Chapter 4

(Yaroslav N. Shchapov)

Russkaya Pravda and Prince Yaroslav’s Statute on Church Courts

The name of Yaroslav Vladimirovich, the Old Russian Grand Prince of Kiev and Novgorod in the eleventh century, whose memory we revere in connection with the celebration of the anniversary of the city of Yaroslavl founded by him, is linked with a number of legislative initiatives that have reached us in different forms and traditions. The historical conditions that existed on the territory of Southern and Northern Rus in the thirteenth and fifteenth centuries did not favour the preservation of those princely orders, laws and statutes in the original and undamaged form. All the written texts containing them belong to much later periods, the fourteenth, fifteenth and subsequent centuries and are usually presented by versions (redactions) and copies that included changes and innovations introduced by scribes-editors in order to adopt the ancient legislation to the needs of their time. But it does not diminish the significant contribution of Prince Yaroslav, the Christian legislator and codifier of law, into creation and consolidation of the Old Russian society and state of the eleventh century. The researchers — historians and
lawyers — in all probability manage to reconstruct not only the content of ancient monuments, but also their structure and even the text.

One of the documents (or some of the documents) linked with the name of Prince Yaroslav is the “charter” of the Prince to which the people of Novgorod referred in order to substantiate their right to invite a prince to rule or to refuse the recognition of him as a prince. According to the Novgorod First Chronicle (Novgorodskaya Pervaya letopis, NPL) of a later version¹ Yaroslav presented this “charter” when he became the Prince of Kiev (NPL, pp. 161, 176). Neither the text nor the complete content of the documents have survived: already in the fourteenth century they lost their urgency and were not copied.

The content of another statute of Prince Yaroslav is known thanks to its inclusion in the Povest Vremennykh Let which served as the basis for later chronicles. It is his will to the sons about the distribution of princedoms among them. When the Povest Vremennykh Let was being compiled in the early twelfth century, the power in the Old Russian princedoms still belonged to Yaroslav’s descendants and the authority of the Prince’s will was the guarantee of the preservation of their dynasties.

Two more monuments of the Old Russian legislation that have survived in the written tradition have the name of Prince Yaroslav in their titles or in the references in the text. They are the Russkaya Pravda and the Statute on Church Courts.

The basis of the Russkaya Pravda in its two early versions and in the so-called “additional articles”, according to modern science, is tacit law of the Old Russian society that had existed before the state, princely jurisdiction, and judicial machinery were formed. Already in the first half of the tenth century, before the official christening of Rus, while regulating the relationship with the neighbours and working out the treaties with Byzantine (in 911 and 944) the rules of this law were recognised by the princely power and used to solve the international conflicts between the Russians and the Greeks (“Christians”). Translated from Greek with the use of the Church Slavonic vocabulary this Russian law was called “Zakon Russkiy” (The Law of Rus), which de facto is the reverse trans-

¹ Новгородская первая летопись старшего и младшего изводов / под ред. и с предисл. А. Н. Насонова. М.;Л.: Изд-во Акад. наук СССР, 1950. 576 с.
lation of “Pravda Russkaya” via the formula «в́мос росикóс» (nomos roskikos). These were legal norms regulating the conflicts related to murders, beating, mutilations, robberies, and violations in the life of the society acknowledged as grave crimes no matter if the society was Christian or pagan.

Oral law in the society having no written language could not be characterised by the unity of legal norms on the whole territory where it was applied. But it was more widespread among the keepers of legal traditions than written law, and to know its norms it didn’t need to be recorded, disseminated on parchment and to have literate users. It explains the fact that Pravda was written only in the first quarter of the eleventh century, two decades after the official spread of the Christian written language in Rus.

The fact that this law is written in the form of the Pravda Yaroslava (Yaroslav’s Pravda) — “Sud Yaroslav Volodimerich. Pravda Russkaya” (in the Short Pravda — “Roskaya”) is connected with the political events in Novgorod and Kiev in 1015–1016.

The conflict between Prince Yaroslav and the people of Novgorod who suffered from the Prince’s Varangian armed force, was solved by recording and certifying the Pravda in the name of the Prince. The people of Novgorod judging by writings on birch bark were as literate as the people of Kiev or Chernigov, and in the first half of the eleventh century written law was already the barest necessity for them.

The studies of the composition and legal content of the Drevneishaya Pravda (the Oldest Pravda) shows that it was devoted to the regulation of the relationship between free individuals — citizens, members of the community, men-at-arms, subjects of law equal in rights — in cases of murders, mutilations, fights, insults, thefts and robberies, including the theft of kholops and puliation. According to the Pravda, one is to be punished for having insulted a man, but not a woman.

The Russkaya Pravda allows us to follow the process of supplanting the community court and jurisdiction in various spheres by those of the Prince; it shows how the compensation to the injured party is being replaced by fines for the benefit of the Prince, how the Prince’s servants
and men-at-arms, having become the Prince’s authorities, gained a privileged position and administered justice.

But at the same time a wide range of cases connected with widespread conflicts related to marriages and divorces, the relationship between spouses, men and women in general remained outside the Prince’s jurisdiction and written law itself. According to the Vast Pravda Russkaya the twelfth century legislator was interested only in the protection of the rights of property of the sons of a widowed mother in case she got married again. Once, in the article 108 of the Vast Pravda it is said about the possibility of going to the Prince’s court in case of the distribution of the legacies among brothers, and it is the possibility not the obligation that is mentioned here: “If brothers litigate before a prince concerning the inheritance...”², that is it is supposed that apart from the Prince’s court there were other instances to solve this conflict.

Does it mean that pre-Christian Rus had neither legal norms nor judicial instances to examine the violations of marital and family law, crimes against women? It surely does not. The indignation of the people of Novgorod at the Varangians raping their wives and daughters caused the retaliation against the rapists and later recording one of the norms of the Pravda proves that the people had the sense of justice in this sphere and their interests were protected outside the competence of the Prince’s court.

Described in the Povest Vremennykh Let, failed attempt of Prince Vladimir to reform criminal law trying to introduce into Rus the norms of Byzantine law with death penalty and mutilation as punishments for murders, robberies and thefts showed that the traditional Old Russian (and barbarian in general) system of compositions, pecuniary compensation to the injured party and fines was again confirmed not only by the Prince, but also by the “bishops” — the church authorities.

The public order of Rus of those times did not allow depriving the state budget of the significant sums provided by viras. The reconstruction of “the order of the fathers and grandfathers” made, according to the Povest Vremennykh Let, at the insistence of both the bishops and “the elders” — apparently, the representatives of the local nobility —

²Правда русская / под ред. Б. Д. Грекова. Т. 2. С. 691—693.
was the capitulation of the representatives of the Patriarchate of Constantinople seeking to introduce the norms of Byzantine penitentiary law to consistent and economically sound Old Russian legal norms. Forced recognition of these norms by the bishops made it possible to use them not only at the Prince’s court, but also at the church court.

Christianization of Rus was followed by the creation of the church organization that originally consisted of bishops and priests having come from Byzantium. They brought the Christian religion, as well as the social and political experience of those well-developed societies and states where Christianity had been born and formed till the tenth century. The level of the development of public law in Rus, just as in a number of neighbouring European countries, differed greatly from the level of its development in the countries where ancient states existed. The conditions of the development of the Byzantine church organization were favourable for the Greek hierarchs to be qualified nomographers, knowing the limits of the church and secular jurisdiction, but changing these limits dashed against strong and traditional power of the Empire’s local authorities. In Rus the church organization discovered the spheres of public law that in the early eleventh century were traditionally regulated by the community and family organisations as the violations in these family and marital spheres did not threaten the new social order. The Old Russian church covered by its jurisdiction a vast group of social institutions, having met no opposition from the state but objectively helping to strengthen the state system and lower forms of social relations in it: monogamy, an individual family, a Christian marriage. Thereby the church jurisdiction in Rus acquired two peculiarities distinguishing it from the Byzantine judicial field. Firstly, it became significantly broader and covered the cases of different social groups that were under the jurisdiction of the state there. Secondly, the church court was authorised by the Church to apply a whole number of norms of customary law that had been under the jurisdiction of the community and family courts.

Prince Yaroslav’s Statute on Church Courts has survived in Russian manuscripts in a great number of copies — this number is equal to the number of copies of the Russkaya Pravda — about 90 of them. There are 18 copies of the Vast Version of the Statute, about 60 copies,
the greatest number, of the Short Version, 6 copies of the west-Russian Rumyantsevskaya and Tarnovskaya Versions and 3 copies of the Ustyuzhskaya Version from the Ustyuzhsky Chronicle. Contemporary researchers have different views on the closeness of the two most ancient versions to the original monument: Ya. N. Shchapov\(^3\) believes the Vast Version to go back to the Kiev text of the eleventh century and the Short Version to be the fourteenth century Moscow redaction of the same Kiev text; A. A. Zimin considers the Statute to be a forgery imitating an ancient text created in Moscow in the fourteenth century and the Vast Version to be a later extension of the Short one.\(^4\)

Monetary measurement with such units as a *grivna* of gold, a *grivna* of silver, just “a *grivna*”, a *kuna* and a *rezana* is typical of the Russian monuments of the eleventh through thirteenth centuries. The term “a *grivna* of gold” had originally applied to a necklace made of gold already mentioned in “The Legend of Princes Boris and Gleb”. Gold came to Rus mainly from Byzantium, most of it being supplied in the eleventh century and by the twelfth century the quantity diminished significantly. As for the rouble rates, given the fact that the copies of the Statute date back to the fifteenth through seventeenth centuries, this monetary unit that appeared in the thirteenth century might have replaced the corresponding rates in *grivnas* of silver mentioned in the earlier texts. It is, however, possible that originally Prince Yaroslav’s Statute could look like a penitential book and included the rates of fines while being spread in different parts of medieval Rus.

Some scientists’ scepticism about the fact that the norms of Prince Yaroslav’s Statute on Church Courts belong to an earlier time, the eleventh century, was explained by the lack of studying the monument, its sources from historical and legal points of view: N. M. Karamzin knew only the sixteenth century copies belonging to the Balzerovsky Variant of the Moscow Short Version of the Statute and quite definitely claimed

\(^{3}\)Щапов Я. Н. Княжеские уставы и церковь в Древней Руси XI—XIV вв. С. 307—317.

the literary monument to be a forgery.⁵ A. A. Zimin considered the Short Version of the Statute, having all the features of the later Moscow editing of the fourteenth century, to be the most ancient one, connected by its origin with Metropolitan Cyprian.⁶ An unusual system of fines for the benefit of a bishop or Metropolitan contradicting Byzantine canon law, complicated monetary measurement mentioning grivnas of gold could not be explained on the basis of the nineteenth century knowledge as well, because they belonged to the period when the norms of canon law based on the Canons of the Apostles, the Canons of the Ecumenical Councils, and the Canons of the Holy Fathers of the Kormchaya were not widely spread and accepted on the territory of Rus.

The author of this article, having spent years studying both the Russkaya Pravda and Prince Yaroslav’s Church Statute, considers this Statute in its original, archetypical form to be the second part of Prince Yaroslav’s legislation passed by him together with Metropolitan Ilarion (Larion). It contains the things that are absent in the Russkaya Pravda, not covered by the Prince’s jurisdiction, but not necessarily appeared with Christianization of Rus.

The first article of the Statute contained only three statements: firstly, Yaroslav “sgadal esm” (has consulted) with Metropolitan Ilarion, secondly, “slozhil esm” (has examined) the Greek Nomocanon and thirdly, has given to the Metropolitan and bishops “the suits” listed in detail further in the Statute, since “a Prince or his boyars ought not to have jurisdiction over them”.

The largest group of 25 articles concerning marriages and relationship between blood relatives and relatives in law deals with pagan forms of marriage, entering into it and divorcing with violation of canons, fornication between relatives. Thus, the Statute in its most ancient form is basically the code of marriage and family law.

Besides, the Statute includes the articles about damaging words, an insult hurt at a person by cutting his hair, fights and beatings, bestiality.

⁵Карамзин Н. М. История государства Российского. 2-е изд.. СПб.: 1818. Т. 2. С. 67.
A special group of five articles about the court trying the causes of the clergy and monks makes the Statute the code of departmental intra-church law as well.

In the Statute many violations of family and marriage law are punished not only by a penance, but also by a fine for the benefit of a Metropolitan or a bishop. This “system of compositions” is similar to the system of the Russkaya Pravda. As for the system of imposing these fines upon violators it corresponds to the social hierarchy of early Rus: the boyars, “dobriye lyudi”, “narochitiye lyudi”, “prostaya chad”, “gorodskiy lyudi”, though the gradation of the boyars (“velikiye boyare”, “menshiye boyare”) is seldom mentioned in the Old Russian monuments and is better known in Bulgaria.

Studying the ancient text of Prince Yaroslav’s Statute shows that basically this monument and the Russkaya Pravda belong to the same period. Both texts are the codes of law containing local, national legal norms, established by the state authority, the Statute taking into consideration the Christian norms. Each code deals with the cases within its scope and nearly does not intrude upon the other one. The common norms of the Statute and the Pravda might have appeared in the Statute both in the middle–second half of the eleventh century and in the twelfth century, when the corresponding parts and versions of the Pravda were being compiled. It is also possible to trace the correspondence of the norms of the Statute with the international commercial treaties of Rus, especially the treaty with Gotland dating to the late twelfth century.

Not only the chronological similarity of the Statute with other Old Russian monuments of the second half of the eleventh century and twelfth century is important but also the correspondence of its legal norms, particularly the ways of punishment — fines for the benefit of the public authority, and almost complete mutual exclusion of the Pravda and the Statute.

The division of Old Russian law into criminal law, inheritance law, and liability law on the one hand, and into family law, marriage law, and church law on the other hand found its expression not only in different codes — the secular Russkaya Pravda and the church Statute of Prince Yaroslav. The most important feature of the judicial and administrative
system of the Old Russian State and succeeding it feudal principalities was the division of court procedure according to these major spheres of social relations into two large judicial establishments — the secular, mostly Prince’s establishment, and the church, mostly bishops’ establishment. The prince’s court used and embodied the legal norms of the Russkaya Pravda, while the church court had the norms of the Nomocanon (the Kormchaya) and Prince Yaroslav’s Church Statute as their codes of law. It is natural that in reality the conflicts, the legal norms and establishments interwove and competed with each other, and the codes influenced each other having some common articles.

It is hard not to pay attention to the vast jurisdiction of the Church in Rus, reflected in the Statutes of Princes Vladimir and Yaroslav, and negatively in the Russkaya Pravda. Practically, judging by the quantity of cases, the church judicial establishment interfered into the life of the Old Russian population as often as the Prince’s court did. The bishop’s representative or the tiun regulated the whole mass of everyday family conflicts and all the cases having to do with the replacement of traditional communal marriage norms and customs by new Christian norms.

It should be considered, however, that the norms of Yaroslav’s Statute, being undoubtedly Christian and ecclesiastical, differed from the Christian church norms fixed in the Greek Nomocanons and spread in Byzantium in the eighth through tenth centuries. First of all, in the Statute certain actions were labelled as the ones under the church jurisdiction, though according to Byzantine legal norms, they were the scope of secular authorities but the church imposed a penance for them as for the sins. The main articles of the Statute were devoted to these actions: kidnapping, raping, divorces, giving birth to a child by an unmarried woman, incest, bigamy, bestiality, damaging words, violence, thefts. This difference was increased by the fact that according to Yaroslav’s Statute the church was to examine the cases unknown to either the church or the secular jurisdiction in Byzantium, for example, the responsibility of parents for not marrying the daughter, the excess of power in case of a forcible marriage of children, killing during ritual wedding games and others. It indicates, in its turn, the existence of local family and commu-
nal legal norms in the pre-Christian society included by the church into its law and jurisdiction.

Secondly, there were differences in the forms of punishment already mentioned: the fines in money terms for the benefit of a Metropolitan except the contribution to the injured party. In the Byzantine Church there were no secular penalties and the church penalty had no civil consequences. The canons provided only disciplinary ways of influence by the church: exhortation, penance and, in the last resort, excommunication.

Thirdly, the Statute proclaimed the legal immunity of the priesthood, black clergy and the ones dependent on the church from the secular arm, particularly the Prince. In Byzantium the clergymen who were out of secular jurisdiction were, however, under the jurisdiction of the Supreme Court of the Emperor.⁷

This peculiar interpretation or to be more precise this special type of church law attracted the researchers’ attention long ago. Already K. A. Nevolin,⁸ one of the first earnest researchers of the text, asked in perplexity “… how come that inside the Church having derived from the Greek Church, the idea could occur to impose fines on the crimes under the church jurisdiction?”; he was the first one to pay attention to the contradiction between the norms of the Statute and the norms of Byzantium church law. He wrote: “The Nomocanon, the Canons of the Holy Fathers, has never known monetary fines from those who violated the church enactments”. The historian of the Russian Church E. E. Golubinsky paid attention to the same fact:⁹ “In the Greek Nomocanon there is nothing about giving the civil and criminal cases to the court of the Metropolitan and the bishops, as it has been done according to the Statutes of Vladimir and Yaroslav”; though he thought this contradiction to be the proof of the fact that the Statutes were forgeries.

The Ukrainian historian of church law A. I. Lototsky¹⁰ was right to consider the difference between the norms to be the proof of the deliberate

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⁷Российское законодательство X—XX веков. Т. 1. С. 163—188.
⁸Неволин К. А. Полное собрание сочинений. СПб.: 1859. Т. 6. С. 300—301.
⁹Голубинский Е. Е. История русской церкви. 2-е изд.. М.: 1901. Т. 1, пол. 1. С. 405.
¹⁰Александр Игнатович Лотоцкий, Олександр Гнатович Лотоцький (укр.).
replacement of “cruel” criminal law of the Greek Nomocanon by the local system of fines. The replacement of one legal system by another one was “an important step that required a great and brave” initiative. Some metropolitan from the Greeks could hardly dare to make such a step and to take the initiative for the Greek hierarchs were closely related to their church codes.¹¹

The important information for understanding the nature of the act is found in the first article of the Statute. It says that the Statute was passed as a result of the agreement between Prince Yaroslav and Metropolitan Ilarion that is during the brief period the latter occupied this position in 1051–1053, no later than February of 1054, when Yaroslav died. This chronological specification of the date of creating the monument that I date to the eleventh century is quite real. But what does this specification give? Why did the monument appear at this time?

Let us go back to an unclear phrase of Yaroslav in the first article: “slozhil esm” the Greek Nomocanon. What exactly did the Prince do after a discussion with the Metropolitan when he passed the Statute?

The textual study of the Statute shows that this phrase already existed in its early texts. The word “slozhiti” without a preposition in the Old Russian language had meanings “to compile”, “to make” (for example, to compile excerpts from the books; to establish peace by ending a war; to take the field) and “to take from” (to take a load from a shoulder), “to cancel”, “to reject” (to cancel tributes, to free from a charge). What meaning did this word have in the text? Was it possible that Prince Yaroslav and Metropolitan Ilarion who was subordinate to the Patriarch of Constantinople rejected the norms of the Greek Nomocanon while introducing the Old Russian system of church law? Such an assumption was made by the author of this article in 1971.¹² The Russian scribes who copied the Statute had some doubt here. In the texts the first article was changed: in some copies of the sixteenth and seventeenth centuries it is written: “razlozhil esm” the Greek Nomocanon that is “opened the book”, the Greek Nomocanon in order to make the Statute in accor-

¹¹Лотоцький О. Г. Українські джерела церковного права. Варшава: 1931. С. 252.
¹²Щапов Я. Н. Устав князя Ярослава и вопрос об отношении к византийскому наследию на Руси в середине XI в. // Византийский временник. 1971. Т. 31. С. 71—78.
dance with it. In the Arkhivny Version of the Statute included in the “Chronicler of Russian Tsars” these words were left out: the editor-copyist could not understand how the Russian Prince could have “compiled” the Greek Nomocanon. The compiler of the Markelovsky Variant was also in perplexity and left only the words “has compiled” without saying what exactly had been “compiled”. In the Ustyuzhsky Version of the early sixteenth century the phrase is changed into “slozhil esmi so grecheskim monokanunom”¹³ that is checked against the Greek Nomocanon, brought in correspondence with it. N. M. Karamzin used this interpretation in his edition of the Statute, understanding this phrase as the expression of correspondence between the Statute and the Nomocanon.¹⁴ Such an interpretation of this phrase seems to be the most plausible one, especially as because V. M. Zhivov has found out that the verb “slozhil” can be a calque (a loan translation) of the Greek word συντίθημι meaning both “has compiled” and “has taken into account”, “kept in mind”.

The Short Version of the Statute was the most popular one in the second half of the fifteenth through seventeenth centuries. It was included into an authoritative collection of canons, imperial laws and rules of Russian hierarchs — the Kormchaya that was confirmed by Grand Prince and the Metropolitan in 1401 and 1419. In contrast to the early texts that have survived in the Vast Version the Moscow Short Version of the fourteenth century reflects the restriction of the judicial rights of the bishops that existed for several centuries. Traditional articles about the theft of farm produce and clothes in the family, killings and mutilations during ritual wedding games obtain important amendments proclaiming that a vira that is “a fine” to the authorities is paid not only to “a vladyko“ (a bishop) but to a vladyko and the Prince “napoly” (equally) and a vira for the person killed during the wedding fighting competitions — not only to a vladyko but to the Prince as well. Such restrictions of the judicial rights of the church in the Moscow documents of the fourteenth century are known: theft, robbery and murder cases in the town of Volok (that in the 1330s was under the Moscow administration) were withdrawn from the jurisdiction of Novgorod Yuriev Monastery and given

¹³Древнерусские княжеские уставы XI—XIV вв. С. 139.
¹⁴Карамзин Н. М. История государства Российского. 2-е изд. Т. 2, прим. С. 60.
to the Prince’s court. In some copies of an anonymous statute of the fifteenth and sixteenth centuries called “Ryad i Sud Pervykh Knyazei” included in the Kormchaya “poshibaniye” (rape) that traditionally was among the church cases obtains an important insertion “a s knyazem napoly” (and with the Prince equally) that shows a gradual transfer of these cases to the princely authority.¹⁵

The most extreme tendency of this redivision of church jurisdiction to the benefit of the princely authority was reflected in the only copy of the Short Version of Prince Yaroslav’s Statute coming from Rostov. It is a historical and literary collection that was being compiled during the thirteenth through fifteenth centuries in North-Eastern Rus and was copied at the beginning of the sixteenth century.¹⁶ In this text of Prince Yaroslav’s Statute practically every article indicating the cases under the bishop’s jurisdiction contains the words “a knyaz kaznit” meaning “and the Prince punishes” which shows the tendency of a considerable extension of the Prince’s jurisdiction over the cases that traditionally belonged to church law. The Statute according to this unique copy and its translation into modern Russian and English languages is presented in this edition.

The time of Prince Yaroslav’s reign is a significant epoch in the history of Old Russian State, Christianity, written language, construction, international relations, law and state structure. The Prince himself for many centuries was the symbol of law and order in Rus, the founder of Old Russian legal system. And it is necessary to welcome the contemporary scientific, state and public actions both in Russia and Ukraine, and Belarus that favour understanding and popularization of his activity in different spheres of life.

¹⁵Древнерусские княжеские уставы XI—XIV вв. С. 113, Ст. 28, 29. С. 203, вар. 28—29. Щапов Я. Н. Княжеские уставы и церковь в Древней Руси XI—XIV вв. С. 120—121.

¹⁶RGB. РГБ, фонд 272 (Син.), № 363, лл. 155 об.—157. In variants the text of the Copy was published: Древнерусские княжеские уставы XI—XIV вв. С. 116—120.