

THE HIERARCHICAL RELATIONSHIPS BETWEEN THE DEGREES RESULTING FROM THE "*HIERARCHIA ORDINIS*" AND THE "*HIERARCHIA JURISDICTIONIS*". CANONICAL-LEGAL STUDY

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ABSTRACT

The canonists of the Eastern and Western Churches have examined and defined the hierarchical relationship between the degrees resulting from the "hierarchia ordinis" and the "hierarchia jurisdictionis" and the manner of exercising the two ecclesiastical powers, i.e., the sacramental power (potestas ordinis) and the governing power (potestas regiminis) or jurisdictional power, through the prism of the dogmatic and canonical doctrine of their Church. The way this teaching was understood and formulated, however, led to the creation of different ecclesiological and canonical doctrines, which we find affirmed both in the text of the canonical legislation of the two Churches (Eastern and Western) and in the works of their theologians and canonists.

For a better understanding of these two ecclesiologies concerning the relationship both between the two powers, sacramental and jurisdictional, and between the two hierarchies, the hierarchy established by virtue of the grace received through the Sacrament of Holy Ordination - known in specialist terminology as the "hierarchia ordinis" - and the hierarchy created on the basis of a juridical act, called the "hierarchia jurisdictionis", I examined and evaluated not only the ecclesiologies of both Churches (Eastern and Western), but also the statements of prestigious theologians and canonists on the content and canonical basis of the two hierarchies, which enabled us to identify both the similarities and the canonical-legal and doctrinal differences of the two Churches on the topic at hand.

Keywords: *sacramental power, ecclesiastical governing power, Sacrament of Holy Ordination, canonical-legal doctrine;*

INTRODUCTION

From specialty literature (church history, dogmatic, canonical, liturgical theology, etc.) it can be seen that, over the centuries, the hierarchical relationships between the levels resulting from the 'hierarchia ordinis' and the 'hierarchia jurisdictionis' have often been reversed because some of those who held positions or ranks in the administration of the great ecclesiastical centres (patriarchates, exarchates and metropolises) were not bearers of the divinely instituted grace of the priesthood in one of its three levels.

This inversion of the hierarchical relations of the members of the two hierarchies was due to the fact that some of those who belonged to the hierarchia jurisdictionis did not have the grace of the priesthood acquired through the sacrament of ordination, which was and must remain the sole basis for the acquisition and exercise of ecclesiastical power, but, instead, they availed themselves of the exercise of this power only through jurisdictional



power. To understand how the two powers are administered or exercised in the Church, i.e. the "potestas ordinis" (sacramental power), which is acquired through the Sacrament of Ordination, and the "potestas regiminis ecclesiastici" (ecclesiastical governing power), which is obtained through an act of jurisdictional power by the competent authority, we must take into account the position of the degree or rank of those who belong both to the "hierarchy ordinis" (ἱεραρχία ἱερατική), i.e. the priestly hierarchy, and to the "hierarchy jurisdictionis" (ἱεραρχία διοικητική) or jurisdictional hierarchy.

The hierarchical structure of the two Churches, Eastern and Western, included and still includes the jurisdictional institutions through which they organize their pastoral activity, hence the canonical-legal relationship that is created not only between "potestas sacra" and "potestas regiminis", but also between "hierarchy ordinis" and "hierarchy jurisdictionis".

In the desire to familiarize the reader with the ecclesiological and canonical-legal issues generated by the way in which the two Churches, Eastern and Western, have perceived and defined their hierarchical structure, and implicitly the way in which they exercise or administer the "potestas regiminis" (power of governance), in the pages of this canonical study, with an interdisciplinary content (theological, canonical and juridical), we have made new contributions to a subject of comparative canon law that the specialized literature has not yet managed to present in a holistic way.

To this end, in the pages of our study we have first of all made some notional elucidations, as well as clarifications of ecclesiological and canonical-legal doctrine regarding the way in which the two ecclesial powers, i.e. the sacramental power (potestas ordinis), and the governing power (potestas regiminis) or jurisdictional power (potestas jurisdictionis), were and are exercised in the two Christian Churches, i.e. in the Orthodox Church and in the Roman Catholic Church, hence the comparative approach and evaluation of these ecclesiological and canonical-legal realities, which bring to the landscape of the specialised literature a scientific contribution with an interdisciplinary content.

1. NOTIONAL AND CANONICAL-LEGAL DOCTRINAL CLARIFICATIONS ON THE HIERARCHICAL STRUCTURE OF THE CHURCH

By the noun "potestas/tis"¹, the Romans understood the notion of "power", i.e., the "power to dispose" (of something), the "power" to do something. The adjective "sacra"², which accompanies the noun "potestas", comes from 'sacer, sacra, sacrum', which means "holy", "divine", i.e., something consecrated to the divine.

The word "regimen/inis"³, by which the Romans expressed the notion of "management" in public administration, has also been taken up by the Church, and in particular by the Western Church, as the phrase "potestas jurisdictionis" in the Code of Canon Law of the Roman Catholic Church today (cf. can. 129 § 1)⁴ attests.

Among the Romans, the phrase "potestas regiminis" (governing power) referred to the concept of "auctoritas/atit"⁵ (authority, basis, decision, order, empowerment, etc.), hence the verb "auctorari" or "se auctorare" (to guarantee, to make oneself master), to which the jurists of Emperor Justinian also made express reference in their famous work entitled *Digestae* (*Pandectae*).

¹ G. Guțu, *Dicționar latin-român*, Editura Științifică și enciclopedică, București, 1983, p. 940.

² G. Guțu, *Dicționar latin-român*, p. 1081.

³ G. Guțu, *Dicționar latin-român*, p. 1044.

⁴ *Codul de Drept Canonic: Textul oficial și traducerea în limba română*, Edit. Sapienția, Iași, 2004, p104-105.

⁵ G. Guțu, *Dicționar latin-român*, p. 122.



In the ecclesiological-canonical language of the Roman Catholic Church, the phrase "hierarchy jurisdictionis" refers to this concept of "auctoritas" (authority), which is acquired through a jurisdictional act, whereas in the Eastern Church it is acquired through a sacramental act, i.e., through the power of grace received through the Sacrament of the Priesthood, on the basis of which divinely instituted clerics also exercise this authority of a jurisdictional nature.

By the noun "ordo/inis"⁶, the Romans expressed both the notions of "order", "rule", "norm" and "rank", "status", "position" (social).

The Latin word "Hierarchia", which comes from the Greek word "Ἱεραρχία", entered the lexicon of ecclesiastical Latin language particularly through the work of Dionysius Pseudo-Areopagite, entitled "On the Heavenly Hierarchy and the Ecclesiastical Hierarchy"⁷.

Dionysius Pseudo-Areopagite's name was also mentioned in the old Collections of Romanian Law⁸. For example, in the "Chosen Pravila", compiled in Moldavia before 1632 by Eustratius, biv chancellor who was one of the great jurists of the Country at that time, and who "also composed the Pravila of Vasile Lupu and wrote the work Seven Mysteries"⁹.

From the Greek word "Ἱεραρχία" derived the noun "ἱερεύς/ἑως" (priest), which is derived from the verb "ἱεράω/ω", meaning to be consecrated to a religious cult, to be entitled to exercise a priesthood, hence the adjective "ἱερατικός/ή/όν" (hieratic, sacred).

In Western Canon Law, the phrase "hierarchy ordinis" expresses the hierarchical structure created by "the degrees of the sacramental hierarchy"¹⁰, i.e., the three degrees of divine establishment (bishop, priest and deacon), which are considered "of divine right"¹¹ also in the Roman Catholic Church.

The Code of Canon Law provides that *de jure* jurisdictional power can only be exercised by those who have received "a degree of the sacrament of the Priesthood (ordre sacro)" (can. 129 § 1)¹². Therefore, according to the provisions of this Code of Canon Law, jurisdictional power can only be exercised by those who hold a divinely instituted priesthood degree (bishop, priest and deacon).

Moreover, with regard to the power of the hierarchy "of divine right", some Roman Catholic canonists have stated that "even the Pope could not exercise this power in an absolute way"¹³, because this power has a "sacramental character"¹⁴, resulting from the Mystery of Ordination, by which clerics of divine establishment enter *de jure* and *de facto* both the "hierarchy ordinis" and the "hierarchy jurisdictionis".

In the Western Church there existed from the first centuries those "Ordines Romani", which are in fact books of worship in which the liturgical ritual is prescribed, and in which are indicated "the rubrics to be followed in ... the administration of the Mysteries"¹⁵, and

⁶ G. Guțu, *Dicționar latin-român*, p. 842.

⁷ See its text in J. D. Migne, *Patrologiae Cursus Completus. Series Graeca*, III, 119-370. Retrieved from URL <https://www.roger-pearse.com/weblog/patrologia-graeca-pg-pdfs/>

⁸ See R. Constantinescu, *Vechiul drept românesc scris. Repertoriul izvoarelor 1340-1640*, București, 1984, p. 200.

⁹ I. N. Floca, *Drept canonic ortodox. Legislație și administrație bisericească*, vol. I, Editura Institutului Biblic și de Misiune al Bisericii Ortodoxe Române, București, 1990, p. 131.

¹⁰ R. Naz, "Ordre en Droit occidental", in *Dictionnaire de droit canonique*, tom. VI, Paris, 1957, col. 1146.

¹¹ R. Naz, "Ordre en Droit occidental", col. 1148.

¹² *Codul de Drept Canonic*, p. 104-105.

¹³ R. Naz, "Ordre en Droit occidental", col. 1146.

¹⁴ R. Naz, "Ordre en Droit occidental", col. 1148.

¹⁵ F. C. Bouuaert, "Ordines romani", in *Dictionnaire de droit canonique*, col. 1144.



particularly of the Mystery of Ordination, from which in fact both sacramental and jurisdictional powers are derived.

Since apostolic times, the Church hierarchy has had two constitutive elements, namely a hierarchy of divine right (bishops, priests and deacons), and one of human right, which included the subdeacons, psalters (cantores), readers (anagnosts), exorcists¹⁶ etc.

In the Western Church, some of these degrees of the clergy of human establishment have been introduced into the hierarchy of divine law¹⁷, as was the case of subdeacons who, in the Eastern Church, have always been part of the hierarchy of the lower clergy, i.e., of human establishment.

About the subdeacons (ipodeacons), we find express provisions both, in Eastern Canon Law (cf. can. 15 VI ec.), and in some state laws (Byzantine) (cf. Novel VI of Emperor Leo VI Wise).

This divinely instituted order of church hierarchy, established and respected in the Eastern Church since apostolic and post-apostolic times, was "expressly admitted by Pope Benedict XIV in his Constitution *Etsi pastoralis* of 26 May 1742"¹⁸, according to which subdeacons were placed in the catalogue of humanly instituted clergy.

According to the dogmatic, canonical and liturgical teaching of the Eastern Church, one can enter the sacramental hierarchy only by administering the Holy Sacrament of Ordination, as the noun "χειροτονία/ας" suggests, which in ancient Greek meant "the action of extending the hand to vote", or "voting with the raised hand", or "election by the people with the raised hand", hence the adjective "χειροτονητός/ή/ον"¹⁹, meaning elected or appointed by voting with the raised hand.

In the same language of Homer, the verb "ιερᾶω/ῶ" had the meaning "to be consecrated to a cult", to be the priest of a deity, hence the nouns "ιέρεια/ας" (priesthood) and "ιερεύς/ένας"²⁰ (priest, high priest).

In ancient Greek, however, the noun "ιέραξ/ακος"²¹ also circulated, meaning the leader of a religious ceremony, whose equivalent in Rome was "Pontifex", also called "ιερονόμος" in ancient Greek.

In Christianity, the Greek noun "χειροτονία" (ordination) was used to express the notion of the Rite of Ordination administered to the three degrees of the divinely instituted priesthood.

According to the apostolic ordinance (cf. can. 68 ap.) and the provisions of some canons of the Church of the first millennium, the Sacrament of Ordination is not repeated (cf. can. 5 Antioch; 48 Carthage; 9 I-II Constantinople), hence also its indelible character, which both, the Sacrament of Holy Baptism (cf. can. 47 ap.) and the Sacrament of Holy Ordination (cf. can. 68 ap.) have.

Later, the Western Church also made mention of this indelible character at the Council of Trent (cf. Session XXIII, can. 4), which provided that the act of ordination imprints on the one who receives this Sacrament a "character indelebilis", i.e., a mark which cannot be erased.

¹⁶ On the canonical status of the members of the lower clergy and the work they performed, see I. N. Floca, *Drept canonic ortodox*, vol. I, p. 304-305.

¹⁷ F. C. Bouuaert, "Hierarchie", in *Dictionnaire de droit canonique*, tom. V, Paris, 1953, col. 1126-1127.

¹⁸ F. C. Bouuaert, "Hierarchie", col. 1127.

¹⁹ A. Bailly, *Dictionnaire Grec-Française*, ed. XXVIe, Librairie Hachette, Paris, 1963, p. 2132.

²⁰ A. Bailly, *Dictionnaire Grec-Française*, p. 960.

²¹ A. Bailly, *Dictionnaire Grec-Française*, p. 967.



2. ON HOW THE RELATIONSHIP BETWEEN THE "HIERARCHIA ORDINIS" AND THE "HIERARCHIA JURISDICTIONIS" IS PERCEIVED AND DEFINED IN THE EASTERN AND WESTERN CHURCH

As a divine-human institution, the Church has a hierarchical structure, and has both degrees or ranks of the priestly hierarchy and ranks or degrees of the jurisdictional hierarchy.

In this regard, the difference between the Eastern and the Western Church lies in the way their theology has defined the relationship between "potestas ordinis" and "potestas jurisdictionis", hence the different concepts and definitions found in the ecclesiology of the two Churches.

That, in the Eastern Church, the "hierarchia jurisdictionis" (jurisdictional hierarchy) has always been conditioned by the graceful state of the person who has received an office in which he exercises the power of leadership or jurisdictional power, is confirmed by canon 7 of the Sixth Ecumenical Council²² (Second Session of 691/692).

In the text of this canon, it is expressly provided "that the deacon, even if he were in a dignity (ἐν ἀξιώματι) or ecclesiastical office (ἐν ὀφικίῳ ἐκκλησιαστικῷ), ..., he shall not sit before the presbyters"²³, unless he is "in another city" as a representative "of his patriarch or metropolitan on a particular mission"²⁴.

In their commentary on canon 7 of the Sixth Ecumenical Council, the reputed twelfth-century Byzantine canonists also noted that canon 18 of Nicaea forbade deacons to sit before priests in the Holy Altar, while in their canon the Fathers of the Sixth Ecumenical Council forbade deacons to sit "before the priests" and "outside the Altar"²⁵.

The same Fathers of the Sixth Ecumenical Council ordered that "the other degrees of the priesthood (τῶν λοιπῶν ἱερῶν ταγμάτων)"²⁶, i.e., the other two degrees of the divinely established priesthood (priests and bishops), should also be considered, since "ecclesiastical dignities are higher than worldly offices"²⁷.

From the commentary of the 12th century Byzantine canonists (Zonaras, Aristenos and Balsamon) on canon 7 of the 6th Ecumenical Council (691/692), we note that deacons holding ecclesiastical offices no longer respected the old canonical ordinance of the Ecumenical Church, hence their exhortation that each degree of the divinely instituted clergy should not exceed the position which the grace of ordination gives them, otherwise the canonical status of sacramental power would be disregarded in favour of jurisdictional power.

²² N. V. Dură, "The Ecumenicity of the Council in Trullo: Witnesses of the Canonical Tradition in the East and the West", in *The Council in Trullo Revisited*, coord. G. Nedungatt, M. Featherstone, Rome, 1995, p. 229-262.

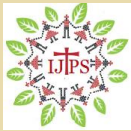
²³ G.A. Rhali, M. Potli, *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων (Sintagma Ateniană)*, vol. II, Athens, 1852, p. 320.

²⁴ G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 321; I. N. Floca, *Canoanele Bisericii Ortodoxe. Note și comentarii*, Sibiu, 1991, p. 102.

²⁵ Balsamon, Commentary on canon 7 of the Sixth Ecumenical Council, in G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 322.

²⁶ See the comments of the canons Zonaras, Balsamon and Aristenos on canon 7 of the Sixth Ecumenical Council, in G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 321.

²⁷ G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 324.



In the text of his commentary on canon 7 of the Sixth Ecumenical Council, the canonist Balsamon²⁸ was keen to point out that this canon also makes express reference to deacons who "sit in chairs before the priests and outside the Altar (ἐκτὸς τοῦ Βήματος)"²⁹.

With this canon, the Synod Fathers also wished to make a provision of principle, according to which this prohibition on deacons should also be valid "for other holy orders"³⁰, in order to avoid that, in the future, those who hold "any dignity or office"³¹ (ecclesiastical) should no longer behave with pride towards those who hold "higher orders"³², i.e. one of the other two orders of the divinely established priesthood, the presbyterate or the episcopate.

From the same commentary of the Byzantine canonist, we note that from the text of canon 7 of the Sixth Ecumenical Council it also follows that "the ecclesiastical offices, i.e., dignities (ἀγιώματα)"³³, are to be understood and defined as "ecclesiastical degrees (βαθμοὺς ἐκκλησιαστικῶς), such as the degree of deacon and others"³⁴.

This "state of affairs", contrary to the apostolic ordinance, mentioned in this canon written towards the end of the 7th century, i.e., the inversion of the relationship between the degrees of divine establishment and those resulting from the "potestas jurisdictionis", has been in existence since the 3rd-4th centuries (cf. can. 18 Sin. I ec.; 20 Lodicea), "and has continued for a good part of the time of the Byzantine Empire in the East, and in the Church in the West it continues to this day. It is the elevation of deacons, by administrative function, not only to the level of presbyters, but even above them"³⁵.

Canonical testimonies from the 4th century, followed by those up to the fall of the Byzantine Empire in 1453, confirm that deacons who held administrative offices, such as that of iconomist, hartophylax, apocrisiar, etc., "came to consider themselves, in an abusive manner, to be superior to presbyters, and sometimes even to bishops, thus inverting from worldly positions the hierarchical relationships based on the grace status of the various degrees of the priesthood"³⁶.

From the commentary on canon 7 of the Sixth Ecumenical Council (trulan) of the Collection of Canons of the Eastern Church published in Leipzig in 1800 by the hieromonk Agapie and the monk Nicodemus, which was circulated in 1802 "with the blessing of Patriarch Neophytos VII of Constantinople and with the approval of his Council"³⁷, which was also translated into Romanian by Metropolitan Veniamin Costachi³⁸, and then edited and published by Neofit Scriban in 1844, we note that some deacons, who had been appointed to various "ecclesiastical offices, ..., had become so arrogant"³⁹ that they sat "higher than the

²⁸ On the life and work of this reputed canonist, see at length S. Troinos, "Byzantine canon law from the twelfth to the fifteenth centuries", in *The History of Byzantine and Eastern Canon Law to 1500*, ed. W. Hartman, K. Pennington, Catholic University of America Press, Washington DC, 2012, p. 170-214.

²⁹ Balsamon, Commentary on Canon 7 of the Sixth Ecumenical Council, in G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 322.

³⁰ G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 322.

³¹ G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 322.

³² G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 322.

³³ G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 323.

³⁴ G.A. Rhali, M. Potli, *Sintagma Ateniană*, vol. II, p. 323.

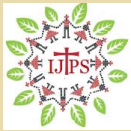
³⁵ I. N. Floca, *Canoanele Bisericii Ortodoxe*, p. 102-103.

³⁶ I. N. Floca, *Canoanele Bisericii Ortodoxe*, p. 103.

³⁷ I. N. Floca, *Drept canonic ortodox*, vol. I, p. 113.

³⁸ N. V. Dură, "Activitatea canonică a mitropolitului Veniamin Costache", in *Mitropolia Moldovei și Sucevei*, XLVII, 7-8 (1971), p. 471-493.

³⁹ Neofit, Patriarhul Constantinopolului, *Pidalion*, Ed. Credința strămoșească, 2007, p. 244.



presbyters" at Holy Mass⁴⁰. However, the holders of these offices should not ignore the fact that, in the Church, these 'offices' are not 'like worldly offices', i.e. like these, but are "spiritual offices, which are given with the divine gift of the Holy Spirit"⁴¹, that is, by virtue of the grace of the priesthood received through the Holy Sacrament of ordination in one of the three stages of divine establishment, and therefore, "these ... are above and higher than the worldly ones"⁴².

Orthodox dogmatic theology also confirms that by the Holy Sacrament of ordination is to be understood "a set of three rites, each of which is a whole in itself: ordination to the episcopate, the priesthood and the diaconate"⁴³, and by which "pastors of the Church", including those who are subjects of the exercise of jurisdictional power, are and must be primarily "bearers of grace ..." (archimandrite Sofronie)⁴⁴.

In other words, those who exercise the power of leadership must also be primarily bearers of the grace power of the priesthood of Christ, because only by taking into account the stage in which the cleric in question is divinely instituted can we also speak of their different amount of jurisdictional power, to which the Fathers of the Sixth Ecumenical Council also referred in canon 7.

Under the 1917 Code of Canon Law, the canonists of the Roman Catholic Church defined ecclesiastical jurisdiction as "the power to govern in the ecclesiastical realm, either by a magisterium or by ministry, deriving from divine or canon law"⁴⁵.

This ecclesiological reality, in the Roman Catholic Church, where there had long been an inversion or a disruption of the relationship between "potestas ordinis" and "potestas jurisdictionis", is also confirmed by some catholic canonists who, among other things, included in the sphere of ecclesiastical jurisdiction "the right to hear and decide all civil or criminal cases belonging to the ecclesiastical forum, that is to say, to the tribunals established by the Church"⁴⁶.

The same canonists said that the Church, being "a hierarchical society", allowed, unlike Roman law, appeals against judicial decisions given by her authorities. Indeed, by appealing to the diocesan synod against the decisions taken by a bishop, it in fact reaffirms the provision of principle enunciated by the First Ecumenical Council in canon 5 and reaffirmed by canon 6 of the Council of Antioch⁴⁷.

Throughout the ages, the hierarchical order of Episcopal sees has been established by canons (cf. can. 4, 5, 6, Sin. I ec.; 2, 3, 6, Sin. II ec.; 8 Sin. III ec.; 9, 17, 28 Sin. IV ec.; 36, Sin. VI ec.).

Initially, in this hierarchization of the principal episcopal sees, the apostolic principle was taken into account, then the political principle prevailed, that is, the political importance of the cities in which the hierarch in question had his episcopal See, which often led in this respect too not only to a reversal or a disruption of the hierarchical order of the Church, but also to a primacy of the jurisdictional hierarchy (cf. can. 4, 6 Sin. I ec.; 2, 3 Sin. II ec.).

⁴⁰ Neofit, Patriarhul Constantinopolului, *Pidalion*, p. 244.

⁴¹ Neofit, Patriarhul Constantinopolului, *Pidalion*, p. 244.

⁴² Neofit, Patriarhul Constantinopolului, *Pidalion*, p. 245.

⁴³ I. Alfeyev, *Taina credinței. Introducere în teologia dogmatică ortodoxă*, trad. F. Dumas, Ed. Doxologia, Iași, 2014, p. 249.

⁴⁴ I. Alfeyev, *Taina credinței*, p. 252.

⁴⁵ G. Oesterle, "Jurisdiction d'après la Code", in *Dictionnaire de droit canonique*, tom. VI, col. 225.

⁴⁶ A. Dumas, "Jurisdiction ecclésiastique", in *Dictionnaire de droit canonique*, tom. VI, col. 236.

⁴⁷ A. Dumas, "Jurisdiction ecclésiastique", p. 239.



The Fourth Ecumenical Council (Chalcedon, 451), which established "a new hierarchical order of the more important episcopal sees in the Church" only "according to political criteria"⁴⁸, "formally introduced"⁴⁹ and "patriarchal dignity in the Church"⁵⁰, which led to the establishment of a "new" hierarchical order also "among the patriarchal Sees, taking as a basis in this regard the political importance of the cities of residence of the patriarchates"⁵¹.

This ecclesiological reality, confirmed both by the texts of some canons of the Second Ecumenical Council⁵² and by those of the Fourth Ecumenical Council⁵³, is present to this day in the Eastern Church, but not in the Roman Catholic Church, where not long ago even the dignity of Patriarch⁵⁴ disappeared.

In the Eastern Church, the old hierarchical order of the principal primatial Episcopal Sees is recalled at every Mass celebrated by the Primate of all the autocephalous Orthodox Churches.

Indeed, in the Orthodox Church, at the celebration of the Holy Mass, the proto-hierarchy of a local Church pronounces - in front of the Holy Altar - the names of the Primate of the other sister Orthodox Churches according to the order in which their names were once inscribed in the diptychs⁵⁵ of the Ecumenical Orthodox Church.

Since the Orthodox world has been aware that, over the centuries, the order in which the names of these Primate were to be mentioned has not always been respected, it led the Ecumenical Orthodox Church to include the question of diptychs on the agenda of the presynodal pan-Orthodox conference held in Geneva in 1976⁵⁶, which also gave rise to studies and reports by some local Churches, which also confirms that, unfortunately, the dispute over the primacy of the episcopal Sees was and remains the real "causa dirimens" of the ecumenical Church.

In the Roman Catholic Church, "jurisdictional power" or "power of government (potestate regiminis)" is exercised only by the bearers of higher ranks in the Church administration, such as cardinals, who in this Church perform "variis officiis" (various offices) (can. 349)⁵⁷.

In the theological literature we also find the statement that the "hierarchy of jurisdiction in the Latin Church"⁵⁸ is made up of the "Supreme Pontiff" and "cardinals"⁵⁹.

That the use of the word jurisdiction to define "the position of the hierarchical levels" and to specify "the jurisdictional relations between them"⁶⁰ cannot "totally disregard their

⁴⁸ L. Stan, "Importanța canonic-juridică a Sinodului al IV-lea ecumenic", in *Pr. prof. univ. dr. Liviu Stan, Biserica și Dreptul. Izvoarele dreptului canonic ortodox*, vol. II, Ed. Andreiana, Sibiu, 2012, p. 6.

⁴⁹ L. Stan, "Importanța canonic-juridică", p. 6.

⁵⁰ L. Stan, "Importanța canonic-juridică", p. 6.

⁵¹ L. Stan, "Importanța canonic-juridică", p. 13.

⁵² N. V. Dură, "Legislația canonică a Sinodului II ecumenic și importanța sa pentru organizarea și disciplina Bisericii", in *Glasul Bisericii*, XL, 6-8 (1981), p. 630-671.

⁵³ L. Stan, "Importanța canonic-juridică", p. 14-15.

⁵⁴ N. V. Dură, "Instituția juridico-canonică a Patriarhatului și implicațiile ei ecleziologice. De la sistemul de conducere de tip diarhic la cel pentarhic, și apoi la cel tetrarhic", in *Revista de Teologie Sfântul Apostol Andrei*, XV, 1 (2011), p. 21-51.

⁵⁵ N. V. Dură, "Dipticele. Studiu istoric și canonic", in *Studii Teologice*, XXIX, 9-10 (1977), p. 636-659.

⁵⁶ † D. Papandreu, Mitropolitul Elveției, *Sfântul și Marele Sinod al Ortodoxiei. Tematică și lucrări pregătitoare*, trad. N. Dascălu, Ed. Trinitas, Iași, 1998, p.16-34.

⁵⁷ *Codul de Drept Canonic*, p. 234-235.

⁵⁸ F. C. Bouuaert, "Hierarchie", col. 1129.

⁵⁹ F. C. Bouuaert, "Hierarchie", col. 1129.



state of grace"⁶¹, is confirmed by both the legislation and the canonical doctrine of the ecumenical Church of the first millennium.

Ignorance of this reality has meant that, in the Roman Catholic Church, jurisdictional power is conferred by "missio canonica", which in fact has "nothing to do with the ordination that (clerics) have or have not received"⁶².

A few years before the Second Vatican Council, some theologians of the Roman Catholic Church were keen to affirm that "the Pontiff does not constitute a rank distinct from that of bishop"⁶³, but that "his primacy derives properly from the power of jurisdiction"⁶⁴.

In other words, there was not only a clear distinction between grace and jurisdiction, i.e., between the power received through the Sacrament of Ordination in the episcopal degree and the jurisdictional power, which also created the primatial power of the pope, but also a clear separation between "potestas ordinis" and "potestas regiminis", and between "hierarchia ordinis" and "hierarchia jurisdictionis", and, between grace and jurisdiction.

This ecclesiological reality is also confirmed by the text of the Code of Canon Law in force, which states that the "Roman Pontiff" (Romanus Pontifex) (cf. can. 330)⁶⁵ is "Bishop of the Church of Rome" (Ecclesiae Romanae Episcopus) (cf. can. 331)⁶⁶, and that he exercises "the supreme authority of the Church" in his capacity as successor of Peter (successor Petri) (can. 330)⁶⁷.

The priestly power of the Pope is therefore identical to that of a bishop, but his primacy derives from the office which Jesus granted "to Peter alone", and of which he is the sole holder. But it is precisely this ecclesiology of the papal primacy that makes efforts to restore Christian unity an impasse still difficult to overcome⁶⁸.

The 1917 Code of Canon Law provided that the Roman Pontiff and the bishops are two degrees of the jurisdictional hierarchy "of divine right" (cf. can. 218).

Roman Catholic theologians and canonists have also confirmed that, according to the norms of the 1917 Code of Canon Law (cf. can. 218), the Pontiff and the episcopate are "two degrees of the jurisdictional hierarchy of divine law"⁶⁹.

The primacy of the Roman Pontiff, considered to be the natural result of the "governing power" (potestas regiminis) or (potestas jurisdictionis), is still today considered to be "ex divina institutione" (of divine institution) (cf. can. 129 § 1)⁷⁰.

The "Roman Pontiff", "successor of Peter (successor Petri)" (can. 330)⁷¹, is still today perceived and defined - in the 1983 Code of Canon Law - as the first rung of the jurisdictional hierarchy, followed by the bishops, considered to be "successors of the Apostles (successores Apostolorum)" (can. 330)⁷².

⁶⁰ L. Stan, "Har și jurisdicție", in *Pr. prof. univ. dr. Liviu Stan, Biserica și Dreptul. Principiile dreptului canonic ortodox*, vol. III, Ed. Andreiana, Sibiu, 2012, p. 309.

⁶¹ L. Stan, "Har și jurisdicție", p. 309.

⁶² L. Stan, "Har și jurisdicție", p. 309.

⁶³ F. C. Bouuaert, "Hierarchie", col. 1127.

⁶⁴ F. C. Bouuaert, "Hierarchie", col. 1127.

⁶⁵ *Codul de Drept Canonic*, p. 222-223.

⁶⁶ *Codul de Drept Canonic*, p. 222-223.

⁶⁷ *Codul de Drept Canonic*, p. 222-223.

⁶⁸ Cf. L. Stan, "Împăratul Justinian, Sinodul V ecumenic și papalitatea", in *Pr. prof. univ. dr. Liviu Stan, Biserica și Dreptul*, vol. II, p. 30-64.

⁶⁹ F. C. Bouuaert, "Hierarchie", col. 1128.

⁷⁰ *Codul de Drept Canonic*, p. 104-105.

⁷¹ *Codul de Drept Canonic*, p. 222-223.

⁷² *Codul de Drept Canonic*, p. 222-223.



According to the 1917 Code of Canon Law, the supreme authority in the Church is the Supreme Pontiff, and cardinals constitute his "senate" (can. 230), followed in the jurisdictional hierarchy by "nuncios, internates and apostolic delegates" (cf. can. 267, 269 and 270)⁷³.

The current Code of Canon Law also states that in the Roman Catholic Church the "power of government" (*potestas regiminis*) is fully and universally vested in the Roman Pontiff, who is the "supreme pastor of the Church"⁷⁴ and, consequently, "against a sentence or decree of the Roman Pontiff there is no appeal or recourse" (can. 333 § 3)⁷⁵.

In the same Code of Canon Law, which entered into force on 25 January 1983 with the Apostolic Constitution "Sacrae Disciplinae Leges"⁷⁶, it is stated that "the Roman Pontiff obtains full and supreme power in the Church by legitimate election, accepted by him, together with episcopal consecration" (can. 332 § 1)⁷⁷.

The legitimate election of a pope is therefore conditional first on his acceptance of full and supreme power in the Church, and then on his reception of the sacrament of ordination to the office of bishop, if he has not already done so.

This procedure of electing the pope, and implicitly that of the Roman Pontiff's acquisition of full and supreme power in the Church, remains an eloquent testimony to the reversal of the relationship between grace and jurisdiction that exists in this Church.

In order to obtain full and supreme power, the Roman Pontiff needs "episcopal consecration", i.e., his ordination to the rank of bishop. But the one elected to be pope can only be ordained bishop after personally accepting his election.

By the act of ordination to the episcopal office of the person elected and legitimated as pope, the inheritance of a special grace is given evident expression, which makes it possible for the "Bishop of the Church of Rome" (*Ecclesiae Romanae Episcopus*) to endure "without interruption the office (*munus*) which the Lord granted only to Peter, the first of the Apostles, and which must be transmitted to his successors" (can. 331)⁷⁸.

According to the dogmatic and canonical doctrine of the Orthodox Church, "each bishop is a descendant of all the Apostles"⁷⁹, and none of the Apostles had "universal jurisdiction as is wrongly claimed"⁸⁰.

A similar case, which is alien to the dogmatic and canonical teaching of the ecumenical Church of the first millennium, is that of cardinals, who are appointed by the Roman Pontiff to one of the three "ordines" (cf. can. 350 § 1)⁸¹, namely the episcopal, presbyteral, and diaconal orders, even if they have not yet received ordination to any of the three degrees of the priesthood, provided that "those who are not yet bishops"⁸², i.e.,

⁷³ F. C. Bouuaert, "Hierarchie", col. 1129.

⁷⁴ *Codul de Drept Canonic*, p. 224-245.

⁷⁵ *Codul de Drept Canonic*, p. 224-245.

⁷⁶ N. V. Dură, "Codul de drept canonic (latin). Principiile ecleziologico-canonic enunțate de Constituția apostolică *Sacrae disciplinae leges*", in *Ortodoxia*, LIII, 1-2 (2002), p. 25-40.

⁷⁷ *Codul de Drept Canonic*, p. 222-223.

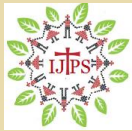
⁷⁸ *Codul de Drept Canonic*, p. 222-223.

⁷⁹ D. Stăniloae, *Teologia dogmatică ortodoxă*, vol. II, ed. a IV-a, Editura Institutului Biblic și de Misiune Ortodoxă, București, 2010, p. 246.

⁸⁰ I. N. Floca, *Drept canonic ortodox*, vol. I, p. 219.

⁸¹ *Codul de Drept Canonic*, p. 234-235.

⁸² *Codul de Drept Canonic*, p. 236-237.



cardinals in the rank of bishop, "must receive episcopal consecration (consecrationem episcopalem)" (can. 351 § 1)⁸³.

From the same legislation and canonical doctrine of the Roman Catholic Church we see that the Roman Pontiff and the "bishops" of the Catholic Church are incorporated into the structure of the Church, as "a College", just as "St. Peter and the other Apostles"⁸⁴ formed a single college (can. 330)⁸⁵, and that "in the Apostles, considered not individually but as a college, are incorporated into the structure of the Church, established in them, in its universality and unity"⁸⁶.

CONCLUSIONS

From the time of the 6th Ecumenical Council until the appearance of the Code of Canon Law of the Roman Catholic Church in 1983, there were often some reversals or upheavals in the relationship between the levels resulting from the priestly hierarchy and the jurisdictional hierarchy.

This unfortunate ecclesiological reality shows that the decision of the Fathers of the Sixth Ecumenical Council, according to which the spiritual dignities received through the grace of the priesthood are superior to worldly dignities, i.e., to the ranks received through an act of a jurisdictional nature issued by the competent authorities (cf. can. 7 Sin. VI ec.), was also ignored.

Hence the conclusion we have also reached in our canonical-legal study, namely that any reversal of the relationship between the two hierarchies affects the very hierarchical structure of the Church which the One who founded it, namely our Saviour Jesus Christ, left us, on the basis of which His disciples, the Holy Apostles, by their "Ordinances", and the Holy Fathers of the Ecumenical Church, by the "Canons", which they formulated at the Ecumenical and local Synods, forbade any inversion or disruption of the hierarchical relationships based on the grace state of the divinely established priesthood degrees with the ranks resulting from the "hierarchy jurisdictionis".

Both from an examination of the text of some canons of the two Churches, Eastern and Western, and from the commentaries of some reputed dogmatists and canonists, we have found that the question of the relationship between the "hierarchy ordinis" and the "hierarchy jurisdictionis" can only be fully explained through an interdisciplinary theological approach (dogmatic and canonical) and a comparative evaluation of the relationship between grace and jurisdiction.

In our research we have used both the text of the two canonical legislations and the statements of leading theologians and canonists of the two Churches, precisely in order to better understand both the canonical status of the two "hierarchies" and the evolutionary process of the canonical doctrine of the two Churches regarding the hierarchical relationship between the degrees resulting from the "potestas ordinis" and the "potestas jurisdictionis".

⁸³ *Codul de Drept Canonic*, p. 236-237.

⁸⁴ *Codul de Drept Canonic*, p. 222-223.

⁸⁵ For an explanation of the content of this canon, see the text of Pope John Paul II Post-Synodal Apostolic Exhortation, "Pastores gregis", 8, Vatican, 2003, retrieved from URL https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_20031016_pastores-gregis.html

⁸⁶ J. L. Gutiérrez, "Commentary on the canon 330", in *Code de droit canonique bilingue et annoté*, 3e édition révisée, sous la direction de E. Caparros et H. Aubé, Montréal, 2009, p. 310.



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