



JURISPRUDENCE OF CONFESSION SECRET AS LEGISLATIVE BIAS

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ABSTRACT

*Starting the scientific approach from the term jurisprudence applied to the secret of confession in the mystery of confession, we find ourselves faced with a major problem, namely: that of the dichotomy of defining the canon by the institution of the Church. This dichotomy is accentuated within the Church by the vagueness of defining what is divine instruction versus human instruction. Solving required the implementation of a *jus divinum* and a *jus humanum*." Thus, the issue of jurisprudence in the mystery of confession is decided by the institution that will rule the case. Philosophers and theologians have dealt with the issue of law itself, only they ask themselves with all seriousness the question: What is law? Lawyers, we could say they only ask: what can bring you the right? How cost-effective is it? That's why it's bizarre to find that it is precisely legal professionals who have the least clear idea of law.*

Keywords: *Jurisprudence; Confession; Canon; Law; Synodal;*

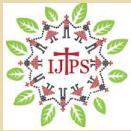
INTRODUCTION

Prof. Liviu Stan is the first Romanian theologian to define canon law from the perspective of Church teaching, showing that the essence of canon philosophy cannot be divorced from theology, and the Church also cannot ignore civil law. The author points out that „Right derives from the will of God, or from Good or Truth, namely as an idea, as from the beginning in God, as *jus actus* but also as *jus militants*, it began to exist for men and fulfill a purpose in their lives, only at the same time as good and truth.” [1]

This, two types of presumption are imposed in canon law:

1. Simple presumption *juris tantum* admitting proof to the contrary
2. Absolute exceptional presumption *juris et de jure* which does not admit proof to the contrary.

Applying these presumptions to our approach, we must define whether the mystery of confession is a *juris tantum* or a *juris et de jure*. Theology focuses the dichotomous life: between time and eternity, sin and holiness, between now and forever, at the same time it also places the dichotomous law between the Law of Christ and the social law, and this logic leads us to the dichotomy of the Gospel-Penal Code. The antinomy between the Gospel and the civil code led the Church to introduce an intermediate law to bring the two fundamental laws closer together, to mediate the relationship between the justice of fallen humanity and the Divine Law. This need gave rise to canon laws, thus the canon is an instrument of correction, a social law that pursues in its essence the extension of the Law of Christ in history, so we can conclude that the canon is an intermediate law that is based on *juris tantum* suffers the simple presumption that accepts evidence to the contrary, the canon is evolutionary, so its letter can de facto change, so the canon cannot claim to be an immutable law such as Divine Law.



1. JURISPRUDENCE OF CONFESSION

Viewed from the perspective of divine law, the canon holds jurisprudence applied to any article. The Canon finds biblical support The Savior is the first to introduce jurisprudence through the promise of the Holy Spirit's proceeding from the Father, having as its primary role „*learning in everything and it will remind you of everything I have told you*” [2] The Canon is based on the Rema principle, the actualization of the law of Christ. The Holy Spirit makes Revelation actual, [3] and the second principle is the *Synodal one*. [4] human work done by priest, confessor according to spiritual life, cumulative studies, experience. Canon I of the Seventh Ecumenical Council states that „the holy canons are set by the trumpets of the Holy Spirit.” [5]

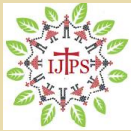
We can define canon law as God's will, or good, or truth, in the sense that it exists from the beginning in God as „*jus aeternum* but as *jus militanus*, it began to exist for men and fulfill a purpose in their lives only at the same time as good and truth.” [6] Canon law is thus seen as a guiding norm, not as dogma, so the canon becomes a guide to truth, the fixing of truth belongs to both clergy and laity, because the Church cannot be seen as a hierarchy, but as the body of Christ, therefore the synodal principle of fixing canons defines the boundaries of the church and not the mission of the church or Christianity in general. For if the canon is merely a declaration of even priesthood or mere recommendations, then they cannot be active principles in the church, for the Church is the Theandric Body of Christ in which all believers are understood. Thus, the canon has a dynamic character, accepting jurisprudence as the norm in case of alteration of the authorized established principle. In the case of refusal of established obedience, the principle of jurisprudence is in the sense of „obedience more to the voice of God than to that of men, thus even the synod is obliged to follow the will of the indications of the laity, against which bishops cannot impose anyone. As an object of the eventual arbitrariness of the episcopal college, the people have the right to refuse to accept a Vladik unloved by them.” [7]

The introductory plea shows that jurisprudence is present and possible in most canonical articles because, from a theological perspective, it should not be confused with dogma, we also note the evolutionary character of the canon, by adding or repealing laws, as well as the relativity of canonical interpretation, but it is not excluded from the Church, because the Church cannot be divided as „in Christ the two natures meet, so in the Church the dimension meets; sacramental- eschatological and what institutional” [8] The unity of the church is not only spiritual, but it also manifests itself at the institutional-structural level. [9] Thus, „the presence and work of the Church in the world is the extension of Christ into humanity expressed through persons (living members), communities and all that expresses an institutional and institutional dimension.” [10]

2. THE ACT OF CONFESSION. DIVINE LAW OR CANON LAW?

From a scriptural perspective the act of confession is inciting to God, since the Old Testament we see that God's law was aimed at the atonement. The code of the Mosaic law provided for a ritual act by sacrificing an animal, confessing sin or wrongdoing, and acquitting the culprit by paying damages. [11] There was also an annual national public collective confession with specific, ritual regulations called atoning sacrifices (Leviticus. 5:6,7,8). Rescue fortresses are introduced as measures of jurisprudence. [12]

An example of the act of confession as God's initiative towards man is the example of King David (2 Samuel: 12:13), God sends the prophet Nathan who rebukes King David using the canon of the law, and the King, not knowing that he is the accused, declares the



death sentence as the decision-making body. And when the prophet (counsel for the prosecution) reveals the identity of the accused, we see the act of divine jurisprudence at work through the mystery of the emperor's public confession. Psalms 32:5 and 51:1-4 „I have confessed my iniquities, and you have forgiven the iniquity of my sin.” In the New Testament confession is like an act of public confession, it is St. James who encourages public confession: „Confess your sins to one another” (James 5:16). The above examples show that the act of Confession is a Divine initiative with the role of bringing the penitent to the restoration of communion with Christ.

Or that is why the mystery of confession can be regarded as divine jurisprudence. If the law states that the wage of sin is death, confession absolves the penitent by confession (jurisprudence), or that is why the divine initiative urges public confession, because confession of sin means acquittal of guilt and release of the guilty. Thus, the secret of confession is an authorized established addition to Canon precisely because of the misunderstanding of the sacrament of confession, which is the soteriological principle of the penitent.

The sacrament of confession does not evade the institutional, but defines it, but in the essence of confession, the Church articulates the means of saving mission in an institutionally organized world, precisely in order to transmit *to it the phenomenon of the Kingdom of heaven*. [13] The functional unity of the Church is given by the institutional dimension, but it is given, it must „spring from the manifestation and mystery of God's saving love, which is expressed both in the plane of conscience and in the plane of life, through relations of communion.” [14]

The theology of Law emphasizes this aspect of divine law shared by the Church as an organic body made up of members who are in a relationship of interdependence. The Apostle Paul shows this organic connection in 1 Corinthians 12: „If one member suffers, the whole body suffers,” it was precisely in this spirit that the act of confession was public, in the sense of empathy with the penitent for repentance. We see the Church „not as a multitude of persons, but as a community of those clothed in Christ who partake of the Mysteries of the Kingdom, participating in the life of the whole Church, including through the canonical church system and structure.”[15]

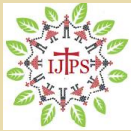
The mystery of Confession is not a mystery because of the secret of confession, but because of the soteriological principle of absolving the penitent and bringing him back into communion with Christ but also with the Holy Church. The freedom to confess sins was evidence of the bond of brotherly love in Christ. Therefore, the Mystery of Confession is a Divine Law that has the role of applying jurisprudence through the Law of Life Grace.

3. CONFESSION SECRET AS LEGISLATIVE BIAS

The secret of confession was introduced in the fourth century as an act of prevention and mitigation of the consequences of public confession, especially relations between believers and non-believers. The expansion of the Church into new environments, the interaction with different systems of laws determined the Church to introduce into the act of confession regulations that in time became authorized canonical norms. The normative acts regulating the introduction of the secrecy of confession are:

Canon 6 Carthage states that only the bishop absolves at public confession. In 390 Patriarch Nektarios generalized the private confession, which then became secret.

Canon 34 Basil the Great and 28 Nicephorus the Confessor impose the secret of confession, because the purpose of the mystery is to cleanse the sins of the believer, not to



divulge them, to cause scandal or to give them to the judgment of men. In confession, man's confession meets God's judgment, and God's judgment must prevail.

Canon 43 Carthage of 419 indirectly mentions that public confession was still practiced at that time. The fact is that today's confession can be both public and private, and when it is private, it must necessarily be secret. The secret of confession is only for the priest, not for the penitent. Therefore, if something said at confession is discovered, we cannot accuse the priest of divulging, perhaps the penitent made it public and then it spread. The spiritual priest may tell the cases of confession in a spiritual sense, but any direct reference to persons, even any allusion and suspicion, must be excluded. Violation of the secrecy of confession is punishable by defrocking. In Byzantium, those who told the secret of confession had their tongues cut off and imprisoned for life. In this situation it has been preserved to this day, but in different forms.

Article 23 of the Law on Religious Affairs of 2007 provides that legal staff cannot be compelled to reveal the secrets of penitentiary.

Art. 214 of the criminal code provides imprisonment from 3 months to 1 year or fine days for those who show professional secrecy.

Art. 79 para. Article 1 of the Code of Criminal Procedure prohibits those in a position to show professional secrecy from witnesses.

Canon 133 Carthage forbids a confessor to be a witness.

Article 28 of the Rules of Procedure of the Disciplinary Courts of the Orthodox Church Romanian provides for the defrocking of the priest who loses the secret of confession. This is also true in the Catholic Church.

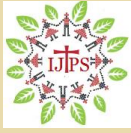
Articles 983-985 of the Codex Juri Canonical prohibit disclosure of the secret of confession, and the priest is punished with defrocking. The scriptural basis for the secret of confession is Jesus Sirach 19:10 - Have you heard a word? May he die with you! [16]

Prof. Ioan Ică Jr. shows that since Byzantium a culture of integration of the Church into the empire and integration of the empire into the Church has appeared. Thus, it is St. Cyprian of Cartagena who emphasizes the legal dimension of ecclesiology, borrowing the imperial perspective, the episcopate of Ignatian is no longer sacramental-cultural but is pushed towards a jurisdictional-territorial episcopate. [17]

This new organization at the level of the Church is confirmed by the Turland Council, especially by canons 17 and 38, which state that church organization must follow political organization. The question for canonists is whether the churching of the norms of jurisdictional and political structure can be placed on the same value and authority as the norms of Divine Law. The answer is not conclusive, an agreement cannot be reached to this day. [18] The act of confession is a canon law only in method, not. Keeping confession secret is an established regulation, by aligning procedures to social authority and has the role of prevention and protection. The secret of confession is nullified by the tripartite procedure itself, the penitent confesses to the confessor, who in turn confesses to Christ.

CONCLUSIONS

The act of confession is an act of jurisprudence in its essence as a mystery. God is the initiator of the mystery of confession as the act of pronouncing the sentence of release of the penitent from the law of sin and death. Jurisprudence in this case is identified with divine grace. Diacritical rational thinking only in the spirit of the law is incompatible with the act of Confession, therefore the Confessor is not guided by rational critical thinking but by the charism of spiritual discernment, because only God can be the guarantor of pronouncing an



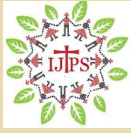
exceptional absolute presumption *juris et de jure* that does not admit proof to the contrary. Therefore, the confessor in the sacrament of confession does not think *about* God but *with* God, combining theory with life, thinking with prayer, concept with contemplation. If the mystery of confession is viewed only from the social perspective of man deprived of the spiritual virtue of discernment, allowing himself to be nourished only by *the telos of the* legal text, then the act of confession is null and void because the *organic law* extracts the very essence of confession, namely the principle of *Agape* (sacrificial love).

Regarding the permissiveness of confessing, the secret of confession by the confessor, I answered by pointing out that the act of confession is the soteriological manifestation of Christ's saving love, so that all those who by faith reach Jesus and confess to be forgiven, receive this forgiveness not by law (justice), but undeservedly by justification by grace (Romans 3:21-24), and the Prophet Micah shows us that God throws all sins to the bottom of the sea. Thus, the confessor, through whom God pronounces the act of absolution, must also have the thought of throwing sins into the sea of oblivion, which can no longer be remembered.

The introduction of the secret of confession was not God's initiative but the adaptation of the Church to the social and jurisdictional needs of law varied from country to country, but in the *agape community* of the Church where confession of sin is seen economically as evidence of repentance, it is not a reason for fear but for joy and celebration. This dichotomous belief of the sacrament of confession is not antinomian within the Church but is merely an adaptation for the prevention of those who have not understood the truth. The Church in love also embraces them through this protection in the economic principle of salvation.

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- [5] Arch. Prof. Dr. Ioan N. Floca, *Canons of the Orthodox Church*, notes, and commentaries, Publishing House of the Biblical and Mission Institute of the Romanian Orthodox Church, Bucharest, 1993, p. 162.
- [6] Liviu Stan, *Homage Juris*, pp.140-167
- [7] Liviu Stan, *Mereni in the Church*, Sibiu, 1943, pp. 608-609. See the example of the 2005 conflict: the election of a metropolitan without a majority in episcopal suffrage.
- [8] Alan Nisus. *Leglise comme communion et comme institution*, Ed. Du Cerf, Paris, 2012, p.58 2008, p.58
- [9] This motivation is underlined by the 34th Apostolic Canon. For apostolic canons, see: Ioan Ică Jr., *Canon of Orthodoxy*, vol.1, Ed. Diesis, Sibiu, 2007, pp.770-784; John Floca, *Canons of the Orthodox Church. Notes and comments*, Sibiu, 1992, pp.7-48; Constantine Dron, *The Canons. Text and interpretation*, Typography Books of Churches Bucharest, 1933, pp.21-272; Nicodemus Malas, *Canons of the Orthodox Church accompanied by commentaries*, trans. U. Jovicic And N. Popovici, vol. I, part I, Diocesan Printing House, Arad, 1930, pp.179- 316
- [10] Nicholas Afanasiev, *The Church of the Holy Spirit*, trans. Elena Derevici, Patmos Publishing House, Cluj Napoca, 2008, p.23
- [11] See the Pentateuch, which is also called the book of the law, especially Deuteron and Leviticus.
- [12] The Lord spoke to Joshua and said, "Speak to the children of Israel, and say unto them, Resolve, as I commanded you through Moses, cities of refuge, 3 where the murderer may flee, who shall kill any man unwillingly, without having any thought of killing him; May they be a place of refuge for you



against the avenger of blood. Let the murderer flee to one of these cities, stop at the entrance of the gate of the city, and tell his story to the elders of that city; let them receive him into their city and give him a dwelling place to live with them. 5 If the avenger of blood pursues him, let them not deliver the murderer into his hands, for he unwittingly slew his neighbor and without having been his enemy before. 6 Let him remain in this city until he appears before the assembly to be judged, until the death of the high priest who shall then be in office. Then let the murderer return and enter again into his city and house, into the city from which he had fled." 7 They set aside Chadash in Galilee, in the mountain of Naphtali; Shechem in the mountain of Ephraim and Kirit-Arba, or Hebron in the mountain of Judah. 8 And on the other side of the Jordan, east of Jericho, he chose the Stick, in the wilderness, in the plain, in the tribe of Reuben, Ramoth in Gilead in the tribe of Gad and Golan in Basan in the tribe of Manasseh. 9 These were the cities appointed for all the children of Israel and for the stranger who dwells in their midst, so that he who kills someone unwillingly may flee into them and not die slain at the hand of the avenger of blood before he appears before the assembly. Joshua chapter 20, Deuteronomy 19.

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[14] Boris Bubriski, *Le mystery de l'Eglise, course de Theologies domestique*, ITO Paris, 2000, p.14. This perspective is also deepened in: Boris Bubriski, *Le mystery de l'Eglise*, Ed. du Cerf, Paris, 2003, pp.36-37.

[15] For complete information see: Patriciu Voicu, *Canon and Libertate. Continuous sharing from the Church's experience*, Cluj University Press Publishing House, Cluj-Napoca, 2013, pp.10-15

[16] Ioan N. Floca, *Canons of the Orthodox Church - Notes and comments*, Sophia Publishing House 2005

[17] Ioan Ică JR, *Canon of Orthodoxy*, vol. I: *The Apostolic Canon of the First Centuries*, Diesis Publishing House, Sibiu, 2008, p.275

[18] Disappointed with the attitude of the emperors towards the order of the Church, Zonaras did not concern himself with the agreement between imperial legislation and the Holy Canons and did not consider the sources of Byzantine law, considering that imperial power negatively influenced church leaders. Theodore Balsamon considered the most knowledgeable of the great Byzantine canonists, a great follower of the Byzantine symphony, contradicts Zonaras and emphasizes the role of imperial legislation and privileges granted by political authority to the patriarchs and especially to the ecumenical patriarch. This position was well received by the Patriarchs of Constantinople, but did not remain without criticism, the most coherent being even a contemporary of his, Demetrius Chomatianos, archbishop of Horrid, who accused Balsamon of incoherence and lack of logic, pointing out that Balsamon sometimes contradicted himself, depending on what he set out to argue. See Michael Angold, *Church, and society in Byzantium under The Comneni, 1081-1261*, Cambridge University Press, Cambridge, 2000, pp. 454-457.