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Roman and Christian Law. Reminiscences of the Roman legal order in Eastern Church legislation

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Abstract
The paper aims at discussing two important issues related to Constantine's legislation: the church legislation in the fourth century and the *audientia episcopalis* institution. While briefly dealing with the religious and historical context of Constantine's religious policy, the study takes a journey into the history of the Roman-Byzantine law and the legislation body issued at the time. Further, it analyses the remnants of the Roman legal order in Eastern Church legislation, focusing on the privilege called *audientia episcopalis*, officially recognized from the fourth century and practised by bishops. This institution is historically approached, the author seeking, ultimately, to uncover its remnants into nowadays Romanian church legislation.

Keywords
Christian Law, Roman Low, Christianity, Roman paganism

Christianity, as an alternative to Roman paganism, brought about a new lifestyle. This new reality influenced both the political and social sphere. As it has been asserted, "the citizens felt more Christians than citizens of the Roman Empire and were tied not so much to their traditional political

institutions as to the new social reality (churches, monasteries, ecclesiastical latifundia)"[1]; in the early fourth century, the Roman society was still pagan, the aristocracy, the leaders, being still pagan.

In the fourth century, Christianity prevailed, becoming state religion. The status of the Church was radically different from both before and after 313. Until 313, the Church had been persecuted, although not continuously[2], while being officially ignored. Hence, it could not develop thoroughly, but only with caution and difficulty, given the fact that the followers of Christianity were in the lower strata of the society and still constituted a minority.

In this context, the religious policy of Constantine the Great (306-337) had consequences of great importance on legislation through the act of religious freedom of Milan, in January 313, through the election of a new imperial residence and, last but not least, through the convening of the Synod of Nicaea in 325. Thus, the law was clearly in favor of the Christianity, especially family legislation that changed in keeping with the Christian spirit, i.e. it made divorce more difficult, adultery and rape were punished while, in the case of those parents without children, abandoning or selling infants was forbidden etc. In the area of social protection, measures were taken to help the poor, the orphans, the widows and the sick while in the cult area, Sunday became a day of rest in the whole empire. During his reign, Constantine also altered the penal law that he tried to humanize, removing from the criminal laws provisions that were contrary to the spirit of the Christianity, such as crucifixion, breaking of the legs, the stigmatizing (burning with hot iron). The treatment of the prisoners improved[3].

From the very beginning, the Church was guided by the principles and fundamental laws existing in the Holy Scripture and Holy Tradition. With the intensifying of the church life, the need to regulate all relations within the Church was felt. Since the time of Constantine, Church has been supported by the state, enjoying the subsequent privileges. The relations among Christian communities became the norm and the synods started

[1] Moreschini C., Norelli E., *Istoria literaturii creştine vechi greceşti şi latine*, II/1 *De la conciliul de la Niceea la începuturile Evului Mediu*, (trad.), Iaşi, 2004, p. 14.

[2] Soloviov V., „Declinul viziunii medievale despre lume", in vol. *Gândirea socială a Bisericii. Fundamente, documente, analize, perspective,* Ică I. I. jr. – Marani G. (ed.), Sibiu, 2002, p. 63.

[3] Răműreanu I., *Istoria bisericească universală*, Institutul biblic şi de misiune al Bisericii Ortodoxe Române, Bucureşti, 1992, p. 100-101.

to gather on regular basis, being convened, organized and funded by the State. Due to the freedom of evangelization and with the help of the state, Christianity began to develop. Church community became complex, thus the need to guide it within clearly defined frameworks was felt, beliefs becoming increasingly numerous and less firm.

In this study, we intend, first of all, to revise the legislation from the fourth century, while in the second part, we shall focus on the presentation of the privilege of *audientia episcopalis*, on identifying the legal norms in the sacred canons and in the present day ecclesial legislation of the Romanian Orthodox Church.

Fourth century legislation

In addition to the 85 apostolic canons, the canons of the ecumenical synods[4], the canons of the local synods[5] and those of the Holy Fathers[6], the imperial law occupies an important place among the sources of the first millennium. The Roman-Byzantine law is important for two reasons; firstly, the Roman emperors of the East were fruitful legislators in what concerns both the religious faith and discipline. Secondly, the church members were

[4] All canons are quoted according to Nicodim Milaş, *Dreptul Bisericesc Oriental,* Romanian transl. D. Cornilescu and V. Radu, Bucureşti 1915*,* 67-92. There are: 20 canons of the First Ecumenical Synod – 325; 7 canons The Second Ecumenical Synod – 381; 8 canons of The Third Ecumenical Synod – 431; 30 canons of The Forth Ecumenical Synod – 451; 102 canons of The VI Trullan Synod – 691; 22 canons of The VII Ecumenical Synod – 787.

[5] 1 canon of the Synods of Carthage - 255-256; 25 canons of the Ancyra Synod – 314; 15 canons of The Synod of Neocæsarea - 314-325; 21 canons of the Synod of Gangra – 340; 25 canons of the Synod of Antioch – 341; 60 canons of the Synod of Laodicea - 343-348; 21 canons of the Synod of Sardica – 343; 2 canons of The Synod of Constantinople – 394; 141 canons of the Synod of Carthage – 419; 17 canons of the First – Second Synod of Constantinople – 861; 3 canons of the Synod of Constantinople – 879.

[6] 4 canons of the Canons of Dionysios of Alexandria; 12 canons of Gregory of Neocæsarea; 15 canons of Peter of Alexandria; 3 canons of Athanasius of Alexandria; 92 canons of Saint Basil the Great; 18 canons of Timothy of Alexandria; 1 canon of Saint Gregory the Theologian; 1 canon of Amphilochius of Iconium; 8 canons of Saint Gregory of Nyssa; 14 canons of Theophilus of Alexandria; 5 canons of Cyril of Alexandria; 1 canon of Gennadius of Constantinople; 1 canon of Tarasius of Constantinople.

both citizens of the empire and Christians citizens, therefore subjects to civil and religious laws. Moreover, starting with the reign of Constantine the Great, the Roman emperors – now Christians – enacted a multitude of laws, considering themselves the only ones entitled to do so. This was a similar, if not identical, process in the West as well[7].

The figure of the emperor played an essential role both in the political and religious fields. It should be noted that the emperor considered himself "Bishop for Foreign Affairs of the Church" and "equal to the Apostles". Therefore, the power to convene synods and the Fathers belonged to the emperor while he was also the one to implement and ensure compliance to the church rules. The Eastern emperors had the Roman law handy, law which became starting point. It is not mere chance that there should be a close link between the church law and Roman law. Consequently, there are many common Roman elements in the church law since the Roman legislation changed profoundly in Byzantium, therefore being called *ius romanum-byzantinum*[8].

The Legislative work of the Byzantine emperors was consistent (even if it occurred only between the 4th and 9th centuries), comprising the work of famous personalities: Theodosius (408-450), Justinian (527-565), Leon the Isaurian (717-741), Basil the Macedonian (867-886), Leo VI the Wise (886-912).

A pertinent question would be why the Church accepted so easily and without question the imperial law in the church administration? One possible answer is provided by professor Dimitrios Salachas who pointed out that

> "since the emperor joined the Church and agreed to protect the fundamental sacred and doctrinal principles on which this was built. No document ever gave the king the power of definition and formulation of these principles, but it was universally acknowledged that he was in charge of keeping to the empirical realities of the history and thus of leading, if necessary, the affairs of the visible Church. This is the meaning of the famous words attributed to Constantine: «I was chosen by God as a supervisor for the Foreign Affairs of the Church»"[9].

[7] Caron P.G., *Corso di Storia dei rapporti fra Stato e Chiesa*, I, Milano, 1981, p. 5-15.

[8] Ceccarelli Morolli D., *Introductio in Historiam Fontium Iuris Canonici Orientalis. Adnotationes academicae*, Roma, 2003, p. 34.

[9] Salachas D., *Istituzioni di diritto canonico delle Chiese cattoliche orientali*, Bologna, 2003, p. 33.

Towards the end of the Roman domination (absolute monarchy)[10], the legal work became very bulky, including legal literature, imperial constitutions and authorized lawyers' responses. The works of the jurisconsults were kept both as sources and as models for the interpretation of the law. The first written Roman law is *Leges duodecim tabularum* (*The Law of the Twelve Tables*), the only source of public and private law (*fons omnis publici privatique iuris*). According to Mihuțiu, "this first written source of Roman law contained very different rules: norms of private law, criminal law, religious rules, procedural rules"[11].

There were two private initiatives through which private law imperial decisions were compiled:

1. *Codex Gregorianus* – a private collection, compiled between the second and third centuries, by a lawyer named Gregory, involving the imperial constitutions, that is, *rescripta* and *epistulae* issued until the times Adrian and Diocletian.

2. *Codex Hermogenianus* – a private collection as well, compiled by a lawyer named Hermogenian as a complement to the Gregorian Code. This codex is contained in one book, subdivided into titles and it includes imperial constitutions (rescripts) from Diocletian and Maximilian, dating back from 293-294 and those of Valentinian and Valens.

We have not received these two codes directly but through a historical compendium from *Lex Romana Wisigothorum* and via various fragments of collections such as *Fragmenta Vaticana, Collatio, Consultatio, Lex Romana Burgundionum*. This pattern will be followed by all the codes and the canonical collections[12].

On the 27th of March, 429, Theodosius II, emperor of the East, decided to draw up a code that, on the one hand, had to "imitate Codex Gregorianus and Codex Hermogenianus", to be valid both in the East and the West and to group all imperial constitutions[13], starting from Constantine the Great, classifying them according to topics and chronology, excluding all that was useless, and on the other hand, had to be completed with

[10] The absolute monarchy starts with Emperor Diocletian (285) until the death of Justinian.

[11] Gidro R., Mihuțiu O., *Drept Roman*, I, Cluj-Napoca, 1996, p. 45.

[12] Stankiewicz A., *Appunti sulle fonti e sulle istituzioni di diritto romano*, Roma, 2002, p. 67.

[13] The imperial constitution includes what the king decides by edict (*edicta*), mandate (*mandata*), decree (*decreta*) and rescript (*rescripta*).

a second collection, that would combine the Theodosian, Gregorian and Hermogenian Codes with the views of the jurists so as to demonstrate what should be applied or what should be avoided in a *de facto* situation. This code was meant to be a formal and unified collection of laws, arising from the difficulties of a unitary application of the imperial laws that were becoming more and more numerous. To implement this project, to direct and supervise the work[14], a committee of nine members chaired by the former quaestor of the palace and the praetorian prefect, Antiochus, was set up. This process was conducted in two stages: one from 429 to 435, when the material was collected, starting from the archives and copying all the important cases, and the second phase, between 435 and 437-438, when because of material tumultuous and difficult task of eliminating the unnecessary phrases without altering or distorting the text, the emperor decided to have abstracts written and to start the final version. Completed at the end of 438 or the beginning of 438, Theodosianus Codex was made public in Constantinople by Theodosius II on the 15th of February, 438, and in Rome, where Valentinian III ruled, on the 25th of December 438, being enforced on January the 1st, 439 in both parts of the Empire[15].

The Code contains 16 books divided into titles. The imperial constitutions placed between titles are abbreviated and listed in chronological order. The compilation is of particular interest for the public, administrative, financial, criminal, ecclesiastical and, to less extent, private law.

Historically speaking, the Theodosian Code is very important. First of all, it is the most precious source that you hold for the history of the 4th – 5th centuries, in which Christianity became the state religion. Also, the Code served as a source of inspiration when drafting Justinian's legislation and the following one. The legislative technique of the imperial age can only be understood only by assuming that the legislative right is incumbent on the emperor, the sole legislator, and thus, that the main source of that period was represented by *Novels* or *Constitutions*. Their writing process is very difficult to pin down because these were influenced by their specific character, the age of the emperors, the nature of the issues covered, the political and religious being more important than those governing private

[14] Cf. *Code Théodosien Livre XVI. Les lois religieuses des empereurs romains de Constantin à Théodose II (312-438)*, vol I, in *SC* 497, (latin text, Theodor Mommsen, transl. Fr. Jean Rougé), Cerf, Paris, 2005[7], p. 14.

[15] *Ibid*., 15.

law issues. Many of them were framed at the suggestion of senior officials, such as the praetorian prefect, *magister militum per Orientem*, etc. The legal standards were prepared by *quaestor sacri palatii*, who was directly responsible for the speeches and the laws issued by the emperor and who was also supposed to master oratory and be a jurist by training. If initially it was the Senate that approved laws, in time, its importance began to decrease rapidly, so it all came down to the will of the Emperor, who personally signed the document or wrote the text himself that was then sent to the officials and magistrates to enforce it. A copy always remained in the imperial archives.

An important element of the constitutions were the addressees because they regulated *de facto* situations that, afterwards, became *de iure.* The Codes mentions them, which makes it easy to identify the date, the author of the constitutions and territory in which they were enforced[16].

The table below[17] is a clear representation of the legislative creations of the period:

Book XVI	313-381	381-395	395-438
Ch. 1. On faith	2	2	
2. The episcopate, the church and the clergy	25	3	19
3. On monks		2	
4. On those that confront religion		3	3
5. On heretics	5	19	42
6. On the repetition of baptism	2		5
7. On apostates		5	2
8. On Jews, the worshippers of the sky and Samaritans	7	2	20
9. A Jew cannot enslave a Christian	2		3
10. On pagans, sacrifices and temples	6	6	13
11. On religion			3

[16] Cf. Gaudemet J., *La formation du droit séculier et du droit de l'Église aux IV et V siècles*, Sirey, 1957, p. 11-12.

[17] According to *Le Code Théodosien. Livre XVI*, in *Sources Canoniques*, 2, Cerf, Paris, 2002, p. 73. The first column belongs to Constantine's period, the second to Theodosian period, the third to the Valentinian-Theodosian period.

As shown in the table, the church organization goes through two important periods, the first is from Constantine, comprising 25 laws; the second is Valentinian-Theodosian, including 19 laws. With regard to heretics, it is easy to note that laws appeared during Theodosius I and proliferated in the following period. The many laws in recent years on pagan sacrifices and temples, not long before the Code was made public, enhance the voluntary nature of the unification of the empire[18].

Audientia episcopalis

The transfer of civil powers to the bishops began with Constantine, with the recognition of *audientia episcopalis* and *manumissio in ecclesia* (Chapter XVIII)[19]. With Constantine, the replacement of the Roman institutions that were undergoing a process of gradual degeneration with others, of Christian origin, began. In the State legislation, the ecclesiastical jurisdiction was not recognized until 318, when Constantine the Great gave to the bishops of the right of arbitrating jurisdiction in civil causes[20] and thus, their decisions were recognized by the state. This privilege is called *audientia episcopalis*, officially recognized from the fourth century and practised by bishops[21].

Although the literature[22] on *audientia episcopalis* is rather extensive, on the one hand, this is a new institution that was not to be found in the

[18] *Le Code Théodosien. Livre XVI*, in *Sources Canoniques*, 2, Cerf, Paris, 2002, p. 73.

[19] Biondi B., *Il diritto romano cristiano*, I, *Orientamento religioso della religione*, Milano, 1952, p. 439.

[20] No one knows exactly how this institution of arbitration was.

[21] Biondi B., *Il diritto romano cristiano*, I, *Orientamento religioso della religione*, Milano, 1952, p. 445.

[22] See *Les lois religieuses des empereurs romains de Constantin à Théodose II (312-438).* II. *Code Thèodosien I-XV, Code Justinien, Constitutions Sirmondiennes*, Delmaire R., (ed.), Les Éditions du Cerf, Paris, 2009, p. 541-546 (SC 531). See also *Codex Just.,* 1, 4, p. 39-51; Rota A., "Episcopalis Audientia", in *Enciclopedia Cattolica*, V, 1950, p. 446; De Francisi P., "Per la storia della «episcopalis audientia» fino alla Novella XXXV(XXXIV) di Valentino", in *Annali dell'Università di Perugina, Facoltà di giurisprudenza*, 30 (1915), p. 45-47; Monchi O., *Vescovi della città* (sec. IV-V), Bologna, 1933; Masi G., *L'udienza vescovile nelle cause laiche da Constatino ai Franchi*, Modena, 1939; Vismara G., *Episcopalis audientia*, *L'attività giurisdizionale del vescovo per la risoluzione delle controversie private tra laici nel diritto romano e nella storia del diritto italiano fino al secolo nono*, Milano, 1937; Vismara G., *La giurisdizione civile dei vescovi (secoli I-XI)*, Milano, 1995.

classic legislation; on the other hand, historically and theologically, it is difficult to grasp.

One of the civil attributes handed in to the bishops, that was of great importance and special significance, is *audientia episcopalis*, officially recognized and employed by the bishops starting with the fourth century. This shows the concept of hierarchy in the life of the state.

According to the statement of Sozomen[23] and Eusebio di Cesarea[24], the judgment of the bishop was always to be preferred to that of any judge. For example, for a long time, the faithful Christians were given the choice between a civil and an ecclesiastical court[25].

Audientia episcopalis was introduced by two constitutions. In the first (318)[26], it is ruled that the ordinary judges cannot object to transferring a trial before the ecclesiastical tribunal, provided that the cause be requested by both parties in the process. Since the ecclesiastical court is neutral, its decision must be accepted by all. The second one (408)[27] is an extension of the principle introduced by the former constitution, so the mere arbitration nature of the appeal to *audientia episcopalis* is expressly affirmed in the constitutions of Arcadius and Honorius in 398 (Codex 1, 4, 7): *Si qui ex consensu apud sacrae legis antistitem litigare voluerint, non vetabantur, sed experientur illius [..] arbitri more residentis sponte iudicium*; and by the same Emperor Theodosius, in 408[28].

[23] Sozomenus, «Historia ecclesiastica», 1, 9, in *PG* 67, 883: "[…] *litigantibus permisit, ut ad episcoporum iudicium provocarent, si magistratus civiles reiicere vellent eorum autem sententia rata esset, aliorumque iudicum sententiis praevaleret, perinde ac si ab imperatore ipso data fuisset:utque res ab episcopis iudicatas, rectores provinciarum eorum officiales exsecutioni mandarent"*.

[24] Pal M., «Episcopalis audientia nelle fonti del diritto romano cristiano da Constantini a Teodosio II», *Folia Canonica* 8 (2005), p. 215.

[25] Biondi B., *Il diritto romano cristiano*, I, *Orientamento religioso della religione*, Milano, 1952, p. 451-453.

[26] *CTh* I, 27, 1: *"Imp. Constantinus A. Iudex pro sua sollicitudine observare debebit, ut, si ad episcopale iudicium provocetur, silentium accomodetur et, si quis ad legem Christianam negotium transferre voluerit et illud iudicium observare, audiatur, etiamsi negotium apud iudicem sit inchoatum, et pro sanctis habeatur, quidquid ab his fuerit iudicatum: ita tamen, ne usurpetur in eo, ut unus ex litigantibus pergat ad supra dictum auditorium et arbitrium suum enuntiet. Iudex enim praesentis causae integre habere debet arbitrium"*.

[27] Cf. *Code Thèodosien I-XV, Code Justinien, Constitutions Sirmondiennes*, R. Delmaire (ed.), Les Éditions du Cerf, Paris, 2009, p. 407.

[28] *CTh* I, 27, 2, 63; *Codex Just.* 1, 4, 8: *"Episcopale iudicium sit ratum omnibus, qui se*

If the *audientia episcopalis* institution, originally practiced by the bishops as arbitrators, was limited only to spiritual matters and disagreements among the clergymen, in time, it became an arbitration institution of highest value for the State, judging even the disputes between laymen and different courts. This privilege has, for the Church, a particular meaning that will be perceived in the church legislation, being the prerogative of the church body and not of some individuals.

Constantine the Great legislated that the courts should decide only in civil cases when both parties agree to be judged by church courts[29]. Consequently, he also legislated that the ecclesiastical courts could judge civil cases even if one of the parties did not agree to be judged by an ecclesiastical court[30].

During the Roman – Byzantine period, the state allowed for the jurisdiction of the ecclesiatical courts while the penal cases were given to the jurisdiction of the civil courts[31]. Later, emperors Arcadius and Honorius will suspend Constatine's second constitution, letting in force only the first one[32]. The imperial law fluctuated in time, either limiting or developing the jurisdiction up to Justinian[33], while *audientia episcopalis* was considered to have an arbitrational character in three laws, 7-8, 13, title 4, liber I from the Codex.

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audiri a sacerdotibus adquieverint. Cum enim possint privati inter consentientes etiam iudice nesciente audire, his licere id patimur, quos necessario veneramur eamque illorum iudicationi adhibendam esse reverentiam, quam vestris deferri necesse est potestatibus, a quibus non licet provocare. Per publicum quoque officium ne sit cassa cognitio, definitioni exsecutio tribuatur". See also Biondi B., *Il diritto romano cristiano*, I, *Orientamento religioso della religione*, Milano, 1952, p. 449-450.

[29] This Constitution was unfortunately lost, but it was mentioned in *Codex,* I, 4, 7, 40: *"Si qui ex consensu apud sacrae legis antistitem litigare voluerint, non vetabuntur, sed experientur illius (in civili dumtaxat negotio) arbitri more residentis sponte iudicium. Quod his obesse non poterit nec debebit, quos ad praedicti cognitoris examen conventos potius afuisse quam sponte venisse constiterit"*; Sozomenus, «Historia ecclesiastica», I, 9, *PG* 67, 881.

[30] *CTh* 16, 5, 12, p. 859-860.

[31] Cf. *CTh* 16, 2, 23, p. 843. Through the Imperial Constitution, Emperor Gratian (376) regulates that criminal cases should be a matter of secular courts. The most serious crimes committed by clerics, which resulted *actio criminalis*, were in the jurisdiction of secular courts, while only minor offenses in connection with religion could be brought before an ecclesiastical court; *CTh* 1, 27, 1, 62.

[32] *Codex Just.,* I, 4, 7, 40; *Codex Just.,* I, 4, 8, 40; Milaş N., *Dreptul bisericesc oriental*, Bucureşti, 1915, p. 378-385.

[33] *Codex Just.,* 1, 4, 39, 51; *Encyclopedic Dictionary of Roman Law*, p. 454.

As one can notice, throughout the times, the Roman – Byzantine legislation assigned to the Church judicial responsibilities as well, considering that justice had to be protected by the Saviour and, in His place, the Church always attempted to serve justice and accomplish its judicial responsibilities through the clergy. Such judicial responsibility was considered a divine commandment. This trust of the state in the judicial responsibility assigned to the Church can be explained through the moral status that the Church enjoyed. Furthermore, the arbitrational justice of the Church was fair and free of charge; therefore, it was much sought after by everyone who had juridical problems. Through the bishops, the ecclesiastical courts had a delegated jurisdiction both in regard to different businesses and to litigations. Therefore, the bishop's activity was ever more intense. On the other hand, many civil laws from the patristic period regulated religious issues as well and vice-versa.

A remnant of the institution *audientia episcopalis* is found nowadays in family law, more precisely in divorce judgment which, in the life of the Church, came into the power of several organs, ranging from the bishop to the rectory, then Horebishop (chorepiscopus), and later to some diocesan and metropolitan courts. It is worth mentioning that the role and jurisdiction of the church increased greatly in the Greek Churches, being still preserved nowadays. The special case of the Greek Orthodox Church, where even nowadays Church legislation has juridical effects on religious marriage and divorce that are under the jurisdiction of the Dicasterial churches. This does not impede that that jurisdiction should belong to the civil courts in the case of the unorthodox. The explanation is that during the Arab and Turkish conquests, the jurisdiction of Dicasterial courts included the right to trial some civil matters, especially those related to marriage, betrothal, dowry and divorce[34].

The Romanian Orthodox Church included such Dicasterial churches till Alexandru Ioan Cuza's reign, when the Civil Code, which made civil marriage mandatory, was enacted (1865), which is why marriage records were handed in to the local councils and, consequently, divorce cases came under the jurisdiction of civil courts. Dicasterial churches, remaining without object, ceased to exist.

[34] Rus Constantin, *Curs de Drept bisericesc şi administraţie bisericească*, II, Arad, 2010, p. 157.

In the life of the Church, parallel with its organizational development throughout the Roman Empire, church courts for formal trial were founded. Their prominently legal character sometimes overshadowed the religious-moral specific of the trial, causing an undue separation between the religious and moral judgment and the formal-legal one. Thus, beside the old spiritual bodies, there appeared judiciary bodies as well. In the fourth century, there appeared in the life of the Church a number of strictly religious courts, that only rarely judged civil litigations.

These courts[35] were: the Episcopal court[36], the Horebishop's court[37], the autocephalous synodal court[38], the metropolitan court[39], the court of the neighbouring bishops[40], the intermediary synodal court [41], special courts[42], the exarchs' court[43], the patriarchal court. Besides these, there are other courts that have an exceptional character such as: the court represented by

[35] These categories are according to Contantin Rus' *Curs de drept penal bisericesc*, Arad, 2011.

[36] It consisted only of the clergy and sometimes clergy and laity. That court had jurisdiction in all cases concerning the clergy, and other causes of the laymen.

[37] This court judges the violations and disputes arising in the life of the clergy subordinate to horebishops and some cases in which simple believers addressed it.

[38] Its existence dates back before the appearance of the metropolitan institution, being organised according to apostolic canons 34 and 37.

[39] It appeared in the fourth century and it was organized according to canons 4, 5 and 6 of the Ecumenical Synod.

[40] Regulated in Can. 14 of the Synod of Antioch: "If a bishop shall be tried on any accusations, and it should then happen that the bishops of the province disagree concerning him, some pronouncing the accused innocent, and others guilty; for the settlement of all disputes, the holy Synod decrees that the metropolitan call on some others belonging to the neighboring province, who shall add their judgment and resolve the dispute, and thus, with those of the province, confirm what is determined".

[41] Superior to the metropolitan court, but inferior to the exarches'. It was regulated only for exceptional cases, by Canon 6 of the Synod of Antioch: „If any one has been excommunicated by his own bishop, let him not be received by others until he has either been restored by his own bishop, or until, when a synod is held, he shall have appeared and made his defence, and, having convinced the synod, shall have received a different sentence. And let this decree apply to the laity, and to presbyters and deacons, and all who are enrolled in the clergy-list".

[42] Regulated by canons 12, 20 and 100 of the Synod of Carthage for judging the deacons, the priests and the bishops, each court made up of a fixed number of bishops, that is 4 for the Synod court, 7 for the priests and 12 for the bishops.

[43] Made up of the central see of the diocese or the Exarchate, as full or restricted exarch synod referred to in can. 6 II ec.; can. 9 and 17 IV. ec.

the ecumenical synod, becoming of great importance especially in Constantinople and Holy See; the synodal court of the autocephalous Churches; the exceptional courts of the judges[44]. Further, as special courts, there have been in the life of Church two types of courts, only one having survived while the other still having the possibility of being revived:

- the ecumenical synod, an exceptional court that has universal jurisdiction whose role has often been taken over by endemic synods, from the pan orthodox ones to the inter-orthodox ones.
- courts for monks.

One must also underline the fact that the most important court remains the spiritual court, represented by bishops and priests, whose rulings cannot be appealed to, functioning according to the rules for the administration of the Sacraments of Penance.

Nowadays, in the Romanian Orthodox Church, the disciplinary bodies and judges for the clerical and the lay church personnel are regulated in the 4th chapter (Discipline of the clergy, art. 148-16) from The Statutes For the Organization and Function of the Romanian Orthodox Church, from 17 February, 2011, decision no 385/2011. Thus, art. 148 reviews all the disciplinary and church judgment instances as follows:

> "1) In accordance to the Holy Canons and the Romanian Orthodox Church tradition, the body entrusted by the authority (bish-

[44] Judges elected from among bishops or other superiors of the church, as regulated by canon 14 of Antioch 14, 3, 4 and 5 of Sardica. Canon 3 of the Council of Sardica: „Bishop Hosius said: This also it is necessary to add, that no bishop pass from his own province to another province in which there are bishops, unless indeed he be called by his brethren, that we seem not to close the gates of charity. And this case likewise is to be provided for, that if in any province a bishop has some matter against his brother and fellow-bishop, neither of the two should call in as arbiters bishops from another province. But if perchance sentence be given against a bishop in any matter and he supposes his case to be not unsound but good, in order that the question may be reopened, let us, if it seem good to your charity, honour the memory of Peter the Apostle, and let those who gave judgment write to Julius, the bishop of Rome, so that, if necessary, the case may be retried by the bishops of the neighbouring provinces and let him appoint arbiters; but if it cannot be shown that his case is of such a sort as to need a new trial, let the judgment once given not be annulled, but stand good as before". The Canon 4 of Sardica: „Bishop Gaudentius said: If it seems good to you, it is necessary to add to this decision full of sincere charity which thou hast pronounced, that if any bishop be deposed by the sentence of these neighbouring bishops, and assert that he has fresh matter in defence, a new bishop be not settled in his see, unless the bishop of Rome judge and render a decision as to this".

op or synod of bishops), with judging is the consistory court, that investigates and proposes decisions for the approval of the respective body of authority.

2)The disciplinary and church judgment instances for the clergy or monks, employed or retired, as well as for religious singers, as regards doctrinal, moral, canonical and disciplinary issues are the following:

1. Judgment on the merits:

a) Archpriest Disciplinary Consistory

b) Eparchial Consistory

c) Eparchial Monastic Consistory

2. Appeal judgment:

a) The Metropolitan Consistory

b) The Metropolitan Monastic Consistory

3) The Church court cases are placed in disciplinary courts with the aproval of the Hierarch in the case of the Deanery Consistories, of the Metropolitan in the case of Deanery and Diocesan Consistories, of the Patriarch in the case of Superior Church Consistory".

As far as the bishops are concerned, The Statute regulates that these should be judged by the Holy Synod.

Conclusion

Due to the right received from Jesus Christ (Mt. 18, 15-17), the bishop is the supreme judge in his eparchy; based on this right, he can punish both laymen and clergymen. If, at the beginning, he merely administered justice by himself or together with the presbytery, right that was reflected in *audientia episcopalis* during Constantine the Great, nowadays, in the judging procedures, he is supported by church courts called consistories that are completely dependent on the bishop.

We have attempted to pin down the legislation of the 4th century, a century during which church legislation was given a precise and articulate form, having focused on *audientia episcopalis* that is nothing else but a privilege given by the emperor to bishops and that has remained in the nowadays church legislation in the form of consistories, under the bishops' jurisdiction.