

THE CHURCH LAW AND THE CIVIL LAW IN BYZANTIUM: TWO PARTS OF ONE LEGAL ORDER (LEGAL SCHOOLS)

DILIAN NIKOLTCHEV

During the first three centuries of its history the Church existed completely independent from the state. As a result of this the juridical rules of the church life, i.e. the canons, also represented entirely independent sphere of the jurisprudence. They developed separately from the secular legislation. But in the course of time, with the recognition of the Church as a public corporation (*corpus christianorum*) by Constantine the Great, the canonical and the civil legislation had, in certain sense, to stand one to the other and to advance to one or another interaction¹.

Actually the ecclesiastical and the civil jurisprudence «permeated» through each other. According to Pitsakis, the state law (Byzantium) and the church law were only the two parts of one and the same legal order. In fact, in the theory and the political ideology of Byzantium the existence of different juridical practices was impossible in that public and social reality. It did not refer to separate institutions (in the broad sense of the word), but to two aspects of the term church—one and inseparable, and to the Christian empire—an earthly image of the Kingdom of God. These were two inseparable aspects in the political and the theological thinking of the Byzantines².

1. M. OSTROUMOV, *Vvedenie v pravoslavnoi cerkovnoe pravo*, vol. I, Harkov 1893, p. 54.

2. K. PITSAKIS, «*Jus graeco-romanum*» et normes canoniguae dans les eglises de tradition orthodoxe, In: *Atti del congresso internazionale: Incontro fra canonici d'Oriente e d'Occidente*, Bari 1994, vol. I, p. 99.

With the adoption of Christianity and with the publishing of numerous Emperor's edicts concerning the Church affairs a new branch of the public legislation appeared. Later, starting with Theodosius II (408-450), it entered as a component part of the Codes. Such an integration of the ecclesiastical and the civil law in one common law system and their permanent interaction should have found an expression not only in the practical application of law by the legislation, legal procedures, etc., but also in a parallel studying of the two types of law - ecclesiastical and civil³.

In contrast to the Roman provinces where legal schools existed (they appeared about the first half of the first century AD), the schools in the East, even those giving highest education, had an encyclopedic characteristic⁴. Of course, except philosophy, rhetoric and other branches of science, law also had been taught at those schools⁵. Probably the latter had developed from the teaching of politics - «*the art to govern the state*»⁶.

The Byzantine theologians recognized the importance of receiving classical secular education. Basil the Great (PG, t. 31, col. 564-589), Socrates the Scholastic (PG, t. 67, col. 417-424) and other renowned early-Christian writers from IV-V century also pointed out that Christians should receive secular education. In their opinion it contained something very valuable: it confirmed the basic Christian principles and promoted the better understanding and interpretation of the Holy Scripture with the help of the methods and the means of the ancient education. The knowledge of the ancient culture afforded an opportunity for the latter to be given a new meaning to and to be estimated in favor of the Church⁷.

St. Basil the Great in one of his treatises («*To the juveniles, about that how useful it is to read pagan writers*»), although appealing them to be attentive when reading the classics and to choose strictly the writers designed for the education of the Christian children, also considered (to no less inconsiderable degree) the pagan literature beneficial: Reading teaches us to respect the good, because the whole Homer's poetry and al-

3. Cfr. M. OSTROUMOV, o. c., p. 54.

4. Cfr. *ibid.*, p. 55 f.

5. Cfr. *ibid.*, p. 56.

6. *Ibid.*

7. Cfr. Z. SAMODUROVA, *Shkoli i obrazovanie*, In: *Kultura Vizantii IV-pervaja polovina VII v.*, Moscow 1984, p. 478.

so the works of the other representatives of «*the external wisdom*» rendered high praise to the virtues, hidden in history (PG, t. 114, col. 596)⁸.

Michael Psellos in encomiums to John Mauropodos reproached that one, «*who had not studied the Egyptian, the Chaldeic and the Judaic sagacity, who had not knowledge of the Hellenic sciences and had not made the best use of them*» (MB. V. P. 151)⁹. The reproach of Empress Anna Comnin (Komnenos) is also interesting. She negatively characterized the heretic Nilus who «*was completely unacquainted with the Hellenic education*» and this made him to pervert the Holy Scripture (Anna Comn. C. 36, 159, 264)¹⁰.

The author of «*Hagiography of Daniel*»-Vth century (Anal. Boll., XXXII, p. 149), and also St. John Chrysostom in encomiums¹¹ to Phyligon, Patriarch of Antioch-IV B. (PG, t. 48, col. 747, 751), told about students of legal schools, who acquired the Latin sagacity and became judicial orators¹². However, it should not be forgotten that not only the secular but also the church administration, as a rule, selected personnel from those that had graduated from such schools¹³.

Since, as we suggested, during the period of the Roman domination the knowledge of Roman law was absolutely necessary for everyone who had aspired to political activity, so it was quite natural that in the East they began to copy partially the studying of law in Rome and to add courses of jurisprudence at high schools. At least that was in Berit (Beirut), a town, according to the account of St. Gregory Thaumaturgus, quite Roman that served as the main school of Roman law for the whole East¹⁴ and as a generally recognized center of the juridical scien-

8. *Ibid.*, p. 479.

9. Z. SAMODUROVA, *Shkoli i obrazovanie*, In: *Kultura Vizantii vtoraya polovina VII-XII v.*, Moscow 1989, p. 369.

10. *Ibid.*

11. *Encomius* (in Greek) = *praiseful words*.

12. Z. SAMODUROVA, *o. c.* ... [... Moscow 1984], p. 479.

13. *Ibid.*

14. M. OSTROUMOV, *o. c.*, p. 57. Receiving reputation right at the beginning of the third century, the school of Berit experienced a development in the fifth century. Here it had occupied the place of an official school. The professors here were called «*ησοεζ*» after their death, and the surviving ones - «*doctors of the universe*» («*οικουμενοι*»). It seems that these titles correspond to certain scientific meaning and position. Cfr. I. BAZANOV, *Kurs po rims-ko pravo*, vol. II, Sofia 1940, p. 70 f. Undoubtedly, the school of Berit had great reputation and its scientific «*products*» were of interest and to the Byzantine jurists. For example, Mi-

ces¹⁵. Some research workers consider that such eminent juridical authorities like Caius, Ulpian, Papinian, Scebola, Markian and Triphonin were related with lecturer's activities at this legal school. Other experts in the field of the Roman law like Collinet, Lipsiz etc., think that this supposition should not be considered as a proven fact¹⁶.

During the fifth century there were four professors of law in Berit, while in the capitals Rome and Constantinople¹⁷ there were only two. Except for these towns law also was taught in Athens, Alexandria, Caesaria, Antioch. All these schools had the fate to bring great benefits for the Christian world, namely, they gave the church a large number of men educated in jurisdiction who took high places in the church hierarchy and exercised indelible influence on the whole later history of the church and the state, i.e the Byzantine Empire.

In fact, together with these pagan schools Christians had their own ones - Christian¹⁸. The same propaedeutic encyclopaedic course existed in these schools as in the pagan ones. During this course the Holy Scripture and Christian philosophy were studied but scarcely the Civil Law in

chail Andreev supposes that in the preparing of the Digests the commission headed by Tribonian probably had used also the works of the professors of the Berit school. In his work Lipsiz notes that out of all 16 members of the commission 11 were lawyers and high clerks and 4 professors; 2 of them from the school of Berit and the other two from Constantinople. Cfr. M. ANDREEV, *Rimsko chastno pravo*, Sofia 1975, p. 79, note. N. 3; see also E. LIPSHIC, *Pravo i sud v Vizantii v IV-VIII vv*, Leningrad 1976, p. 85.

15. D. ANGELOV, *Istoria na Vizantia*, vol. I: (395-867), Sofia 1968, p. 182. See also D. ANGELOV, *Vizantia-vasxod i sales na edna imperia*, Sofia 1991, p. 86. See also Z. UDALCOVA, *Zakonodatelnie reformi Yustiniana*, in: *Vizantiyskiy vremennik*, vol. XXXVI, [Moscow, Akademia nauk SSSR], 1965, p. 24. See also E. LIPSHIC, *Yuridicheskie shkoly i razvitie pravovoy nauki*, in: *Kultura Vizantii IV-pervaya polovina VII v.*, Moscow 1984, p. 360.

16. E. LIPSHIC, *Pravo i sud ...*, p. 21 and note N 38, *ibid*.

17. At the time of Theodosius II in Constantinople was opened a high school (in 425) — the so called Theodosius' school— at which except for Latin, Greek, Theology and Philosophy Law also was taught. Actually, this school was already built in the fourth century (in 334) but it received real organization only during the time of the cited Emperor, after his decree issued for that purpose. F. USPENSKI, *Istoria Vizantijskoy Imperii*, vol. I: *Period I /do 527 g./ elementi obrazovaniya vizantizma*, S. Peterburg, s. a., p. 264 f. See also D. ANGELOV, *Istoria ...*, pp. 86, 182. See also I. BAZANOV, *o. c.*, p. 71. See also G. BAKALOV, *Vizantia (kulturno-politicheski ocheri)*, Sofia, s. a., p. 392. See also *The Oxford Dictionary of Byzantium*, vol. II, New York-Oxford 1991, p. 1196.

18. The origin of theology as science is related to the famous Alexandrian catechetic school, founded by Panten and in the third century converted in a real theological capital by Clement Alexandrian and Origen who, not without reason, is named the father of ecclesiastical science. He created an original theological system for scientific training and laid the beginnings of the exegetic and biblical textcritic. See D. POPOV and A. NIKOLOV, *Istoria na Staria svyat-Garcia, Trakia, Rim*, Sofia 1997, p. 323.

whatever form. And indeed, Tertulian, Gregory New Caesarian, Serapion Tmuitian (scholasticus), Basil the Great, Amphilochy Iconian, Ambrosy Mediolan, John Chrysostom, Astery Amasian, John Scholasticus, etc. who in their youth had practiced law received their juridical training not in Christian schools but in pagan ones where they had studied first. Thus, during the considered period, i.e. the second half of the fifth century including, the pagan schools were a source of juridical education, both for the pagans and the Christians, especially during the intense converting of pagans to Christianity, i.e. in the third and fourth centuries.

In the time of Justinian the Great, this «theologian on throne», as he is called by Posnov¹⁹, all the pagan schools ceased their existence after his imperial decree²⁰. From this time on the higher and the juridical educations were centered in Constantinople²¹, and the «student's» studies augmented from four to five years²². The school of law in Berit continued its activity, too²³.

19. M. POSNOV, *Vizantizm v istoriyata na drevnata hristiyanska carkva*, GSU-BF, vol. V, 1927/1928, p. 12 [228].

20. One of the biggest school centers —the University of Athens— was closed in the year 529. See D. ANGELOV, *Istoria ...*, pp. 168, 183. See also D. ANGELOV, *Vizantia ...*, p. 86. See also N. TALBERG, *Istoria hristiyanskoy carkvi*, vol. I, Moscow-New York 1991, p. 117.

21. Cfr. M. OSTROUMOV, *o. c.*, p. 58. See also D. ANGELOV, *Visantia ...*, p. 86 f.

22. Cfr. I. PUHAN and M. POLENAK-AKIMOVSKA, *Rimsko pravo*, Skopje 1991, p. 54. At the time before Justinian during the four-years educational course law was studied by students in the following manner: during the first educational course the students studied the Institutes of Caius and partially the comments of Ulpian and Paul to the praetorian Edict. The first year students were named «*dipondii*» («*insignificant*»). In the second course the students' classes went into more details with exercises on other comments to the praetorian Edict. That is why the second year students were called «*edicales*». The third educational year was dedicated to the studying of the Sententii and the other writings of Paul and the works of Papi- nian, from where came the name of the third year students-«*papianistae*». The fourth year students were admitted to independent activity and without any teacher's help studied the «*Answers*» of St. Paul. They got the eloquent name «*litai*» («*liberated*»). After Justinian's reform and the passing on to a five-year educational course in law during the whole period at the school the students studied exclusively the Institutes, the Digest and the Code of Justinian. On the basis of a new program the first year students studied the Institutes and the first four books of the Digest. As a mark of particular mercy Justinian canceled the old humiliating denomination of the first year students («*dupondii*») and changed it with the more respectful-*Justiniani novi*. The second, the third and the fourth years of the education were entirely devoted to the learning of the Digest. In the fifth course the students studied the Code of Justinian. The designations for the students of II, III and IV courses remained the same and the fifth year students received the name «*plotytae*». Cfr. Z. UDALTCOVA, *o. c.*, p. 25 f.

23. Cfr. Z. UDALTCOVA, *o. c.*, p. 25. In 551 a strong earthquake demolished Berit and the high school was temporary moved to Sidon. See *ibid.*, note N 73.

It is known that after the reforms carried out by Emperor Theodosius in February 425 two out of 31 professors were obliged to teach law (*qui juris ac legum formulas pandant*) at the High School of Constantinople (Cth, 14, 9, 3, 1 = C., II, 19, 1, 4). One of them, probably, studied «*jura*», i.e. the writings of the jurists whose opinions were obligatory for the judges, and the other studied and taught «*leges*», i.e. the Imperial Constitutions. After hundred years of teaching the jurisdiction in Constantinople became equal to that of Berit

In the time of Justinian the legal school of Constantinople became more popular. It was closed down by Emperor Phoca (602-610), then restored by Emperor Hiraclii (610-641) with the close co-operation of the learned Patriarch Sergy, and continued to exist till Emperor Leo Isaurian (717-741)²⁴. As the analyst from the ninth century George Monk writes, the Emperor-iconoclast closed down the school and set on fire its building together with the people and the rich library. This report bears a fabled characteristic and most scientists consider that this information is just an invention²⁵.

However, it should be noted that from the end of the seventh century up to the first half of the ninth century the Byzantine jurisprudence and legislation went through a profound crisis and shared the destiny of the Byzantine culture. It is not accidental that some authors (for example Medvedev) call this period a time of «*the dark centuries*». After the great codification efforts made by jurists from Justinian's epoch, after the well imposed state system of juridical education, the law of Byzantium experienced a decline not only in the field of the imperial legislation but also in the jurisprudence as a whole. Among the preserved juridical works from the discussed period there is not anything that could focus our attention. «*The only, as Medvedev notices, distinguished event from the juridical life of the Empire from the end of the seventh century was the officially proclaimed by the Council in Trullo (691-692) formal corpus of the resources of the Canon Law*»²⁶. This corpus was also confirmed

24. Cfr. M. OSTRUMOV, o. c., p. 61.

25. Cfr. E. LIPSHIC, *Yuridicheskie shkoli ...*, p. 367.

26. Cfr. I. MEDVEDEV, *Razvitie pravovoy nauki*, in: *Kultura Vizantii vtoraya polovina VII-XII v.*, Moscow 1989, p. 216.

by the personal seal of the Emperor, who announced the Council decisions as inviolable for ever²⁷.

It cannot be ascertained exactly when the Constantinople school of law was restored but probably it was connected with the revival of the higher education in Byzantium in the middle of the ninth century²⁸. There are reports about a legal school located near the church «St. Theodora» in Sphorakia district in Constantinople. It existed from about the year 800 and continued its activity later²⁹. At the time of Emperor Constantine IX in the University of Constantinople two faculties were established: of law and of philosophy. The faculty of law (*διδασκαλειον νομων*, i. e. a school for learning laws)³⁰, founded in 1043 by a special decree of Emperor Constantine IX, was housed in «St. George» monastery. For a «dean», in the present-day sense of the word, was appointed a Nomophylax (word for word: a guardian of the laws)³¹, who was attached to the Cynclte and occupied the place of honor after the Minister of Justice at grand parades³². The education in the faculty was free of charge, classes took place every day, except for Sundays and feast-days.

It is supposed that the legal school in «St. George» monastery survived until the conquest of Constantinople by the Latins³³. It is known that in the middle of the eleventh century this school (or faculty of law) was mastered by John Xiphilin, the future Patriarch of Constantinople³⁴.

27. *Pravilata na Sv. Pravoslavna Carkva s talkovaniyata im*, vol. II, Sofia 1913, a legislative text of Canon I of the Sixth Oecumenical Council, p. 22.

28. Cfr. E. GRANSTREM, *Sistema i obrazovania*, In: *Istoria Vizantii*, vol. II, Moscow 1967, p. 355.

29. E. LIPSHIC, *Yuridicheskie shkoli*, c. 367. See also E. LIPSHIC, *Ocherki istorii vizantiyskogo obshtesva i kulturi VIII-pervaya polovina IX veka*, Moscow-Leningrad 1961, p. 259 f.

30. The faculty of law founded by Constantine IX in the historical sources was called «school» and in Michail Attaliat (Psel.)-as «museum of introduction to law». Cfr. I. MEDVEDEV, *Razvitie pravovoy nauki ...*, p. 238.

31. E. GRANSTREM, *o. c.*, p. 355. See also I. MEDVEDEV, *Razvitie pravovoy nauki ...*, pp. 237, 239. See also M. OSTROUMOV, *o. c.*, p. 67. See also H. PERCIVAL, *The seven ecumenical councils of the undivided Church, their canons and dogmatic decrees* [Excursus on the history of the roman law and its relation to the Canon Law], In: *The Nicene and Post-Nicene Fathers of The Christian Church*, vol. XIV, Albani, Oregon 1996, p. 46.

32. Cfr. I. MEDVEDEV, *Razvitie pravovoy nauki ...*, p. 239. See also M. OSTROUMOV, *o. c.*, p. 67.

33. Cfr. M. OSTROUMOV, *o. c.*, p. 68. After the conquest of Constantinople by the crusaders the juridical school was moved to Nikea and later to Ephesus; it was back in the capital after the liberation of the town. Cfr. V. CIPIN, *Cerkovnoe pravo*, Moscow 1994, p. 18.

34. E. GRANSTREM, *o. c.*, p. 356. See also *The Oxford Dictionary ...*, p. 1196.

According to preserved reports, he and Michael Psellos laid down the intellectual climate in the capital. The former was reputed as the main authority in the field of law, and the latter-in the field of rhetoric and philosophy. Among the students of Xiphilin was the Emperor himself, whom he led to the niceties of the law³⁵.

But as if the period of highest prosperity of the Byzantine jurisprudence was in the twelve century³⁶. The end of the eleventh century and the whole twelve century were marked by a huge legislative activity both from the patriarchs of Constantinople and from the emperors³⁷. This is the century of the great canonists: Aristenus, Zonaras and Balsamon³⁸. In 1178 the notable Byzantine canonist Theodore Balsamon finished his work «*Nomocanon of XIV titles*» where he intended to harmonize the ecclesiastical canons with the civil laws, giving preference to the first and blessing the legal power of the latter in the jurisprudence of the Patriarchate of Constantinople³⁹. This great Eastern commentator directed his attention mainly to the exceptional collection of Roman and Byzantine law published under the title «*Basilica*»⁴⁰. Towards the end of the century the juridical science reached its greatest spreading. Just before the Latin conquest of Constantinople, according to the account of Balsamon, the town was overcrowded with teachers in law⁴¹.

With the conquest of Constantinople by the crusaders (1204) and the foundation of the Latin Empire a death-blow was delivered to Byzantium after which «*its days were counted up*»⁴². Even after the restoration in 1261 Byzantium did not become a great state. Economically rui-

35. Cfr. I. MEDVEDEV, *Razvitie pravovoy nauki ...*, p. 238.

36. Cfr. M. OSTROUMOV, *o. c.*, p. 69.

37. M. GARCÍA, *El nuevo derecho matrimonial oriental [estudio comparativo]: consentimiento y forma*, In: *Incontro fra canonici d'Oriente e d'Occidente* [Atti del congresso internazionale], vol. II, Bari 1994, p. 383.

38. The comments of Zonaras and Balsamon were composed on different positions of principals: Balsamon was an apologist of Manuil I Comnin and Zonaras belonged to the monastic opposition and he criticized Comnin for the defiance of the latter to the ecclesiastical synclit. That is why Balsamon and Zonaras passed each other in the treatment of a series of concrete questions of Canon law. Cfr. E. GRANSTREM, *o. c.*, p. 364.

39. M. GARCÍA, *o. c.*, p. 383.

40. MILASH, DALMATINSKI EPISKOP NIKODIM, *Pravoslavno cerkovno pravo*, Sofia 1904, p. 23.

41. Cfr. M. OSTROUMOV, *o. c.*, p. 69.

42. *Ibid.*

ned and plundered by the north Italian republics, it got more and more into territorial «particularism» and it was the time when national societies and states appeared in the West⁴³.

In 1453, after a hard «agony», Constantinople was conquered by the Ottomans and the Byzantine Empire ceased to exist⁴⁴. Exact reports about what was the teaching and studying of law during this period do not exist. The system of juridical education was probably carried out as personal learning of law, of its systematization and classification and practical application. Otherwise it is hard to explain the appearance of such juridical authorities like Matthew Blastares and Constantine Harmenopulus⁴⁵ in the fourteenth century. According to some short stories preserved in literature it is known that Harmenopulus (1320-1382) who was a Nomophylax received juridical education under Simon Attaloit, a descendent of Michael Attaloit (Psellos). By and large it seems that the ecclesiastical law during this period attracted much more «wits» than the learning of civil law. It was the time of struggle of the Orthodox Church against the Union on whose side, as usual, was the secular authority⁴⁶.

As an ecclesiastical one the canon law takes an independent place in the field of juridical-consciousness. Even the Roman jurists were not strangers to the idea for the independence of the Canon Law. Ulpian and Isidor assigned «*ius sacrum*» to «*ius publicum*» but Cicero distinguished «*ius pontificum*» from «*ius publicum*». And Quintilian testifies out: «*genera sunt tria: sacri, publici, privati iuris*»⁴⁷.

With the established relations between the Christian state and the church in Byzantium, the canon law directly corresponded to the public and the formal secular law. In many cases the civil and the canon law «overlapped» and complemented one another through publishing similar legislative decrees and treating one and the same juries.

43. G. BAKALOV, *o. c.*, p. 404.

44. Cfr. M. OSTROUMOV, *o. c.*, p. 72.

45. Cfr. I. MEDVEDEV, *Pravovoe obrazovanie v Vizantii kak komponent gorodskoy kulturiy*, Leningrad 1986, p. 26.

46. M. OSTROUMOV, *o. c.*, p. 72.

47. Cfr. *ibid.*, p. 41. Indeed Cicero and Quintilian are orators and not jurists but this does not belittle the price of their testimonial.

It is known that there were many decrees on the ecclesiastical affairs in the Byzantine Imperial Constitutions. So, for instance, in the *Code of Theodosius II*, issued in 438, they occupy the last (XVI) book, which by itself is equal to 1/6 of the whole Code. In the *Code of Justinian* (529 A.D.) they cover the first thirty titles of the first book, and moreover many other novels, concerning the church, belong to Justinian⁴⁸. In the «*Complement to the Eclogue*», elaborated in the middle of the eighth century, four articles of the «penalty» title are dedicated to the crimes against the Christian faith - apostasy, heresy, witchcraft etc.⁴⁹ In «*Basilica*» (issued probably not earlier than 892) which comprises 60 books such decrees cover the first four books, without counting the decrees about the marriage. In the so called «*Prochiron nomos*» (a handbook of laws), published in the name of Emperor Basil Macedonian and his sons Leo and Constantine (between 870-879), there are some titles with similar contents. All these decrees were included in the programs of the law courses, especially in the epoch after Justinian, when the learning of the Codes in force became obligatory⁵⁰.

The knowledge of the canon law was necessary and obligatory also because of the practical application of law in Byzantium. Very often in practice it was necessary to have knowledge both of the canon decrees and of the civil edicts. For instance, there exists a court order for some villa signed by the judges who relied on the synod decrees of patriarchs Sysinius and Luke Chrysoverg. In the court orders of the «*Pyra*», i.e. a collection of epitomes of the patrician⁵¹ Eustatius Romeisky's (the Roman) court decisions, there is an argumentation on the rules of the Sixth Ecumenical Council and also on the patriarchal decrees⁵².

48. *Ibid.*, p. 75.

49. Cfr. I. MEDVEDEV, *Razvitie pravovoy nauki ...*, p. 221. Conditionally named, the monument «*Complement to the Eclogue*» (in the middle of the VIIIth century) has not a proper title and it is a private compilation or a collection of about 100 juridical standards divided in 14 groups more or less firm and solid on subjects and manuscript traditions. Furthermore, in the composition of these 14 groups four relatively big and enough independent monuments or «laws» are included, namely: *Agrarian Code*, *Martial Code*, *Navigation Code* and *Mosaic Law*. Cfr. *ibid.*, pp. 220-222.

50. Cfr. M. OSTROUMOV, *o. c.*, p. 75.

51. From the time of Constantine the Great on the title «*patrician*» (for both men and women) was bestowed for great services mainly on members of the Emperor's family and sometimes on people outside the family. See PROCOPIY, *Taynata istoria*, Sofia 1983, p. 115, note N 3 [to chapter 3].

52. Cfr. M. OSTROUMOV, *o. c.*, p. 76.

The secular jurists were very well acquainted with the ecclesiastical law and they relied on it in their works. For example, the mentioned Eustatius in his «opinion» on the marriage law relies not only on the 87th rule of St. Basil the Great but also on the synod decree of patriarch Sysinii. And what is more, it is known that *the Nomocanon of XIV titles* (or *Syntagma of canons in XIV titles*)⁵³, in its version from the time of Patriarch Photius, is elaborated by one of the best experts in civil law, known under the name Enanthiophan, i.e. an author of a book about the apparent antinomies. It should be kept in mind that a student of Patriarch Photius, himself author of a set of scientific works and compiler of the «*Biblioteca*», is the great Emperor-legislator Leo VI (except for Theodosius and Justinian) who, by the words of Lipsiz, «*had not been devoid of juridical training*»⁵⁴. It is also known that the same nomocanonical collection after Phothius⁵⁵ was once again worked out by a secular jurist, Theodore Vest⁵⁶. Equally juridical and theological are the writings of the *Mosaic law* compilers, included in the *Complement to the Eclogue*. By means of periphrasis and stylistic edition the first compiler not only included in the juridical composition moral and ecclesiastical precepts and standards for social behavior entirely collected by the *Septuagint*⁵⁷ but he,

53. This monument and source for the church law is known in five versions: *Chronological Nomocanon* (about 629); *Sintagma of the Canons*-first version, also known as *Sintagma of Trullon* (about 668-692); *Sintagma*-second version (before 815), *Sintagma*-third version or called after the name of patriarch Tarasii-Tarasiiian (about 787), and finally the *Systematic Nomocanon* (between 787 and 861). Cfr. E. LIPSHIC, *Yuridicheskie shkoli ...*, p. 368.

54. Quoted according to E. LIPSHIC, *Zakonodatelstvo i yurisprudencia v Vizantii v IX-XI vv. - istoriko-yuridicheskie etyudi*, Leningrad 1981, p. 93.

55. The *Nomocanon of XIV titles* from the tenth century received wide spreading and usage not only in the churches but also in the state institutions of the Byzantine Empire. Cfr. V. NARBKOV, *Nomokanon konstantinopolskago patriarha Fotia s tolkovaniem Valsamona*, vol. I, Kazan 1899, p. 249.

56. M. OSTROUMOV, o. c., p. 77.

57. *Septuaginta (editio septuaginta virorum)* - the Latin name of the most ancient of the preserved up to this day translations of the Old Testament in Greek, the so-called «*Alexandrian translation*»; it is named «*Alexandrian*» because this translation was made on the island Pharos near the town of Alexandria. It received a wide spreading and authority in the ancient world and especially among the Christians, as the Christian doctrine was spread abroad in Greek they had in its completeness God's words-the Bible, the New and the Old Testament. The Greek title of the translation is: *η των εβδομηκοντα γραφη*. In the specialized literature the translation is called also *the translation of the 72 interpretations* because, together with the text, explanations of the more difficult places of the Holy Bible are given. Cfr. I. MARKOVSKI, *Obshto vavedenie v Sveshtenoto Pisanie na Staria Zavet*, vol. I, Sofia 1932, p. 228.

and the later compilers of the law codes, obviously treated these orders and prescripts in the capacity of juridical standards and the proper law-in the capacity of juridical monument. About this testifies also the fact that the commented «law» is often met later on in juridical and canonical manuscripts⁵⁸.

In connection with all this we are bound to mention the juridical collection known by the science under the name of «*Epanagogue*»⁵⁹. In 885, or some time later, a commission headed by patriarch Photius elaborated a code entitled «*Isagogy*» (*Εισαγωγή*) i.e. «*Introduction*», that entered in the history of law, by misunderstanding, under the name «*Epanagogue*». Although the collection follows the traditions of Roman and Byzantine law we can find in it one fundamental exception: it contains a public-judicial section, the only one of its kind, that is without any equivalent both in the ancient sources and in the Byzantine law tradition. This section concerns both the secular and the ecclesiastical authorities and their representatives-the emperor and the patriarch⁶⁰. This is the most remarkable part of the collection. Its richness consists in the clear delimitation of the functions of the supreme secular power exercised by the emperor (*basileos*) and the supreme ecclesiastical power, exercised by the patriarch⁶¹. Thus title II, named *To the Basileos*, begins with a determination for the *basileos* as a «*legitimate authority*». The *basileos* is obligated to protect and guard first of all what is written in the Holy Scripture, then - all that is established in dogmas by the sacred ecumenical councils and finally - to observe the Roman, i.e. the Byzantine laws. Furthermore he is bound to be distinguished for his orthodoxy, piety and all Christian virtues⁶².

58. Cfr. I. MEDVEDEV, *Razvitie pravovoy nauki ...*, p. 223.

59. The preparation for the publishing of *Epanagoga* (*Return to law, Reminder of law*) began even in 879 with the assistance of patriarch Photius. Mainly this legislative collection reproduced the *Prochiron*-in it also were included and again systematized important legislative texts but some of them were considerably changed in comparison to the Roman law. The *Code of Justinian* or the *Ecloga*. Cfr. I. VOZHILOV, I. BILYARSKI, Hr. DIMITROV and I. ILIEV, *Vizantiyskite vasilevsi*, Sofia 1997, p. 231.

60. Cfr. I. MEDVEDEV, *Razvitie pravovoy nauki ...*, p. 230.

61. Cfr. I. BOZHILOV et al., *o. c.*, p. 231.

62. Cfr. I. MEDVEDEV, *Razvitie pravovoy nauki ...*, p. 230. An analogous image, this time of the patriarch, we find in title II of the same collection named «*About the Patriarch*» where the latter is determined as an alive and animate icon of Christ and his deeds and words-as heralding truth. Cfr. *ibid.*, p. 231.

It should be noticed that a number of theologians engaged in Canon law as Michael Psellos who wrote the *Synopsis of the Nomocanon*, Zonaras who after that wrote the famous interpretation of the canons, Harmenopulus, the judge of Thessalonica who wrote *Curtailment of God's laws* - all of them received the common juridical education for that time on equal basis like all the other laymen⁶³. The author of a collection with canonical contents (nomocanon) John of Antioch (Scholasticus) was also a scholastic⁶⁴. At the end of Justinian's government this famous jurist became patriarch and also famous for his firm opposition to the Syrian and Egyptian monophysism⁶⁵.

The studying of Roman law was necessary because of its richness, supremacy in technical aspect and wide-spreading in its field of application⁶⁶. That is why all famous jurists were also excellent experts in Roman and Byzantine law. The well-known Dimitrius Syncel, an ex-member of the questor court under the patrician Evstatius, and subsequently a Cisician metropolitan bishop, was the author of some canonical treatises on the marriage law and along with it a compiler of the mentioned collection «*Pyra*»⁶⁷.

From all the aforesaid it can be concluded that history and practice of church law were inextricably bound up with history and practice of Roman and Byzantine law. The unity between the ecclesiastical and the civil law, expressed even in the uniformity of the juridical decrees, gave way to the appearance of the huge nomocanonical literature-this typically Byzantine legislative production⁶⁸.

63. M. OSTROUMOV, *o. c.*, p. 77.

64. The term «*scholastic*» is widely applied from VI-VII century for jurists, lawyers and professors. Cfr. E. LIPSHIC, *Yuridicheskie shkoli ...*, p. 364.

65. *Ibid.*, p. 365.

66. R. NAZ, *Dictionnaire de droit canonique*, vol. IV, Paris 1949, p. 1053.

67. Cfr. M. OSTROUMOV, *o. c.*, p. 77.

68. Cfr. K. PITSAKIS, *o. c.*, p. 113.

