

# РОЗДІЛ 1

## ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА; ІСТОРІЯ ПОЛІТИЧНИХ І ПРАВОВИХ УЧЕНЬ

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### THE CONDITION OF THE CHURCH IN THE SYSTEM OF BYZANTINE SOCIETY

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#### **Skovronskyy D. The condition of the church in the system of byzantine society.**

Over the centuries, the fact of belonging to Christianity gradually became an integral feature of Roman status. A full-fledged citizen subject to the emperor must not be a pagan, a representative of another religion. The Romans, Byzantine society, ultimately do not constitute a national, ethnic unity. The Byzantines were aware of this fact, contemporaries quite clearly emphasized the positive or negative features of the rule of certain dynasties, based on their ethnic groups. But this circumstance is perceived as natural. None of the peoples inhabiting the empire had a monopoly on state power. The Romans were a multinational people who professed a single religion, obeyed Roman law, obeyed the power of the emperor and was a unifying force. The heritage of Greek culture, the state Greek language were the basis of cultural, but not ethnic unity of society.

The Emperor, Constantine I, laid the foundations of the institution of ecclesiastical organization in the administrative and legal system of the empire: the liberation of the clergy from the usual duties of Roman citizens; legal personality of church institutions, for example, the right to accept in their favor the inheritance by will, the performance of state duties; judicial powers in civil cases of members of the Christian community and more. In the Eastern Church, due to the significant economic role of various church institutions, especially monasteries, a special branched administration was formed, the importance of which for the population sometimes exceeded the state. The church was in fact a special bureaucratic organization that had its own goals and interests of existence and development. The unity of secular and ecclesiastical authorities was recognized as the basic principle, but their role and relations in the life of the Christian community have always caused fraught debates. In the most general form, the Byzantine doctrine of the role and purpose of the institution of the church, in its narrow sense, can be reduced to two main provisions. The church is an organic continuation, with its peculiarities, of state power. At the same time, according to other doctrines, the church has some autonomy, the political organization of Byzantine society includes two equal structures — the institution of state power, which was embodied in the emperor, and spiritual power, especially the Patriarch of Constantinople. This scheme of basic concepts is not exhaustive, it reflects only the main directions of political and legal thought.

**Key words:** Byzantine law, Christianity, church, state, emperor, spiritual power, secular power.

#### **Сковронський Д. Становище церкви в системі візантійського суспільства.**

Протягом століть факт приналежності до християнства поступово став невід'ємною ознакою римського статусу. Підвладний імператору повноправний громадянин не повинен бути язичником, представником іншої релігії. Римляни, візантійське суспільство, в кінцевому підсумку не становлять національної, етнічної єдності. Візантійці усвідомлювали цей факт, сучасники досить чітко підкреслювали позитивні чи негативні риси правління тих чи інших династій, виходячи з їх етнічних груп.

Але ця обставина сприймається як природна. Жоден з народів, що населяли імперію, не мав монополії на державну владу. Римляни були багатонаціональним народом, який сповідував єдину релігію, дотримувався римського права, підкорявся владі імператора і був об'єднуючою силою. Спадщина грецької культури, державна грецька мова були основою культурної, а не етнічної єдності суспільства.

Імператор Костянтин I заклав основи інституту церковної організації в адміністративно-правовій системі імперії до: звільнення духовенства від звичайних обов'язків римських громадян; правосуб'єктності церковних установ, наприклад, право на прийняття на свою користь спадщини за заповітом, виконання державних обов'язків; судові повноваження у цивільних справах членів християнської громади тощо. У Східній церкві через значну економічну роль різних церковних установ, особливо монастирів, утворилося особливе розгалужене управління, значення якого для населення часом перевищувало державне. Церква фактично була особливою бюрократичною організацією, яка мала свої цілі та інтереси існування та розвитку. Основним принципом визнавалася єдність світської і церковної влади, але їхня роль і відносини в житті християнської громади завжди викликали жорстокі дискусії. У найзагальнішому вигляді візантійська доктрина про роль і цілі інститут церкви, у її вузькому розумінні, можна звести до двох основних положень. Церква є органічним продовженням, зі своїми особливостями, державної влади. Водночас, згідно з іншими доктринами, церква має певну автономію, політична організація візантійського суспільства включає дві рівноправні структури – інститут державної влади, що втілювався в імператорі, та духовну владу, особливо Констанського патріарха, Тінополь. Ця схема основних понять не є вичерпною, вона відображає лише основні напрями політико-правової думки.

**Ключові слова:** візантійське право, християнство, церква, держава, імператор, духовна влада, світська влада.

**Problem setting.** Many scholars, thinkers and politicians were concerned about the phenomenon of Byzantine law for centuries. For centuries, the Byzantine Empire has been an example and model of the development of institutions of law and statehood for Europe and the Middle East. The very concept of statehood, law and its most important institutions have laid the foundation for the legal development of many countries not only in the medieval but also in the modern world.

**Analysis of recent researches and publications.** The study of the history of Byzantine law has been considered in the works of many researchers. Among them should be noted: V. Beneshevych, A. Berhera, R. Braunin V. Valdenberh, I. Medvedieva, O. Lipshyts, F. Uspenskyi, B. Horianova, H. Ostrohorskyi, S. Sorochana, L. Voitovych, T. Kharytonova, M. Dolynska and others.

The **aim** of the article is to study the political and legal situation of the church in Byzantium. To trace the sources and system of canon law, the influence of state religion on political and legal ideology, the sphere of normative regulation of public life by the church, as well as the influence on the development of certain branches of secular law.

**Article's main part.** The Byzantine Church is one of the unique institutions of statehood and society. According to philosophical and state-legal doctrine, the church is both an association of believers, uniting all social institutions, including the state, and a kind of bureaucratic institution designed to exercise spiritual power and some functions of governance. The question of the relationship between spiritual and secular power, the role and purpose of the church in the life of the state and society of the Romans has always been open.

Roman emperors were aware of the benefits of the new state religion and the importance of ecclesiastical power in ensuring ideological and religious unity, as well as strengthening social morality. The religious and international struggle of the peoples who inhabited the empire, in the actual absence of domination of a particular ethnic group, posed a real threat to the existence of the state. According to the Edict of Milan of 313 by Emperors Constantine and Licinius, everyone was given “the freedom to live in the religion in which one wants... We must give the mind and will of everyone to engage in divine affairs of their choice, we have given permission to all others and Christians to maintain their faith and worship...” [1, p. 75]. Religion should not destroy the state by force. It is logical to have a single cult for the whole society, a single system of values, worldview, which unites society and the emperor. The edict of 324 states that Christianity is the “only true faith” and paganism is only a tolerable factor. The general pattern was that in the period IV-VI centuries other religious cults began to be perceived by law as some exception to the rule as targets for segregation. Almost all Byzantine emperors pursued a policy based on the assertion of Christianity as the state religion. An exception is the reign of Emperor Julian, but this Basileus consistently planted a single religious cult, based on the Hellenistic heritage. The church was also not interested in opposing the Christian community and the state.

Thus, we can distinguish the rules of criminal responsibility for the Byzantines, who did not follow the postulates of the faith, in accordance with the rules that prevailed in a particular historical period. At the same time, they are quite strict, for example, according to the Code of Justinian, heretics were subject to confiscation of property and exile [2, p. 63-64]. The Eclogue already contains an indication of the death penalty by the sword. Temptation to Judaism and later to Islam was punished separately. An important fact was that the empire did not pursue a purposeful policy to combat people of different faiths. The emperors were interested in developing trade and political relations with other states. The internal struggle for the purity of the faith was extremely dramatic, but Byzantine law knew no analogues of the institution of Auto da Fe. The execution of a heretic is an exceptional and rather forced measure. Fighting them is of great importance for preserving the integrity of Byzantine society.

The main organizational institution of ecclesiastical power is, as noted above, the diocese. Bishops of cities where church councils or private church conventions have traditionally been held have received special status as metropolitans or archbishops over time. In the V-VI centuries the metropolitans, relying on the teachings of the church fathers, became supreme hierarchs. If before bishops were elected by church members, now they are recognized by metropolitans. But it should be noted that according to the official state and legal doctrine, the church hierarchy should not be isolated from society by superstructure. Centuries later, imperial law continued to confirm the election of clergy by parishioners. For example, Basilika contains a rule that warns against becoming a deacon or a stratot by flattering the demos. The expansion of the power of the bishops was carried out in accordance with the will of the emperor. First in the IV century the traditional principle for the whole of the Mediterranean is established: the dioceses coincided with the territorial units approved by the emperor Diocletian. But over the centuries, the situation has become more complicated. The fema system no longer binds the district to the subordination of one or another city center. There was a rise and fall in the political and economic importance of cities. The most important factor is the religious significance of the city: for example, the bishop of Jerusalem could not obey the hierarch of the provincial center. Some of the most politically, religiously, or economically significant church institutions were removed from the general system of church management. These included, for example, the complex of Athos monasteries, the Church of St. Sophia in Constantinople and others. The legislation establishes a special legal status of these institutions, which was related to the regulation of property rights, performance of state duties and so on. The most honorable and esteemed of the hierarchs received a special status of patriarchs. Initially, the patriarchs were the bishops of the apostolic cities, but later the status of the highest clergyman of a city became more determined by its political significance in the life of the empire. Thus the highest church hierarchs of Constantinople, Jerusalem, Antiochia and Alexandria within the Byzantine Empire became patriarchs. The patriarchs recognized special rights in the internal church administration and interaction with public authorities. Until the X century. the extensive apparatus of bishops becomes the most complex. It was managed by the head of the secret-office, the housekeeper and the sakelarium, who were in charge of financial and economic affairs.

The Patriarch of Constantinople became the highest church hierarch of the empire. He gradually gained ecumenical significance in the eyes of the Romans. From the IX century the patriarch began to carry out the procedure of anointing the emperor with oil, which meant the transfer of divine power. But the performance of a religious rite, although considered one of the most important factors in accession to the throne, but did not act as a prerequisite. The exclusive status of the Patriarch of Constantinople as the highest ecclesiastical hierarch of the Christian world was not finally recognized not only in many Christian states, but also within the empire itself. The status of patriarch of the capital of the state can not be compared with the position of the bishop of Rome, although some of them, such as the already mentioned Patriarch Philotheos, considered themselves the first spiritual pastors of the world's Christian community. The bishop of the capital was formally one of the many patriarchs of the church. Initially, Constantinople was not an apostolic city, such as Rome or Alexandria. This circumstance for many centuries led to misunderstandings of the head of the Byzantine Church with other higher hierarchs, especially with the Roman high priest. The solution of this question was a sharp political struggle of the Byzantine emperor and the eastern hierarchs with the Roman high priest, for the main position in Christendom. From the point of view of law, this decision was reflected in the norms of secular and canonical law, as well as in political practice. For example, the 6th canon of the Council of Nicaea of 325 equally guaranteed the rights of the bishop of Rome (pope) and the hierarchs of the East; The 36th canon of the Council of Trullo in 691 enshrines the "pentarchy" of the ecclesiastical ecumenism, the equality of the prerogatives of the Roman high priest and the patriarch of Constantinople. In fact, there were two ecclesiastical organizations, one of which included bishops based on the Patriarch of Constantinople and

the other on the Bishop of Rome. According to the “schism” of 1054, the final separation of the Western and Eastern Churches took place, which resulted in the termination of a single system of canon law and the relationship between secular state and church institutions within a single political entity of the Christian Empire.

The Patriarch of Constantinople headed the Synod of the Eastern Church, a permanent supreme administrative-ecclesiastical council based on the membership of the highest ecclesiastical hierarchs and administrators. The patriarch was formally elected by the emperor from the number of suggested candidates by the highest hierarchs of the church. But the formal order established as a legal principle for a long time did not exist. The position of the Patriarch of Constantinople was extremely ambiguous. As the first bishop of the new capital of the empire, he could claim supremacy in Christendom. At the same time, Rome continued to be preserved with its bishops - the successors of St. Peter. The Patriarch of Constantinople was the national ecclesiastical hierarch of Byzantium, in contrast to the Pope, who symbolized the unity of the ecclesiastical organization of Christians in Western Europe. The dogmas of the Orthodox faith established ecclesiastical councils as the highest ecclesiastical authority and did not allow the infallibility of a Christian even to episcopal rank, which contradicted the affirmative Catholic principle of the unity of authority of the Pope. At the same time, the domination of the metropolitan patriarch in the empire was largely due to the loss of the largest eastern political and religious centers. But in Byzantium XI-XV centuries. the bishop of the capital was in fact and legally recognized as the spiritual pastor of the Romans.

The supreme ecclesiastical administration was represented by a great provisor, supreme head of monasteries, supreme overseer of sacred gifts, caretaker of church property and sacred regalia, grand chancellor, who was in charge of the church’s external relations, grand intendant of the monasteries, defensor and others. There was a special department of internal church control. Territorial and central administrations were subordinated. At the same time, the emperors wanted to gain control over the use of church wealth. The position of great provisor was traditionally appointed with the consent of the emperor.

The idea of the role and purpose of the church was reflected in the law, the teachings of various secular and religious thinkers, especially in the politics of emperors. For example, F. Uspenskyi speaks of the existence of broad autonomy, “arbitrariness” of Byzantine church institutions, the withdrawal of their lands from the general system of government in the IV-VII centuries.

At the same time, numerous ecclesiastical institutions are singled out, depending on the status of the categories, for example, imperial monasteries and similar, which enshrine the peculiarities of the status in the field of tax and administrative legislation. In particular, freedoms from the oppression of officials, “dynatos” and “from the burdens and duties that usually occur” [3, p. 117]. But still the first imperial chrysobull, consolidating the broad immunity of church institutions, belong to a later period. The excursion was in many respects inextricably linked with the development of the institution of pronia - “care”, the assignment of public administration functions to church institutions and individuals.

In early Byzantium to the VII century the estates of the tradition of the Late Roman Empire continued, and the clergy became, like other categories of the population, legal communities with certain features of closed hereditary castes, though to a much lesser extent than other estates. In particular, Emperor Leo I establishes the inalienability of church estates as the economic basis of the organization; Anastasia forbids the sale and donation of church houses, lands, columns and slaves; Justinian I connects access to the spiritual state of columns and slaves with the achievement of a high spiritual rank [4, p. 97-116]. According to the law of 546, persons of episcopal rank could not be brought to secular court, both civil and criminal. The clergy were relieved of most state duties, primarily the so-called “dirty” ones, in particular, construction duties, military service, and so on. The clergy, as a privileged state in the field of liberation from many state duties, became a shelter from the ruin of many Byzantines. The emperors Arcadius and Honorius, by decree of 398, forbade the decurions to enter the spiritual state. Mauritius, with a novella from 593, restricted the right to be ordained a monk by persons in public, especially military, service. The latter act provoked the displeasure of Pope Gregory I and was later repealed.

The political significance of church institutions was enshrined in law initially. Emperor Constantine in 318 equated the legal status of the episcopal court with the state. In 321 the verdicts of this instance were recognized as unappealable. In different periods, the scope of jurisdiction of ecclesiastical courts changes. The legal status of the ecclesiastical court was determined in accordance with the norms of official secular and canon law. Legal provisions on the status of the ecclesiastical court and the peculiarities of the process are contained in the Codes of the emperors Theodosius II and Justinian I, Nomocanon XIV titles, the Epagogogue and other legislative acts. The bishop’s court was recognized as equal to the state. First by mutual agreement of the parties, then in accordance with official recognition. Since the VI century the jurisdiction

of ecclesiastical courts also included ordinary civil cases. If the parties agreed, the clergy could decide in ecclesiastical or civil court at their discretion. From the middle of this century the situation changed, now the clergy, persons of clerical rank, as well as people subject to and dependent on the church were subject exclusively to the ecclesiastical court. Violations of church precepts by representatives of all classes, except for senior senators, were also subject to consideration in church courts. As discussed earlier, in the period IV-VII centuries the bishops were in fact entrusted with the functions of municipal government.

One of the supporters of the inclusion of the church in the system of public administration is Emperor Justinian I. The Emperor, apparently, did not recognize the enshrined further clearer separation of powers of secular and religious institutions. In an edict addressed to the bishops, he states: others, the first ones were rewarded, and the last ones were punished ... "[5, p. 157]. A significant list of powers of the bishop is established, which in essence is more directly related to the exercise of secular power. Thus, the bishop, together with the first citizens of the city, made sure that the leaders of the province did not interfere with the citizens in the implementation of various legal acts. Together with the defender and the "fathers of the city", the bishop had the right to judge the suitability of the guarantors. The bishop could accept complaints against the head of the province and make a presentation to him, and in case of negligence - he could bring the case to the emperor. He, along with the first citizens, could present to the emperor candidates for the head of the province. The bishop generally defended all the interests of the city, participated in the election of city officials, in the audit of its activities [5, p. 166-167]. But this position was quite dangerous. Giving the church the functions of public administration did not mean that it should organically enter the system of administrative management and pursue the policy of the emperors. The church, a large clergy, united in a single branched structure, had its own development goals, which did not always coincide with the national ones, which posed a threat to imperial power. The most striking example is the reign of the Patriarchs of Alexandria. These bishops had their own armed forces, had authority in the field of metrology, collection of certain duties. Their policies sometimes went beyond the Byzantine Empire. Many used their power to fight the emperors for the assertion of Monophysitism throughout the empire.

An example of the autonomous existence of ecclesiastical authority is the Legislative Code of the Epanagogue, compiled with the participation of Patriarch Photius. The patriarch's duty is to observe the piety of Christians, convert to Orthodoxy and unite all heretics with the church, as well as missionary activity. Only he has the right to interpret ancient canons, decrees of the holy fathers and the rules of the Holy Councils, to resolve disputes between other patriarchal chairs. The issues of church administration and court belong exclusively to the patriarch. The emperor and the patriarch embody the power of Christ on earth in the image of the Christian empire. The emperor is obliged to rule, in accordance with the canons, to observe and protect them. The patriarch has the exclusive right to govern the church on the basis of canons. Athanasius the Great, Archbishop of Alexandria in the IV century in response to the religious repression of the emperor, Constantius put forward the idea that the church is an institution that is fundamentally different from the state. Each institution must deal with the issues assigned to it by God [6, p. 47].

The emperors of the iconoclastic dynasty most vividly embodied the idea of the role of the head of state as high priest. According to Emperor Leo Isaurus, the definition of church dogmas may well be his personal prerogative. But not everything in the church depended on the will of the emperor. The head of state as a good Christian had to follow the canonical prescriptions. Vasilevs could appoint and dismiss hierarchs, as the Roman emperor with the status of "pontifex maximus" actively interfered in church disputes, but he could not cancel anything that was considered a revelation and part of the unwritten tradition. It should be noted that the active intervention of emperors in purely dogmatic disputes is not an example of their extreme piety or a manifestation of despotism. The role of secular and religious head of state inevitably stemmed from the specifics of cultural and ethnic features of the empire. The formation of the cult was greatly influenced by the provisions of Hellenistic-Roman philosophy, specific folk beliefs and more. Christianity was branched out into many sects. Of particular danger was their territorial and ethnic localization, which created the ideological basis for local separatism. Peculiarities of religion for citizens acted as an indicator of belonging to a particular political group, social group [7, p. 6]. The Church was interested in preserving the unity of the dogmas of the doctrine, and in this it could rely only on imperial power. In turn, the state sought to preserve the integrity of society and actively fought against heresies.

In Byzantium XI-XV centuries in connection with the development of feudal relations, the institution of pronia, the imperial chrysobull entrusted to ecclesiastical institutions many functions of national government, including military. In fact, in this period the systems of civil, ecclesiastical and partly patrimonial administration are largely mixed. Since the XIII century, the Lascaris dynasty, the matrimony to the kingdom is



a determining factor in the accession to the throne, instead of the Roman tradition of popular recognition. The church is actually becoming a defining political force. But there is a principle similar to Catholicism - "ecclesia vivit legae romanae" - "the church lives according to the Roman law". It was this institution that was most interested in uniting the fragments of the empire and preserving this unique state. Many prominent church figures, such as Demetrius Homatian, directly saw themselves as guardians of ancient legal traditions.

Obedience to Roman law, the authority of Basileus and belonging to the Christian faith were the most important factors in the self-identification of the Romans. The church organization complemented the administrative system and served as the basis of religious unity, the integrity of the state and society. The only state ideology, based on the influence of the legacy of Roman law and Christianity, was equally promoted by the church and defended by the state. The Church sanctified secular power, gave it a sacred character, cared about the spread of religious and, consequently, ideological influence of the empire on other nations. An important fact was that the Byzantines perceived their church as both national and universal. The state was interested in the economic independence of the church, as only in this way it would be able to fulfill its tasks. The emperors promoted church canons to the rank of general imperial legislation and ensured their observance by force of state coercion. For all the contradictions that arose between the secular and ecclesiastical authorities in Byzantium throughout its history, the unity of the will of the emperors and the church on all issues of state and legal life of society has never been questioned.

The Byzantine Empire had as its fundamental basis the provisions of Roman law, the period of the late empire. The Roman state had an extremely high level of development of legislation, which was largely due to the exceptionally high role of professional lawyers in the preparation of codified and current legislation. All the most important spheres of public life were in the field of legal regulation. At the same time, the most important form of lawmaking is the codified act, which to the maximum extent embraces all spheres of public life and, accordingly, is designed to reflect the system of Byzantine law. The development of law was dynamic, but the most important principle of law was the succession of legal requirements, consistent with the scholastic method of cognition.

**Conclusions.** Byzantine political and legal doctrine distinguishes between the concept of the state, sources of state power, the personality of rulers and institutions of public administration. The notion of the people, a kind of equivalent of "civil society", is singled out. Throughout the history of Byzantium, the succession of the Roman Empire was officially proclaimed. The emperor acts as a kind of "physical" embodiment of state power. This institute combined the principles of the individual monarchical and ancient, which went into the past of the republican polis system. The main purpose of the exercise of state power was officially recognized as the achievement of universal justice, which was embodied in the legislative guarantees of "economy", social compromise. An important institution of statehood and society was the church, which in accordance with political and legal doctrine was interpreted as an association of believers, which includes all social institutions, including the state. At the same time, it was a kind of bureaucratic institution, which is designed to exercise spiritual power and some functions of public administration. There was an idea of the fundamental unity of secular and spiritual authorities, which are not identical to each other, but carry out their activities in accordance with normatively common goals.

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