

**“OVIDIUS” UNIVERSITY OF CONSTANTA
DOCTORAL SCHOOL OF THEOLOGY
DOCTORAL DOMAIN - THEOLOGY**

**CHURCH PENALTIES IN BYZANTINE AND
ROMAN LAW BASED ON THE NEW TESTAMENT**

ABSTRACT of Ph.D. Thesis

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Constanta 2014

KEY WORDS

- Byzantine law
- Roman canon law
- Church penalties
- New Testament
- delicts
- synods

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INTRODUCTION

God and man are the constituent parts of an original binome, unique and essential in the complexity of existence and history, which extends its significance in man's experiences or actions. God and man are, therefore, part of a mode of being with one another, a mode which finds its expression through a relationship based on the observation of divine, natural and ecclesiastical laws that attain their apex in the Teachings of our Lord Jesus Christ.

The current research is justified by a series of aspects – theological, canonical and pastoral – which reveal a triple argument for its conduction.

A first argument is rooted in the intention of the Romanian Orthodox Church to pay close attention and adopt a special attitude to the acquiescence with ecclesiastical disciplines with regard to the contents of the canons established by the holy synods and the Holy Fathers.

The second argument stems from the desire to provide a response to the challenges of contemporary social life at a moment when, given the display of its moral options, the Orthodox believers themselves approach the canonical discipline nonchalantly.

A third motivation derives from the intention of finding the authentic means through which man can approach with

serenity and restore by his mode of existence the customary disciplinary norms derived from the New Testament, in the knowledge that the main concern of the Church is the *redemption of every believer's soul*, which according to the Code of Canon Law and the doctrine elaborated by canonists is *a supreme law*. The elusion of religious, moral and canonic norms weakens the relationship between man and God, between man and his peer and, more than anything else, stands in the way of and negatively affects the redemption work of the Church members, so it becomes equally detrimental to the canonical order within the Church.

The starting point of our research aimed at clarifying the current Church penalties, which are deeply rooted in the New Testament is **The First Synod** which was held by the Apostles in Jerusalem in around 50 A.D. (F.A. 6, 1-7). The Synod was summoned in order for the Apostles to decide whether the newly converted to Christianity (*the gentiles*, non-Hebrew) should totally comply with the Law of Moses. This Synod represented an exceptional reunion of all Church leaders. For almost two centuries to follow there was no other reunion to compare to this one until the First Ecumenical Synod of Nicaea, in 325.

The research is structured into four chapters and intends to coherently follow the thematic unit – Church penalties in Byzantine and Roman law, the basis of which is deeply rooted in the writings of the New Testament and in the doctrine of the Holy Fathers.

In the first chapter, we deemed it necessary to undergo research in order to clarify the principles which constitute the basis of the equitable application of canonical penalties, both those established by the Canonical penal law and those imposed through administrative and judicial procedures. It is a chapter in which we intend to highlight the main sources of inspiration of the Holy Fathers who succeeded in clearly framing and defining delicts and Church penalties with a view to protecting believers from being led astray and to maintaining the unity of faith both in the Christian East and the Western part of the Roman Empire. It is for this reason that the period is plentiful of various writings which bring to light the rightful Teaching passed to the Church by our Saviour Jesus Christ. Of paramount importance in establishing delicts and imposing penalties are the ecumenical Synods from the first centuries of the Christian era which are valid to date.

In the second chapter, the focus of the research is directed to the significance of the canonical penal law in the Christian Church of Western Europe. We shall reassert that a major role in the formation of a Body of canon laws belonged to the Decree of Gratian, which lay the foundations of the science of canonical law at the University of Bologna. From this point on, the second chapter analyses the historical evolution of penal law in the Western Church. It is for this reason that we considered that an understanding of the provisions of the

Code of Canon Law is not possible unless reference to Roman and German penal law is made, since the majority of Canonical law principles of the Western Church rely on the principles of concrete application taken from the Roman law and on the subsequent reflections of glossarists regarding the imperial laws which are unified in the works of the Roman Pontiffs Gregory IX, Boniface VIII, Clement V and John XXII, resulting in a classical canon law under the name of *Body of Canon Law – Corpus Iuri Canonici*.

In the third chapter, the research concentrates on concrete aspects and legal provisions contained in the work of codification of the Code of Roman Canon Law in the year 1917 which refers to delicts and on the ensuing novelty of this codification. Thus, a first novelty resides in the classification of delicts and their consequences. In this light, we considered it necessary and opportune to have a comparative study of the laws of Eastern Christian Churches of Byzantine rite and those of the Western Christian Churches, mainly the Roman-Catholic Church.

In order to attain the coherence of this research, the fourth chapter will present the Church penalties established in the Code of Roman Canon Law at different courts of the Church, either at a local level – the penalties are established by the diocesan Bishop or the local Assessor, or at a universal level – the canonical penalties fall under the jurisdiction of the Holy See.

The conclusions we have reached as a result of this re-

search pinpoint not only the detailed knowledge of delicts and canonical penalties within the Church, which are to be imposed following the principle of canonical equity, but also their importance in the life of believers, clerics and monks. The research paper represents the pinnacle of the courses attended at the Faculty of Orthodox Theology, part of the University “Ovidius” of Constanta.

It is for this reason that I want to express my immense gratitude to His Eminence Teodosie Petrescu, Archbishop of Tomis and the coordinator of my doctoral thesis who supported me and this research with His paternal care and His words of wisdom, which will prompt me to further extend my research in this field.

I would also like to thank Pr. Professor Isidor Martica, Ph.D, from the Faculty of Roman-Catholic Theology, part of the University of Bucharest, for accepting the joint coordination of this doctoral thesis.

In addition, I wish to show my appreciation to the professors at the Faculty of Orthodox Theology from the University “Ovidius” of Constanta and to the librarians of the Franciscan Theological Institute in Roman, Neamt County, who provided me with the necessary books which permitted the conduction of the research illustrated in the doctoral thesis.

I honestly and whole-heartedly thank all the people who supported me all along my research and accompanied me with their prayer. May God repay them all.

THE NEW TESTAMENT AS THE BASIS OF CHURCH LAWS

The roots of church laws are to be found in the texts of the New Testament, as follows:

If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every charge may be established by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the church. And if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector. Truly, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven.

(Matthew 18, 15-18)

The Holy Scripture offers us the right perspective on the relationship between God, human being and Universe, by showing us that it is God who gives each of these „life, breath and all workings” (F.A. 17, 25), being the source of existence.

The coming of Christ is aimed at the redemption of all people, that is of all humanity. The world needs to renew, to restore itself by receiving communion from the light of Christ and His teachings.

The Holy Scripture is a rich source of written Church Law. The New Testament however, and most of all the four Gospels are somewhat the basis of subsequent church legislation. The Gospels comprise the entire doctrine of our Saviour, the founder of the Church and its first and foremost legislator. By preaching His teachings on earth, He establishes, alongside faith and Christian life, the fundamental norms for the formation of His Church.

Subsequently, the Holy Fathers, successors of the Apostles, gathered in synods and passed written church laws under the name of canons, based on the teachings of the New Testament. The assembly of written laws is called codex. These laws can be established by God or people. The former are spread through the New Testament and are not grouped in a codex.

The Old Testament bears less significance as a source of Church Law, even though the Psalms (105, 3) read: „Blessed are they who keep judgement and do righteousness at all times”, as the Judaic social and ceremonial laws were abated upon the coming of the Saviour, while only the moral ones were preserved.

Consequently, the words of our Saviour Jesus Christ, „it shall be to you as a Gentile and a publican”, were interpreted by the canonical doctrine of all times as *the one who breaks the canon law and persists in disobedience shall be excommunicated or excluded from the church*. In this sense, in the Old

Testament, the publicans and the sinners were excluded from the people and avoided.

The Holy Evangelist Matthew considers the Old Testament a great divine prophecy (Matthew 5, 18) and relates His Salvation mission to the biblical prophecies (In. 5, 39, 46; Mc. 14, 21; Lc. 22, 22; 24, 46-47, etc.). This attitude to the Old Testament is generally confessed in the New Testament in the Embodiment of the Son of God, who „did not come to abolish the Law, but to fulfill it” (Matthew 5, 17)

The infringement of religious, moral and canonical norms of conduct, which are meant to maintain the order within church life is firstly considered a sin and then a breach of Church canons; therefore, any deviation on the part of a Church member firstly bears a religious and moral significance and only then is it seen from a judicial perspective.

CHAPTER I

GENERAL PERSPECTIVE ON CHURCH PENALTIES

General overview

The final exhortation of the Apostolic canons (4th century), addressed to the bishops made the following recommendations: “Shall you keep them entirely, you will be redeemed and at peace; but shall you fail to keep them, you will be punished and in continuous struggle, against one another, thus receiving the repayment for your disobedience. *And God who is Alone Eternal, Creator of all things, will unite you by giving you the peace of the Holy Spirit, showing you the right way, making you persistent in good, without repayment, unconflicted and will offer you eternal life.*” (Epilogue to the Apostolic Canons).

Any human society – either lay or religious – presupposes a clear orderly state achieved by the disciplined behaviour of its members. In pursuing its long-spanning work of redemption, the Church concentrates on what is good and what is not good, with the intention to remove the evil.

The Canonical penal law refers to the canons or laws of the Church established by an ecumenical Synod (or at least accepted by it while the laws are formulated by other Synods

or even by some of the Holy Apostles and some of the Holy Fathers), which become the source of the laws of the Eastern Christian Churches.

Thus the conclusions of the synods contain terms which were borrowed from the state law as naturally as other words like 'law' or other technical terms used in judicial sciences.

- The term 'infringement' is utilised to denote noncompliance with the disciplinary measures stipulated in laws and regulations, which entail certain sanctions. The disciplinary infringement refers to the guilty infringement of the established disciplinary rules within a collectivity by a person belonging to that collectivity. (e.g. labour discipline infractions)
- The term 'delict' means abandonment or elusion, i.e. leaving the law aside or avoiding it. It comes from the Latin word '*delictum*', derived from the verb '*deliquo*' which means 'I leave', 'I abandon'. In legal terms, or more precisely in the context of behavioural norms set within a society, it refers to the abandonment of the path that one must take, in concordance with the law, i.e. by-passing the route stipulated in and indicated by the law. The delict seen as elusion of law is generally associated with the elusion of civil laws. The judicial doctrine kept the term 'delict' mainly to determine civil infractions lacking penal character, while the term 'misdemeanour' is exclusively used to refer to the infringement of penal law.

1. Term definition, purpose, type and duration of penalties

1.1. *Term definition and purpose of Canon law penalties*

Although the current Code of Canon Law does not provide a definition of 'penalty', a reference can be made to the provisions of canon 2215 from the abrogated Code of Canon Law in which 'penalty' is:

- a) considered a measure of constraint which is manifested through depriving the believers of a spiritual good;
- b) imposed by the competent authority;
- c) applied with the purpose of preventing the occurrence of new misdemeanours or that of punishing the offender.

In this sense, the Romanian Orthodox Church legislation is based on the last canon of the Synod of Trullo which establishes that every offender should be held accountable for his mistake in such a way that it becomes a cure for the person who initiated it (canon 102). The same Synod of Trullo (691) validates, by means of canon 2, the collection of canons from the last book (Book VIII) of the Apostolic Constitutions, i.e. the collection of 85 canons which the short epilogue describes as canons given to Bishops by Apostles.

The Church penalties established in Canon Law are:

- a) *censures* (canon 1331) which are further classified into: *excommunication, interdict and suspension*;
- b) *expiatory penalties* (canon 1336);
- c) *penal remedies and penances* (canons 1339-1340).

In the Byzantine penal ecclesiastical law, the penalties for all Church members are as follows:

a) Epitimia which the father confessor imposes, from the authority of the confessional seat, for the misdeeds against Christian rules and order.

b) Excommunication or malediction, which consists of the dismissal from the Church through the withdrawal of membership and implicitly any rights pertaining to it.

c) Anathema, also known as damnation or curse, consists of punishing the excommunicate, the dismissed from the Church, with the gravest possible Church penalty, which is equivalent to the capital punishment. In the old Church, anathema was also referred to as simple excommunication (canon 18 Ancira).

For clerics, however, the penalties of excommunication and anathema are only applicable if they have previously been subject to other penalties which deprived them of the clerical state.

The penalties imposed on the clerics are as follows:

a) Defrocking by which the subject is deprived of ecclesiastical status, in the sense that he is completely denied the right to perform ecclesiastical duties, without being deprived of grace, though. This is still in his possession, but he is not allowed to use it. In the event that a cleric committed one of the delicts in the holy canons, such as blasphemy against the Holy Spirit, apostasy or schism, he would be

deprived of grace and prevented from ecclesiastical activities or any other sacerdotal work, especially if he obstinately persists in them.

b) Clerics are also subject to other penalties such as: advice, expostulation, temporary deprivation of ecclesiastical status (Apostolic canons 15 and 16).

c) Rank deposition without loss of clerical state.

Secondly, we distinguish between *determinate* (established) and *indeterminate* (unestablished) penalties, which are interchangeable. The former was established and evaluated through sources. The latter lies under the competence of the judge or the superior through his chosen words or imperatively (functioning as a precept). Moreover, even the determinate penalties referring to particular circumstances or arrangements of the offender, can be reduced or accrued (canon 102 Trullo).

Thirdly, they classify into *medicinal* and *vindictive* penalties. This classification is so frequent that it can be found in almost all canons.

1.3. *The duration of penalties*

The penalty should be as directly proportional as possible to the offence. This issue is addressed in the last canon of the Synod of Trullo (680-681): “*All power is in the hands of the local bishop, so that upon concrete consideration of all aspects, he shall decide which penalty, either integral or reduced, is to be imposed.*”

Prior to the imposition of penalties, it is required that discussions be held as to the manner in which the general ones are to be established. However, as it shall become apparent, there are examples of *latae sententiae* (declared) excommunications for deposition and suspension:

- a) *In order for the penalty to be imposed, the delict must be grave;*
- b) *The delict must be external and proven through documents and witnesses;*
- c) *When there is grave lack of loyalty;*
- d) *The existence of a delict provided in the canons and insufficiently penalised.*

2.2. The imposition of latae sententiae penalties

The sources of the propositions regarding declared (*latae*) penalties punish not only extremely grave delicts such as heresies (canon 1 Ephesus), the celebration of Easter with the Jews (canon 1 Antioch), appointments in a foreign diocese (canon 3 Antioch), communication with the expelled and the anathemised on grounds of dogma, or forging the Roman Pontiff's letters.

2.3. The imposition of ferendae sententiae penalties

Here it is necessary to clarify the difference between vindictive penalties, which entail something else in the absence of advice, and the remedial or medicinal penalties which are remitted after the normal speech.

I. SPECIFIC SINGULAR PENALTIES

a) DEPOSITION

1. *Definition of 'deposition'*

The term ‘deposition’ in Romanian („depunere”) comes from the Latin word *dēpōnō, ere, posuī, positum* (vt.), which means *to put down, to abandon, renounce something*. ‘Rank deposition’ or ‘rank descent’ is a canonical penalty with roots both in the Old Testament and in the primary Church, for which several names have been used, even though initially they did not specifically refer to rank deposition.

β) EXCOMMUNICATIO

1. *Definition of 'excommunication'*

According to the Holy Canons, malediction or excommunication can generally be of three types:

a) minor excommunication, which consists of suspension from the Holy Communion (canon 80 The Sixth Ecumenical Synod; canon 11 Sardica);

b) major excommunication, which consists of suspension from all services and the physical expulsion from the church. These are both ordinary excommunications and can only be imposed on lay believers because excommunicating a holy servant means depriving him of the Holy Communion, which is not possible for a servant who performs the Divine Liturgy;

c) suspension or prevention from performing the Divine Services, which is only applicable to clerics.

γ) SUSPENSION

1. *Definition of 'suspension'*

Suspension is a penalty applicable only to clerics and prohibits them from performing all or some of the sacerdotal celebrations or service leading. It is a very old penalty which originated in the post-Apostolic period. The simple and clear formulas presented form the basis of the definition of 'suspension' in accordance with Byzantine law. Suspension is a penalty by which the cleric is temporarily deprived of the right to exercise Church power, to function within the Church through the competence of rank, duty or Church benefit.

δ) INTERDICT

1. *Definition of 'interdict'*

Interdict can be defined as "*a spiritual or medicinal penalty by which the believer, still in connection with the Church, is denied entry into the Church or banned from celebrating the Divine Service in the temple*".

II) SPECIAL DELICTS

This part of the research paper is devoted to the presentation and analysis of certain special delicts provided in the Church law, namely: delicts against faith, against Church unity and against Church authority.

It should be stated from the very beginning that the delict is an action contrary to the fundamental values of Christian life, therefore an action which corrupts the good of ecclesiastical life. In other words, it is an anti-ecclesiastical action.

CHAPTER II

THE ROMAN ECCLESIASTICAL PENAL LAW

Starting with the second half of the 12th century, the Western Church went through a period of renaissance of canon law. It is the period when canon law, different from theology or Roman law as a science, is established as a full judicial system.

The work which resides in-between the two millennia is *Concordantia discordantium canonum* (Concordance of discordant canons) or *Decretum Gratiani* (Decree of Gratian).

CHAPTER III

DELICTS IN ROMAN CANON LAW

1. The term 'delict'.

In ecclesiastical law, delict is seen as the interior and exterior moral violation of law which entails a canonically imputable, indeterminate sanction.

2. Classification of delicts

According to the mode of manifestation, delicts can be public, known and unknown.

CHAPTER IV

PENALTIES IN ROMAN CANON LAW

Penal canon law is not very popular since there have been numerous debates on it. Some canonists stated that the Church would never have resorted to coercitive power in such a way as to provide penalties in the full sense of the word. It was even claimed that sanctions in Church would come in stark contrast with the very purpose of ecclesiastical communion.

The Church has its proper innate right to constrain Christian believers who commit delicts through penal sanctions.

The Church penalty refers to the deprivation of goods aimed at the rehabilitation of the offender and the punishment of the delict imposed by the legitimate authority.

The reduction of the penalty is done through pardon in the case of a sentence and through dispensation in the case of harsh, vindictive penalties. Consequently, the premises of penalty reduction are related to the differences in meaning between pardoning and dispensation.

Penalty reduction is an act of the Superior's authority by which the penalty imposed on the offender is reduced and consists of the absolution of penalty through a legitimate concession of the Superior.

Since the self-same penal law serves the public good, the

punishment of the offence needs to be taken into consideration. There are, however, special circumstances in which the absolution of the penalty brings more benefits to society.

This is a real situation, and the authority who is to reduce the penalty needs to act discreetly, with legislative prudence, lest the penalties should lose their value in less serious conditions.

Conclusions

In conclusion, it can be stated that the penal law of the Church of Byzantine rite does not spare any of us from discovering a number of aspects in the formulation stage, as there are numerous harsh sanctions provided in the disciplinary laws aimed at ensuring public safety.

Therefore, we can distinguish some fundamental norms of penal discipline in the Byzantine Church:

1. The Church does not refer to the internal affairs (canon 4 Neocaesarea);
2. A superior cannot punish another according to his conscience alone, in the absence of external arguments (canon 133 Carthage);
3. When accusations are brought against somebody, the accused must be summoned to judgement three times if he fails to attend after the first summon (canon 74 Apostolic);
4. The accused can only be judged by men worthy of cred-

it, not by excommunicates or heretics (canon 75 Apostolic, canon 6 The Second Eccumenical Synod);

5. No cleric is to request a lay judge, for he will lose the trial and will receive a harsher penalty (canon 15 Carthage, canons 9, 17 Chalcedon);

6. A superior is not to make haste in inflicting punishment; he is to evaluate the type of delict, the quality and condition of the offender, his status, knowledge, penance and repentance, in the light of which he must analyse and decide whether the penalty should be accrued, reduced or changed (canon 102 Trullo).

These are all conclusive aspects which originate in the canons. The practice of synods and Roman pontiffs establishes the following general principles: one cannot be adjudged in his absence, but summoned to judgement after being notified repeatedly in order for the accusations of offence to be changed. He is to be given the chance to defend himself.

If we were to make a comparison between Church laws and practice, it needs to be shown that the laws generally establish that the offenders are to be punished with strictness, while in practice the cases are judged individually and a more lenient penalty is applied. We observe that as far as penal cases are concerned, there are numerous useful references in the documents of the Synods of Ephesus, Chalcedon and Nicaea. The synod which stands out from the others is that of Antioch, which clarifies the use of terms, the appeal to the synod,

etc. and establishes the superior as having the authority to impose penalties.

There are other synods with special characteristics, e.g. the Synod of Sardica containing references to the appeal to the Roman Pontiff or the Synods of Trullo, though only informative up to the last canon which is included in the Byzantine penal law. The canons of the Synod of Sardica provide the harshest penalties for delicts so that people become fearful of committing offences. In other words, people should be aware that there are penalties for all the offences that need sanctioning.

However, the misdeeds resulting from weakness rather than malice (like that of murderers) need to be leniently analysed and the ensuing punishments should be milder.

This type of law which has lasted throughout centuries in the Byzantine and Roman Church is supported nearly entirely by the holy books in the Christian conscience, in the spirit of the Church.

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