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Decisions of the “Holy and Great Council”, Held in Crete (Greece, June 16-26, 2016), on Marriage

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Abstract

One of the topics addressed in the Work Sessions of the “Holy and Great Council”, held in Crete (Greece), in June (16-26) 2016, was Marriage, especially the impediments to marriage, a topic debated and evaluated thoroughly also at the pre-Synodal Pan-Orthodox Conferences in the light of the canon law of the Eastern Church.

As the Synodal Fathers replicated some definitions of marriage left to us by the Roman legal experts from the 2nd-6th centuries AD, in the pages of this study, with a canonical-legal content, we have first discussed the “Jus romanum” (Roman law), and then the Byzantine (state and church) legislation. Hence the evaluation of these synodal “decisions” also in the light of the provisions of the Code of Laws (nomocanon) legislation, which also enjoyed a real welcome in the Northern Danubian area ever since its very beginning, that is, from Emperor Justinian’s time (527-565).

Keywords:

institution of marriage, synodal decisions, canonical law, nomocanonical legislation

I. Introduction

In the official Document issued by “The Holy and Great Council” - assembled in Crete (Greece), between 16-26 June 2016 - it was mentioned that “in the Orthodox Church, marriage is considered to be the oldest institution of divine law because it was instituted simultaneously with the creation of Adam and Eve, the first human beings (Gen 2:23)”¹.

About this reality, peremptory testimony is given to us also by the canons that the Post-Nicene Church assigned to the Holy Apostles². For example, in the Apostolic canon 51 it is explicitly stated that “... he made man male and female”, thus, “if any bishop, presbyter, or deacon, or any one of the sacerdotal list (rank), stays away (abstains) from marriage, ..., let him be corrected, or else be deposed, and cast out of the Church”³ (can. 51), that is, be excommunicated⁴.

Through this canon, both the clergy of divine institution (bishop, priest and deacon), as well as those in the “hierarchical catalog” (τοῦ καταλόγου τοῦ ἱερατικοῦ) were, therefore, punished with defrocking (καθαιρέσις) and casting out of the Church (τῆς ἐκκλησίας ἀπόβαλλέσθω) (Apostolic can. 51)⁵. In fact, the “layman” (λαΐκος) who had such an attitude towards marriage was also excommunicated (cast out of the Church)⁶.

In their commentaries on Apostolic canon 51, the Byzantine canonists of the twelfth century also wanted to reaffirm the old “Church order”

¹ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

² See Nicolae V. DURĂ, *Le Régime de la synodalité selon la législation canonique, conciliaire, oecuménique, du I^{er} millénaire*, Ametist 92, București, 1999, pp. 137-157; 287-382; Nicolae V. DURĂ, “Le Concile des Apôtres, prototype de tous les conciles, modèle de la synodalité orthodoxe”, in: *La Lumière du Thabor*, 49-50 (2003), pp. 61-84.

³ Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe. Note și comenatrii*, Sibiu, 1992, p. 34.

⁴ On the two punishments, defrocking and excommunication, see extensively in Nicolae V. DURĂ, “Precizări privind unele noțiuni ale Dreptului canonic (depunere, carterisire, excomunicare, afurisire și anatema) în lumina învățaturii ortodoxe. Studiu canonic”, in: *Orthodoxia*, XXXIX (1987) 2, pp. 84-135; in: *Orthodoxia*, XXXIX (1987) 3, pp. 105-143.

⁵ *Syntagma of the Holy and Devine Canons (Athenian Syntagma)*, G. A. RALLI, M. POTLI (ed.), vol. II, Atena, 1852, p. 67.

⁶ *Athenian Syntagma*, vol. II, p. 67.

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(ταξίς τῆς Εκκλησίας), according to which “man” and “woman” must unite through Marriage, as this was “παρα Θεοῦ” (from God), and for this reason the Church stipulated that, if those belonging to the clergy class (of divine establishment) do not “correct” (μὴ διορθοῦται) themselves, “they should not just be defrocked (καθαιρεθήσεται), but also cast out of the Church (τῆς ἐκκλησίας ἀπόβληθήσεται), ..., just like a heretic (ὡς αἰρετικός)”⁷.

Among other things, in this synodal act, which quintessentially expressed teachings of Apostolic and Patristic origin of the Eastern Orthodox Church about marriage, it was, in fact, emphasized that the “union” of the two spouses, through the Holy Sacrament of Marriage, implies not only “spiritual communion of a married couple - a man and a woman - but also assured the continuation of the human race. As such, the marriage of man and woman, which was blessed in Paradise, became a holy mystery, as mentioned in the New Testament ... (Jn. 2,11)” (I, 2)⁸.

Following the administration of the Holy Sacrament of the Wedding, by the priests of the Church, the spouses enter not only into a “community of life” (coniunctio vitae continens)⁹ – as defined by the Roman legal experts (according to Modestinus) – but also into a “sacred”¹⁰ one, of divine nature, hence the fact that the Orthodox Church “teaches” not only about the sacredness of marriage, but also about “the free union between a man and a woman”¹¹, which is an indispensable condition for the Holy Sacrament of Marriage (I, 1), through which both “grace” (χαρις), and the freedom of consent from the future spouses are “a gift from God” (Ephes. 2, 5-8; II Thess. 2, 16), and there “... where the Spirit of the Lord is, there is freedom” (II Cor. 3, 7).

⁷ Ioan ZONARA, „Commentary on Apostolic canon 51”, in: *Athenian Syntagma*, vol. II, pp. 67-68.

⁸ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

⁹ *Justiniani Institutiones*, I, IX, 1.

¹⁰ See Nicolae V. DURĂ, “Le sacré et les fêtes religieuses”, in: *Dionysiana*, III (2009) 1, pp. 9-18.

¹¹ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

II. The Decisions of the “Holy and Great Council” and the basic principles of Christian Marriage

By reaffirming the traditional teaching of the Eastern Orthodox Church, the Holy and Great Council also affirmed the basic principles of Christian marriage, namely:

a) Marriage is an institution of divine law;

b) A “legitimate marriage”¹² (*iustas nuptias*) is based only on the connection (*foedus*) between a man and a woman, as explicitly stipulated both in the “provisions of the law” (*praecepta legum*) (*Justiniani Institutiones*, lb. I, X), and in the Roman laws¹³, which were commented on and explained by famous Roman solicitors in their works, and which became “*fontes juris romanum*” (sources of the Roman law), known as “*Jus antiquum*” from the time of Emperor Theodosius II through “the law of citations” from the year 425.

In this regard, it is, of course, sufficient to recall - for example - the definition given by the famous Roman legal expert, Modestinus (2nd century AD), according to which a “legitimate marriage” (*iusta nuptiae*) is only the one which results from “man’s connection with the woman” (*vir et mulieris coniunctio*).

The legal experts of Emperor Justinian (527-565) - who interpreted and explained the content of the definition given by the famous Roman legal expert Modestinus - also emphasised that, “if a marriage is concluded against the rules (*adversus normas*), ..., there is no husband (*vir*), no wife (*uxor*), no wedding (*nuptiae*) or marriage (*matrimonium*), no dowry (*dos*)” (*Justiniani Institutiones*, lb. I, X, 12).

c) Marriage has both a monogamous character, and an indissoluble one, as through the Sacrament of Marriage not only the “spiritual communion” between the two spouses, man and woman, is realized, but also one of its primary purposes, namely the procreation, in order for the life of man on earth to be, thus, continued, but with the “blessing” (*εὐλογία*) of the Church, which actually “belongs” to God (Mt. 25, 34; Mk. 14, 61; Luke

¹² MODESTINUS, *Regulae*, I, apud JUSTINIAN, *Digestae*, XXIII, 2, 1.

¹³ Cătălina MITITELU, “Reglementări ale dreptului roman, privind instituția căsătoriei, exprimate și comentate în «*Decretum Gratiani*»”, in: *Jurnalul juridic național: teorie și practică*, 2 (2019), pp. 32-35.

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1, 68; Gal. 3, 81), and by which His "grace" and "gifts" are transferred to us (Heb. 6, 7).

About this reality, that is, the perpetuation of the human species through the birth of sons and daughters, a convincing testimony is given to us, however, by "Jus naturale" (Natural law), "which all beings learnt from nature (*natura omnia animalia docuit*), since this right (*jus*) is not specific only to the human race (*non humani generis proprium est*), but it is common to all living beings ..." (*Justiniani Institutiones*, lb. I, 11).

The Roman solicitors (centuries II-VI AD) had once expressed themselves in similar terms. For example, according to the statement of one of the famous Roman solicitors, namely Modestinus, "the connection of the man with the woman", on which a "lawful marriage" (*iusta nuptiae*) is based, "consists of a community of life, indivisible (*individuum consuetudinem vitae continens*)" (*Justiniani Institutiones*, lb. I, IX, 1). Also Gaius (2nd century AD), another famous Roman solicitor stated that "sub patria potestas", that is, "under the parental power", i.e. "pater familias", "are also our children (*fili familias*) whom we conceived ... " (*Gaius, Institutiones*, lb. I, 55).

d) The sacramental character of the marriage.

Blessed in Heaven (according to Genesis 2, 23), Marriage was elevated to the rank of "Sacrament" (Μυστήριον), that is, "Holy Sacrament", by the Founder of the Church Himself, our Lord Jesus Christ (according to John 2, 11 sq.), through which spouses receive the "grace of God" (Acts 14, 26; Rom. I, 7; Peter 5, 12).

e) Marriage is a "free union between a man and a woman".

By this phrase, the Fathers of the "Holy and Great Council" affirmed, in fact, another basic principle of this old institution of divine origin, namely the freely consented marriage between a man and a woman, as stipulated in "Sacrae Constitutiones", that is, the Imperial Constitutions promulgated by the Roman emperors.

The two notions, "man" and "woman", which were explicitly stipulated not only by these imperial Constitutions, but also even by the European Convention on Human Rights¹⁴ (Rome, 1950), were unfortunately replaced

¹⁴ Cătălina MITITELU, "The European Convention on Human Rights", in: *The European Integration – Realities and Perspectives*, Danubius University Press, Galati, 2015, pp. 243-252; Cătălina MITITELU, "Europe and the Constitutionalization Process of EU Member States", in: *Ovidius University Annals, Economic Sciences Series*, XIII (2013) 2, pp. 122-127.

- in the “European Social Charter”¹⁵ revised in 1998, and in the Treaty of Nice¹⁶, from 2000, - by the notion of “spouses”.

By replacing the two notions, man and woman, - to which European law explicitly referred to for two millennia, both through Roman and Byzantine Law, and European States’ law, and ever since their emergence in the socio-political landscape of our continent, - with that of “spouses”, the perception and definition of marriage would become totally alienated from the provisions of the classical, positive (written) or common (customary) European Law, as well as from the provisions of the main international instruments¹⁷ of our days, the “primacy character” of which, in relation to those of National law¹⁸, is also explicitly referred to in the Constitution of Romania (according to Art. 11, para. 3).

It should be emphasized, however, that this innovation introduced in the international matrimonial law, by the notion of “spouses” instead of the other two, “man” and “woman”, had an unfortunate impact also on the constitutional text of some European Union member states.

Indeed, in the constitutional text of some EU member states the two traditional notions no longer appear, only that of “spouses”, such as in the Constitution of Romania, which stipulates that “family is based on the

¹⁵ Cătălina MITITELU, Mariana MITRA RADU, “The European Social Charter (Revised) and the Protection of the Human Rights”, in: *Ovidius University Annals, Economic Sciences Series*, XIII (2013) 1, pp. 1593-1598.

¹⁶ Nicolae V. DURĂ, Cătălina MITITELU, “The Treaty of Nice, European Union Charter of Fundamental Rights”, in: *The European Integration – Realities and Perspectives Proceedings*, Danubius University Press, Galati, 2013, pp. 123-129.

¹⁷ On the provisions of these international instruments, see Nicolae V. DURĂ, “Principalele organisme și organizații internaționale cu preocupări și atribuții în domeniul promovării și asigurării protecției juridice a drepturilor omului”, in: *Dionysiana*, I (2007) 1, pp. 18-25; Nicolae V. DURĂ, “General Principles of European Union Legislation Regarding the Juridical Protection of the Human Rights”, in: *Journal of Danubius Studies and Research*, III (2013) 2, pp. 7-14; Nicolae V. DURĂ, Cătălina MITITELU, “Human rights and their universality. From the rights of the «individual» and of the «citizen» to «human» rights”, in: *Exploration, Education and Progress in the third Millennium*, Galati University Press, Galați, I, 4 (2012), pp. 103-127.

¹⁸ Nicolae V. DURĂ, “Despre caracterul prioritar al normelor dreptului internațional, privind drepturile și libertățile fundamentale ale omului, în raport cu cele ale dreptului național”, in: *Revista Națională de Drept*, 7-9 (2018), pp. 54-58; Cătălina MITITELU, “Europe and the Constitutionalization Process of EU Member States”, in: *Ovidius University Annals, Economic Sciences Series*, XIII (2013) 2, pp. 122-127.

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freely agreed marriage between the spouses" (art. 48, para. 1), without any explicit indication regarding their sex.

However, both "Jus naturale" (Natural law) and "Jus romanum" (Roman law) give us peremptory testimony that a "legitimate marriage" (*iusta nuptiae*) can only be concluded between a "man" (*vir*) and a "woman" (*mulier*). In fact, peremptory testimony about this reality was given to us by some famous Roman legal experts, who stated that a "family" is based only on a "marriage between a man and a woman", "... as this rule is based on Moral Law, and not on justice (*jus*)" (Pomponius, *Sabinus*, lb. V)¹⁹, or - in terms of Orthodox Christian teaching - on Christian morality "Law"²⁰.

f) The sacramental character of Marriage.

It should also be mentioned that, among other things, the "Holy and Great Council" held in Crete also wanted to emphasize the sacramental character of Marriage, and in quite expressive terms: "A civil marriage between a man and a woman registered in accordance with the law lacks sacramental character since it is a simple legalized cohabitation recognized by the State, different from a marriage blessed by God and the Church" (I, 9)²¹, hence the fact that, "the Church does not allow for her members to contract same-sex unions or any other form of cohabitation apart from marriage" (I, 10)²².

The hierarchs who represented the local Orthodox Churches at this Pan-Orthodox Synod, with a quasi-ecumenical character for Eastern Orthodoxy, - among which were also the hierarchs of our Church, led by its Primate, that is His Beatitude Patriarch Father Daniel, - also noted that, in order to conclude the marriage, it is necessary to take into account both the necessity of applying "rigor" (*akribeia*/strictness) and the affirmation of "natural law principles", formerly stated by the Roman Law regarding marriage, and "that acknowledge the marital bond between man and woman as *a communion of divine and human law* (Modestinus) compatible with

¹⁹ JUSTINIAN, *Digestae*, XXIII, 8.

²⁰ See Nicolae V. DURĂ, "Familia, un bun al umanității", in: *Revista de Teologie Sfântul Apostol Andrei*, XI (2007) 1, pp. 210-214.

²¹ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

²² *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

the sacredness of the sacrament of marriage attributed by the Church” (I, 6)²³.

III. The marriage according to definition given by Modestinus (sec. II p. Chr.)

In its decisions, the “Holy and Great Council”, therefore, also referred explicitly to this “compatibility” of the “communion of the divine and human law”, created by the conclusion of a marriage between a man and a woman, and which, for the famous Roman solicitor, Modestinus, - who had not yet known the Christian Law - had not only a legal nature, but also a moral-religious one, based, however, on the Natural moral law²⁴.

The fact that, over the centuries, the definition of the Roman solicitor, Modestinus, was perceived and expressed in this spirit, by the Eastern Orthodox Church, is confirmed persuasively to us even by the “Great Code of Laws”, that is “Pravila” (Nomokanon) of Târgoviște, printed in the year 1652.

Indeed, in the text of this Code of Laws, known also under the name of “*Îndreptarea Legii*” (Straightening of the Law), its authors, faithful to the Byzantine law doctrine (state and church), stated that “Marriage is the joining of man and female, that is, the mixing, or mixing and inheriting, throughout their life, and to the rightful man closeness to God” (Chapter 203)²⁵.

Undoubtedly, those who are in the least familiar with Modestinus’ definition of marriage can easily realize that the authors of the “Pravila of Târgoviște” almost “ad litteram” replicated - but in the conceptual terms of the Byzantine Law, adapted to the reality of their time, - the definition of the famous Roman solicitor.

In the Târgoviște printed Code of Laws, however, the impediments to marriage were also explicitly stipulated, hence the urging from its authors - legal experts and canonists of the respective era (of Greek and Roman

²³ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

²⁴ See Nicolae V. DURĂ, “Loi morale, naturelle, source du Droit naturel et de la Morale chrétienne”, in: M. Th. URVOY (coord.), *La morale au crible des religions*, Éditions de Paris, 2013, pp. 213-233.

²⁵ *Îndreptarea legii*, 1652, Editura Academiei RPR, București, 1962, p. 213.

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language) - "that we must look in a wedding not only for what is proper, but to look for what is right" and, thus, also to verify if "... in the connections of kinship it does not stumble" (Chapter 198)²⁶, that is - in other words - if there are no impediments to the marriage, a favorite subject of the Pre-synodal Conferences²⁷ whose "Decisions" also served the synodals of Crete as a documentary source of first reference.

In accordance with the teaching of the Orthodox Church, - reaffirmed in an obvious manner through the Decisions of the "Holy and Great Council" held in Crete - "a necessary condition of marriage is faith in Jesus Christ, which must be shared by the bridegroom and the bride, man and woman" (I, 4)²⁸.

By confessing this faith "in Jesus Christ", "together", the two spouses, man and woman, receive the "blessing of God" (God's blessing), which "is elevated to a higher level", since "it initiates the spouses into the order of the Kingdom of the All-Holy Trinity" (I, 4)²⁹.

And, in fact just this common faith can help the two spouses, man and women, do not limit themselves only to that "community of life" (*communicatio vitae*) (*Justiniani Institutiones*, lb. I, IX, 1), about which had spoken Modestinus.

IV. The decisions about the impediments to Marriage

From the text of the same "Decisions" of the "Holy and Great Council" we also note that the Eastern Church took into account "*both the positive preconditions* (difference of sexes, legal age, etc.) and *the nega-*

²⁶ *Îndreptarea legii*, ..., p. 195.

²⁷ See Nicolae V. DURĂ, "Impedimentele la Căsătorie în lumina hotărârilor celei de a II-a Conferințe Panortodoxe Presinodale (3-12 septembrie 1982)", in: *Mitropolia Banatului*, XXXIV (1984) 7-8, pp. 404-416; Nicolae V. DURĂ, "Sfântul și Marele Sinod Ecumenic. Considerații ecleziologice privind textele redactate de Comisia pregătitoare a celei de-a III-a Conferințe Panortodoxe Presinodale", in: *Mitropolia Moldovei și Sucevei*, LXIV (1988) 5, pp. 33-45.

²⁸ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

²⁹ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

tive impediments (kinship by blood and affinity, spiritual kinship, an existing marriage, difference in religion, etc.) for the joining in marriage” (I, 6)³⁰.

Moreover, regarding the Impediments to Marriage resulted “due to kinship by blood, kinship by affinity and adoption, and spiritual kinship”, The Holy and Great Synod wanted to clarify that “the prescriptions of the canons (Canons 53 and 54 of the Quinisext Ecumenical Council) and the church practice derived from them are valid as applied today by local autocephalous Orthodox Churches, determined and defined in their charters and their respective conciliar decisions” (II, 1)³¹.

Thus, explicit reference is made only to four types of kinship, i.e., blood kinship, kinship by alliance (cuscra), adoption kinship, and spiritual kinship. However, from the text of the same Synodal Document, it can be noted that the Synodal Fathers did, in fact, refer to all the norms of the canon legislation of the Eastern Church regarding the impediments to Marriage caused by the four types of kinship, although mentioned explicitly were only canons 53 and 54 of the VI Ecumenical Synod (Quinisext)³², held in the years 691/692.

Regarding canon 53 of this Ecumenical Synod, it should be mentioned that, in its text, it is stipulated “expressis verbis” that “... kinship (the soul kinship) (τὸ πλευμα οἰκειότης)”, that is the one resulted from “the act of holding during Baptism, is greater (μείζων) than the bond of the bodies (τῆς τῶν σωμάτων συναφείας)”³³.

About the fact that Spiritual kinship, born through the act of holding during Baptism, “would be above the kinship of the body”, well-informed canonists already stated that this “is exaggerated”, as “... this spiritual kinship has no sacred character, only a general, morally-religious one. If that respective thesis were real – as it was stated in one of the Comments approved for this canon – it would mean the admission of the exaggerations

³⁰ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

³¹ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

³² See Nicolae V. DURĂ, “The Ecumenicity of the Council in Trullo: Witnesses of the Canonical Tradition in the East and the West”, in: G. NEDUNGATT, M. FEATHERSTONE (coord.) *The Council in Trullo Revisited*, Roma, 1995, pp. 229-262.

³³ *Athenian Syntagma*, vol. II, p. 428.

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of some legislators, or at least the later interpretations of the canons, which extended the impediment of spiritual kinship to degrees farther than those of the physical, blood kinship or kinship by alliance³⁴. Hence, their conclusion that this "is actually a misinterpretation, and not a proper interpretation"³⁵.

It should not be ignored, however, that by applying the provision of Canon 53 of the VI Ecumenical Synod, "... a new method of divorce was (also) born, that is, if the father holds his own son during baptism, he is obliged to divorce his wife", as this makes her "a spiritual relative of second degree with the husband and in case of such a degree of spiritual kinship marriage is prohibited ..."³⁶.

Furthermore, "... between a husband and a wife there is no kind of kinship allowed, neither by blood, nor by alliance, and even less a spiritual kinship, since they together make up a being, both physically and spiritually, ..."³⁷.

However, despite this obvious reality, it is a known fact that some Byzantine emperors resorted to this pseudo-interpretation of canon 53 of the VI Ecumenical Synod (quinisext / Trullan, 691-692) in order to invoke a legal basis to divorce their wives, as was, in fact, recorded in some documents of the respective time during the Byzantine Empire³⁸.

As regards canon 54 of the same Ecumenical Synod (Constantinople, 691-692), it should be mentioned that, among other things, in its text it was stated that, due to the lack of prohibition of "unlawful marriages (τῶν ἀθέσμων γάμων), the very human nature (ἡ φύσις) has mixed itself, ...", and, as such, "we, from now on, decide that it should fall under the seven-year canon - obviously after they separated from the unlawful companion - the man who joined his (first) cousin, in a wedding companionship (marriage), ..., or father and son with two sisters, or mother and daughter with two brothers or two brothers with two sisters" (can. 54, VI Ec. Syn.)³⁹.

³⁴ Commentary on Canon 53, in the Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe ...*, p. 137.

³⁵ Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe ...*, p. 137, n.1.

³⁶ Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe ...*, p. 137, n.1.

³⁷ Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe ...*, p. 137, n.1.

³⁸ See, for instance, "Tomos Henoseos" of Constantinople Synod of the year 920 (*Athenian Syntagma*, vol. V, ..., Atena, 1855, pp. 3-10).

³⁹ *Athenian Syntagma*, vol. II, p. 433; Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe ...*, p. 138.

By this canon of the VI Ecumenical Synod, it was, thus, forbidden to marry until the 4th degree, both in the case of blood kinship, and of kinship by alliance, and those who had concluded an “unlawful companionship” could not impart, that is, be found worthy of receiving the Holy Eucharist⁴⁰, for seven years after the “separation” of the respective spouses (male and female).

Regarding the prohibition on blood kinship and kinship by alliance, stipulated in canon 54 of the Trullan Synod (691/692), it should be mentioned that it did not remain “... within the limit set by the present canon”, as in the case of blood kinship this prohibition was extended “up to the VII degree inclusively, and as for kinship by alliance, ..., up to the V-VI or even VII degree”⁴¹.

In fact, the “Holy and Great Council” also referred only to the two canons of the VI Ecumenical Synod (Trullan / quinisext), since the other canons of the Eastern Church (Apostolic, Ecumenical, Local and of the Holy Fathers) were explicitly referred to in the text of the Decisions reached at some Pre-Synodal Pan-Orthodox Conferences, which had preceded by several decades the official Document issued by the Grand Pan-Orthodox Synod assembled in 2016, and in which references were made to all the canonical norms regarding impediments to Marriage.⁴²

At the meeting in Crete (Greece), in June 2016, representatives of the Orthodox Church also emphasized that “a marriage that is not completely

⁴⁰ On penances and the sacramental nature of the Holy Eucharist, see Nicolae V. DURĂ, “«Povățuiri» și «Învățături», cu conținut liturgico-canonic, privind Sfânta Euharistie. Considerații eclesiologico-canonice”, in: G. PETRARU și L. PETCU (coord.), *Dimensiunea penitențială și euharistică a vieții creștine*, Doxologia, Iași, 2014, pp. 63-109; Nicolae V. DURĂ, “Rânduiești și norme canonice privind administrarea Sfintei Euharistii”, in: *Spovedania și Euharistia izvoare ale vieții creștine*, II, Basilica, București, 2014, pp. 465-484; Cătălina MITTELU, “The celebrant of the Holy Sacrament of the Eucharist. Rules and canonical norms of the Orthodox Church”, in: *Annales Canonici*, 10 (2014), pp. 135-148; Cătălina MITTELU, “The application of Epitimias in the See of Confession according to the «Canonical Custom» and the «Penitential Canons»”, in: *Teologia Mlodych*, 4 (2015), pp. 10-18.

⁴¹ Commentary on canon 54 of the Trullan Synod, in the Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe ...*, p. 138.

⁴² See LIVIU STAN, “A patra Conferință Panortodoxă Geneva-Chambesy, 8-16 iunie 1968”, in: *Biserica Ortodoxă Română*, XX (1968) 7-8, pp. 870-881; Nicolae V. DURĂ, “Hotărârile celei de-a III-a Conferințe Panortodoxe Presinodale (Cambesy – Geneva, 28 octombrie 1986). O evaluare eclesiologico-canonice”, in: *Orthodoxia*, XL (1988) 3, pp. 75-102.

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dissolved or annulled and a third marriage constitute absolute impediments to entering into marriage, according to Orthodox canonical tradition, which categorically condemns bigamy and a fourth marriage" (II, 2)⁴³.

The same Synodal Fathers acknowledged that, "in accordance with the rigor (*akribeia*) of the holy canons, entering into a marriage after monastic tonsure is forbidden (Canon 16 of the Fourth Ecumenical Council and Canon 44 of the Quinisext Ecumenical Council)" (II, 3)⁴⁴.

However, the respective document also mentioned the fact that "priesthood in itself does not constitute an impediment to marriage, but in accordance with the prevailing canonical tradition (Canon 3 of the Quinisext Ecumenical Council), after ordination entrance into marriage is forbidden" (II, 4)⁴⁵. Hence, the opinion of some canonists that "from the canon", that is from canon 3 of the VI Ecumenical Synod (Quinisext), results the fact "... that a legal marriage was also allowed after ordination"⁴⁶, and that the "canon text" is - they state - an obvious "testimony" that, "... until that time, bishops could get married and stay married, ..." ⁴⁷.

However, one should not ignore or conceal the fact that, even from the first centuries, bishops were usually recruited from among monks or bachelors, distinguished by both an exemplary moral life and sound theological knowledge, and some of them, also by a solid literary, philosophical, legal training⁴⁸ etc.

⁴³ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

⁴⁴ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

⁴⁵ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

⁴⁶ *Commentary on canon 3 of the Trullan Synod*, in: Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe ...*, p. 104.

⁴⁷ Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe ...*, p. 104.

⁴⁸ See Nicolae V. DURĂ, "Christianity in Pontic Dacia. The «Scythian Monks» (Daco-Roman) and their Contribution to the Advance of Ecumenical Unity and the Development of the European Christian Humanist Culture", in: *Revue Roumaine d'Histoire*, 1-4 (2003), pp. 5-18; Nicolae V. DURĂ, "Thinking of Some Fathers of the Ecumenical Church on the Law", in: *Christian Researches*, VI (2011), pp. 230-245; Cătălina MITTELU, "Saint John Casian The Founder of Occidental Monasticism", in: *Christian Researches*, VI (2011), pp. 32-49.

V. The decisions on mixed marriage and about the exercise of ecclesiastical “oikonomia”

The “Holy and Great Council” also ruled on mixed marriages⁴⁹, namely “mixed marriages of Orthodox Christians with non-Orthodox Christians or non-Christians” (II, 5)⁵⁰ and, reaffirming the principle provisions of the canonical Orthodox legislation, the Synodal Fathers stated that such marriages constitute an impediment to marriage.

According to the disposition principle stated by the Holy and Great Council, “marriage between Orthodox and non-Orthodox Christians is forbidden according to canonical *akribeia* (Canon 72 of the Quinisext Ecumenical Council)”⁵¹ (II, 5, a).

Moreover, according to the decision taken by the Holy and Great Council, “the possibility of the exercise of ecclesiastical *oikonomia* in relation to impediments to marriage must be considered by the Holy Synod of each autocephalous Orthodox Church according to the principles of the holy canons and in a spirit of pastoral discernment”⁵² (II, 5, b), as it was in fact regulated and practiced until nowadays in the pastoral-canonical life of the local Orthodox Churches.

At a Pan-Orthodox level, all the Pan-Orthodox Conferences, starting with the one in Constantinople, in 1923, and ending with the Preparatory Conference of the “Holy and Great Council”, held in Crete (Greece) in

⁴⁹ On the canonical Orthodox doctrine of mixed marriages, see extensively in Nicolae V. DURĂ, Piotr KROCZEK, Cătălina MITITELU, *Marriage from the Roman Catholic and Orthodox points of view*, Scriptum, Krakow, 2017, pp. 221-266; Cătălina MITITELU, “Norme și rânduiești canonice privind modalitățile primirii eterodocșilor în Biserica Ortodoxă”, in: *Revista de Teologie Sfântul Apostol Andrei*, XII (2008) 1, pp. 322-336; Cătălina MITITELU, “Elemente de drept matrimonial în Pravilele românești, tipărite, din secolul al XVII-lea”, in: *Dionysiana*, 1 (2008), pp. 412-419.

⁵⁰ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

⁵¹ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

⁵² *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

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2016, also noted the urgent need for the application of the church "oikonomia" also in the specific case of mixed marriages⁵³.

The same "Holy and Great Council" of the Orthodox Church decided that "the practice adopted in implementing ecclesiastical Tradition with respect to impediments to marriage should also take into account the relevant provisions of state legislation, without going beyond the limits of ecclesiastical economy (*oikonomia*)" (II, 6)⁵⁴.

However, by this "Decision", the "Holy and Great Council" also stipulated the obligation of the local Churches to take into account the provisions of the civil (state) laws regarding the impediments to marriage, provided that they do not go beyond church economy (*oikonomia*)' limits⁵⁵, in the area of which is found the assertion of human dignity, and, ipso facto, of a humanism beyond the boundaries of that of philosophical⁵⁶ or legal⁵⁷ origin.

No doubt, through all these clarifications of canonical doctrine – made in the spirit of the canonical Tradition of the Eastern Church⁵⁸ – the "Decisions of the Holy and Great Council" remain a first-hand reference source for all three constituent elements of the Church, namely clergy, laymen and monks⁵⁹, as the Orthodox canonical doctrine reaffirmed at the

⁵³ See Nicolae V. DURĂ, "Căsătoriile mixte în lumina învățaturii și a practicii canonice ortodoxe", in: *Ortodoxia*, XL (1988) 1, pp. 92-113; Nicolae V. DURĂ, "Intercomuniune sau comuniune sacramentală? Identitatea eclezială și unitatea în credință", in: *Ortodoxia*, XL (1988) 4, pp. 15-58.

⁵⁴ *Official Documents of the Holy and Great Council of the Orthodox Church: The Sacrament of Marriage and its Impediments*, <https://www.holycouncil.org/-/marriage> (accessed: 30/08/2019).

⁵⁵ Gheorghe CRONȚ, *Iconomia în Dreptul bisericesc ortodox. I. Principii*, București, 1937, p. 6 sq.

⁵⁶ Pierre MAGNARD, *Questions à l'humanisme*, Presses Universitaires de France, Paris, 2000, p. 49 sq.

⁵⁷ Nicolae V. DURĂ, "Valorile religio-creștine și «moștenirea culturală, religioasă și umanistă a Europei». «Laicitate» și «libertate religioasă»", in: *Modernitate, postmodernitate și religie*, Vasiliana, 98, Iași, 2005, pp. 19-35.

⁵⁸ About this Tradition, and its canonical content, see Nicolae V. DURĂ, "Iisus Hristos, Viața lumii. Importanța Tradiției Bisericii ortodoxe pentru cunoașterea și mărturisirea Cuvântului Vieții", in: *Ortodoxia*, XXXV (1983) 2, pp. 266-285.

⁵⁹ See Nicolae V. DURĂ, "Biserica creștină în primele patru secole. Organizarea și bazele ei canonice", in: *Ortodoxia*, XXXI (1982) 3, pp. 451-469; Nicolae V. DURĂ, "Monahii, al treilea element constitutiv al Bisericii", in: *Biserica Ortodoxă Română*, CXXI (2003) 7-12, pp. 469-483; Cătălina MITITELU, "Dacian-Roman Cultural Personalities

Pan-Orthodox synodal assembly, in Crete (Greece, 2016) is based on the canonical ecumenical legislation of the first millennium.

Regarding Marriage, this canonical, ecumenical legislation, also confirmed some principles of the Roman and Byzantine legislation, that is, of humanist-Christian European origin, an integral part of the universal legal culture heritage⁶⁰, which our ancestors appropriated both through the canonical “Syntagmas” (Collections)⁶¹, and the Nomocanons⁶², in which marriage - one of the oldest European legal institutions⁶³ - has not only its legal basis, but also its canonical basis, which remain, in fact, the basic criteria in evaluating any doctrine regarding this European canonical-legal institution⁶⁴.

from Scythia Minor (4th-6th Centuries) and their Contribution to the Affirmation and Promotion of a Humanistic-Christian Culture at European Level”, in: V. MANOLACHI, C. RUS, S. RUSNAC (ed.), *New Approaches in Social and Humanistic Sciences*, Iasi & London, 2018, pp. 316-331.

⁶⁰ Nicolae V. DURĂ, “«Justitia» and «Aequitas» in the perception of the Greek philosophers and of the Roman jurists”, in: *Teologia Mlodych*, 4 (2015), pp. 4-9; Nicolae V. DURĂ, “The ‘Scythian Monks’ (Daco-Roman) and their Contribution to the European Christian Humanist Culture”, in: D. MUSKHELISHVILI (ed.), *Dialogue of Civilizations*, New York, Nova Science Publishers, 2010, pp. 33-42.

⁶¹ Nicolae V. DURĂ, “Denis Exiguus (Le Petit) (465-545). Précisions et correctifs concernant sa vie et son oeuvre”, in: *Revista Española de Derecho Canonico*, L (1993), pp. 279-290; Cătălina MITITELU, “Corpus Juris Civilis and Corpus Juris Canonici. Legal and Canonical Considerations”, in: *Teologia*, XVIII (2014) 4, pp. 127-137; Cătălina MITITELU, “Internal (Material) Sources of Orthodox Canon Law”, in: *Philosophical-Theological Reviewer*, 1 (2011), pp. 111-120.

⁶² See Nicolae V. DURĂ, “The Byzantine Nomocanons, fundamental sources of old Roman Law”, in: *Exploration, Education and Progress in the third Millennium*, Galati University Press, Galați, I, 3 (2011), pp. 25-48; Cătălina MITITELU, “Începuturile Dreptului scris la români”, in: *Dionysiana*, 1 (2009), pp. 417-426; Cătălina MITITELU, “The Legislation of Emperor Justinian (527-565) and its Reception in the Carpathian-Danubian-Pontic Space”, in: *Analecta Cracoviensia*, 48 (2016), pp. 383-397; Cătălina MITITELU, “The Nomocanons (Pravilele) Printed in the Roman Countries, in the Seventeenth Century, and Their Provisions of Criminal Law”, in: *Religion*, 3 (2014), pp. 41-57.

⁶³ See Nicolae V. DURĂ, Cătălina MITITELU, *Istoria Dreptului românesc. Contribuții și evaluări cu conținut istorico-juridico-canonic*, Editura Universitară, București, 2014, pp. 89-145; Nicolae V. DURĂ, Cătălina MITITELU, *Legislația canonică și instituțiile juridico-canonicе, europene, din primul mileniu*, Editura Universitară, București, 2014, pp. 45-89.

⁶⁴ Cătălina MITITELU, *Vechi instituții europene prevăzute de legislația nomocanonică din secolul al XVII-lea (Pravila de la Iași și Pravila de la Târgoviște)*, Editura Univer-

VI. Instead of Conclusions

By affirming some basic principles of the Old Roman law (*Jus romanum antiquum*), in regard to marriage, as well as some of the principles enounced by the provisions of the "New Roman law" (*Jus romanum novum*), created by Emperor Justinian in his monumental legislative work, in which he conceived and defined the juridical institution of marriage in the light of the Christian doctrine, the divine-human institution of Marriage found a new legal basis.

Peremptory testimony of the fact that the legislation of the emperor Justinian – including his imperial constitutions in regard to the marriage – was also known and applied in the Dacian-Roman geographical space of North of Danube, it is given to us not only by the old "Pravila" (Nomokanons) of the Country, but even by the legislation and legal Romanian doctrine of our days, as attested by both the Constitution of Romania and the New Civil Code⁶⁵.

Form the text of the decisions of the "Holy and Great Council", held in Crete (Greece, June 16-26, 2016), anyone could also realize the fact that the the fathers of this Synod of pan orthodox level proved to have a good familiarity both to the "*Jus romanum antiquum*" (Old roman law) and to the "*Jus romanum novum*" (New roman law). However, for the synodal Fathers, the canonical legislation of the Ecumenical Orthodox Church of the first millennium was "à l'evidence" not only the main documentary sources, but also one of the reference.

By the "Decisions" taken in regard to the Holy Sacrament of Marriage, the "Holy and Great Council", held in Crete (2016), reaffirmed also the canonical doctrine of the Eastern Orthodox Church, hence the obligation of any clergyman, theologian, canonist, jurist etc., to know it, and, at the same time, to report and evaluate it always in accordance with the provisions of the canonical legislation of the Ecumenical Orthodox Church of the first millennium, as evidently did the Synodal Fathers assembled for the works of the "Holy and Great Council" in Crete (Greece).

sitară, București, 2014, pp. 67-123; Cătălina MITITELU, "The Byzantine Law and its Reception in the Romanian Principalities", in: *Philosophical-Theological Reviewer*, 4 (2014), pp. 33-43.

⁶⁵ Cătălina MITITELU, "Reglementări ale Noului Cod civil român privind logodna", in: *Revista Națională de Drept*, 7-9 (2018), pp. 59-62.