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# The Interpretation of Canon 3 of the 1<sup>st</sup> Ecumenical Synod in Nicaea (325) and Its Actuality in the Life of the Church

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## Abstract

The study presents the interpretation of Canon 3 of the 1<sup>st</sup> Ecumenical Synod in Nicaea (325). The Fathers of the 1<sup>st</sup> Synod in Nicaea, by strengthening the moral life of the clergy, condemned the concubinage with hidden women, but they did not support celibacy over marriage. The cohabitation with legal wife is not mentioned, but this lack of mentioning does not automatically mean that the separation from wives or the celibacy were introduced in the Church legislation and practice. Wife is considered to be a full member of the category of legitimate women; but here, the canonical disposition refers to non-married or widow members of the clergy, who may cohabit only with mother, sister, aunt or other women connected through physical kinship and who are beyond any doubt. The intention of the participants to the Synod was not to introduce celibacy as mandatory for clergy, but the text of the canon is very clear, as it aims to strengthen the discipline of the clergy, the moral life, through confirming the custom and condemning the abuses. In fact, we don't even find references to such a rule that supports celibacy.

## Keywords

Clergy, Concubinage, Celibacy, Monastic state

## 1. The authority of the 1<sup>st</sup> Ecumenical Synod and the strengthening of the clergy morality

The 1<sup>st</sup> Ecumenical Synod in Nicaea (325), called during the Holy Emperor Constantine the Great, imposed in the life of the Church through the common conscience and the general Church consensus, as having an ecumenical character, with general and mandatory decisions, as a “Holy and Great” ecumenical Synod, which expresses the infallibility of the Church. This ecumenical Synod was remarkable not only due to its Symbol of faith, to its Trinitarian and Christological dogmatic decisions, as a means of specifying the truth of faith kept infallibly by the Church as a whole, but also due to its canonical rules, with moral and disciplinary character. The written specification – thus in a positive manner – of this canonical rules marked a transition from the consuetudinary or customary law to the written law that gave expression to those customs imposed in the Church life through the *consensus Ecclesiae dispersae* and that cannot be neglected. This is a normal thing, as long as the very historical and cultural context, the objective conditions, the mentality of the time and the state legislation represent important material sources of the Canon Law, in general, inevitably reflected in the text of the Holy Canons of our Church, which must be correctly and objectively interpreted, on the basis of the principles of canonical interpretation already established in doctrine. The text of these canons is to be found, as general and mandatory, in the *Corpus Canonum* of the Orthodox Church, being a reference for the organization and functioning of the Orthodox Church, based on the canonical principles, but also within the recent codifications of the Roman-Catholic Church (1917; 1983).

In this period, of the 4<sup>th</sup> and 5<sup>th</sup> centuries, the Fathers of the synods proved a lot of creativity, trying to delineate from the customary limits by strengthening the written Law. The Church discipline, which was imposed and became mandatory in the Church of that historical period, but also later on, presents a great practical interest, but also for research. These canonical rules, of the first four ecumenical synods – therefore of the 1<sup>st</sup> Ecumenical Synod in Nicaea, too – enjoy the greatest authority concerning the regulation of the most important institutions of Canon Law, but also from a disciplinary perspective. They truly are the heart of the Eastern Church Law, also having a major influence on the Western Church. The authority of the canonical legislation, enjoyed by the 1<sup>st</sup> Ecumenical Synod in Nicaea is undeniable and this only if we look to the subsequent positioning of

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the ecclesiastical authority (the episcopal authority) as far as the adoption of the canonical dispositions of Nicaea (325) is concerned. Thus, Eusebius of Caesarea refused the bishop seat of Antioch, proving to be a keeper of the Nicene canonical rule<sup>1</sup>. Even the bishops of Rome were faithful to the canonical legislation of the Nicene Synod, considering its legislation as inviolable (pope Leon) or even “divinely inspired” (pope Julius)<sup>2</sup>. An eloquent and important example for our study, as far as the authority of the 1<sup>st</sup> Ecumenical Synod and the imposition of a moral stature of the clergy are concerned, is the mentioning of canon 3, as an authoritative rule, by Saint Basil the Great, in the text of his canon 88, in which he condemns the concubinage (illegal cohabitation) of a non-married bishop with a much younger woman, which caused suspicion and stumbling. This canon, 88 of Saint Basil the Great, is used in the canonical doctrine to impose the maximum age for matrimony, but also the maximum age difference, as conditions for marriage. The authority of the 1<sup>st</sup> Ecumenical Synod, as far as the disposition of canon 3 is concerned, was invoked not only by Saint Basil the Great, but also by subsequent synods.

The Fathers of the 1<sup>st</sup> Synod in Nicaea, by strengthening the moral life of the clergy, condemned the concubinage with hidden women, but they did not support celibacy over marriage. The cohabitation with legal wife is not mentioned, but this lack of mentioning does not automatically mean that the separation from wives or the celibacy were introduced in the Church legislation and practice. Wife is considered to be a full member of the category of legitimate women; but here, the canonical disposition refers to non-married or widow members of the clergy, who may cohabit only with mother, sister, aunt or other women connected through physical kinship and who are beyond any doubt. The intention of the participants to the Synod was not to introduce celibacy as mandatory for clergy, but the text of the canon is very clear, as it aims to strengthen the discipline of the clergy, the moral life, through confirming the custom and condemning the abuses. In fact, we don't even find references to such a rule that supports celibacy. We will offer in the following lines some aspects concerning the civil status of clergy.

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<sup>1</sup> Peter L'Huillier, *Dreptul bisericesc la sinoadele ecumenice I-IV*, trans. rom. Al. Stan, Gnosis, Bucharest, 2000, p. 19-20.

<sup>2</sup> B. Lonergan, *The Way to Niceea*, Philadelphia, 1976, p. 105-118; also see G. Bardy, *Recherches sur Lucien d'Antioche et son école*, Paris, 1936.

On the grounds of canon 3 from the 1<sup>st</sup> Ecumenical Synod, which will be discussed below, but also of the precedent canonical dispositions, the Church does not accept the immoral state of concubinage, neither for the simple believers, nor for the clergy. Saint Basil the Great refers to concubinate, sort of modern world concubinage, the cohabitation between a free man and a free woman, characterized by stability and the lack in the intention of the two partners to consider themselves as spouses. He considers it fornication, in canon 26: “Fornication is not wedlock, nor yet the beginning of wedlock. Wherefore it is best, if possible, to put asunder those who are united in fornication. If they are set on cohabitation, let them admit the penalty of fornication. Let them be allowed to live together, lest a worse thing happen” (can. 4, 21, 22, 34, 37, 38, 48, 58, 59, 77, 79, 80 Saint Basil the Great)<sup>3</sup>. The evident tolerance of the Cappadocian Father towards the cohabitation in concubinate, as an exception from the canonical doctrine of the Church, and this only if the two don’t separate and don’t marry, can be explained by the historical framework of the 4<sup>th</sup> century within the Roman Empire. The Roman legislation allowed, along with the legal marriage, the institution of concubinate, specific to the Roman Law, without a correspondent in the modern law and without being assimilated to the term of “concubinage”<sup>4</sup>. In time, this sinful state of Roman concubinate lost its importance towards the end of the 8<sup>th</sup> century, when emperors Leon the Isaurian and Constantine Copronymus, in their *Eclogue*, and later the emperor Basil the Macedonian (9<sup>th</sup> century), in *Prohiron*, decided that nobody is allowed to hold a concubine in his home: people in this condition are forced either to marry, or to separate.

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<sup>3</sup> Ioan N. Flocă, *Canoanele Bisericii Ortodoxe. Note și comentarii*, 3<sup>rd</sup> ed., Sibiu, 2005, p. 339.

<sup>4</sup> The confusion between the two terms is an error. Initially, the concubinate was a factual union, tolerated in the criminal law, but not recognized by the civil law. Christianity influenced the Roman legislation and the concubinate was not a factual union anymore, being considered a low rank marriage with only some civil law effects (the obligation of support and fidelity; the children born within such a relation became free *liber naturalis*, a superior state to those born in forbidden relationships, but inferior to the children born in matrimony (*liber legitimi*); the father had an obligation of maintenance towards the children and between the father and the children was established, at a lower scale, a right of succession *ab intestate*); see Teodor Sâmbrian, *Drept roman*, Craiova, 2001, p. 85-86.

*The Interpretation of Canon 3 of the 1<sup>st</sup> Ecumenical Synod in Nicaea (325)***2. The cohabitation of clergy with “feminae subintroductae” and the canonical evolution of their civil state**

Canon 3 of the 1<sup>st</sup> Ecumenical Synod in Nicaea is relevant for the condemnation of the immoral practice of clerics cohabitation with different kinds of women (paramours of concubines), with several expressly mentioned exceptions, these being categorically rejected by the competent ecclesiastical authority, both at Nicaea and later on, on the grounds of this canon from the Synod. We provide the text of the aforementioned canon: “The great Synod has stringently forbidden any bishop, presbyter, deacon, or any one of the clergy whatever, to have a *subintroducta* dwelling with him, except only a mother, or sister, or aunt, or such persons only as are beyond all suspicion”<sup>5</sup>.

From the text of this canon we can observe the prohibitive rule (or of express forbiddance) of clerical cohabitation with the so-called “feminae subintroductae” or “women furtively introduced” and who were not in a legal conjugal relation with clerics, providing reasons for suspicion and stumbling for the community of faithful, through this non-allowed cohabitation. Being in danger the clerical dignity, mainly the episcopal one<sup>6</sup>, the Fathers of the synod decided to put an end to this immoral practice, which, unfortunately, will also be found later in the Church<sup>7</sup>, that is of the cohabitation of unmarried, divorced or widow clerics with women who produced suspicion within the local communities. The exception specified by the canon is only aimed at the unmarried or widow clerics (bishops, priests and deacons), who were allowed to cohabit only with women who did not provide any reason for suspicion of a unlawful, immoral relations, such as the mother, sister, aunt or other women in tight kinship relation. From this is excluded the legitimate wife, who is beyond any doubt; but the women who cannot be suspected of any immoral relation with the clerics with whom they cohabit are the mother and those in tight kinship relation. Therefore, the only women beyond any doubt are not just those positively mentioned by the canon, but also those who are in a close kinship

<sup>5</sup> Ioan N. Floca, *Canoanele Bisericii Ortodoxe...*, ed. cit., p. 56; see can. 5, 26 ap.; 5, 12, 13, 18, 22 in Trullo; 19 Ancyra; 3, 4, 25, 38, 70 Carthage; 88 Basil the Great).

<sup>6</sup> In this period, the bishop were married, too, as the episcopal celibacy was canonically established only at the Synod in Trullo (691-692), can. 12.

<sup>7</sup> See canon 88 of Saint Basil the Great.

relation, as it is also proved by the ancient Latin versions (*Corpus Juris Civilis*) or by the text of John Scolasticus, found in a number of manuscripts: "These women *and those who are tight kin with them* are beyond any doubt" (Synagoge)<sup>8</sup>. Therefore, there is no mention of other categories of women, being, thus, forbidden the cohabitation (concubinage) of the clerics non-legally married with their wives with other categories of women, such as the consecrated virgins, the deaconesses, presbyteresses, widows etc. We cannot speak anymore of a cohabitation with monks, as we today have the organization of monasticism, because this was recognized under the control of the bishop, as a canonical institution, only in the 5<sup>th</sup> century, through the canon 4 of the 4<sup>th</sup> Ecumenical Synod from Chalcedon (451). In consequence, on the grounds of the precedent canonical dispositions (e.g. can. 5, 26 Ap.; 5, 12, 13, 18, 22 In Trullo; 19 Ancyra; 3, 4, 25, 38, 70 Carthage; 88 Basil the Great) but also on the grounds of the express condemnation of this practice by the Fathers of The Church, throughout the centuries (viewed as the "pest of agapetae"<sup>9</sup>) or of the civil legislation, the Fathers of the 7<sup>th</sup> Ecumenical Synod in Nicaea (787) condemned the cohabitation between women and bishops in their houses, that is in the bishop residence, being also forbidden the organization and functioning of mixed monasteries (monks-nuns)<sup>10</sup>.

The canon 5 Trullo, important in this context, defends the dignity of the ecclesiastical servants and of the monastic life, by condemning the cohabitation with women, a practice already incriminated by the canon 3 of the 1<sup>st</sup> Ecumenical Synod in Nicaea. This canon of the Synod in Trullo refers to the canon 3 from 1<sup>st</sup> Synod in Nicaea, mentioning that "none of those who are on the priestly list possess any woman or maid servant, beyond those who are enumerated in the canon [can. 3 1<sup>st</sup> Ec.] as being persons free from

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<sup>8</sup> P. L'Huillier, *Dreptul bisericesc la sinoadele ecumenice I-IV*, p. 68.

<sup>9</sup> Blessed Jerome, *Epistle XXII*, apud *Ibidem*, p. 69.

<sup>10</sup> See canons 18 and 22 VII Ec. We note here that in that period (8<sup>th</sup> century) the monasticism was already recognized within the Church (can. 4 IV Ec.) and the mandatory bishop celibacy was introduced by the can. 12 in Trullo (691-692), although it was not yet generalized. Married bishops still existed until later on, despite the custom concerning the monastic status of bishop was established starting with the 8<sup>th</sup>-9<sup>th</sup> centuries. Such a practice of concubinage was even more condemnable after the introduction of episcopal celibacy and after the consuetudinary law obliged the candidates to bishop to take the monastic vows, that is after the possibility for a bishop to marry was eliminated.

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suspicion, preserving himself hereby from being implicated in any blame. But if anyone transgresses our decree let him be deposed [...]”<sup>11</sup>. But as the Synod in Trullo introduces the celibacy of bishop (can. 12) and also his physical separation from his legal wife (although she enters monasticism), through mutual consent, for the election as bishop (can. 48), the Fathers of the 7<sup>th</sup> Ecumenical Synod especially condemn the cohabitation of bishops and monks with women, being, thus, forbidden “the presence of women in bishoprics and monks monasteries, as well as their employment in the service of men monasteries and bishop homes”<sup>12</sup>. Such a regulation was also aimed to defend the episcopal and monastic dignity and to avoid the stumbling and the defamation of the ecclesiastical authority<sup>13</sup>: “[...] But for women to be dwelling in bishoprics, or in monasteries, is a cause for everyone’s taking offense. If, therefore, anyone be caught in possession of a femaleslave or of a freewoman in a bishopric, or in a monastery, for the performance of any service, or ministration, let him be penanced; and if he persists, let him be deposed from office [...]” (can. 18)<sup>14</sup>.

These canonical dispositions are not targeted only at mere women, but also at the consecrated women, as we showed above (can. 31<sup>st</sup> Nicaea), and the sinning with such women is called hierosylia. This specification is wel-

<sup>11</sup> Ioan N. Floca, *Canoanele Bisericii Ortodoxe...*, ed. cit., p. 114-115.

<sup>12</sup> *Ibid.*, p. 195. See D. G. Boroianu, *Dreptul bisericesc*, vol. II, Iași, 1899; D. I. Ciobotea, „Chemarea preoțească”, în rev. *MA* 1-2/1973; Y. Congar, *L’Episcopat de l’Eglise universelle*, Paris, 1952; C. Erbiceanu, „Despre ierarhie”, în rev. *BOR* 9/1904-1905; D. Găină, „Unele rânduieli canonice privitoare la episcop”, în rev. *GB* 9-10/1965; Al. Munteanu, „Întărirea disciplinei clerului potrivit sfintelor canoane și legiurilor actuale ale Bisericii Ortodoxe Române”, în rev. *GB.*, XXXIX (1980), nr. 6-9; R. Paquier, „L’episcopat dans la structure institutionnelle de l’Eglise”, în rev. *Verbum caro*, vol. XIII, nr. 49/1959; V. Phidas, *Droit canon. Une perspective orthodoxe*, Chambésy-Genève, 1998.

<sup>13</sup> He who receives, with honor and responsibility, the gracious state of the divinely instituted priesthood, specific to each of the three degrees of priesthood, becomes a member of the clergy, with canonical and civil rights, but also with well determined obligations, according to the Canon Law of the Church. These obligations are imposed by the spiritual service and by the respective hierarchical rank, which has an authority specific to the gracious state, as well as a personal authority, according to the qualities and personality of each cleric. We note here that the authority of the bishop in the Church is given by his call to episcopal dignity, every bishop having the duty to earn the respect of the clergy and faithful through his work and personality, to establish his personal authority.

<sup>14</sup> *Ibid.*, p. 194.

came in the context of the condemnation of cohabitation with “*feminae subintroductae*”. This way, we clarify the canonical regulations already mentioned in the context of canon 4 in Trullo, which forbids such unions between clerics and consecrated or dedicated women, i.e. those women who entered the service of the Church through *cheirotesia* or through the hierurgy of monastic tonsure. Examples of such women are the deaconesses, the widows, the presbyteresses, the virgins or the nuns. A potential legal marriage, subsequent to the ordination (*cheirotonia*) is not allowed, both because ordination is an absolute impediment to matrimony, confirmed by the canon 6 in Trullo and because the consecrated women are not allowed to receive the Holy Sacrament of Matrimony, given their special status in the service of the Church. Indeed, some of the aforementioned categories of consecrated women do not exist anymore in the practical life of the Church. We provide here the text of the canon 4 in Trullo: “If any Bishop, or Presbyter, or Deacon, or Subdeacon, or Anagnost (Reader), or Psalt (Chanter), or Janitor (Doorkeeper), has (carnal) intercourse with any woman that has been consecrated to God, let him be deposed from office, on the ground that he has contributed to the delinquency of a bride of God. If, on the other hand, he is a layman, let him be excommunicated”<sup>15</sup>.

It is true that, among all the religious groups that contributed to the development of ecclesiastical life, through an involvement in the teaching and social activity of the Church, a front place is occupied by the groups of widows, presbyteresses, deaconesses etc., groups of women who were living in abstinence and innocence. All these groups of women have existed ever since the Apostolic age and the deaconesses, as pious women, were remarkable due to their activity within the local Churches, being the most important group among those mentioned above. They were permanently under the supervision of the clergy, no matter that they lived within their families or *in consortium*; they never lived, though, together with the clergy. For example, the deaconesses were recruited from the *consecrated virgins or widows*, after the age of 40, mentioned as the minimum canonical age (can. 15 4<sup>th</sup> Ec.; 14, 40 in Trullo). In time, the minimum age for the *cheirotesia* of deaconesses was raised or reduced, from 60 years old (Cod. Justinian 1, 3, 9), the minimum age of the widows of which the deaconesses were chose, to 50 years old (through the law of Justinian form 53; as

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<sup>15</sup> *Ibid.*, p. 114.

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an exception, the deaconesses who were younger than 50 were forced to live in a monastery) and then to 40 (Novella 123, 13). The minimum age for the cheirotesia of deaconesses was reduced even under the minimum age specified in the law of Justinian from 546 (40 years old), a reason for this being the election of married men as bishops. This was a canonical reason for divorce, accepted by the Church, so the wives of those elected as bishops were given the possibility to be granted the dignity of deaconess, according to their abilities. This reason of divorce is mentioned in the canons 12 and 48 of the Synod in Trullo.

According to the Novella 6 of Justinian, the deaconesses could live within the parishes or monasteries and were informed, on their reception, in front of the other deaconesses, that the trespassing of the vow of chastity will lead to the loss of head, while their belongings will pass to the respective parish church or monastery. The promise of chastity, in a broad sense, was an impediment to the conclusion of a marriage, both for the monks who took the vow of chastity when entering monasticism and for the deaconesses and virgins who consecrated themselves to the Lord. Saint Basil the Great, discussing the canon 19 from Ancyra, in his answer to Amphilochius (can. 18), considers that the for the consecrated virgins who fell into fornication a punishment of one year is not sufficient, but, given the evolution of the spiritual life in the local communities, they have to receive the punishment of adulterers, that is an epithymia of 15 years<sup>16</sup>. Saint Basil the Great, in order to conserve the ecclesiastical order and not to encourage the heretics to bring objections against the Church, forbade those who took the vow of chastity, as well as those who entered the clergy unmarried (canonical persons) and then fell into fornication, to live with the person with whom they had sinned and, even less, to marry him or her: “As regards fornication of Canonics, they are not to be accounted marriages, but ought by every means available to be compelled to discontinue their intercourse. For this is also advantageous to the Church for safety, and affords heretics

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<sup>16</sup> This position is justified by the Holy Father on biblical grounds (1 Tim. 5:11-12). He differentiates between the state of widows and that of consecrated virgins, of which the deaconesses were chosen, the latter being considered superior and the punishment must be in consequence. But this is applicable only to the virgins who had taken the vow of virginity while already being in the Church of Christ, not to those who were in heretical societies or outside the Church, as that vows were not valid (can. 20 Basil the Great).

no occasion to complain against us on the ground that we are attracting to ourselves on account of our permitting them to sin” (can. 6)<sup>17</sup>

We can note that, along with the monks, there also were virgins who took the vow of chastity for their entire lives, or the institution of deaconesses, their vow being taken before the local bishop. The virgins or the deaconesses were not allowed to marry after the vow was taken, such a marriage being considered bigamy and punished with the exclusion from the Christian community. This was the decision of the Fathers from the Synod of Chalcedon (can. 16). Nevertheless, the gravity of the act was to be judged by the bishop, as the only competent judge, who could exclude them from the religious community or could apply a more severe punishment. Following such a marriage, the men with whom they would marry were also subject to punishment, while the matrimony was called *contubernium* and the children born within it were considered outlawed.

Therefore, the cohabitation or a potential marriage, after the ordination, of clerics with women or consecrated women was strictly forbidden. The first canonical rules included the condition for the candidate to priesthood, in its three divinely established degrees, to be in a legal marriage, according to the Christian doctrine, without living in fornication and without having been previously married: “He who has been twice married after baptism, or who has had a concubine, cannot become a bishop, presbyter, or deacon, or any other of the sacerdotal list” (can. 17 Apostolic)<sup>18</sup>. This canon forbids two marriages only after the Sacrament of the Holy Baptism<sup>19</sup> for the candidates to priesthood, as well as the union with concubines. According to the canonical dispositions, the Church forbade the marriage after the receiving of the Holy Sacrament of Priesthood, in the hierarchical degrees of deacon, priest and bishop. The members of the divinely established clergy may marry before the ordination, namely before the ordination as a deacon, but they also may remain bachelors, if they wish, as the marriage is not mandatory. Thus, the Synod in Trullo did not forbid the bachelors to become bishops, while those already married were allowed to be elevated to bishops, under the condition that they will sepa-

<sup>17</sup> Ioan N. Floca, *Canoanele Bisericii Ortodoxe...*, ed. cit., p. 383. Pidalion. *Cârma Bisericii Ortodoxe*, Ed. Credința strămoșească, Iași, 2004, p. 615.

<sup>18</sup> *Ibid.*, p. 17.

<sup>19</sup> Jean Meyendorff, *Le mariage dans la perspective orthodoxe*, trans. Lucette Marçais, Paris, 1986, p. 98.

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rate from their wives, through mutual consent, and that the woman will enter a distant monastery and will be provided for by the bishop (can. 48 in Trullo).

Therefore, in the old Church, both deacons and priests, on the one hand, and bishops, on the other hand, had the freedom to marry or not, but also the freedom to choose between the marriage before and after the ordination. This complete freedom was based on the establishment let by the Saint Apostles, according to which the clerics could choose the most appropriate civil status for themselves. The only restriction in this matter was that referring to monogamy, which had to be respected, despite the legal practice – according to the roman and mosaic legislations – of bigamy, which allowed man to also have a concubine, along with their wife<sup>20</sup>. In time, as a custom, was established the regulation that the clerics must marry only before their ordination, but without specifying measures to be taken against those who were still marrying after the receiving of the Holy Orders. The first canonical rule that established the marriage before ordination was canon 26 Apostolic, which allows the marriage after the admission in clergy only to the readers and chanters<sup>21</sup>: “Of those who have been admitted to the clergy unmarried, we ordain, that the readers and singers only may, if they will, marry”<sup>22</sup>. Although forbids the marriage after the ordination, the canon does not provides punishments for those who would violate this rule, because such punishments would not have any justifiable ground. Until the enforcement of the establishment prescribed by the canon 26 Apostolic, the clerics were free to marry after ordination and they had the possibility to choose their own civil status – married or bachelors. We must not confuse here the celibate with the monastic state, which was not yet institutionally recognized by the Church. Canon 6 of the 6<sup>th</sup> Ecumenical Synod, reproducing canon 26 Apostolic, forbade the marriage after ordination for hypodeacons, deacons and priests; these were only allowed to marry before ordination or cheirotesia, violations of this rule being punishable by defrocking<sup>23</sup>.

<sup>20</sup> Ioan N. Floca, *Drept canonic ortodox. Legislație și administrație bisericească*, vol. II, EIBMBOR, Bucharest, 1990, p. 58.

<sup>21</sup> *Ibid.*, p. 59; Also see Paul Evdokimov, *Sacrement de l'amour. Le mystère conjugal à la lumière de la tradition orthodoxe*, Paris, 1980, p. 257.

<sup>22</sup> Ioan N. Floca, *Canoanele Bisericii Ortodoxe...*, ed. cit., p. 21. See can. 5, 51 apost.; 14 IV ec.; 3, 6, 12, 13, 20, 30, 48 Trullo; 10 Ancyra; 1 Neocaesarea; 16 Carthage; 69 Basil the Great.

<sup>23</sup> Iorgu D. Ivan, „Căsătoria – Sfântă Taină a Bisericii și instituție juridică a Statului”, in *Biserica Ortodoxă Română*, CI (1983), no. 9-10, p. 741; Paul Evdokimov, *Sacrement de l'amour*, p. 257.

Unlike the practice of the Orthodox Church, in the Roman-Catholic Church it is still in use the practice of mandatory celibacy for bishops and priests, while the deacons may be married only if they agree to permanently stay deacons<sup>24</sup>. The clerical celibacy in the Roman Catholicism is an actual problem, given the implications it has in the practical ecclesiastical, moral and social life<sup>25</sup>. The practice of celibacy became a general mandatory rule in the Western Church after the Great Schism in 1054, when Pope Gregory VII imposed it through his 3<sup>rd</sup> epistle from 1074. Today, we can assert that the problem of the celibacy of Catholic clergy tends to become more acute<sup>26</sup>, given the reactions against it from within the Roman-Catholic Church (clerics, faithful, mass-media), protests being heard in numerous Catholic countries. The keeping of mandatory celibacy for priests encouraged some immoral practices, such as concubinage, homosexuality or pedophilia, problems that are nowadays present in the Roman-Catholic Church.

### 3. Canon 3 from Nicaea I and the problem of the maximum matrimonial age

Canon 3 of the 1st Ecumenical Synod, through which the cohabitation of clerics with women, in concubinage, is forbidden, is cited by Saint Basil the Great, in the text of canon 88, where he condemns the cohabitation with *feminae subintroductae*. In the same time, the text of canon 88 is used to impose a maximum matrimonial age in the Church. Thus, according to canon 88 of Saint Basil the Great, a man who reached the age of 70 should not be allowed to conclude a marriage<sup>27</sup>. Therefore, as far as the masculine

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<sup>24</sup> Mihai L. Constantinescu, „Le problème du célibat clerical dans la tradition canonique de l’Eglise Catholique-Romaine”, in *AUC*, series Theology, IX (2004), no. 12, p. 445-456.

<sup>25</sup> See F.-J., Braceland, *Mariage et célibat*, (collective work), Le III-e Congrès de l’Association catholique internationale d’études médico-psychologiques, Cerf, Paris, 1965, p. 99-117.

<sup>26</sup> A. Rouet, *Prêtres mariés nos frères*, Cerf, Paris, 1974; Jean, Marie-José Codron, *Prêtres de quelle Eglise?*, (collective work), Paris, 1971; Heinz -J. Vogels, *Celibacy – gift or law ? a critical investigation*, London, 1992.

<sup>27</sup> Nicodim Miłaș, *Dreptul bisericesc oriental*, trans. rom. D. I. Cornilescu and Vasile S. Radu, Bucharest, 1915, p. 479; Paul Evdokimov, *Sacrement de l’amour*, p. 256; Jean Dauvillier, Carlo de Clercq, *Le mariage en droit canonique oriental*, Paris, Recueil

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part is concerned, Saint Basil the Great mentioned in a letter addressed to a certain bishop Gregorius: “[...] For I am persuaded that neither a man of seventy years of age would cohabit in a passionate fashion with a woman, nor have we with regard to any supervening act ruled what we have ruled as due to any improper act [...] But we are aware that what has been done by others soundly and sanely, will become to others an occasion for sinning. On this account we ordered you, *in pursuance of the injunction of the Holy Fathers* [can. 3 Nicaea I, a.n.], to separate from the hag [...] Cast her out of your house, therefore, and settle her in a monastery [...]” (can. 88)<sup>28</sup>. We observe here the firm attitude of Saint Basil the Great towards the 70 years old bishop who has accused of having relations with a *femina subintroducta*, introduced in his home under the pretext she is taking care of him. In this case, the Holy Father invokes the authority of the Holy Fathers from the First Ecumenical Synod in Nicaea (325), who, in canon 3, forbade the presence of the *feminae subintroductae* in the homes of clerics and, in consequence, he advises the old bishop to send her to a monastery and to be served by men, in order not to become a stumbling for his faithful. Despite these, the persons who reach such an age cannot get anymore to the physical purpose of marriage under normal circumstances. This kind of matrimony appears to be even less justifiable under moral aspect<sup>29</sup>, because there are serious incapacities at a higher age, as they appear at a too low age. This superior canonical age limitation was not respected in the civil legislations, even since the time of Justinian, and is not respected nowadays in any state.

Concerning this matter, it is remarkable that the civil law does not impose a *maximum age* until which marriages may be concluded. Thus, a marriage may be concluded at any age, even at extreme ages – *extremis vitae* –, in most of the cases, to legalize a preexistent state. We can note here a contradiction between the purposes of the marriage according to the civil law and the lack of a mention on the maximum age at marriage. It is clear that a very aged person is not able to fulfill all the conditions

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Sirey, 1936, p. 159.

<sup>28</sup> Ioan N. Floca, *Canoanele Bisericii Ortodoxe...*, ed. cit., p. 365.

<sup>29</sup> Nicodim Milaş, *Dreptul...*, p. 479. The canonist Nicodim Milaş maintains that in the 19<sup>th</sup> century, in Serbia, men over 50 years old and women over 40 were forced to receive the approval of the competent ecclesiastical authority, in order to conclude their first marriage. A similar decision, concerning the aged persons, was present in the Russian Civil Code, too.

required for the valid conclusion of a marriage. Concerning the *maximum difference of age* between the future spouses, the law does not establish such a difference and marriages may be concluded regardless of the difference in age between the spouses, even if this difference is significant. However, the existence of such a difference can be a clue for a fictive marriage, concluded for particular interests, in disagreement with the genuine purposes of the institution of marriage. This is yet another contradiction between the two realities (the purposes of marriage in the civil legislation and the inexistence of a maximum age difference in the state law). In the Orthodox Church it is respected the age imposed by the civil law for the administration of the Holy Sacrament of Matrimony<sup>30</sup> because it follows the civil marriage and the matrimonial full age is a physical requirement<sup>31</sup>.

#### 4. Conclusions

Through canon 3, the Fathers of the Synod in Nicaea (325) aimed to strengthen the moral life of the clergy, condemning the concubinage of clerics with the *feminae subintroductae*, without an intention to introduce the celibacy for clerics, to the detriment of marriage.

The text of canon 3 I Ec. expressly forbids the clerics from all the three degrees of the divinely established priesthood to cohabit with women with whom they were not in a legal conjugal relation, being this way a stumbling for the community of faithful. Such cohabitation would have affected the clerical dignity, especially the episcopal one, and that is why the Fathers of Nicaea decided to end this immoral practice. An express exception is made, as the members of the clergy had the right to cohabit only with women who were beyond any doubt of immorality, such as the mother, sister, aunt or other woman in a kinship relation. The absence of wife from this enumeration does not mean that the marriage of clerics is condemned and that the celibacy is imposed, but that the clerics are forbidden to cohabit with certain categories of women, such as consecrated virgins, deaconesses, presbyteresses, widows etc.

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<sup>30</sup> Traian Costea, *Căsătoria din punct de vedere: istoric, dogmatic și canonic*, PhD thesis, Bucharest, 1935, p. 59.

<sup>31</sup> Ioan N. Floca, *Drept canonic ortodox...*, vol. II, p. 70.