the first novella also dealing with proving one's personal freedom (for an overview, see: [54, pp. 288-291]).

The canonical and, even more so, secular content of the Nomocanon of St. Sava, which includes rules on betrothal and marriage, is very extensive. This branch of law gained prominence in Byzantine civil law from the late 10th century onward (see: [61]). Besides the three novellae discussed in this paper, the Nomocanon of St. Sava also included the Old Serbian translation of the entire Byzantine legal manual known as

the Prochiron, renamed *Zakon gradski* in the translation (Chapter 55).

Besides the extensive content of the *Zakon gradski*, the Serbian legislator included a few decisions on betrothal and marital relations in his codex. Their content is given in Chapters 56 and 58 of the Nomocanon. The miscellaneous Chapter 56 first brings the text of the “о беззаконныхъ брацехъ. срѣчь ѿ кровомѣшени” [9, pp. 217-231]. This is the well-known Tomos enacted under Patriarch Sisinnius II of Constantinople (996–998) in 997, which describes prohibited marriages between consanguineous and affinal relatives ([9, pp. 4, 11-19]; the description see [58, N.809]).

Title “отъ(ь) тогожде скоро” [9, pp. 231-233] is followed by a text attributed, based on its stylistic characteristics, to Demetrios Synkellos, Metropolitan Bishop of Cyzicus, on the seventh degree of affinal kinship (ἀγγιστεία – близостьство), at which marriages were allowed and which was equalized with the eighth degree of affinity, and the seventh degree of consanguinity (marriage with a second cousin's daughter), which the laws neither permitted nor prohibited (see: [21, p. 110]), for Old Serbian translation [21, pp. 111-113].

The synodal decision passed under Patriarch Alexius Stoudite (1025–1043), “Писаннїе патриарха изложено отъ(ь) ншан(н)а книгохранителя. ншополнта ѿ поемшнмь вторуюю братоу҃чедоу своєне м(а)т(е)ре. н ѿ под(о)бнѣмь дати юмоу запрѣщенїи”. This decision discussed the case of a marriage at the seventh degree of consanguinity. Under the same patriarch, the following decision was adopted: “Ѡ нѣкоємь съетавшнмь своємоу с(ь)новн бракомь дьщерь нѣкоєго подь властню соуцоу без воле ѿ(т)ца ює”. The present rule examines a marriage with an

underage daughter (below the age of twenty-five), who had married without her father's consent, that was to be considered illicit [66, pp. 37-39; 58, N.845]; Old-Serbian translation [9, pp. 235-238]. The section titled “Љ ТЪХЖДЕ БРАЦЪХЪ” in Old-Serbian translation [9, pp. 238-239] includes the text of the 1038 decision introducing the seventh degree of consanguinity as an impediment to all future marriages. “ЉТЬ ННОЕ ГЛАВЫН” in Old-Serbian [9, pp. 239-242] is a heavily abridged fragment from the text “Μελέτη” by Demetrios Synkellos², Metropolitan Bishop of Cyzicus ([66, pp. 354-355]; cf. [9, p. 242, n. 3]). Chapter 56 ends with an appendix on the classification of prohibited and lawful marriages with consanguineal or affinal relatives, “С ДѢ НЗВѢСТНОЕ РАЗДѢЛЕНІЕ ВЪЗБРАНЕННЫМЪ И ЗАКОННЫМЪ БРАКОМЪ” [9, pp. 242-250]³, with visual representations and instructions for calculating the degree of kinship.

Some matters concerning marital law were explained in the reply of Nicetas, Metropolitan of Heracleia, preserved in Chapter 58 of the Nomocanon [9, pp. 261-268; 4]. In Chapter 59, the Serbian lawgiver brought the text of the so-called Tomos of Union [9, pp. 268-275]⁴ promulgated under Patriarch Nicholas I that refers to the fourth marriage of the Emperor Leo VI the Wise ([48]; cf. [52]). The Tomos provides explanations concerning first, second, third, and fourth marriages and the epitemia applicable in those cases [9, pp. 4, 11-19].

2. Byzantine sources and the manuscript tradition

As the protograph of the Nomocanon of St. Sava is lost, research relies on the preserved manuscripts. Surviving manuscripts of the Serbian redaction date from the 13th to the 17th centuries. The Ilovica copy (1262) is known to be chronologically closest to the source. This manuscript was published as a phototype edition and is fully read and translated, ensuring optimal conditions for research [8; 10; 11; 9; 23; 7]. The text contains all of the abovementioned elements of the Nomocanon of St. Sava, listed in the designated chapters, suggesting that the protograph possibly had them, too⁵. In addition to Ilovica, the earliest copy, five 14th-century manuscripts containing the Nomocanon of St. Sava have reached us: the Ras, Dečani, Pčinja, Chilandar, and Sarajevo copies. Two are

datable to the 15th century: the Belgrade and Peć nomocanons. Of the nomocanons examined by Prof. S. Troicki, Dečanska, Pčinjska, Sarajevska, Pećka and Savinska Krmčija [24, p. 94], only the Peć manuscript (mid-16th century) does not contain the novellae of Alexius I Comnenus [24, pp. 94-95].

Almost thirty years ago, L. Burgmann proposed that the Nomocanon of St. Sava was similar to a Greek nomocanon that has survived in Codex Vaticanus graecus no. 1167 (13th – 14th centuries) [27]. Although there are sound arguments against the possibility that the two were identical, some degree of similarity is apparent. That is also the case with the material regulating betrothal and marital relations. Namely, the collection discovered in the manuscript from the Vatican Library contains the three novellae of Alexius Comnenus [27, p. 97]⁶ in Chapter 46 of the Nomocanon of St. Sava, reproduced in the same order. The Greek nomocanon also included the Tomos of Union from Chapter 59 [27, p. 95]⁷. The complete content of Chapter 56 in the Nomocanon of St. Sava is missing and is – so to speak – replaced by a set of rules on adultery, debauchery, and third marriages [27, p. 95]⁸, which still include the canons of the Synod of Ancyra and selected rules of St. Basil the Great concerning these matters [27, p. 98]. Chapter 7 brings the replies of Metropolitan Nicetas of Heracleia [27, p. 95]⁹. However, this Greek nomocanon does not include the Byzantine manual Prochiron.

We know of no other Slavic nomocanon that preceded St. Sava's and included translations of the three novellae issued by Alexius I Comnenus. That is understandable, as the first Slavic translations of the Greek nomocanons appeared during the time of Sts. Cyril and Methodius and the Christianized First Bulgarian Empire. Those were the so-called Nomocanon of St. Methodius (see: [49; 67, p. 120]), translations of John Scholastic's Syntagma and Nomocanon in 14 titles (without commentaries), also known as Old Slavic Kormchaja (see: [3; 67, p. 138 sqq.]).

The Nomocanon of St. Sava was highly influential in the development of similar compilations in Russia, to which this legal tradition probably arrived via the Second Bulgarian Empire [24, p. 2]. Among other things, this led to the further expansion of the section

with the three novellae of Alexius I Comnenus. The Ryazan Kormchaja (1284), known to have incorporated the interpretations from the “Old Serbian edition,” brings the three imperial writs in the same order as the Serbian source [20, pp. 70-71; 54, pp. 291-292]. Also, the *Merilo Právednoye* (“Just Measure”), whose earliest copy is datable to the 14th century, contains those three novellae and lists them in the previously seen order (see: [17, pp. 87-88; 25, p. 154]). Among others, this source was used for compiling one of the later redactions of the Kormchaja in the territory of Russia, known as the Chudovo Kormchaja [17, pp. 128-135], whose earliest copy, the Perm copy, dates from the third quarter of the 15th century. This kormchaja includes the three novellae [6; 2, pp. 57-59], as does the version printed in 1653.

The overview suggests that some sections regulating betrothal and marital relations functioned as independent items in the manuscript tradition. However, no source that has reached us can directly confirm the spread of the three novellae of Alexius I Comnenus in Slavic manuscripts produced before the Nomocanon of St. Sava and, consequently, in the Slavic milieu. Their reception opens up other research topics, such as the specific reasons for their inclusion in the Nomocanon of St. Sava. The existence of this block in the one Greek nomocanon nevertheless brings us closer to answering the question of how and why these three imperial laws – and not some other ones – were among the selected material¹⁰. The surviving writings of Demetrius Chomatenus also frequently refer to the legislation on betrothal and marriage enacted by Alexius I Comnenus (see: [30, nos. 19, 21, 34, 124]; cf. [54, p. 163]).

3. The contents of the three included novellae of Alexius I Comnenus

In the order they were listed in the Nomocanon of St. Sava.

3.1. The Novella on the Liberation of Slaves and Church Marriages of Slaves

As the first-listed law, Chapter 46 brings the text of the Novella promulgated by Emperor Alexius I Comnenus in 1095¹¹ and formulated as replies to two petitions appealing to the emperor’s grace – the first sent by Patriarch Nicholas III Grammaticus and the second by Theodulus, Bishop of Thessalonike (see the edition: [50,

pp. 341-346]; see also: [22; 12; 38; 36]). The copies of the Serbian-redaction Nomocanon of St. Sava, the Nomocanon in Codex Vaticanus graecus no. 1167¹², and the nomocanons compiled later based on the Serbian redaction of the Nomocanon reproduce only the reply to the first petition¹³. However, it is the response to the second petition that provides insight into the background of this imperial law.

At the beginning of the reply in the Nomocanon of St. Sava, Alexius I Comnenus writes to Nicholas III Grammaticus, Patriarch of Constantinople, about two contentious matters he had heard about. The first petition concerned the descendants of “Bulgarians and the like” who, at the Church of the Holy Wisdom (“τῷ ἁγίῳ μεγάλῳ καὶ θείῳ ναῷ τῆς τοῦ θεοῦ λόγου”), sought to prove their status as free men¹⁴. These were the freeborn scions of “Bulgarians and the like” that had been sold by their impoverished parents and brought to Constantinople in childhood¹⁵. The text does not specify the geographical region from whence they came. However, referring to them as “Bulgarians and the like” suggests that this must have been a non-Greek-speaking, barbarian population, which probably lived in the territories of the Byzantine Empire (cf. [47; 16; 18]).

In previous cases, the slaves’ demands for liberation were contradicted by their masters’ witnesses, making the lawsuits uncertain and protracted and unlikely to be won by the petitioners. As per the decision enacted by Basil II Boulgaroctonus in 996 ([50, pp. 262-272]; see Cap. I [45]) and the ruling explained in the Novella, testimonies regarding someone’s status as a free person could not be refuted by witnesses testifying on behalf of their influential masters; instead, they would have to find witnesses to testify they had been born free or provide written proof of their freedom, i.e., a letter of manumission ([50, p. 242, ll. 17–18]; cf. [13, pp. 148-149]). Thus the legislator extended protection to this population category, which had become part of the Byzantine *politeia*. The position of Byzantine citizens was regulated in accordance with the rule of Leo VI the Wise that they could not lose their freedom by being sold into debt slavery (Leo VI. Novella no. 59 ([51, pp. 221-223]; cf. [38, p. 164; 59, pp. 175-176]). The Nomocanon of St. Sava brings an intriguing phrasing of one place in the text, which does not appear in the Greek

original published by Lingenthal and the Zepos father and son ¹⁶.

The second topic discussed in the Novella is Christian marriage among enslaved persons. The lawgiver makes the Christian wedding ceremony mandatory for slaves' marital unions, not specifying whether that referred only to persons whose efforts to prove their freedom were previously described or to slaves in general. The text goes on to reveal that it indeed referred to persons accepted into the *politeia*. It states that masters who violated this law would lose power over their slaves, but it also assures them that a Christian wedding ceremony undergone by slaves does not automatically entail manumission (cf. [59, p. 177; 13, p. 146]) ¹⁷. Christian marriage among slaves is described as a gesture of Christian grace extended to this population category ¹⁸. In line with the Novella's overarching theme, we can assume that enslaved foreigners, once the process of proving freedom was made easier, must have benefited from the introduction of mandatory Christian weddings – not merely ideationally or by getting a sense of equality; unless a Christian wedding ceremony took place, the masters would lose their slaves, and if it did, presumably, the masters could no longer alienate or separate persons in a subordinate or enslaved status, which was one of the more challenging aspects of such a status ([42, p. 266 sqq.]; cf. [37, pp. 18-20]) ¹⁹.

3.2. The Novella of 1084 on genuine betrothal

The second novella in Chapter 46 of the Nomocanon of St. Sava was promulgated “М(ѣ)с(ѣ)ца нюниа. нндикта седмаго. въ лѣт(ѣ) сѣѣѣ.” And set down by “Варды. хранителя полатѣ. и прьваго соуднѣ силнаго” ([10, p. 678, ll. 26–32]; see also: [68, pp. 62, 145-156; 47, pp. 150-151]; on Bardas Hikanatos see [14, p. 708]). The Greek text of the Novella does not include this title, listing only the date ([50, pp. 305-309]; no. XXXIV). A title identical to the Old Serbian version appears in Cod. Vat. gr. 1167 [10, p. 678, n. 1] ²⁰.

The topic of the Novella is establishing “когда ксть истинноу обрѣченнѣ” [10, p. 679, l. 21]; “ὅ τι ποτὲ κυρίως ἐστὶν ἡ μνηστεία” ([50, p. 306, ll. 5–6]; cf. [50, p. 307, l. 10]), meaning a legally binding betrothal, as per ecclesiastical and secular law. The synodal decision, passed under Patriarch John VIII Xiphilinus in 1066 [66, pp. 51-52; 58, N.896] ²¹ and confirmed by

Emperor Nicephorus III Botaneiates in 1080 [50, pp. 338-340], made the impediments to marriage applicable to betrothal, too. These also were the degrees of affinity introduced as impediments to marriage by Patriarch Sisinnius II in 997 (5th and 6th degree), which had, however, never been confirmed in imperial legislation until Alexius' time. With the emperor's affirmation of these rules, betrothal and marriage passed firmly into the hands of the Church, supplementing the rules on Christian wedding ceremonies enacted during the reign of Leo VI the Wise (886–912) (Leo VI. Novellae nos. 74 and 89).

Lawful, “genuine” betrothal was to precede marriage and could not take place at the same time as the wedding. It required a religious ceremony of betrothal for persons of age (twelve years or older for girls and fourteen or older for boys) [10, pp. 684-685; 50, p. 308, l. 13 sq.] ²². This was a departure from the rules instituted in Leo VI the Wise's legislation, which allowed betrothals to be arranged for seven-year-olds (or older) and required a religious betrothal ceremony for twelve- and fourteen-year-olds, just like marriage (Leo VI. Novella no. 109; cf. Ecl. 2, 1; Proch. 4, 2). The 1084 Novella of Alexius I Comnenus fully equalized betrothal and marriage, meaning that its dissolution and subsequent marriage with another was considered adultery (πρѣлюбодѣяннѣ, μοιχεία), as per a canon of the Quinisext Council (see: [10, p. 681, ll. 10–21; 50, p. 307, ll. 3–10]).

The Novella did not specify whether the impediments to marriage, now expanded to include betrothal, referred only to betrothals of persons of age or to all betrothals, including those judged as “imperfect.” One reading argues that the Novella of 1084 limited the application of Patriarch John VIII Xiphilinus' synodal ruling, which had covered all betrothals, restricting it solely to “genuine” betrothals [40, p. 36; 26, p. 409] ²³. Other scholars have proposed opposite views [35]. Be that as it may, shortly after he ascended the throne, Alexius I enacted the 1084 Novella and, via the Church, established control over the formation of alliances between powerful families [40, p. 36].

This Novella forbade notaries to draw up betrothal contracts according to the old rules, and anyone who dared disobey would not be allowed to continue working as a notary [10, p. 685, l. 33; p. 686, l. 14; 50, p. 309, ll. 19–21]. It also ruled

that the chancellery “τῶν οἰκειακῶν” (cf. [44, p. 1105]) would collect a fine for the state treasury (cf. [53, p. 610; 43, p. 353]) from both signatories of such a (betrothal) contract due to breach of law [50, p. 309, ll. 22–25; 10, p. 686, ll. 10–13].

3.3. The Novella of 1092 on the indissolubility of betrothal

The last of the three novellae continues the topic introduced in the preexisting law, enacted by the emperor previously. In the Nomocanon of St. Sava, the 1084 Novella is followed by the Novella issued in March 1092 [50, pp. 319-325; 68, p. 62; 47, pp. 154-156] upon receipt of a report by “хранительѣ полатѣ и великаго стража”, i.e., the couroupalates and grand drungarius of the Vigla (“Watch”) John the Thracesian²⁴. The theme of the report and the resultant imperial Novella is affirming the legal nature of betrothal – in other words, affirming the indissolubility of betrothal. The Novella also provides for the possibility of imperial dispensation (exemption from the rule) when deemed justified.

The senior judicial official named John the Thracesian described to the emperor his experience from the Hippodrome tribunal. The court petitioned by parents who wanted to terminate the betrothal contracts of their children by giving back the assets they had received as part of the engagement. It would have constituted a violation of the preexisting rule on the indissolubility of betrothal. The judge reported disagreements in the courtroom regarding the (in) dissolubility of betrothal and asked the emperor to definitively settle the matter [50, p. 321; 57, no. 1168]. The text of the emperor’s writ reiterated the rule set down in the 1084 Novella, in which betrothal was indissoluble. This Novella required a religious ceremony, and it could not be dissolved by returning the gifts exchanged on the occasion. Patriarch John VIII Xiphilinus’ ruling concerning kinship-related impediments to marriage was to be fully implemented and expands to include betrothal. The source (Synopsis Major, Γ II, 1) reports that, between the two surviving novellae (from 1084 and 1092), in December 1088, Alexius I Comnenus issued another writ. It prohibits marriage at the sixth degree of affinal kinship and expands the previous (secular) definition of illicit marriages ([57, no. 1168]; cf. [47, p. 156])²⁵. Only indirect testimonies

about this law have reached us, but they were not included in the Nomocanon of St. Sava.

The Novella stated that the betrothal contract would not list betrothal gifts. It reiterated the age limit for the affianced, stipulating that, exceptionally, it could be reduced to the age of seven by the emperor’s decision and in line with the legislation of Leo VI the Wise. He provided that the parents ensure a carnal union, which would not take place until the affianced reach sexual maturity. In this case, the consequences were the same as in betrothals entered into by persons of age: if one of the affianced persons died before the wedding, the other party could not enter into betrothal or marriage with their relatives, as per the previously enacted decisions.

The specific case that led to the promulgation of the 1092 Novella is known. The emperor issued a *prostagma* allowing the protoproedros and hetariarches Bardas Xeros [63, p. 137 (h)]: “τοῦ Καταζωτοῦ” to marry a girl at the sixth degree of affinal kinship ([57, no. 1168]; see [40, p. 38])²⁶. The emperor’s decision was presented at a synod chaired by Patriarch Nicholas III Grammaticus, who accepted it ([57, no. 1168; 58, N.954 (961)], cf. [64, pp. 283-284; 65, p. 559; 40, p. 38; 26, p. 410]). Then, according to Theodore Balsamon, this decision was incorporated into the synodal act [58, p. 422]. To prevent any dissent among the senior clergy, the emperor then compiled an explanation (ἐρμηνεία) [66, pp. 59-60]. After that, a new synod was held to reconsider the previous decision and confirm it [58, N.955]. Several sources name the author of a “treatise” as “grand drungarius of the Vigla” Skylitzes, who was, as noted above, the same person as John the Thracesian (Prochiron Auctum, VIII, 50; see Cod. Vindobonensis jur. gr. 13, 87v–91r; cf. [68, p. 331, n. 1; 40, pp. 38-39]). These reports led A. Laiou to assume that this “treatise” was the explanation the emperor presented to the synod [58, N.955, N.963; 40].

At a synod in May 1092, attended by the patriarch and members of the synod as well as seven archons, members of the Senate and judges, including John the Thracesian, Bishop Basil of Philippopolis asked for a ruling on the permissibility of marriage between persons at the sixth degree of affinal relations. The marriage of an uncle and niece with an aunt and nephew is also mentioned in this synodal enactment. It is to

give Bishop Basil guidelines for resolving similar cases in his diocese. The attendees brought up the case of Bardas Xeros and voiced uncertainty about the applicability of the rules of the affinal kinship set down in Patriarch Sisinnius' Tomos [58, N.956; 66, pp. 58-59; 26, p. 410]. A month later, on 14 June 1092, the synod reconvened. The bishops of Bithynia, Caria, and Euchania, who had previously abstained in the voting process, reported that they had examined the imperial, patriarchal, and synodal documents and the "explanation," agreeing with the other senior church officials ([58, N.958; 66, p. 59]; see also [40, pp. 38-39]).

The permissibility of the sixth degree of affinity is established in an individual case based on a *prostagma* issued by Alexius I Comnenus in 1092, with the calculation 3+3 (an uncle and niece from one family marrying an aunt and nephew from another family). It caused a wave of reactions among the clergy in the 12th and 13th centuries, especially in relation to the Tomos rule (4+2; explained above) and a third variant, 5+1 (marriage of a "little" aunt and "little" niece – in the fifth degree with a father and son)²⁷.

4. Conclusion

The 11th and 12th centuries saw the enactment of many secular and church laws on marriage and prenuptial relations in the Byzantine Empire, which *de facto* applied to all its inhabitants. And yet, many sources suggest that these rules were violated not only in the provinces but in Constantinople, too. One can hardly argue against the conclusion of A. Laiou, proposed decades ago, that the promulgation of most of those laws directly or indirectly had to do with controlling powerful family clans and consequently curbing the growth of their property portfolios (cf. [39, p. 282]). Amidst many contradictory and conflicting rulings, at the end of the 11th century, Alexius I Comnenus issued three seemingly straightforward and reasonable laws, veiled as Christian grace and meant to lessen the existing polarization in marriage law. The special circumstances underlying the 1092 Novella on betrothals pertained to the possibility of departing from the preexisting rules based on imperial *oikonomia*²⁸. As we know, the conflict of interest, arising from

the overarching sociological and economic background, did not disappear and, quite the contrary, intensified under Alexius' successors.

At the various laws he chose to include in the significant miscellaneous part of the Nomocanon, the Serbian lawgiver chose the three novellae of the Byzantine emperor Alexius I Comnenus discussed in this paper. Although grouped into a separate section and, judging by the manuscript tradition, a stand-alone block in the scribing tradition, Alexius' novellae should be seen in the context of other rules on betrothal and marriage adopted upon the establishment of the autocephalous Serbian Church. Other vital elements of the miscellaneous part of the Nomocanon show that Serbian bishops were given detailed instructions. They specify which marriages were prohibited, especially when it came to affinal relations. According to those rules, the affinity was ordered to expand on betrothals. The inclusion of tables for calculating kinship degrees and the diagrams of prohibited marriages show that these elements were not adopted merely as dogma but were intended to be used in practice. The Nomocanon of St. Sava reproduces the up-to-date Prochiron (as opposed to the obsolete Ecloga in earlier Slavic nomocanons), the modern material from Alexius' novellae, and the related writings. The second part of the Nomocanon seemed to have been preoccupied with marriage and prenuptial relations, including impediments to marriage (and betrothal). These impediments spring from consanguinity and affinity, which led to the issuing of the novella 1092. It does not seem that the Serbian legislator intended to rectify some existing and deeply embedded undesirable behavior; rather, his insistence on the adopted rules was probably meant to prevent the emergence of the socio-economic problems that already plagued the Empire. However, we can hardly say that the new forms of rules, cited in various sources, were observed with no resistance or confusion. Those writings, like the sources quoting them, emerged from various forms of opposition.

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NOTES

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² Bishop Demetrios served under emperors Romanus III Argyrus and Michael IV the Paphlagonian in the first half of the 11th century after having previously spent 17 years at the chancellery of the Quaestor mysticus, where he presumably became familiar with legal problems in practice (see: [68, pp. 45, 323]). There are other stand-alone reports about his service at the Great Church (see [32, p. 25]).

³ The earliest known variant of a table for calculating kinship degrees appears in the manuscripts accompanying the Ecloga (Appendix Eclogae, IX); on the Ecloga and the text preceding it (see [28]; for an English translation and commentary, see [41, pp. 104-105]; and the commentary in [34, pp. 138-152]; see also [56, p. 218]).

⁴ A reading and Serbian translation of the text can be found in [9, pp. 268-275].

⁵ However, additional notations are known, including the one on prohibited marriages, which the Ilovica nomocanon does not include. On this and the protograph of the Sarajevo nomocanon, believed to be older than the Ilovica copy (see [9, pp. XI-XIV (esp. pagination)]).

⁶ The three novellae are at positions 63–65 (foll. 119r–125r).

⁷ The Tomos of Union is at position 8 (foll. 24v–26v).

⁸ The set of rules is at position 4 (foll. 18v).

⁹ See foll. 24r/v.

¹⁰ L. Burgmann argued that the Nomocanon of St. Sava was based on an earlier copy or the protograph of the nomocanon in Cod. Vaticanus graecus no. 1167 or a similar text.

¹¹ The year of the reply to the second petition is known because the text lists the date it was issued. However, the answer to the first petition does not, but K.S. Zachariae von Lingenthal believed that it was promulgated in 1095, notwithstanding the contradictory reports in later sources (see: [61, p. 561, n. 31; 36]).

¹² A digitized manuscript of the folios with the three novellae was available to the author courtesy of the Biblioteca Apostolica Vaticana.

¹³ The later nomocanons are described above.

¹⁴ Given that the second petition about the same matter was sent to the emperor by the archbishop of this city, scholars believed, taking their cue from Lingenthal, that those lawsuits had taken place before this church. However, the first petition, which mentions an ecclesiastical court, was sent by the patriarch of Constantinople. The sources explain that the tribunal attached to Hagia Sophia in Constantinople, known as the *ekdikieion*, had jurisdiction in some legal matters. Sources ranging from the 12th to the 15th centuries report that the *protekdikos* had judicial powers in matters concerning debtors, runaway slaves, offenders who had committed manslaughter or premeditated murder, and other persons who sought asylum in Hagia Sophia in Constantinople (see: [45, p. 129; 46, pp. 68-69; 13, p. 151]; cf. [1, p. 147]).

¹⁵ This report appears in the reply to the second petition ([50, p. 344, (B (33α) =, α', l. 3–4)]; see: [22, p. 370; 1, p. 152]; cf. [36]).

¹⁶ The Nomocanon of St. Sava uses the phrase “*ἡμῶν ἐν τῇ βασιλείᾳ ἡμῶν ἡμῶν ἐν τῇ βασιλείᾳ*” in its translation of a spot that in the Greek text contains two different and contradictory variants of the statement “*οὐς εἰς δουλείαν ἢ καθ’ ἡμᾶς παρέλαβε πολιτεία*” and “*οὐς εἰς δουλείαν ἢ καθ’ ἡμᾶς οὐ παρέλαβε πολιτεία*” [11, p. 673]. However, this seems to be a mistake made in the copying process, as the rest of the text leaves no room for ambiguity – the Novella referred to persons accepted into the *politeia* (see: [19, p. 184; 55, pp. 179-180; 36]). About the concept “*δουλεία*” see also [5].

¹⁷ In the Byzantine legal tradition, the act of manumission could take place in a church (*manumissio in ecclesia*), a practice known from the 8th-century codification of the Isaurian dynasty, Ecl. 8, 1, 4 [31].

¹⁸ Christian marriage is known to have been mandatory for the Empire’s free inhabitants starting from the late 10th century and the legislation of Leo the Wise.

¹⁹ I am indebted to Dr. Stanoje Bojanin for pointing out this possibility.

²⁰ M. Petrović also noticed that the title was identical (see [10, p. 678, n. 1]).

²¹ About a year later, on 19 March 1067, a synod confirmed the patriarch’s decision (see: [66, pp. 53-54; 58, N.897]). Interestingly, there is a surviving report of the synodal decision attributed to patriarchs Sisinnius II and Xiphilinus (with 66 years separating their respective pontificates) that the entire body of legislation on marriage applied to betrothal (prenuptial relations) (see [58,*N.812]).

²² There is an unsigned act, attributed to Patriarch Nicholas III Grammaticus, mentioning an imperial law

that introduced an age limit for betrothal. The editor, V. Grumel, thought that this was a reference to the 1084 Novella. For an edition of this act (see: [33]).

²³ The slightly later text by Nicetas, Bishop of Ancyra, compiled at the behest of Alexius I Comnenus, lamented that all betrothals were equalized with marriage, both those that had been blessed and those that had not. (The text was published in [29, pp. 268-275]; see also [40, p. 22].)

²⁴ This was a high-ranking title, and the *droungarios tēs viglēs* (“Drungarius of the Watch”) was the senior judicial position held by the judge who presided over the Court of the Hippodrome in Constantinople, as the commentary in the *Ecloga Basilicorum* from the first half of the 12th century informs us (see [45, p. 124]). W. Seibt proposed that John the Thracesian and John Skylitzes, the author of the famed Byzantine chronicle from the late 11th century, were one and the same; this view is now accepted (see: [62]).

²⁵ On this episode and the possible reasons behind the enactment of such a law, which might have had to do with the birth of John II Comnenus in 1087 and the previous betrothal of the emperor’s daughter Anna Comnena and Constantine Ducas (see: [40, pp. 37-38]; cf. [61 p. 559]). There might be a reference to the Novella of 1088 in the text of Nicetas of Ancyra, who cites the *semioma* of Emperor Alexius Comnenus, which declared seventh-degree consanguinity and sixth-degree affinity to be absolute impediments to marriage [40, p. 22].

²⁶ Although the particular circumstances of the pair’s affinal kinship are unknown, this case was not identical to the cases described in the Tomos of Patriarch Sisinnius as prohibited because the Tomos calculated sixth-degree affinal kinship as 2+4, and in the case of Bardas Xeros, as 3+3. This difference was used to justify the ruling in the dispensation (see: [68, p. 328]). Theodore Balsamon mentions the *prostagma* in his commentary on the Nomocanon of Fourteen Titles (see: [64, pp. 283-284]).

²⁷ A. Laiou describes the reactions of Michael Chumnus, Theodore Balsamon, Demetrios Chomatenus, John Pediasimus, and Matthew Blastares; some of these jurists accepted the emperor’s *prostagma* as a general and others as an individual rule. She also lists the sources that show opposition to the imperial decision among the clergy (Nicholas of Adrianople and Nicetas of Ancyra) (see: [40, p. 40]). For all variants of the sixth degree of affinity and the subsequent secular and ecclesiastical reactions (see: [68, pp. 319-342]; see also: [60, p. 199]).

²⁸ An interesting and relevant recent contribution examines the chronology of the marriage of the Serbian king Stefan Radoslav and Anna Ducena, daughter of Theodore Comnenus Ducas, ruler of Epirus [15]. This

study is based on the fact that the 1092 Novella of Alexius Comnenus on the betrothal process, age limit, departing from the legally prescribed age, and betrothal gifts (originally the Novella of 1084) was valid in the Despotate of Epirus (cf. [54, pp. 95-96]).

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