

**THE COURTS OF LAW OF THE ROMANIAN
PATRIARCHATE IN THE 20TH CENTURY
CANONICAL STUDY
SUMMARY**

The need for organizing the disciplinary canonical resorts in the Romanian Orthodox Church was felt from the very beginning, provisions and rules of those courts are bodies that fulfil the judicial function in the Church: the old bodies spiritual and judiciary itself, of which the first resort was Episcopalian. In the next place, after the 4th century Metropolitan Courts were constituted, according to the canons 4, 5 and 6 of the First Ecumenical Council, and then set by other canons. The term of „court” is found only in the beginning of the 9th century at the Patriarchate of Constantinople. The main cause for this organization is the example of the Holy Apostles, who proceeded to personally prosecuted those who deviated from Church`s discipline according to the power received from Messiah, but when they found it fit, they deliberated upon "synodality", meaning together. An eloquent example of this practices is the Apostolic Council of Jerusalem (49-51), in which have origins all the private metropolitan, periodical, endemical, permanent, national, ecumenical and pan-Orthodox synods, gradually arisen in the Church.

The Apostolic Canon 37 states that these councils should meet regularly, at least twice a year for problems related to the dogmas of the Orthodox faith, and also to decide on controversies that appeared.

On the judgment of the bishops, the Apostolic Canon 74 reads: „If any bishop has been accused of anything by men worthy of credit, he must be summoned by the bishops; and if he appears, and confesses, or is convicted, a suitable punishment must be inflicted upon him. But if when he is summoned he does not attend, let him be summoned a second time, two bishops being sent to him, for that purpose. If even then he will not attend, let him be summoned a third time, two bishops being again sent to him. But if even then he shall disregard the summons and not come, let the synod pronounce such sentence against him as appears right, that he may not seem to profit by avoiding judgment”.

Along with the development of the cult, the need for expanding the activity of courts was felt, by forming the judicial ecclesial authorities as follows: The Appointed Court of Neighbors Bishops, The Intermediate Synodal Court, Special Courts, The Exarch Court, The Patriarchal Court, The Court represented by the Synodal Ecumenical Council, The Court of

Autocephalous Churches, the Exceptional Courts of Judges, and the Ecumenical Council Courts for Monks.

Until the the19th century, in the Romanian countries, with no legal courts, the clerics were judged by the bishops, and in more serious cases by the metropolitan, sometimes in the council. The trial was made by the laws known in our country as the Pravda and the church`s canonical regulations. Until the early 19th century we can not talk about a court in the appropriate way. In 1803 it is commemorated the Metropolitan dicastery who judged an indicted priest by defrocking him. In 1840 The Great Collective Reunion in Romanian Countries approved a new ecclesiastic law, and according to it there are two separate entities: the dicastery and the consistory. The consistory deals with matters of civil status and the dicastery with the ecclesiastic discipline.

After 1865, the dicastery was replaced by the eparchial council and the general council developed the *Regulation for the Works of the Eparchial Council in Matter of Ecclesiastic Discipline* on 31th of December 1865. In the same regulations it was foreseen the situation in which a bishop could lose his position. These regulations regarding the trial of bishops differed in the two regions, in Moldova the procedure of trial being defined more accurate therefore, for spiritual misconduct

the hierarch could be judged by 12 titular bishops and diocesan and for political deviations, a committee of 12 bishops and 12 important landowners elected by the Great Reunion, but without the presence of bishops and Metropolitan. Note that from the 12 landowners, none was allowed to be relative or enemy with the high priest judged. The decree was nominally voted by the members of the comitee and if the accused was found guilty then the defrocking sentence was sent to the Patriarch of Constantinople. If the charge was proved to be unfounded, the demandant lost his rank if he was a landowner or he was punished after the Pravda law if he was cleric.

Also, the hierarchs held legal powers. Metropolies and suffragan dioceses held for previous centuries consistories and dicasteries, recognized by the Organic Regulations. Inside this, priests, archimandrites, deans and other church's officials appointed by the church's hierarch performed their activity.

After 1862, after the political unification of the princedoms, Cuza also intended to complete the Church's union and ensure the status of Autocephalous Church. The Decree Law was promulgated on 6th of December 1864. The decree contained 26 articles, divided into five chapters. Cuza's legislative reforms regarding the church were canonical, innovative, but they were meant to be applied with a required

expertise needed in time. This is why when the Bishopric of the Lower Danube was founded by decree on 17th of November 1864, in Article 2, Cuza appointed Melchisedec Stefanescu as the Bishop Lieutenant without consulting any decision of the Holy Synod in this regard, a decision that actually did not exist. Moreover, the Prince will appoint bishop Melchisedec as the eparchial, without the Holy Synod to be pronounced in any way. This are the circumstances of the emergence of the law for appointing of bishops and metropolitans that was voted by the Chamber on 20th of January 1865 and on 12th of February by the Senate and ratified by Alexandru Ioan Cuza on 11th of May 1865.

Applying this law established two diocesan categories in the country: those who were chosen according to the canons and customs of the country and those appointed and invested by the new law considered by some theologians as non-canonical. This was the onset of disputes in the life of the Romanian Church, 2 of hierarchies of the two metropolis extra Carpathian being considered "canonical" (Metropolitan Niphon from Bucharest and Bishop Calinic from Râmnic) and other 6 bishops appointed by the Prince as lieutenants, then diocesan bishops appointed by decree, are considered "non-canonical". Hierarchies "appointed" Cuza: Melchisedec Ștefănescu, Dionisie Romano, Calinic

Miclescu, Iosif Gheorghian supported the Prince policy regarding the church. On the other side stood the brothers Neofit and Filaret Scriban, Iosif Bobulescu, Ioanichie Evantia.

At the Patriarchal Synod on 8th of October 1865, the Ecumenical Patriarch incriminated the Romanian legislation as non-canonical and it would seem that he intended to anathematize Romanian Church. Cuza's abdication on 11th of February 1866 changed the patriarch attitude, that became more moderate, especially in cutting off the ties only with the "non-canonical" bishops. The fight for Canonical ended after the new law was adopted in December 1872 (*The Synodal Law regarding the election of metropolitans and bishops diocesan and the establishment of the Holy Synod*) in which the bishopric was to be elected and all the bishops Cuza appointed considered "non-canonical" were to be recognized.

In the literal way, Arch diocesans appeared in Romanian Orthodox Church uneth in 1872 in the election of metropolitans and diocesan bishops law. We identify the first resort of appeal, in the same year, as the Holy Synod. This provision was also established by Synod's Law in 1872.

The way that the Church was organized during the old kingdom and the first disciplinary resorts, represents the preamble of another crisis that the Church in the old kingdom

had to pass since 1909 when the liberal minister of religions Spiru Haret introduced the legislative initiative in the Senate to amend the synodal law in 1872. Thus, the liberal minister of religions initiated introduction of a new central body together with the Holy Synod, called the Superior Consistory of Church. This body was formed by the Holy Synod hierarchs with additional members appointed from among the clergy based on their competence with the ministry's proposal. They also have participated in the election of hierarchs and the judging the appeals registered by the cleric at the Holy Synod. The law got this form because of other previous regulations: Regulation for despicable cases and anathemas, Regulation for church discipline, Regulation for the good conduct of the clergy, Regulation for monachal discipline, Regulation of Procedure in matters of ecclesiastical trial, Archdiocesan Regulation. The legislative proposal was endorsed by liberals and was motivated by the desire to democratize the Church, specifically giving access to leadership to clergy, monks and teachers of Theology with higher education, which they can offer to the ecclesial institution. In Minister conception, the only way for people to be in indissoluble bond with the Church was that this people and through other representatives, outside bishops, to attend to the leadership of the church's destiny. Nicolae Iorga, both in the

Senate interpellations, and in some written articles, captures the size of the conflict, especially the danger of exploitation by the political class in the Church matter. He was seeing it deeply conflicting involving the State in the Church affairs, considering that "assiduity" of Minister Haret is taken to the extreme.

Even during discussions in the Senate regarding the adoption of this law, bishop of Roman, Gherasim Safirin fought with lot of energy the initiated project on the grounds that the law was non-canonical and he proposed that the new body had only a consultative role. However, the law was adopted and applied and even they passed at the election of members of the Consistory.

After numerous disputes, accusations and pressures that even the Minister of Cults, Spiru Haret, seems that was not foreign of, on 13th of January 1910 the come to an agreement: the Bishop agrees to return to the meetings and to resume his relations with the three despicable hierarchs who had been guilty of supporting the law in the Senate: The First Metropolitan, the Bishop of Moldavia and Suceava and the Bishop of Huși, on the condition that the Holy Synod to interfere in the Government to modify the provisions of an antidogmatice and anti-canonical law. As the application had been accepted unanimously by the Council, Gherasim Safirin agreed with this decision. However,

because the end of the session was approaching and there was no any attempt to amend the Bishop of Roman forms on 3th of February 1910 an interpellation in the Senate on this issue showing that when this law was first brought to discussion in the Holy Synod, only two bishops who opposed to it: he and the then Bishop of Râmnic, Atanasie Mironescu. Meanwhile, after his election as First Metropolitan on 5th of February 1909, Atanasie Mironescu changed his opinion, so in March 1909 when the project was debated in Senate, he declared his approval. And although he accepted a deal to get out of this sad situation, the Metropolitan had done nothing to honor it.

Therefore, based on these facts, the Bishop of Roman, Gherasim Safirin, demanded that the Metropolitan be judged by the Holy Synod since he disregarded and violated the rules and canons and although voted in the Holy Synod for changing the law, he did not sustained it and he did not initiated it as he engaged. Also, to eliminate any doubt, he and the Bishop was put themselves to the judgment of the council in the situation that the assumption proved to be untrue.

After this, the conflict appeared in some news articles that shocked the clerical and political life, especially as none of the two sides showed any sign of reconciliation. Therefore, during the meeting from 20th of May 1911 of the Holy Synod,

after many deliberations, it was decided to proceed with the indictment of both bishops and merging the trials into one. After intense effervescences alternated by accusations and claiming's, mixed with defamatory news articles, in 24th of June 1911, the decision of acquittal of the Metropolitan Atanasie Mironescu was given to the public. Instead, the decision of Holy Synod shows that according to canon 6, the one which raises unfair accusations against a bishop is to be punished with the same punishment that would have suffered priest if allegations were proved to be true. Therefore, Bishop Gherasim Safirin was guilty of rebellion against the Holy Synod and for disturbing for two years the peace of the church, for which became bishop with unanimity of votes. In this moment, under the political pressure, Atanasie Mironescu would agreed to resign on condition that they make use it only after the announcement of the sentence. According to Nicolae Iorga, this trial with all its consequences would had only one defendant who also was finally punished: not the First, Mironescu Atanasie, not Bishop Gherasim Safirin, but just the honor of the Church. *Pax ecclesia* and the Superior Consistory of the Church was going to work with fewer responsibilities than those found in Spiru Haret legislative initiative. With all this turmoil, who left in the shadow of history the term of "Church`s crisis", it was built a

moment as a test of maturity that the institution of Church had to pass until after 1920, at the Unification of Church, especially at the adoption of the Law and the statute in 1925.

On the other side of the mountains, Orthodox Church from Transylvania and Banat had a twisted history over the centuries due to socio-political circumstances and religious contexts, given the infusion of Christianity in these territories. Therefore, the Church`s life, varied according to the significant changes produced by the political factor.

The Austrian occupation had negative effects on society and also on the Orthodox Church. The Emperor Leopold I (1657-1705) sought for support from people leaving in that region to fight the Ottoman offensive, guaranteeing their freedom of religion, and he elaborated two proclamations; one of these praises the Patriarch of Ipek, Arsenie III Cernoievici. To win the goodwill of the Serbs and Romanians, the Vienna`s King granted through his diplomas the "*Illyrian privileges*" - the free right to exercise the religious faith, the exemption from taxes and duties (excepting the old common law rights of the king and nobles before the Ottoman invasion).

In the 18th century, historical realities made in the strictly area of Orthodox Church, influenced the area of judicial decisions to vary according to the Council from Carloviț. After

1718, there were two categories of Serbs Orthodox Hierarchs: two bishops of Timișoara and Vârșeț and the Metropolitan of Belgrade, appointed by the Patriarch of Ipek and new hierarchy of Carloviț recognized by the Diploma in 1695.

From political reasons, the court from Vienna agreed with the existence of two independent Serbian metropolises: the Carloviț, which had in subordination the Bishoprics of Arad, Buda, Pecs, Slavonia, Kostanjnica, Carlstad and Belgrade with the suffragans Caransebeș, Vârșeț, Râmnic and Valjeva. The Church's Congress assembled after the death of Metropolitan Vincent Popovici from Carloviț, chooses for this free position Moise Popovici and in this way the unification of the Serbian Orthodox Church was made, throwing down the political tricks of Vienna.

Immediately after this *"move"* of Serbs co-religionist, Romanians had submitted to the commander of imperial companies from Sibiu a statement in which they asked the replacement of Bishop Moise - *"tool"* of Turks - with Romanian Petrone. The document was signed by 12 deans with priests from parishes and 40 knyazes and is considered as a start for acquiring the right of Romanian hierarchy.

The fraternity of Romanian and Serbs Orthodox did not last *"forever"* because the historical moment required a national

emancipation of the Church and so that the hierarchical separation became unavoidable. The Empire`s Orthodox Church did not functioned in a "legal gap", but it was organized and it solved their specific problems after certain "corpus": Declaratory Script, Cosistory Systema, The Diocesan Synod from Arad. The history of Romanians from Transylvania and Banat experienced a "twist" due to Metropolitan Andrei Şaguna. He became famous for his visionary talents as a "effigy" personality in the Orthodoxy in this part of Europe. The restoration of his work had as base the historical right, meaning that demonstration with credible sources that his intention for renovation does not begin with a gap, but with a reality. In his view, the Church had to be a "an institution that thinks" and that put itself in the service of society. Thus, he has published three collections historical texts with, canonical and documents in Romanian and German - *"Memo about the historical right of the Romanian national church autonomy of Eastern religion in this region of Austrian monarchy"* Sibiu-Vienna, 1849; *"Addition to the Memo about the historical right of the Romanian national church autonomy of Eastern religion in this region of Austrian monarchy"* Sibiu 1850 *" Memorial for widening the Romanians` wealth in Eastern Religion in Austria for the restoration of*

Metropolitan in terms of holy canons. Written C.R. Ministry for Culture and Guideline 1851" Sibiu 1860.

The Organic Statute was adopted by the Congress of the National Church of Sibiu in 1868 and ratified by the imperial authority of the Court in Vienna on 28th of May 1869, and this way the Romanian Orthodox Church from Transylvania and Banat got into a "New Church Era." The Organic Statute defined the Consistory as the administrative and judicial permanent body in all church`s affairs, school and foundational in the diocese. In *"Compendium of canonical law of a Holy and Apostolic Church"* 3rd Edition, Sibiu, 1913, starting with "Excision IV", Andrei Şaguna brings various explanations in matter of canonical trial in Church. The Organic Statute was not *"completely"* if we think about many problems that beset the Church of Transylvania and Banat until 1918 or 1925.

Although during centuries they were separated by unnatural borders, Romanians unitary developed on both sides of Carpathian mountains, which, far from building a barrier, were always a meeting place, for living together with a brother that lived on the side of the versant.

Before the Great Union in 1918, Romanian Orthodox were divided into four distinct church units, each having a specific namely that made the difference. The Union in 1918

changed the paradigm of nationality, bringing a "*wave in the soul*" from the Greek Catholics, who wanted a "*unique Romanian Church*" given the fact that it was not right "*two Romanian Churches*" to exist, but this desire was not fulfilled for various reasons.

The clergy and monks who had not imposed themselves in the consciousness as representative names in the Romanian Orthodox Church, also showed interest for the Unification of the Church and this demonstrates that this issue harmed even lower members of the Church who cherished the thought of a powerful and imposing Church of the Nation.

The unification of church issue was debated by the church leadership bodies: First Congress of the Clergy Association of Metropolitan of Transylvania (Sibiu 6th/19th – 8th/21th of March 1919), Archdiocesan Synod (Sibiu, 14th/27th of April - 19th of April / 2nd of May, 1919), the Synod of Bishops of the Metropolitan of Transylvania (Sibiu, April 23th of April 1919), the Metropolitan Consistory Meeting in Sibiu (2nd/15th of May 1919) Meeting in Sinaia (24th to 25th of June 1919) Congress of Priesthood in Old Romania (Bucharest, 17th to 19th of September 1919), the Metropolitan Consistory Meeting in Sibiu (4th /17th November 1919).

The Church`s Unification matter has grown so large that it became a Government`s concern, a Parliament`s and not least a church`s and media`s. Obviously in such a wide circle of "unification" ideas, the process was extended to the Law and Statute of the Romanian Orthodox Church from 1925.

"The triad" of the "contributors" theologians to the church`s unification commitment in whole Romania - Valerian Şesan, George Ciuhandru and Elie Miron Cristea – offered us among others three visions on Church`s equity, embodied in the Law and the Statute for organizing the Romanian Orthodox Church (1925) and Regulation of procedure for the courts (1926). The emergence of the Law and Statute for organizing the Romanian Orthodox Church was not possible without the changes required by peace negotiations from Sibiu through the mediation of Minister Alexandru Lapedatu and then the debates in the Parliament - the Senate and Chamber of Deputies. The law from 1925 had the following "chapters": Church's position inside and outside (Article 1); canonical and administrative disposals (Articles 2 and 3); Church`s Rights by the Constitution (Article 4); The Holy Synod (Article 5); Church National Congress and the Central Council (Article 6 and 7); Constituent Parts of the Church and of their bodies (Articles 8-11); Election of Bishops and Archbishops - Metropolitans - Their Possessions

(Articles 12-14); Wealth of Monks and Nuns (Article 15); Disciplinary Courts and Tribunals of the Church.

Both the Church's Disciplinary Regulation of Procedure and judicial courts and also the Criminal Code, seem to have a procedural complexity at all 3 levels: diocesan, metropolitan and central. The existence of two courts of appeal, confirms the liberalization of trial and the increment of the ability to defend clergy from charges in ecclesiastical processes.

The big economic crisis did not prevented the United National Church Congress to develop and approve the "Regulation for the appointment, advancement and discipline of the official in church," a complex legal document for officials in diocese.

The Law and Statute for the organization of the Romanian Orthodox Church from 1925 through textual accuracy, is undoubtedly another step in the historical development of the Romanian Orthodox Church.

The law for the organization of the Romanian Orthodox Church names in the art. 16 which are the disciplinary and judicial courts for clergy in matters of church issues:

1. Spiritual Diocesan Consistory at every diocese as first court. Dioceses may send some small issues at the deanery court.

2. Spiritual Metropolitan Consistory, as court of appeal, in addition to the 3 historic Metropolitanates: in Bucharest for Ungro - Wallachia Metropolitan in Iasi for Moldovian, Bucovina and Bessarabia Metropolitan and in Sibiu for Transylvania Metropolitan.

3. Spiritual Central Consistory of the Holy Synod, as court of appeal and to ensure the unity of jurisprudence. Appeals are dogmatic issues concerning the exclusive competence of the Holy Synod.

The Regulation of Procedure of disciplinary courts and tribunals of the Romanian Orthodox Church was voted session from June 1926 in the Holy Synod , promulgated by Royal Decree no. 4160 from 29th of December 1926 published in the Official Gazette no. 290/ 30 of December 1926.

For the first time in the organizational principles of the church, the penalties applied by spiritual consistories were divided after their severity in temporal punishments and permanent punishments, both applied after the principle of graduality and with effects on spiritually-canonical and administratively -economic area.

The Law and Statute of the Romanian Orthodox Church (1925) and the Regulation of Procedure of the disciplinary courts of the Romanian Orthodox Church (1926) have already

the "halo" of legal modernity, which is not the same reaction or fabrication of ecclesiological content, on the contrary, the Church adapted and reformulated the canon fund, in available ways for the modern spirit

Compared to those recorded in the Regulation of *Procedure of the disciplinary and judicial courts* in 1926 and also in the Criminal Code, we find the complexity of the procedure, both at diocesan level and at the other levels, respectively metropolitan central. The existence of two courts of appeal confirms the liberalization of lawsuits and increasing the possibility of clergy to defend against the allegations brought in church`s lawsuits. It is necessary to note the adoption of the provisions of civil and criminal codes from the laic area and to adapt them in the clerical area, the emergence of the ecclesial defendants increases the clergy`s prestige, especially the church`s in general to the laic authority, which assumes that the church`s rulings in court and provides directives for this.

The man truly faithful values only God's justice, because by its manifestation, He becomes right Himself. Biblical it is established a sort of "*dialectical Bible*" in this way: the justice, like the that the kingdom of heaven is expected ("blessed are those who hunger and thirst for righteousness, for they will be filled" - Matthew 5: 6) and confessed with the price of an

assumed suffering ("blessed are those who are persecuted for righteousness for theirs is the kingdom of heaven" - Matthew 5: 10). Passivity is not soteriological ("Seek first the kingdom of God and his righteousness, and all these shall be added unto you" - Matthew 6, 33) and should be replaced with militant activism.

The "New Man" (reformed) does not need any "judgment", " For we hold that one is justified by faith apart from works of the law" (Romans 3, 28) . Therefore, the Pauline epistles from the New Testament militate for a new culture of law agreed with freedom.

Revolutionary transformations, political, economic and cultural issues that occurred after 23rd of August, 1944 in the life of Romanian people naturally caused a series of transformations and changes in the religious sector. These transformations have occurred in the lives of all religions, but it mainly occurred in the life of Orthodox religion, religion organizational embodied in Romanian Orthodox Church.

The religious freedom enshrined in the new era that was beginning to emerge in the context of the publication of the Decree - Law no. 177 in 1948 for the general regime of religious cults. In Article 27 of this Decree there was ensured the freedom of conscience and freedom of religion for all citizens and the

religious freedom to organize and operate freely, according to the doctrine, tradition, practice and own canons. The only statement was made in connection with this guaranteed freedom of religious organization was not to practice something that would violate the constitution, public security or morality. Hence, there is a distinction between freedom of conscience and freedom of religion as individual property, which is absolute and unlimited, and between them the externalization of religious freedom is guaranteed only to the extent that threaten public order and contrary to morality. Although in semblance the State does not seem to interference in an area which has no jurisdiction, it realizes that cults` life influences social life and thus it stick to the idea of discrete controlling the problems of organization, while avoiding the interference in the rules of doctrine that remain in exclusive to cults.

With the emergence of the new Statute the old organizations of the Church dissolved and with the patriarchal decision no. 56/1949 dissolved the old deliberative diocesan and executive bodies, which according to the provisions of the new statute, were making their corporation through new elections.

Observing another historical and social reality, new principles in organizing the Romanian Orthodox Church have been required. For this, it proceeded to the adoption of new laws

for the organization of the Romanian Orthodox Church. According to canonists of that time, from the *Statute for organization and functioning of the of the Romanian Orthodox Church* from 1948 three fundamental principles emerge: autocephaly, autonomy and synodality.

Although they not renounced at the participation of laics in running the church affairs, under the new statutes Patriarch Justinian, under the fear of the dangerous infiltration of the Protestant mentality in the Romanian Orthodox Church, limited the participation of laics in the administration of the church affairs, reasoning this opinion on the spirit of the canons and tradition.

The principles mentioned in the organization law from 6th of May 1925 and the *Statute for organizing the Romanian Orthodox Church*, attached to that law were provided, in general, and in the Statute of the organization from 1949, according to the principle enshrined in the Constitution of the Popular Republic of Romania in 1948, which recognizes autocephalous Romanian Orthodox Church and it organization unit.

Regarding justice inside the Church, we can recognize the assess of 3 disciplinary courts for the breaches of parish clergy and singers. This way it decrease the board of judges from 5

courts to 3. These are the Disciplinary Deanery Consistory, the diocesan consistory and Central Church`s Consistory, and also of course, the Metropolitan Consistories and the Higher Consistory. In these circumstances, the conciliatory trial courts no longer find a place in the new Statute. The Central Church`s Consistory was set as appeal court for diocesan decisions, except those in which the penalty of defrocking and the Holy Synod for the previous two courts of appeal had been set as fundamental courts. The reasons of these organizational changings in matter of religious courts were partial, motivating that the laic terminology and even the regulations ecclesial principle caused serious and damaging confusions for the ecclesial court institutions.

The Article 158 of the Statute establishes that both the constitution and competence of disciplinary and legal proceedings would be determined by a special regulation made by the Holy Synod and approved by the High Presidium of the Great National Union. Thus, based on the principles of civil law, the organization of the Romanian Orthodox Church will operate as a regulatory document, becoming a law.

Based on Articles 145-158 of the *Statute for the organization the Romanian Orthodox Church*, and based on addresses no. 8237/1949 and 154/1950 of patriarchal

administration, and also based on address no. 1045/1950 of the Ministry of Cults and sanctioned by the High Presidium of the National Assembly, with the decree no. 7/12 on January 1950, the new regulation of procedure became effective on publication in the gazette of the Romanian Patriarchate "Romanian Orthodox Church" no. 1 from January 1950.

The nature of this legal action, of the legal procedure, of the courts, of the rulings in justice and of the Church`s main goal, made a the distinction between the new principles from those of laic`s justice. It is true that there formal similarities between them and relying on them, the bodies of Church`s power believed in the past that they can conclude on their basis, on their identity, and therefore they proceeded to the organization of justice in Church by the laic regulations, borrowing even the same terminology, which in most cases differs in content from the church`s one and this trying its usage in ecclesiastical justice reached to serious and damaging confusions.

The changing of the historical paradigm "*shacked*" also the church`s life until its constitution most of the time. Changing the Religious Law in 1948 and adapting new social and political realities put the Church back to attempt an adaptation to operate in "*normal conditions*". Divine Providence has arranged that

the Statute of the Romanian Orthodox Church in 1948 become the longest status in time. Along with this Regulation for disciplinary bodies of the Romanian Patriarchate in 1949, it will be constantly used for the next 50 years.

To highlight the development of the disciplinary bodies and the regulations of procedure, we note that the application of the new provisions is a comparison between the old and new Rules of Procedure, highlighting the significance, canonical and legality of the stipulations introduced in amending and supplementing the old regulation, in the view of both the canonists and the judicial practice of the Church. After the adoption of new legislative and regulative frameworks, in 1948, the State planned to correlate them with civil and criminal legislation. This was motivated on the ground of the advancing socialist society, which provoked the spirit of emancipation and affirmation of the innovative ideas of individuals, according to coordinates communist state. All coordinates of social development were required to be addressed, also the complete adherence to all people to achieve the objectives of social evolution.

Given the status of "*working man*", given to both clergy and non-clergy, engaged in functioning structure of the Romanian Orthodox Church, the employees with "working"

responsibilities in Church adhered to the legal and canonical procedures of responsibility. This responsibility took many forms, depending on the case: *material, disciplinary, administrative or criminal*.

Once employed in an organization, any person beard the burden of a set of rights and obligations. All of this was related to the legal work, and they were complementary to the rights and obligations of every citizen. By the fact that the employees participated at certain cult activities, it was necessary for them to assume administrative, criminal or civil responsibility for it. If the acts committed affected the social values defended by the legislation, then the authors received criminal charges (for crimes), contraventional (for contraventions) and civil (for unlawful acts which that caused damages to property). These possible responsibilities had implications for both clergy and non-clergy staff, among whom was a clear distinction.

For the labour discipline matters the laic staff employed in the Romanian Orthodox Church adopted the following laws: Law 1/1970 on the organization and working discipline Law 10/1970 (Labour Code). The provisions of the art. 13, alin. 1 of Law 1/1970, respectively art. 100 (1) of the Labour Code states that the illegal act, in terms of disciplinary work is a breach of the duties, including those from norms of behaviour. *The*

working obligation is the complex of duties of each person under the contract of employment, of the legal provisions and decisions at the organizational level, required in order to achieve the best conduct of the working process.

When a disciplinary liability is associated with a material one, the last can not be used to settle with the Regulation of disciplinary bodies of Romanian Orthodox Church, because the recovery of financial damages is not offered to that court. Since we report to patrimonial evidence governed by laws of general application, their solution was strictly in the courts' jurisdiction, based on the laws mentioned above.

In addition to these laws for the legal framework of the laic staff in the labour law, we also highlight the provisions of Law 63/1974, which applied to the entire staff of cult highlighting and preserving the national cultural heritage assets that they held.

Another set of duties related to the conformation to the law was for priests in quality of managers of parish and movable and immovable property.

Since the communist regime triggered a general plan for the generally systematic urban environments, there were issued following normative decrees to pursuit this goal: decree no. 144/1958 and 545/1958 regarding the legal regime in

construction; Law no. no. 58/1974 and no. 59/1974 on land planning and territorial fund.

The year 1990 was a landmark for Romanian Orthodox Church, as for the entire country. The Revolution of December 1989 caused a major unrest among the clergy and actual crises among the faithful. The desire for change was felt inside the Church, and a renewal group of the Romanian Orthodox Church was formed. Clergy, monks and intellectuals disloyal to communist regime, required amongst others the renewal of the Statute *for the Organization and Functioning of the Romanian Orthodox Church* and the church regulations also, providing the liberalization of the Church. They want that the Church become independent of to the State. It should come free in its internal organization, which is not accomplished by its leaders until the unification of the church in 1920.

In this context writing a *Statute for the Organization and Functioning of the Romanian Orthodox Church* and the regulations annexed to it are expected to come, since the liberalization and reform of an institution at national level could not be done so quickly. Faced with this assumed reality, the Church enacted regulations to amend the statute and the its regulations. All these provisions will be collected in a volume published by the Bible Institute and mission of the Romanian

Orthodox Church in 2003 under the name of *Laws of Romanian Orthodox Church - extract.*

The "*Regulation of procedure of the disciplinary and the trial resorts of the Romanian Orthodox Church*" from 2003, preserves the principles of the old procedure rules with of noting of some amendments designed to create stability, but also to rejuvenate the principles in the new context of social and political changes that faced by the Romanian Patriarchate.

A new readjustment in the new Rules of Procedure refers to disciplinary and judicial resort of clergy, parish priests, deacons and singers in strictly ecclesiastical matters. Therefore, the decision of the Holy Synod no. 3505 from 15 July 1998 established the following disciplinary resorts:

1. *Deanery Disciplinary Consistory;*
2. *Archdiocesan.*

Bodies of Appeal:

1. *Metropolitan Synod* for relegation cases;
2. *Holy Synod*, in defrocking cases.

The ecclesial judicial system, according to the new regulation, has two levels of jurisdiction, a case following a ordinary cycle of two-stage cycle trial courts of different hierarchical level - "*judgment at first resort and on appeal.*" Since 1948, the previously existing system with three levels of

jurisdiction was abandoned - the first resort, appeal and recourse - which without being an effective assurance, was unnecessarily extending the trial.

The first level of jurisdiction is formed in the first resort, performing the task of solving the case. The trial at first resort is *indispensable* to all cases where of judgment and considered as the main stage of the proceedings. Ordinary cycle – composed of the trial at first resort and the appeal judgment - is not only consecutive, but it is possible to return the case back to the first trial, if it was conducted in violation of essential procedural law or not solved the main cause; in this case shifting the case in a new trial on appeal becomes possible by following a retrial in the first resort. As observed, in the decision no. 3505 of the Holy Synod from 15th of July 1998, the Metropolitan Council as recourse resort is reintroducing the regulation, which has in jurisdiction the cases that come as recourses from the Archdiocesan appeal, where was applied the penalty of resigning the rank for the clergy. According to the decision no. 3505 of the Holy Synod from 15th of July 1998, the Metropolitan Council, as a court of appeal, can totally, partially change or confirm the first resort sentence. If the appeal is rejected, the sentence of first resort is final, and in case of remission of the sentence, the metropolitan council retain the case file and

reconsider it. The decision taken by the Metropolitan Council is enforceable and final, after the Metropolitan's approval. Metropolitan Synod as courts of appeal for resigning ranks of the clergy, does not judge the case after the current sentence, but only based on the existing evidence and presented to the Metropolitan synod members and to the official of the Metropolitan Center.

Between the articles 223-230, is presented the way for appeal to the Holy Synod for the defrocking punishment in analogy with the procedure at the recourse filed at the Metropolitan Council. Basically in the new regulation of procedure 21 articles were removed (205-226) from the old regulation of procedure, articles that submitted in matter of judgement what was in courts' proceedings Central Consistory Church's attribution in the old regulation.

The abolition of this institution of trial, all requests for reviewing of sentences given by courts of law are submitted to the Church's Patriarch, which under the art. 232 par. 2 readdress to another Diocesan Consistory from the same metropolitan, which can cancel the conviction sentence and retain for a new trial, according to par. 3 of the same article. If that sentence was to be discover inequitable, the new decision of

that Consistory decision will rehabilitate the prestige of the convicted one.

A lack of the two regulations of procedure is that they are some unspecified provisions for discharging the penalties. According to canonical norms and customary law, the right to discharge the penalties is handed to courts ecclesiastical courts itself or to their upper bodies, invested with the power to reform, to cancel or to revise the decisions made by those courts. Spiritual punishments will not be removed or modified only by those who have decided it or by their canonical successors in position.

A general view to the Regulation courts of the Romanian Patriarchate, amended in 1998 and published in 2003, shows us that it mainly maintained the principles of the Regulations of Procedure from 1950, given that there had been some changes signalled in the lines above, which had prepared a bigger background work that would be completed after 2010.

The change of political regime in Romania and reorientation of our country to the European Union by democratic aspirations and full freedom, provided our Church that, starting with 1990, the possibility to bring over more than 100 amendments to the *Statute for the organization and functioning of the Romanian Orthodox Church*, published 1948.

After 1990, the dynamic and complexity of the Church's` life and mission, imposed a systematic and coordinated correlation of the ecclesiastical legislation with the State`s law, in accordance with the holy canons, the Orthodox tradition and keeping the dogmatic union, liturgical and canonical communion with the Universal Orthodox Church.

Founded on religious freedom and the right to assert full autonomy of religions in Romania, under the constitutional provisions (art. 29, par. 3 and 5) and the "*Law no. 489/2006 on religious freedom and the general regime of religions* " that have provided new insights for the unification of freedom with the responsibility, the Holy Synod of the Romanian Orthodox Church adopted an action plan on the writing of the *Statute for the organization and functioning of the Romanian Orthodox Church* at the meeting from 13rd of February 2007, under the leading of the worthy of mention Patriarch Teoctist.

In this context, the Holy Synod, in a first meeting on 23rd-24th of October 2007 finalized the Articles 1-89 of the *Statute Project*, then during the meeting from 27th -28th of November finalized the articles 90-205, and adopted a total of 25 amendments to the text written in the previous session, and finally on 28th of November 2007, approved unanimously the text of the new **Regulation for the organization and**

functioning of the Romanian Orthodox Church (205 articles).

In 2011, the Holy Synod of the Romanian Orthodox Church has modified the status with the decision no. 385/17th of February 2011. Thus all the improvements adopted by the Holy Synod from 2007-2011 were introduced in the statute.

Regarding the disciplinary courts, their operation is provided in art. 148-161 and presents wide changes.

Therefore, according to art. 148 par. 2, for trial cases of clerical parish church and monachal staff, in activity or retired and also for all non-clergy staff, the following consistories are working in matters related to violations of administrative, moral and dogmatic character:

1. The base trial:

- a) Deanery Disciplinary Consistory;
- b) Diocesan Consistory;
- c) Diocesan Monachal Consistory.

2. The appeal trial:

- a) Metropolitan Consistory;
- b) Monachal Metropolitan Consistory.

3. The recourse trial: Superior Consistory of the Church.

In these circumstances, according to art. 153 par. 1 Metropolitan Consistory is a disciplinary court of recourses for parish clergy belonging to the Metropolitan suffragan dioceses, sanctioned by cancelling the ranks of the clergy, as well as the appeals against defrocking decisions.

A new element in the current regulations of the disciplinary resorts is the monastic Metropolitan Consistory, according to art. 154. This court is the disciplinary court of appeals court for the recourses of monastic clergy belonging to the Metropolitan suffragan dioceses, sanctioned by cancelling ranks of the clergy, as well as the appeals against defrocking decisions.

It is noted the appearance in disciplinary resorts of the Superior Consistory of Church. *Statutes and Regulations Committee*, reunited at the Patriarchal Residence on 1-2 September 2010, recorded that the canonical doctrine of the Orthodox Church anticipates for an autocephalous local Church a court system with two resorts of appeal, the appeal and the recourse, the fact that in the Orthodox affined churches has generally remained the same trial system of by specific to the entities of authority (the bishop and synod of bishops), and the two ways of attacking the courts` basic sentences, appeal and recourse and also the fact that within the Romanian Orthodox

Church existed until 1998 a CENTRAL CONSISTORY OF THE CHURCH, as a court of recourse, submitted the proposal of foundation, within the Romanian Orthodox Church of a SUPERIOR CONSISTORY OF THE CHURCH as a resort which in the custody of the Holy Synod, handled the defrocking sentences of a Metropolitan Consistory within the Romanian Patriarchate and proposed for consideration to the Holy Synod, waiting for approval and solutions to these appeals.

Therefore, this court becomes again the highest disciplinary court of law for parish or monastic clergy, which judges appeals against defrocking sentences given by a consistory diocesan and maintained by a Superior Metropolitan. The sentences given by The Superior Consistory of the Church regarding appeals against defrocking decisions are final and irrevocable after their approval by the Holy Synod, according to art. 155.

Thus, based on the autonomy of religions, stipulated in law and their specific skills, the religious courts solved internal matters of discipline and ecclesiastical court sentences at all levels that cannot be attacked in the civil courts.

The Holy Synod of the Romanian Orthodox Church declared the year 2015 as an *Anniversary Year of the today's` parish and monastery mission* and *Commemorative Year of St.*

John Chrysostom and of the great souls shepherds from dioceses in the Romanian Patriarchate. In the same year, the Holy Synod of the Romanian Orthodox Church during the working session from 5th to 6th of February 2015 reviewed and approved the new disciplinary regulation, entitled *Regulation of canonical disciplinary authorities and courts of the Romanian Orthodox Church*, which contains 179 articles organized into 6 chapters and that become operative on 6th of February 2015. The content of the new regulation of the disciplinary resort is more oriented towards the legal side comparing than the one that become operative in 2015, but it can work more efficiently on disciplinary entities, having the chance to equalize the church's` discipline and its procedure of implementation at the Romanian Patriarchate, in a society increasingly oriented toward strictness and legal principles in all its aspects.

By placing case studies after presenting each regulation does not make this intercession a treaty of priests judgments, which today is a "*delicacy*" subject for the contemporary, but an invitation to understand the need for the loving Spirit of Jesus. Christ does not judges us to satisfy a judgment pleasure, because He says: "I can of my own self do nothing: as I Hear, I judge: and my Judgment is just; Because I seek not my own Will, but the Will of the Father Which hath sent me" (John 5, 30); he does

not "keep away" of the Judgment, but is expected to be invested with the assumed responsibility, because: "For the Father Judges no man, but hath Committed all Judgment unto the Son " (John 5, 22).

Thus, we understand that Christ will judge with His Spirit that bears between Him and the Father, the spirit of love, that is responsible, but mostly that is fair. Assuming the position as sons of the Judge, we have a duty to seek justice, for all we will add to us, if we first seek the Kingdom of God and His justice. The justice of God is not outside love, and that is why building each regulation for discipline and functioning of each disciplinary court must take into account the fundamental canonical norms of Christ, the one sentenced and arisen: "I have not come to call the righteous, but sinners" (Mark 2, 17).

Certainly Jesus does not wait for us in the Kingdom dressed in Judge`s „robe", but "*there*" we will see Jesus in the tearful shirt. In Revelation 5, 6 we find judge Jesus as a slain Lamb, ready to judge, as one sentenced and convicted, but that fight to the sin. This promise does not entitle us to give up discipline, but empowers us to follow it with love, because the Church is the place where we love our neighbour as ourselves (Matthew 22, 37), so the first rule of each regulation is to remain in Christ's love for people.

Even though the regulations through their technical feature have a military prevalence, Church is a community of those who are bound together by faith, divine law hierarchy and holy sacraments, where the unshakable foundation is Jesus Christ (I Corinthians 1, 11). Canon law in its legal applicability, can not afford to encroach on damaging the human dignity, but it has the responsibility of rebuilding the lost memory.