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(1614-2014)

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Institutions in transition: The evolution of the law during the “long” 15th century

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ABSTRACT: The second half of the 15th century was an era of transition, not only for the newly established Ottoman Empire, but also for the Orthodox community that resided in its territory. Both parties needed to find a new *modus vivendi* that would allow for a peaceful co-existence. Their political interests, that coincided in some points, formed the base for collaboration: the patriarchate wanted to eliminate the western threat (i.e. the pope's influence on the Orthodox flock), and the sultan, to establish his role as the successor of the Byzantine emperor. This role, according to the Byzantine political theory, entailed among other things that of the guardian of the Church. This paper attempts to study the conditions on which the said transition took place, by examining the legal institutions and the adaptations that they had to undergo.

KEY WORDS: Ottoman Empire, patriarchate, Orthodox Church, legal institutions.

RESUMEN: La segunda mitad del s. XV fue una época de transición, tanto para el recién constituido Imperio Otomano como para la comunidad ortodoxa afincada en su territorio. Ambas partes veían necesaria la búsqueda de un *modus vivendi* que permitiera una coexistencia pacífica. Sus intereses políticos, coincidentes en parte, fueron la base de la colaboración: el patriarcado intentaba eliminar “la amenaza occidental” (i.e. la influencia del papa sobre el pueblo ortodoxo), y el sultán, consolidar su papel de sucesor del emperador bizantino. Este papel, según la teoría política bizantina, también incluía, entre otras, la función de defensor de la Iglesia. El presente artículo intenta estudiar las condiciones en que esta transición se realizó

desde la perspectiva de las instituciones legales y de las adaptaciones que tuvieron que sufrir.

PALABRAS-CLAVE: Imperio Otomano, patriarcado, Iglesia ortodoxa, instituciones legales.

I. INTRODUCTION

When historians describe the 15th century as “long”, they are obviously not referring to its actual duration, but rather to the intensity and significance of the events that took place during that hundred-year period. Indeed, a century seems like a very brief period in which changes of such magnitude and importance could have taken place in the Byzantine Empire, culminating in its fall in mid-century and its replacement by a new one, namely the Ottoman Empire.

The boundaries between the late Byzantine and early Ottoman periods have never been absolutely clear. It is exceptionally complicated to describe what we mean when we talk about Byzantium in the mid 15th century and to define the point at which the Ottoman Empire begins, both chronologically and –more importantly– geographically¹. Nevertheless, the Turkish historian H. Inalcik argues that it was definitively established upon the conquest of Constantinople, and that its real founder was Mehmet II the Conqueror, who transformed it from an Islamic principality into an empire straddling two continents and two seas. He was the first to sit on the throne of the caesars². It is, in any event, certain that 29 May 1453, primarily a symbolic date, marks the end of Byzantium as a State. The old and new orders of things were called upon to co-exist under the new arrangements imposed by the change of power. Groups of people as well as institutions that had existed prior to the conquest reappeared in a modified role afterward. What will engage our attention in this paper is mainly the transition process, that is, the integration of the waning reality into the following one, which was still being shaped.

¹ I am referring to the different dates on which the various parts of the Byzantine Empire were lost to the Ottomans.

² INALCIK (1994): 29-30.

2. THE THEORY AND INSTITUTIONS OF THE LAW IN THE LATE BYZANTINE PERIOD

According to the Byzantine political theory³, the emperor was regarded as the representative of God on earth, the blessed head of the peoples of the earth. Church and State –although technically the distinction between these two authorities, led by the patriarch and the emperor respectively, was instituted by law– in the collective political and theological thought of the Byzantines expressed the two forms in which the single and undivided concept of Christianity was manifested, in an inseparable duality⁴. This is one of the reasons why this distinction is very difficult for researchers to pinpoint. An additional difficulty is the fact that the relations between Church and State in practice were usually dependent on the individuals concerned and not just on institutions.

The dual nature of the office of the emperor has been the main issue of an ongoing dialogue that started in the years of Constantine the Great, initiated by his theoretician Eusebius Caesariensis⁵ and continued all through the Byzantine era. There were of course times when some minority group appeared that questioned the emperor’s right to give orders to the Church; and when such a group was organised by leading monastic figures –such as Theodore the Studite⁶, to name but one–, it could sometimes cause embarrassment and even influence imperial policy. Such a minority, however, despite its activity would never succeed in splitting the institution created by Eusebius. Despite efforts by people like Photius and Michael Cerularios⁷, the patriarch appeared generally as being subject to the emperor⁸. Public opinion appeared to approve

³ On the political theory and ideology of the Byzantines, see GLYKATZI-AHRWEILER (1975). Abundant evidence can also be found in the preambles of the Imperial Novels, as stated by TROIANOS (1999): 45. See also CHRISTOFILOPOULOU (2004): 17.

⁴ BECK (1959): 36.

⁵ See *Opera Omnia* in PG, v. 20.

⁶ See OSTROGORSKY (2002): v. II, p. 59.

⁷ Both patriarchs are known for the friction between them and the emperors Basil I Macedonian and Constantine IX Monomachus respectively. See OSTROGORSKY (2002): v. II, pp. 109 and 223. See also GLYKATZI-AHRWEILER (2009): 157.

⁸ A different opinion is expressed by GLYKATZI-AHRWEILER (2007): 157. In any case, the ongoing dialogue on the concepts –and the mere existence for that matter– of “caesaropapism” or “papocaesarism” in the Byzantine political theory is too extended to be exhausted in this paper.

of the patriarch's role of safeguarding the conscience of the empire and the emperor. But he should not be placed on the same level as the emperor, nor meddle in politics⁹.

Perhaps this viewpoint is consistent with the concept of eternity¹⁰ that accompanies the Byzantine idea of their empire, since the earthly State was something ephemeral, whereas a State headed by the representative of God approaches, more than anything else, the idea of the empire as a reflection of the heavenly kingdom on earth and consequently eternal.

To provide theoretical justification for an emperor's interventions in Church affairs, the "principal of economy"¹¹ was applied, a notion characteristic of the eastern Orthodox Church. Thus the necessary flexibility and adaptability was ensured in applying the laws which would be done on the criterion of the common good. In this way, the monarch is ensured unhindered pursuance of his policy.

In the 12th century, Theodoros Balsamon summarized his views –very carefully, in fact, and sometimes contradictorily– that the Church is subject to the power of the emperor, which is founded on the latter's role as ἐπιστημονάρχης, i.e. the guardian and supervisor of the theological science and education¹². Thus, although he accepted the irrevocability of the patriarchal court, he believed that the emperor was competent to judge the patriarch, when the latter was charged personally of sacrilege and heterodoxy¹³.

A century or so later, Demetrios Chomatianos compiled a catalogue of the rights of the monarch over the Church¹⁴. According to it, the king presides at synodic decisions and lends them executive force, shapes the ranks of the ecclesiastical hierarchy, rules on the lifestyle of the clergy, arranges elections to fill vacant bishoprics, transfers bishops and elevates bishoprics to metropolitanates.

⁹ CHRISTOFILOPOULOU (2004): 94-96.

¹⁰ GLYKATZI-AHRWEILER (2007): pp. 21 and 28, to *Jobannis Euchaitarum metropolitae quae supersunt in cod. Vaticano graeco 676*, ed. P. de Lagarde and J. Bollig, Berlin 1882.

¹¹ On the notion of the "principal of economy" see CHRISTOFILOPOULOS (1965): 101-104. More specifically see TROIANOS (2004): 783-799. On how this notion was applied in the case examined herein, see DAGRON (1996): 259 and GLYKATZI-AHRWEILER (2007): 168 et seq.

¹² On the specific term see STEFANIDIS (1930).

¹³ Th. Valsamon on the XII canon of Antiocheia, cf. RHALLI-POTLI (1966): v. III, p. 146 et seq.

¹⁴ Response of D. Chomatianos to K. Kavasillas, cf. RHALLI-POTLI (1966): v. V, p. 429.

A significant attempt to change these regulations was made during the dynasty of the Macedonians and specifically through the *Eisagoge* (or *Epanagoge*)¹⁵. In this piece of legislation, *inter alia*, the structure of the State was described along general lines, and under headings 2: Περὶ Βασιλέως (‘On the king’) and 3: Περὶ Πατριάρχου (‘On the patriarch’) the rights and obligations are set out of the emperor and the patriarch as equal agents of the two supreme authorities, and the timeless boundaries were established of the authority of each of them¹⁶. Through the *Eisagoge*, the Macedonians were trying to impose for the first time the theory of the two authorities, between which was the concept of divine Law. In this way, the field of the emperor’s power was restricted. The conception of its provisions and probably their formulation has been attributed to the patriarch Photius. The duration of the *Eisagoge*, however, was brief¹⁷.

The balance in the relations between State and Church was never constant and even less was it linear. It was often shaped in accordance with the political and historical circumstances, but also the personalities of the emperors and patriarchs in question, as was the case with Photius, mentioned above, or as it was that of Leo III the Isaurian during the iconoclastic friction¹⁸, to name but a few.

Despite all the above, from 1204 until the dissolution of the Byzantine State the role of the emperor appears to have followed the fate of his ever weakening Empire. And even though just before the end texts were being written such as the letter from the patriarch Antonios to Vasily, grand prince of Moscow¹⁹, I assume that they already knew that things had changed definitively.

3. THE EARLY TRANSITION: FIRST HALF OF THE 15TH CENTURY («Νῦν οἰκονόμου χρῆζομεν καὶ οὐ βασιλέως»)

The dawn of the 15th century found the Byzantine Empire a dramatically shrunk State –as it has been long ago deprived of its richest territories–, heavily

¹⁵ *Eisagoge* or *Epanagoge*? On the correct term see TROIANOS (1999): 171.

¹⁶ For the complete text see IGR, v. II, pp. 236-368.

¹⁷ TROIANOS (1999): 175.

¹⁸ The emperor commanded the unfrocking of the patriarch Germanus when the latter refused to sign the order by which the icons should be destroyed. Cf. OSTROGORSKY (2002): v. II, p. 29.

¹⁹ *MM Acta*, v. II, pp. 190-191.

indebted and economically dependent on the West. Its emperor was a tributary of the Ottoman sultan since 1373 and its people lived under the constant threat of yet another siege²⁰ and the imminent conquest. It was therefore inevitable for the political theory to be adjusted accordingly and, as far as the political organization of the State was concerned, to engage different, more simplified structures and bureaucratic mechanisms.

The ecclesiastical administration, on the other hand, having the advantage of not being dramatically affected by the territorial fragmentation or more generally by the regroupings within the State –given that the patriarch continued to be the leader of his flock, even of the section of it that had already been subjugated, while the emperor ruled over ever fewer subjects– managed to retain a stronger position. Moreover, after the catalytic events of the Ferrara-Florence council²¹ and the following political developments that led to the prevalence of the anti-unionist group, the game of balance ended in favour of the Church.

The general insecurity that came as a result of the territorial loss, the split, the internal disputes and the more had repercussions in all manifestations of social life, and in particular they had caused –perhaps inevitably– a mistrust in institutions. An increased participation of the Church in legal affairs then came as no surprise. Troianos²² sought a plausible explanation for this phenomenon in the fact that, on the theoretical level, the participation of the State and the Church in the exercise of joint power, had Church covering the deficit created by the breakdown of State structures that had started to heave in sight as far back as in 1204 and the conquest of Constantinople by the crusaders.

As a result, a sharp increase was noted in appeals to the ecclesiastical courts. As can be seen in resolutions from court practice of that period²³, the Church courts were hearing not only ecclesiastical disputes, but their jurisdiction had been extended to include the usual civil disputes. In the expansion of the ecclesiastical jurisdiction, which also appeared in the field of the dispensation of justice, we should look for one of the causes –perhaps the most important– for the Church's readiness to undertake after the conquest

²⁰ The last siege lasted from 1397 to 1399, when marshal Bousicaud managed to break it. There had been others before that and of course more to follow. See RUNCIMAN (1990): 40.

²¹ On the events of the Ferrara-Florence council see RUNCIMAN (1990): 109 et seq. and OSTROGORSKY (2002): v. III, p. 264 et seq. Indispensable source of information is to be found in LAURENT (1971).

²² TROIANOS (1999): 277-279.

²³ PAPAGIANNI (1992): v. I, p. 7.

the role of applying the “privileges”²⁴, first granted to the Orthodox community by Mehmet II. This role started off being fairly limited, and then gradually came to include in essence all disputes under private law²⁵.

In brief, those were the circumstances that paved the way for the Church to take over the role of the leader of a group of Ottoman subjects, namely the Orthodox community, without being itself a comprising element of the State anymore.

4. AFTER THE CONQUEST («...έκκλησίαν ἔχειν καὶ βασιλείαν οὐκ ἔχειν»)

Just seven months after the conquest, overcoming any possible legal technicality²⁶ as well as some strong objections from his entourage²⁷, Mehmet II decided to permit the re-establishment of the patriarchate of Constantinople. His decision served his political agenda, for by doing so, he made it implicitly clear *erga omnes*²⁸ that the leadership of the Orthodox community had officially acknowledged the new regime. It also served his personal ambitions of assuming the role of the Byzantine emperor²⁹, so that the new regime would appear to be the successor of the previous one, thus facilitating the smoothest possible incorporation of the new population into the Empire. This decision was said³⁰

²⁴ The notion of the “privileges” will be briefly explained further below. Some useful reading suggestions from the abundant bibliography on the subject are: PANTAZOPOULOS (1960-1963); AMANTOS (1936): 103-166; ZACHARIADOU (1996): 90-97, and KONIDARIS (2009): 11-21. The use of quotation marks is due to the reservations expressed by the most of the recent studies on the concept, the context and the legal nature of the said privileges. See APOSTOLOPOULOS (1995, offprint): 30; KONORTAS (1998): p. 295 et seq., and TSOURKA PAPASTATHI (2005).

²⁵ PAPAGIANNI (1992): 2.

²⁶ According to *shari‘a*, if a community has been subdued “by force”, no rights are conceded to them. Nevertheless, Mehmet chose to apply a more lenient policy towards the Orthodox community, a policy which after his death was criticised as to “have infringed the law of the prophet and impaired the good order of the land”. Cf. INALCIK (1969-70): 231-249.

²⁷ APOSTOLOPOULOS (2007): 76-77.

²⁸ BABINGER (1992): b. 2, pp. 104-105. «Mehmet’s installation of the Orthodox patriarch (...) demonstrated that the supreme spiritual authority, not only of the Greeks but also of all Oriental Christendom, had fully recognized the new state of affairs».

²⁹ INALCIK (1994): 26.

³⁰ *Historia politica et patriarchica*, p. 26, ls. 19-22: Ἐπανελθὼν δὲ (ὁ Μωάμεθ) πάλιν ἐν τῇ Πόλει καὶ ὄρων μὴ συναγομένους ἰδίᾳ θελήσει ὅλως χριστιανούς, ἠρώτησεν τὸ αἴτιον παρὰ φίλων καὶ γραμματικῶν Χριστιανῶν, οὓς εἶχε πλησίον καὶ ἐδιοίκουν πᾶσαν τὴν βασιλείαν.

to be triggered or at least reinforced by the influence of some of the Greek dignitaries (ἀρχοντες), whom the conquest found already serving in high places, even among the sultanic divan. For them, upgrading the new situation to the form of the old Empire also entailed upgrading their role. Either way, it was a political decision of great importance, since it defined the relationship between the Orthodox community and the Ottoman authority for the centuries to come.

The first patriarch after the conquest was Gennadius Scholarius. Apart from being a well known and respected person –therefore suitable as a figure of unity for the Orthodox flock under Ottoman rule– he was also one of the leaders of the anti-unionist group. He was clearly not a random choice: Mehmet needed an anti-unionist as the head of the Orthodox community, in order to assure the loyalty of the flock and above all, to prevent them from appealing to the West for help, potentially triggering a new crusade.

The sultan endowed the patriarch with all the civil and religious powers he deemed necessary in order to exercise his office, a body of rights known under the general term of “privileges”. In short, the patriarch had the power to elect and dismiss members of the clergy, to manage the Church’s resources, to collect taxes from his flock and –last but not least– he had jurisdiction in all disputes under family and inheritance law, i.e. those sections of the law that were traditionally associated with religion³¹.

The procedure for appointing the first patriarch was indicative of the way in which the Ottoman authority perceived the institution. The Church was given the right to follow its canonical *typikon*: all available metropolitans were invited to act as the “Synod” that would elect the new patriarch, and a ceremonial investiture was held. Some chroniclers³² even reported that Mehmet II himself handed Scholarius the crosier (δεκανίκιον) during the ceremony, as the Byzantine emperor would have done on such an occasion, but this is unconfirmed. Nevertheless, the Porte’s acknowledgment of the legality of the procedure indirectly legalized the Church’s right to be governed by its own system of canon laws, as it had been during the Byzantine era.

On the other hand, the appointment had to be consistent with the new legal order; otherwise it would not be valid. So, following payment of the

³¹ For more details on the contents of the said privileges, see bibliographical reference in n. 24.

³² See REINSCH (1983): 90-91.

*peşkeş*³³, a decree (*berât*)³⁴ was issued by the Sultan –which, according to Ottoman diplomatic documentation, was the executive document required for the appointment of every civil servant– by which the sultan assigned to the patriarch the right to exercise his office. In this way, the institution of the patriarchate was incorporated into the Ottoman administrative machinery. The relationship between the Ottoman authority and the patriarchate was always determined by the content of the corresponding *berât*. The bond established between the *berât*-bearer and the issuing authority was of a personal rather than an institutional nature. If for any reason one of the two parties lost his office, a new *berât* had to be issued. So, when a new sultan ascended to the throne, the serving patriarch had to request a renewal of his own appointment, since the *cânûn* law³⁵ did not recognise the notion of a legal entity³⁶.

In 1474, there was a significant development in the history of the patriarchate as an institution. After an initiative³⁷ taken by an Orthodox group, the patriarchate was from then on obliged to pay an annual tax, known as *kharaj*, to the Ottoman State. Much has been written about this initiative: some argue that it was an act of treason by a minority seeking the favour of the sultan³⁸. Others, that it was a clever political choice by which the patriarchate was being “anchored” to the safest, most solid function of the Ottoman state, i.e. its fiscal system³⁹. The fact is that from that moment on, the patriarchate remained closely dependent on the wealthier members of the Orthodox community, since they were the ones who had to pay the most. Many incidents demonstrate the truth of this dependence. To cite but one: in 1466, princess Mara Branković, step-mother of Mehmet II, intervened in the election of a new patriarch in favour of the metropolitan Dionysius of Philippopolis and

³³ *Peşkeş* is the present that every functionary, upon his appointment, had to offer to the sultan, in return for his office. See KONORTAS (1998): 167. It has been argued that, in this case, «it was just a disguised tax upon the clergy», cf. INALCIK (1991): 408.

³⁴ The oldest known patriarchal *berat* was issued to patriarch Symeon I in 1483 by the sultan Bayezid II, cf. ZACHARIADOU (1996): 157 (doc. 1).

³⁵ The Ottoman civil law in contradistinction to sacred Islamic law, i.e. the *shari'a*.

³⁶ Cf. APOSTOLOPOULOS (1992): 94-95 and KONORTAS (1998): 123.

³⁷ Could be inspired by the precedent of the other patriarchates of the East, already under Muslim territory, that had to pay taxes to the State, and maybe that practise served as a model to those who suggested the enlisting of the patriarchate of Constantinople to the ottoman fiscal system.

³⁸ AMANTOS (2008): 126.

³⁹ APOSTOLOPOULOS (1995): 38.

succeeded in placing him on the patriarchal throne. She is said to have appeared in front of the sultan bearing 2000 pieces of gold and thus her wish was granted⁴⁰. According to another theory, the *kharaj* was imposed as a tax on the money collected by the patriarchate from its flock⁴¹. This money was deemed to belong to the State Treasury and therefore had to be taxed. In either case, the result was that from that moment on, the patriarchate was included in the imperial taxation system.

For the leaders of the Orthodox Church, who had to justify plausibly to their flock their cooperative –not to say submissive– attitude towards the Ottoman authority, a very ancient and widely known concept came to the rescue⁴²: that the fall of the Empire was God’s punishment for the sin its people had committed by trying to achieve a union with the Roman Catholics. In his letter of resignation from the patriarchal office, Gennadius wrote that the conquest had been a remedy sent by God to save the Orthodox souls from the “heretics”⁴³, therefore they had to bear with it and do their best to survive.

The result of all these processes was that during the first decade after the conquest, the patriarchate and the sultan came to an understanding: the Church was to maintain its autonomy up to a certain point, but the entire institution had to be fully incorporated into the administrative machinery of the Empire. Thus the patriarchate assumed the role of an institutional mediator between the Sublime Porte and its Orthodox subjects. According to that understanding, the Church had the right to self-government and indeed under its own system of canon laws that were in force during the Byzantine period, the legality of which was secured indirectly by the legalization of the patriarchate as an institution⁴⁴. Moreover, even Gennadius, the first patriarch after the conquest, urged his congregation to safeguard «the golden laws and the provisions of the holy mother Church»⁴⁵. The right to self-government can

⁴⁰ *Ekthesis chronike*, p. 29, and *Historia politica et patriarchica*, p. 41.

⁴¹ KONORTAS (1998): 345. Similar opinion in ZACHARIADOU (1996): 83.

⁴² GLYKATZI-AHRWEILER (2009): p. 241 et. seq.

⁴³ This concept continued to appear through the whole Ottoman era in chronicles («Καὶ τὴν νύκτα [...οἱ Τοῦρκοι] εἶδαν σημεῖον Θεοῦ, πῶς ὁ Θεὸς τοὺς ἔδωκε τὴν Πόλιν...καὶ οὕτως ἐπάρθη ἡ Πόλις, διὰ τὰς ἁμαρτίας ἡμῶν...»: *Βιβλίον ἱστορικόν*, p. 418.), as well as in a special category of traditional Greek songs, the *Laments for the Conquest of Constantinople*, (...γιατί ἦταν θέλημα Θεοῦ ἡ Πόλη νὰ τουρκέψει). See MEGAS (1953): p. 247 et seq.

⁴⁴ PAIZI-APOSTOLOPOULOU (1988): 55.

⁴⁵ Latest edition of the source in PAIZI-APOSTOLOPOULOS (2011; cit. in p. 49, l. 38-40).

likewise be concluded even from synodic decisions of the period, in which penalties are imposed on priests, as provided under canon law⁴⁶.

To what degree, however, can we speak of self-government when we know that the Ottoman authority had a voice in ecclesiastical affairs? Furthermore, processes of this type do not take on their final form in one day. Obviously, establishment of the boundaries between the two authorities called for a long struggle, nor was it a linear process. Reversions and interventions took place before it assumed its final form. In fact –as can be seen by the study of the relevant *berâts*⁴⁷– in the 16th century the patriarch was appointed directly by the sultan, without any involvement by the Synod⁴⁸. The evidence that has been preserved regarding the period in question is not abundant, but it is enough to allow us to hypothesise the complex, frequently contradictory and unexpected nature of the fermentation taking place in the first two decades after power changed hands. Through these fermentations, the Ottoman authority, on the one hand, with the facility of the victor, set the limits, claiming through appointments and interventions the right to have a voice in ecclesiastical affairs; and on the other, the patriarchate, now the head of the entire Greek *millet*⁴⁹, claimed both its continued existence and some comparative autonomy, subject of course to the limitations of the tributary. As a tributary, in fact, it was often obliged to accept conditions contrary to canon law, in order for the institution to ensure its own survival. And as a valuable tool of adaptation, it once again utilized the principle of economy.

Thus we frequently have the phenomenon of “strange coexistence”. For example: in the Synod convened on 10 October 1474, which eventually decided to acquit patriarch Symeon, representatives of the Turkish authority were also present to ensure that the law was accurately applied⁵⁰. That is, it was accepted that the Synod was competent to resolve differences arising in the ranks of the Church and that the law to be applied was canon law⁵¹. But the presence of the

⁴⁶ Examples of such decisions in APOSTOLOPOULOS (1992).

⁴⁷ The berat was a decree drawn up in the name of the sultan, with which certain powers or privileges were granted. See KONORTAS (1998): 45.

⁴⁸ KONORTAS (1998): 125.

⁴⁹ On the use of the term “millet”, see KONORTAS (1998): 443. More details on the subject to be found in BRAUDE (1982): 69-74.

⁵⁰ «...ίνα τὸ δίκαιον ἀκριβῶς τηρησαι...», cf. APOSTOLOPOULOS (1992): 93.

⁵¹ PAIZI-APOSTOLOPOULOU (1988): 55.

sultan's representatives added a new dimension: the sultan now appears as a guardian of institutions and Church laws. Indeed, since mechanisms for imposing synodical decisions do not appear to have existed, it was sometimes necessary to appeal to the secular authority⁵².

Moreover, it should not be forgotten that the institution of the patriarchate was recognized on the basis of Islamic political theory, with the aim of serving the Ottoman State⁵³. The appointment of patriarchs, and generally of ecclesiastical leaders, was now done by *berâts*; therefore Ottoman law was applied at least as regards the technicalities. These *berâts* were documents of appointment and as such were primarily of a legal nature. We should not forget that when referring to the Church, they express the attitude of the Ottoman authority to it, which was a long way from the Church's attitude to itself⁵⁴. In any event, the Orthodox clergy were now treated as civil servants integrated into the Ottoman State class.

As time passed, the Synod appears to have extended its jurisdiction to include personal disputes between members of the clergy. In this case, "strange coexistences" appeared once again, e.g. the metropolitan of Tornovo in 1476, who borrowed money on the guarantee of the metropolitan of Roizaion. His creditors turned to the guarantor «before a secular court of law» from whom they demanded repayment of the money. Then the guarantor filed suit against the initial debtor putting forward the right to recourse and the case was taken up by the Synod⁵⁵. We note how easily the multiple jurisdictional systems were utilized and selected according to one's best convenience. This phenomenon became commonplace throughout the post-Byzantine period⁵⁶.

On the Ottoman side, the imperial ambitions of Mehmet II were visible from the outset: his role was not that of the civil leader of a State, but that of the head of an empire, whose citizens included people of various religions. His intention was obviously not to obliterate them, but to subjugate them. For this reason, he adopted the role of one continuing from the Byzantine Emperor and through the rights of this role he had the facility of ceding privileges while

⁵² PAIZI-APOSTOLOPOULOU (1988): 56.

⁵³ ZACHARIADOU (1996): 25.

⁵⁴ KONORTAS, 1998, p. 48.

⁵⁵ PAIZI-APOSTOLOPOULOU (1988): 57.

⁵⁶ BASDRA (2003): 73.

at the same time retaining control⁵⁷. As noted above, the role of the emperor also included that of religious leader. To this end he proceeded to codify the *kânûn*, in accordance with which the sultan is the head of all authorities⁵⁸, thus making possible the implementation of his political programme.

5. CONCLUSIONS

To sum up, the process of transition was triggered by the mutual awareness on behalf of both parties of the political and historical necessity: for the patriarchate, as head of the Orthodox community, the imminent threat obliged it to somewhat bend some of its principals, in order to ensure the continuance of its existence; for the Ottomans on the other hand, the need to assimilate the new populations in their territory, obliged them to adopt a policy of leniency and conciliation. Vehicle of the adjustments that had to be made in order to achieve the desirable smooth as possible coexistence, were the juridical institutions that therefore were modified, re-established, enhanced or weakened or even deleted accordingly.

Thus, the interests of both parties were safeguarded: the Orthodox community ensured its safety, as well as a relative “autonomy” into the framework of the new regime, and the sultan solidified his status by declaring very specifically not only towards his new subjects but towards any possible western “crusader” his intention to assume the role of the Byzantine emperor.

⁵⁷ Mehmet claimed the title of “caesar” of Rome (*Kayser-i Rûm*), cf. BABINGER (1992): 249.

⁵⁸ INALCIK (1997): 73.

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