

TSARIST-CHURCH RELATIONS IN THE MOSCOW STATE AND IN THE RUSSIAN EMPIRE: ‘SYMPHONY OF AUTHORITIES’ AS A LEGAL FORMULA

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Abstract: The topic of interaction between the Church and is still relevant since the influence of religion on public-power relations throughout the Christian world remains a tangible factor in public life. The present research aims to uncover the legal meaning of the sixth novella of Emperor Justinian (known in historiography as the ‘symphony of authorities’) in tsarist-church legal relations that were characteristic of Muscovy and the Russian Empire. The civilizational-cultural approach in jurisprudence used by the author allowed concluding that there is not only a functional difference between the tsardom and the priesthood (the two subjects of law that are part of the novella) but also the legal inequality characteristic of public law relations. From this angle, the novella was adopted in medieval Russia and legalized in the Russian Empire where the sovereign was called the Head of the Church and resolved the most important issues of

church life with the help of the Holy Synod for this. The acquired experience of interaction between the reigning monarch and the Church can be mastered for developing the model of state structure existing in modern Russia.

Keywords: church, government, tsarist Russia, ‘symphony of authorities’, tsarist-church relations

1. Introduction

The problem of interaction between the supreme power of the sovereign and the Church in Russia, reflected in the works of numerous scholars, is always in the spotlight due to its obvious relevance. This also applies to modern Russia, where, contrary to the thousand-year-old tradition of Russian statehood, the Church has been separated from the state for more than a last hundred years of its history. The published scientific papers still do not give an answer (which could satisfy all

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the authors) to the question of what the hereditary rights are of the reigning monarch to manage the Church. The main discussions are around understanding the ‘symphony of authorities’ – the legislative formula of Emperor Justinian that was designed to regulate the relations between the reigning monarch and the Church. Transferred to Russia along with the adoption of Christianity, the idea of cooperation between the ‘tsardom’ and ‘priesthood’ was reflected first in the legal tradition and then in the current legislation of Muscovy and the Russian Empire.

The present research aims to reveal the legal meaning of a ‘symphony of authorities’ by examining the correlation of the subjects of law discussed in it, as well as clarifying the conclusions existing in historiography on this topic. This attempt is made taking into account the following important circumstance: considering the issue from this angle had little influence on its legal side; this affected the completeness of the study of chosen subject.

2. Materials and methods.

2.1. Sources. These include archival documents stored in the Russian

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State Library in the manuscript department (F 152, F 256, F 310). They also include: state regulatory documents, including Stoglav 1551, the Sobornoye Ulozheniye (council code) of Alexis of Russia 1649, Kormchaia Book (Nomocanon) printed from an original published by Patriarch Joseph of Moscow, as well as its Nikon edition, which also contains a translation of the preamble of the sixth novella. In 1787, Catherine the Great’s publication of Kormchaia followed, under the direct supervision of the Holy Synod. Under Alexander I, Kormchaia was published twice, in 1804 and 1816. Normative acts of the synodal period include: the Regulation or Statute of the Ecclesiastical Collegium of 1721 (which legitimized the abolition of the patriarchate and the establishment of collegial authority of the Synod), the Statutes of the spiritual consistories of 1841 and 1883, Art. 43 BCL (bases of civil law) 1832, Art. 65 BCL 1906, the Charter on the prevention and suppression of crimes of 1845, the Code of Institutions and Charters of the Department of Spiritual Affairs of Foreign Confessions: Christian and other 1857, Decree of April 17, 1905 “On Strengthening the Beginning of



Tolerance” and other normative acts which directly or indirectly pointed to the dominant role of the reigning monarch in determining the order of church life.

2.2. Russian historiography of this issue is quite extensive, represented both by the works of pre-revolutionary and modern scientists – historians, lawyers, and political scientists. Among those who studied the ‘symphony of authorities’, its theory and law enforcement practice in Russia were such famous figures as G.F. Shershnevich (1908), B.N. Chicherin (1882), L.A. Tikhomirov (2004). Famous Byzantinists and lawyers are to be mentioned, such as: D. Azarevich (1877), A. A. Vasiliev, V. M. Gribovsky, Yu.A. Kulakovskiy (2003), A.P. Lebedev (2005), F. I. Uspensky (2013), and N. Popov, Archpriest (1892). Among the scholars who studied this question in relation to the Russian Empire, were Archbishop Seraphim (Sobolev), Archpriest G.V. Florovsky M.V. Zyzykin, I.S. Berdnikov, I.K. Smolich, K.P. Pobedonostsev, V.E. Valdenberg, F.A. Kurganov, I.I. Sokolov N.S. Suvorov. A great deal of effort in understanding the nature of tsarist church relations was undertaken by

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modern scholars such as A.V. Velichko, K.A. Maksimovich, A. Desnitsky, S.B. Sorochan, L. Yu. Kostogryzova, A.A. Dorskaya, E.A. Zhukov. In addition, the works of such foreign authors as D.J. Dunn (2018), N.K. Gvosdev (2001), W.L. Daniel (2019) were used as historiography sources.

2.3. The research methodology is based on rejecting the formation approach in the historical and legal studies of Russian statehood in favor of the civilizational and cultural approach (Nemytina, 2017). This made it possible to take a different look at the concept of its evolution, to see in Russia a single legal space formed by its history, religion and geography, the space that independently existed between the West and the East for a thousand years, and to see in tsarist-church relations the royal dominance worked out by Russian history, which reflected both the ancient legal tradition of imperial power, partially borrowed in the Byzantine Empire, and the experience of autocratic rule in Muscovy and in the Russian Empire.

3. Results

3.1 ‘Symphony of authorities’ as a legal formula. Tsarist-church relations

in Muscovy and in the Russian Empire were regulated taking into account the idea of co-operation of ‘priesthood’ and ‘tsardom’ borrowed from the Byzantine Empire (the 6th novella of Emperor Justinian’s Codex Juris Canonici), expressed in the legal formula established by him, called ‘symphonies of the authorities’. Based on the reception of classical Roman law (Maksimovich, 2007), it was inspired by the Orthodox worldview and the Byzantine experience of imperial statehood. As a result, Roman pagan law acquired a new spiritual content of Christian monotheism which was maximally adapted to its religious truths (Velichko, 2015). The symphony formula was transferred to Russia along with the adoption of Christianity in the 10th century without any preliminary changes and existed as a church legal tradition until the middle of the XVI century. Legal documents that received the status of a council-approved legislative act (which had a written form where the idea of a symphony was reflected) were first the 62nd chapter of Stoglav in 1551, then the 42nd chapter of the Printed Kormchaia Book (“From the scroll of the divine new commandments and others in the divine heritage of Tsar

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Justinian”), called Nikon Kormchaia after Patriarch Nikon, who published it in 1653.

The text of the translation of the formula (made for Stoglav) said: “Equal in greatness, there are two gifts of God in a human being, granted by His boundless love for Men – the Priesthood and the Tsardom. Owing to the Divine, while serving human beings, both have yet one beginning and adorn the human life. Both pray to God for each other, since both are blameless in everything and have boldness to God, and righteously they will begin to adorn the cities faithful to them, and those living by them will exist in harmony, since all of us have faith in the good and the kind. If the observance of the sacred rules, righteously praised and worshipped, is preserved, then the self-seers of God’s Word will become Apostles, and the Holy Fathers will practice and preserve it” (Stoglav, 2011).

The text in the Kormchaia Book (the official edition of the second half of the XVI century) (MD RSL), in the Printed Kormchaia Book (Kormchaia, 2011), and in the lists from earlier (Kormchaia, Book XV) and later times (Copy of the 1st Moscow edition, 1653) does not differ from the translation in



Stoglav. In Stoglav and in the Printed Kormchaia Book, this text acquired the status of a state document of higher legal force emanating from the tsarist legislator, in which the general rules of Tsarist-church relations were presented in the most detailed form, and it was widely used in Russia until the Regulation of Peter the Great in 1721 was created, although the Kormchaia Book continued to be published until 1816.

The Russian translation of the sixth novella made at the beginning of the XX century looks a little different: “The greatest blessings bestowed on people by the highest goodness of God are the priesthood and the tsardom, of which the first takes care of divine affairs, and the second directs and cares for human affairs, and both based on the same source, they adorn the human life. Therefore, nothing lies as much in the hearts of tsars as the honor of the clergy, who for their part serve them, praying to God incessantly for them. If the priesthood will be comfortable in everything and pleasing to God, and the state power will truly govern the state entrusted to it, then there will be complete agreement between them in everything that serves the benefit of the

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human race. Therefore, we make the greatest effort to protect the true dogmas of God and the honor of the priesthood, hoping to receive through this great blessings from God and hold fast those that we have” (The rules, 1911). A similar translation is given by A.V. Kartashev (2008).

There are other, later translations, some of which it is necessary to give below. Comparing several samples of professional translation from both official publications and scientific studies, made in different historical eras and with significant interruptions (for a total period exceeding 450 years), allows better understanding the legal meaning of the sixth novella.

Modern translation from Greek was made at the beginning of the XXI century by K.A. Maksimovich and I.S. Chichurov, who wrote in their commentary that “the language of Byzantine law is rather conditionally correlated with the legal style of the modern Russian language...” and is distinguished by “emphasized rhetoric, full of peculiar speech figures and not alien to puns”. This, along with features of application of the modern scientific apparatus of jurisprudence to the norms and realities of the long-non-existent



Christian state in Byzantium and the autocratic monarchy of the Russian Empire that is a hundred years away from us, noticeably obscures the task of researchers.

The translation of the sixth novella from the article by K.A. Maksimovich in the Bulletin of Saint Tikhon's Orthodox University of Humanities is as follows: “The greatest gifts of God among people given from above because of His love for people are the priesthood and the tsardom. The first serves divine affairs; the second rules and observes human affairs; both come from one beginning and harmoniously equip (κατακοσμοῦσα) human life – and nothing is more important for the reigning ones than the honor of the presbyters who always pray to God for them. For if the first will be perfectly impeccable and be favored by God (παρρησίας), and the second will justly and properly equip (κατακοσμοίη) the state entrusted to them, then there will come some kind consent (συμφωνία τις ἀγαθή) which will provide all the benefits to the human race. Therefore (τοίνυν) we earnestly care both for the dogmas of the divine truth and for the honor of the priests, in the presence and consequence of whom we are sure that

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we will be given great blessings from God – and we will preserve the ones that are already available, and those that we still have not received, we will acquire. But all this can be accomplished in a kind and proper way only if a worthy and pious beginning is laid. And it, we believe, is possible only if the sacred canons are observed, of which the truly glorified and worshiped self-seers and associates of God and the Word are the apostles, and which the holy fathers preserve and interpret” (Maksimovich, 2004, 2007).

For a complete understanding of the original, here are two more options for translating the novella. This is a translation from the work of the Greek scholar-theologian A. Gerostergios and a translation made for the Foundations of the social concept of the Russian Orthodox Church. The former goes: “Lord, in His love for man, gave him two great gifts from above: the priesthood and imperial dignity. The first serves the Divine, the second directs human affairs. However, both of them come from the same source and adorn the life of mankind. Therefore, nothing can be a greater concern of the emperor than the dignity of priests, for it is precisely for the good of the emperor that they

constantly pray to God. If the priests are free from reproaches and their prayers reach God, and the emperors fairly and impartially govern the state entrusted to them, a general harmony arises and every blessing is granted to the human race” (Gerostergios, 2010). The theologian further adds that “this ideal cooperation between the two authorities can only be realized when each of them acts in harmony with God’s Providence: “For everything ends happily where there was a corresponding beginning, agreement with the will of God. We believe that this will be so if the sacred rules of the Church, which are explained to us and preserved for us by the fair, respectable and beloved apostles, who contemplate, carry and serve the word of God, and the holy fathers, are fulfilled” (Gerostergios, 2010).

In the Foundations of the social concept of the Russian Orthodox Church (ROC), we can find the following variant: “The greatest blessings bestowed on people by the highest goodness of God are the priesthood and the tsardom, of which the first (priesthood, church authority) takes care of divine affairs, and the second (tsardom, state power) governs and takes care of human affairs, and both, coming

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from the same source, adorn the of human life. Therefore, nothing lies as much in the hearts of tsars as the honor of the clergy, who for their part serve them, praying to God incessantly for them, and if the priesthood is a complete agreement between them in everything that serves the benefit and good of the human race. Therefore, we make the greatest effort to protect the true dogmas of God and the honor of the priesthood, hoping to receive through this great blessings from God and hold fast those that we have” (Foundations of the social concept of the ROC).

These translations of the preamble to the sixth novella reveal that it consolidates the subjective composition of Tsarist-church relations and gives a general idea of the legal status of each of them. In the first phrase of the novella, Justinian indicates the presence of two subjects of legal relations, the interaction of which is its main semantic content. The first of them he calls the ‘priesthood’, the second the ‘kingdom’; the difficulties with defining and understanding the former usually arise less than the latter. Most researchers agree on a logical interpretation of the concept of kingdom for the purposes of the sixth novella as state law, and, based



on the law enforcement practice established in the Byzantine Empire, express a fair opinion that the emperor is meant here, although it is clear that the earthly 'kingdom' as a gift of God is a much broader concept and the emperor acts as the sole and legal representative of this 'kingdom', personifying it and acting on its behalf according to Christian doctrine by the will of God. It would seem that there should be no doubt about the second subject - the 'priesthood', although the novella does not contain direct indications that the term 'priesthood' necessarily means the patriarch as the primate of the Orthodox Church. However, knowing that it were the patriarchs who led the Byzantine church hierarchy, we can safely assume that the second subject of legal relations in the 'symphony of authorities' was the patriarch. In any case, the political practice of that time did not know another option, although it is obvious that, as in the case of the concept of kingdom, the generalized concept of priesthood applied by the author of the novella is significantly wider in its historical and theological sense than its legal content, defined by general rules of the sixth novella.

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The absence of a direct indication that the patriarch is the second subject of legal relations in the 'symphony of authorities' was perceived by a number of researchers as an opportunity to understand by 'priesthood' not only the primate and/or clergy but also church authority. If we pay attention to the interpretation of this issue in a number of studies on this topic, we understand that the authors, at times, go further and mean the whole Church under the term 'priesthood', although it also consists of lay people. It is difficult to object to this from the point of view of a formal analysis of the sixth novella. In fact, it does not contain a transcript of the concept of priesthood, which leaves a wide field for thinking of this term in accordance with the difference in tastes and tasks. Looking ahead, it can be noted that the compiler of the Spiritual Rules Feofan Prokopovich and Peter the Great seemed to take advantage of the lack of an accurate indication of the understanding of this term, building Tsarist-church relations without the participation of the patriarch, who since 1721 was replaced by a collegiate synodal organ.

Noting the unearthly nature of priesthood and kingdom, Emperor



Justinian describes them as ‘two gifts of God’ received by people from the Almighty, which is closely related to the religious understanding of the legal foundations of Byzantine statehood, rooted in the Old Testament sacred history and New Testament church canons. The novella confirms the unity of the source of power for the kingdom and the priesthood (both having one and the same source, as mentioned in Stoglav) which they both serve, and points to this source of their power as Divine. For the priesthood and kingdom, serving the Divine is in leading people, caring for them, and is based on the Christian doctrine the sacred books of which were the most important source of law for the Byzantines, including the right of the emperor to own the kingdom he received from God, and priesthood duties to spiritually nourish the flock.

In the same part, the novella, judging by this translation, establishes the third subject of legal relations and the object of law enforcement; this third subject is people who are in a state of submission to the first two subjects, and who should be taken care of ("while serving human beings") (Stoglav, 2011). Thus, the object of law enforcement is the relations that arise between two

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subjects of legal relations: the priesthood and tsardom, as well as between them and the royal subjects. Defining the responsibilities of all the three entities, the novella indicates the need to pray for the first two ("Both pray to God for each other") (Zyzykin, 1988). This is done for the sake of preserving their integrity and of decisive striving for God ("since both are blameless in everything and have boldness to God") as well as for adorning the possessions given to them ("and righteously they will begin to adorn the cities faithful to them"). Then, as the author explains, an agreement will be reached between the priesthood and the tsardom, which will serve the benefit of human life ("those living by them will exist in harmony, since all of us have faith in the good and the kind").

Emperor Justinian emphasizes the duty to take care of the priesthood and assigns it to the kingdom (Zyzykin, 1988). In the version by A. Gerostergios, this is the dignity of the priests (Gerostergios, 2011), in the version by K.A. Maksimovich, this is the honor of the presbyters (Maksimovich, 2007), in the version of the ROC, this is the honor of the clergy (Foundations of the social concept of the ROC).

If we compare the translation of the sixth novella in Stoglav and the Kormchaia Book with the ROC translation with the interpretation of Nicodemus, Bishop of Dalmatia-Istra, made in 1911, it is easy to notice the difference in the presentation of the relationship between the priesthood and the tsardom. The first two versions avoid direct reference to the subordination of the priesthood to the tsardom, while the translation made at the beginning of the XX century presents a different approach. One of the phrases there suggests the following: the relationship between the two subjects of law contains an indication not only of their functional difference but also of legal inequality characteristic of public law relations. In the Rules of the Orthodox Church (1911), the emphasis is on the fact that priests serve the tsars and, therefore, are subordinate to them: “Therefore, nothing lies as much in the hearts of tsars as the honor of the clergy, who for their part serve them, praying to God incessantly for them” (The rules, 1911), which differs from the translation of the same phrase in the two earlier sources (“Both pray to God for each other”) (Stoglav, 2011).

The same difference is present in many modern translations different in form but similar in essence. The translation made in the Foundations of the social concept of the Russian Orthodox Church (2000) goes: “Therefore, nothing lies as much on the heart of the kings as the honor of the clergy who, for their part, serve them, praying to God incessantly for them” (Foundations of the social concept of the ROC). K.A. Maksimovich’s version (2008) reads: “nothing is more important for the reigning ones than the honor of the presbyters who always pray to God for them”. The Greek theologian A. Gerostergios (English translation of his book into Russian - 2010) wrote: “nothing can be a greater concern of the emperor than the dignity of priests, for it is precisely for the good of the emperor that they constantly pray to God” (Gerostergios, 2010). An earlier researcher of this issue, V.E. Valdenberg, who published a paper on the subject in 1920-1931, shared this view (Valdenberg, 2008). The exception is M.V. Zyzykin, who made a translation of this phrase in 1930 from Latin, similar to the one found in Stoglav: (“Both pray to God for each other”) (Zyzykin, 1988).

It seems that the difference that can be seen in the 1911 translation compared with Stoglav (1551) and the Kormchaia Book (1653) did not appear by chance. It is fully explained by the law-making and law enforcement practice of the Russian Empire during the synodal period, by the desire to emphasize the subordinate nature of the relationship between the Church and the Supreme Autocratic power, which has a historical and legal foundation dating back to the period of the Byzantine Empire. In fact, the correct conclusion about the subordination of the priesthood to the tsardom which follows from the 1911 text is difficult to distinguish in Stoglav and the Printed Kormchaia Book. Obviously, the complexity of the subject of legal regulation explains the choice of delicate formulations in the description of the very principle of the ‘symphony of authorities’ which Justinian dwelt upon, establishing general legal norms of the sixth novella. It can be seen from the text that the author avoids directly affirming the subordination of the priesthood to the “kingdom” in matters of state building which he understood widely, believing it necessary to establish the emperor’s right to organize church administration, to discuss religious dogmas and to

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participate directly in them, using both the authority of the emperor and the possibility of royal power.

In general, it can be argued that the disposition of the novella (despite the differences in the available translations) is compiled in such way that the legal equality of the two subjects of law (the priesthood, that is, the Church or its primate, and the kingdom represented by the emperor or king) is not testified. The text shows that its author, not directly indicating the nature of church relations subordinate to the emperor, at the same time, builds his novella in such way that the priesthood is not vested with any independent legal authority in state affairs.

3.2. Tsarist-church relations in Muscovy. The idea of close interaction between secular and ecclesiastical authority, borrowed from the Byzantine law, which provided state legal protection for the prevailing faith, was positively received in Ancient Russia (Berdnikov, 1903), and was continued during the period of Muscovy. The power of the protective influence of the supreme state power on church life and its dogmas was demonstrated in 1439. Then the Grand Prince Vasily II the Dark rejected the Union of Florence, deposing



the papal nuncio of Moscow Metropolitan Isidore, who signed it. This step was a turning point both in understanding the role of the Russian sovereign in protecting the dogmas of the Orthodox faith, and in its influence on the organizational side of church life. The firm position of the supreme princely authority contributed to the establishment of autocephaly of the Russian Church, the actual beginning of which was the election of the bishop of Ryazan, Iona, Metropolitan of Kiev and all Rus at the local council, which took place in 1448.

The question of the right of the Grand Prince to control church life in Muscovy had a very definite worldview connected with the spread of the theory ‘Moscow is the Third Rome’ after the fall of the Byzantine Empire. By virtue of its basic idea, the Russian sovereign was given the place of the only monarch in the world, the successor of the Roman Caesars and Byzantine emperors, who had the right and duty to defend the Orthodox faith, to assist the Church in its preservation and organization of its life. Thus, the political and legal tradition of preserving the prevailing faith on the part of the ruling sovereign that was taking place in Ancient Russia was further

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strengthened in the new historical conditions. Moreover, “neither the Church nor the church hierarchy saw any ‘tyranny’ on the part of state authorities in this. The legal side of the case was completely ignored. It never occurred to anyone to use individual cases of state intervention as precedents for building a system of ‘Moscow state churches’ ... More important was that peculiar feature of ancient Russian thinking that allowed melting the Tsar’s duties in relation to the Church into the rule of law” (Smolich, 1996). As the further development of Russian statehood showed, the normative regulation of Tsarist-church relations gradually acquired quite definite legislative forms. The power of the Russian sovereign who adopted the imperial title in 1547 began to extend to decisions of church and state synods. After the Stoglav Synod in 1551, here the most important task was to achieve the necessary balance of interests between the tsarist government and the clergy, the tsars also initiated the local synods which owned the legislative, administrative, judicial and controlling authorities in the Church. Without the approval of the monarchs, the decisions of the local synods had no legal force.



The next step on the path of legislative consolidation of the power of Moscow sovereigns, whose relations with the Church was an integral part, was the Code of 1649, which codified the previous legal acts. The Code continued the legal policy of the *Russkaya Pravda*, adding 19 new articles to the legislation in force at that time. Tsarist-church relations were normalized, including the state protection of the Church from crimes; however, more drastic measures for legislative regulation of these relations were not taken. Subsequently, this led to the fact that the disagreements that arose between Tsar Alexis and Patriarch Nikon (who openly came up with the idea of the priority of spiritual authority over the tsar's) were resolved outside the field of law and resulted in a dispute where pragmatic interests of large landowners from among the boyars (who feared the dominance of church over land ownership) were implicitly present.

3.3. The limits of the rights of the reigning monarch as the Head of the Church in the Russian Empire.

The possibility of considering the legal status of the Russian Emperor as a sacred person, possessing the spiritual title of Head of the Church, drew the

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attention of Catherine II. As the researcher of the history of the Russian Church I.K. Smolich notes, “in a letter to Voltaire she even called herself ‘chef de l’Eglise greque’ [head of the Greek Church (fr.)]”; and Grimm calls her “chef de son Eglise” [the head of her Church (fr.)] (Smolich, 1996). Her son Paul I legitimized this opinion when he introduced into the Act of Succession of 1797 the provision that “Russian Emperors are the Heads of the Church” (The Act, 1830). Since that time, the accession to the Throne of the hereditary Russian autocrat and the subsequent coronation, which later became known in the Fundamental State Laws of the Russian Empire as “sacred crowning and anointing according to the rank of the Orthodox Greek-Russian Church” (Article 57), provided for their simultaneous succession of Rights of the Head of the Church. From this point of view, the right to be called the Head of the Church, as the law precisely defines it, is, in fact, also the hereditary right of the Orthodox Russian autocrat.

The limits of the rights that the monarch, who occupied the Throne had in relation to the management of church life, are established by the Basic Laws of the Russian Empire only in general terms



in a specially designated Chapter Seven 'On Faith'. According to Art. 64, "The Emperor, like the Christian Sovereign, is the supreme protector and guardian of the dogmas of the prevailing faith, and the guardian of law and all holiness in the church". The interlinear for this article gives an explanation of the legislative norm: "In this sense, the Emperor, in the Act on the Heritage of the Throne 1797 of Apr. 5 (17910) is called the Head of the Church" (CCL RE, 1912). The reference of the drafters of the Basic State Laws of the Russian Empire to the Act of Succession of 1797 published by Paul I was justified by the fact that it was the first time at the legislative level to confirm the exclusive state-canonical legal status of the Russian monarch, who possessed secular and church authority at the same time.

At the same time, another question was resolved. The law, therefore, excluded the accession to the throne of the heterodox heir, and explained the difference between Jesus Christ, who, according to the Christian religion, is the Head of the Church of the earthly and heavenly, and the reigning emperor, who, being the Christian sovereign and the Anointed of God, is only named Head of the Church by virtue of the law,

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and, moreover, only in the sense this law established, defining the general limits of the emperor's rights as the Head of the Church to ecclesiastical administration and at the same to providing royal protection for internal church life, and to the monarch's participation in protecting the dogmas of Christian doctrine. At the same time, his power extended not only to the territory of the Russian state but also beyond its borders, covering all the lands where the Orthodox faith was spread. Thus, in Muscovy the universal protective role of the Russian monarch, the successor of the Byzantine Basileus, was understood. As N.S. Suvorov explained in this connection, describing the limits of the emperor's ecclesiastical authority, "Neither the highest bishops of the Christian church, nor the ecumenical synods could be the personification of one church-wide, universally recognized and permanent authority, cherishing the whole church, issuing laws and orders to establish church order in Christianity as a whole and to restore disturbed order" (Suvorov, 1908). In fact, in the Act of Succession, Paul I legally clarified what was still decided by the Stoglav Synod in 1551, which adopted the Byzantine formula of 'symphony of authorities' as the basis of Tsarist-church relations,



which used to belong to the Russian worldview on the state-canonical status of the reigning monarch occupying the Throne of the All-Russian Emperor by virtue of Divine establishment and taking care of the purity of the Orthodox faith and the spiritual life of his subjects "arranging everything for the benefit of the people handed to him for the glory of God, so that he is praised on Judgement Day"(The rite, 1841).

An illustrative example of how the reigning monarch resolved extraordinary issues of church life, using the powers of the Sovereign Emperor and the Head of the Church, is the situation that developed in church-state relations in 1913 in connection with the persecution of monks taken by force from Mount Athos to Russia. It largely reflected the practice of relations between Nicholas II and the Holy Synod of the Russian Orthodox Church. The teaching of the monks of the name of God was related to the dogmatic foundations of the Orthodox faith and affected the established practice of understanding this issue. Despite the fact that the Holy Synod and Nicholas II held different opinions on this issue, the Emperor did not independently, by his authority, refute his Decree of May 18, 1913,

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which condemned these teachings of onomatodoxy (Archbishop Nikon, 2003; Fomin, 2012). This caused discontent among followers of Athos monks since the Tsar refused to consider this issue (Florensky 1998), and among the members of the Holy Synod because the Tsar "sided" with onomatodoxy and belittled the authority of the supreme organ of church-state administration of the Russian Church (SARF) by canceling his trial and ordering for the monks to be placed in the Russian monasteries, and for priesthood to be returned to them.

Regarding this step as the official "Sovereign pressure on church authority in the church case of onomatodoxy," Bishop Prilutsky Vasily (Zelentsov) cited the appeal of the Chief Prosecutor of the Holy Synod, V. Sabler, on April 30, 1914, which states that "His Imperial Majesty on the 15th day of April, in Livadia, was pleased to personally hand over to me a handwritten note of the following content: "On this holiday of Holidays, when the hearts of believers aspire with love for God and for their neighbors, my soul mourns for Athos monks whose joys of sharing the Holy Mysteries and the comfort of being in the temple were taken away. Let us forget



the strife: it is not for us to judge the greatest sanctuary — the Name of God, and thereby to bring the wrath of the Lord to our homeland; the court should be abolished, and all monks, following the example of Metropolitan Flavian, should be placed in monasteries and allowed priesthood”. I have the honor to tell this to the Holy Synod. Chief Prosecutor V. Sabler" (Prilutsky).

The author of the present research believes that the circumstances of this case perfectly emphasize the nature of state law enforcement practice at the beginning of the XX century in relation to the sovereign towards the Church and demonstrate the Byzantine understanding of the distinction of rights and duties between tsarist and spiritual authorities that has survived in the Russian Empire. The emperor, in accordance with applicable law, had the right to intervene in criminal prosecution and legal proceedings, acting under Art. 23 BCL 1906. This article established that “the Emperor possesses the pardon of convicts, commutation of sentences and the general forgiveness of those who have committed criminal acts with the cessation of prosecution against them and their release from court and from punishment, as well as the addition of

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royal penalties and official penalties in general, the granting of favors in special cases, not suitable for the application of general laws, when no interests and civil rights protected by law are violated” (BCL 1906). Based on this right, the Emperor, on the one hand, abolished the trial of Athos monks and appealed to the Chief Prosecutor of the Holy Synod to decide on their future fate related to issues of organizational and church structure. On the other hand, the decision that the Athos monks were deprived of the right to receive the sacrament (Prilutsky), was left to the full discretion Synod, without the Emperor interfering with the issues of Synod’s competence to determine the limits of punishments (church disciplinary punishments) established in accordance with the holy canons. Thus, the balance of interests in the right of the reigning monarch and the authority of the Holy Synod was not violated, and the final solution to such a complex organizational and dogmatic issue remained with the Emperor and Head of the Church Nicholas II.

3.4. The main regulatory documents governing the tsarist-church relations in the synodal period.

Legislative consolidation of the Emperor’s right to administer the



Church, in addition to the already mentioned Kormchaia Book and the Act of Succession of 1797, was found in other fundamental regulatory documents that preceded this act and in those published later, during the XIX-XX centuries. On January 25 (February 5), 1721, the manifesto of Peter I was issued on the establishment of the Ecclesiastical Collegium with an oath for its members (CCL RE) and with the Rules and Regulations which defined the Collegium's tasks and duties of its members, and indicated the circle of subordinate persons and the jurisdiction of the new department: "According to which it knows its duties and those of all the spiritual ranks and of laity, because they are subject to spiritual management, and at the same time it has to act in the administration of its affairs" (CCL RE). A month later, the Ecclesiastical Collegium became known as the Most Holy Governing Synod. According to the famous researcher of the synodal reform P.V. Verkhovsky, by issuing the indicated normative legal acts, "the ancient order of the church structure and administration of the Russian Church by the power of the Metropolitan, and then the Patriarch of All Russia with the Cathedral of Russian Bishops" was

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pushed back to the field of tradition. At the same time, he questions the canonicity of the Spiritual College, and the legal nature of the new organ of the tsarist authority of the Russian monarch requires serious reflection, without which it is impossible to "understand and evaluate the church system established in the last two hundred years and the position of the Orthodox Church in the Russian state"(Verkhovsky, 1916). In this regard, it should be noted that the canonicity of the Synod as a church institution was recognized by the Eastern Patriarchs in response to their notifications by Peter I of its establishment. The Patriarch of Constantinople wrote that "Our dimension, by the grace and power of the All-Holy, Life-giving and All-Commanding Spirit, legitimizes, affirms and proclaims ... the established Synod". The exact same wording on the recognition of the right of the Russian Emperor to establish the Synod is contained in the letters of the Patriarch of Antioch and Jerusalem with the final conclusion that "the Holy Synod gets Apostolic Blessing" (Tsarist and Patriarchal Charter, 1848).

On March 27, 1841 The Charter of the Spiritual Consistories was published



which was "a public place through which, under the direct authority of the diocesan bishop, management and the ecclesiastical court are carried out in the local boundary of the Russian Orthodox Church, called the diocese" (The Orthodox Encyclopedia, 1912). This normative legal act established a number of new provisions relating to Tsarist-church relations. Its text regulated in detail the rights and obligations assigned by the monarch to clergymen and other persons involved in church administration. It also established the order of local church administration and the relationship of the Synod with the Emperor. Art. 2 determined the subordination of the Spiritual Consistory to the Synod, the legal status of which was established as "The Collegium of Government is nothing but a government meeting" (CCL RE, 1912), which was subsequently agreed with the general rule of Art. 43 BCL 1832, as well as Art. 65 BCL 1906: "In the administration of the Church, the Autocratic Power acts through the Most Holy Governing Synod established by it" (CCL RE, 1912).

Texts 6, 7, 8 of general provisions of the Charter indicate that the Byzantine understanding of the 'symphony' of tsarist-church relations as of primarily a

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religious sanction of the state which "is the oldest and most famous system of tsarist-church relations under which spiritual unity with the people is reached" (Pobedonostsev, 1996), and its connection with the canonical sources of law in the synodal period was preserved. Moreover, this relationship took on the form of elaborated legal norms. Art. 6 of the Charter points to both canonical and legislatively established sources of law, the circle of which was determined by the royal legal order: "The foundations of the Diocesan administration and the court are: a) The Law of God proposed in the Holy Scriptures; b.) Canons or Rules of the Holy Apostles, Holy and Local Ecumenical Synods and of Holy Fathers; c) the Spiritual Regulations and the Highest Decrees and Decisions of the Holy Governing Synod; d) Civil Charters" (The Highest Approved Charter).

The 1883 edition of the Charter of the Spiritual Consistories (The Highest Command to the Senate, 1886) did not have significant changes. It also consolidated the established legal practice of relations between the tsarist government and the clergy. At the same time, the legal framework set by the royal legislator did not affect the internal



spiritual life of the church while maintaining its dogmatic independence. Art. 7 and 8 of the general provisions of the Charter established the obligation of the diocesan authorities to supervise the purity of the dogmas of the Orthodox Church, of the confession of the state faith by clergy and laity so that "the Clergy preaches the Word of God in the churches and instructs, at every opportunity, the Orthodox people in Faith and piety, and in obedience to the Authorities" (The Charter of the Spiritual Consistories). In this way, the rule of the 'symphony of authorities' was observed which provided for the Emperor's obligation to "protect the true dogmas of God" with the involvement of the local church leadership.

The law enforcement practice that developed during the synodal period was to a large extent explained by the legislatively established division of competences between the reigning monarch and the Holy Synod, which many researchers hastily assessed as an obstacle to the independent development of church life and regarded it as government interference in the affairs of the Church. However, both earlier and later, in the XIX and early XX centuries, "never once has the law-abiding Russian

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hierarchy, under the control of chief prosecutors and in the rare moments of personal reports to the tsars, tried to break this blockade" (Florovsky, 2009), which once again confirms the idea that the majority of hierarchs, as in the XV-XVII centuries, did not have the task to put the tsarist authority in subjection to spiritual authority, following the formula of 'symphony of authorities'.

The Charter on the Prevention and Suppression of Crimes was published in 1832, and entered into force on January 1, 1835 and "normatively fixed crime prevention as a category" (Ushanov, 2011). In its various editions, it was reprinted four more times, and in 1890 it entered the Code of Statutes on the Prevention and Suppression of Crimes, incorporating all the previous changes. It was based on the laws which operated at different times from end of the XVII – beginning of the XVIII centuries and before the beginning of the XX century. According to Art. 53 BCL 1832, the Charter acquired the force of state law. Church life, in a number of its aspects regarding the participation of lay people, was regulated by the first four chapters of the first section of the Charter. It contained the rules of entry into the church (CCL RE, 1912), the behavior of



the laity during the service (CCL RE, 1912), and upon arrival of the Members of the Imperial Family at the service (CCL RE, 1912).

A separate article, repeatedly updated since the beginning of the XIX century (which testified to the increased attention of the legislator to the norms included in it), regulated the procedure for reporting violations of worship and church life established by the Charter. This article instructed to “rigorously inform” the Holy Synod and the Chief Prosecutor of the incidents in the churches. In turn, the Chief Prosecutor, in accordance with the requirements of this article, compiled statements on the basis of reports received, which were regularly, once every four months, submitted to the Tsar “at the Highest Discretion”. More important reports of incidents in the churches had a different order of presentation.

Thus, from the consideration of the legislative acts valid in XIX - beginning of XX centuries it is clear that the regulation of church life had the nature of not only "supreme supervision of church life by the state" and at the same time local, direct "church supervision", as N. S. Suvorov writes about this. Until 1906, even the order of organizing

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church sacraments such as confession was determined in detail, which had the character of excessive legal regulation on the verge of interference if not into the essence of the church sacrament but into the preparation for it, which violated the free will of the Christian to live in the Church. The law replaced the clergy, whose direct duty was to cultivate an independent desire among believers to perform church ordinances.

Until 1906, the second chapter of the Charter, called "On Preventing and Suppressing Evasion of the Execution of Orthodox Church Rules," began with Articles 18-23 which established special measures for the “prevention and suppression of evasion from confession and Holy Communion”. With the adoption of the Decree of April 17, 1905, “On Strengthening the Principles of Tolerance,” the state of affairs changed, and the regulation of the relationship of believers to church ordinances was abolished and left entirely to their discretion (CCL RE, 1912).

The trend towards legal consolidation of the right to choose a religion and freedom of conversion to another religion is also clearly visible from the norms of the second section of this chapter, which established a ban on



the forcible resettlement of newly baptized and people of other confessions to other places of residence if there were disputes between them regarding land tenure and worship (CCL RE, 1912). In Art. 66 of the BCL of 1906, the legislator allowed all citizens of the Russian State and foreigners to use “the universally free administration of their faith and worship according to the rites” (CCL RE, 1912), and Art. 81 of 1906 indicated that Russian subjects enjoyed freedom of faith, the conditions of which were determined by law (CCL RE, 1912). Moreover, relations between the specially protected Orthodox religion and other faiths were regulated taking into account Art. 68 and Art. 4 of 1906, as well as the provisions of the "Code of Institutions and Charters of the Department of Spiritual Affairs of Foreign Confessions: Christian and Gentiles": "Within the state, one dominant Orthodox Church has the right to convince followers of other Christian confessions and Gentiles to accept its teaching on faith" (The Code of Institutions, 1857). Violation of the established rule entailed criminal prosecution (The Code of Institutions, 1857).

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Due to the importance of issues related to the protection of religious truths, the legislative regulation of the confessional differences of the Christian religion was also under the direct supervision of the reigning Emperor. This can be judged by documents containing instructions to the Highest Orders on sending petitions of the Old Believers on instances to receive answers to these petitions (Note by the Old Believers, 1832), the submitters of which addressed the Russian autocrat (in the framework of the provisions of the BCL of 1832, and then 1906 (CCL RE, 1912) as a patron "in the Fatherland of the Eastern Catholic Apostolic Orthodoxy" (Note by the Old Believers, 1867). At the same time, questions related to the dogmatic foundations of the Christian religion were brought to a collegiate church discussion and received legal force only after the adoption of the Highest Resolution of the Emperor. A positive decision on the petition was taken only if the requests contained in it could be resolved in accordance with the Orthodox dogma.

4. Discussion

4.1. Differences of opinion regarding the ‘symphony of



authorities?. There are several main positions that researchers of tsarist-church relations hold, all of them preceding either from substantiating the priority of one of their subjects and their subordinate position in relation to it of another subject, or from asserting their equality. The arguments of one group of authors boil down to the fact that the priesthood which directly carries out the task of saving human souls clearly dominates, and the tsardom, as a derivative material institution of secular authority, which should ensure the fulfillment of this task, is obliged to obey the priesthood. Another group of researchers has the opposite opinion, and its followers are convinced that the tsardom is higher than the priesthood. This is the most important division on the one side of which scholars who prefer the tsardom to the priesthood are grouped, and on the other side there are those who realize that the monarch occupying the hereditary throne is the Head of the Church and plays a leading role in the regulation of tsarist-church relations due to his inherent exceptional state-canonical legal status of the reigning crowned sovereign. There is a third group of authors which prefer to focus not on theoretical considerations

but on the practical legal relations. Its adherents proceed from the fact that “It cannot be said that the Byzantine symphonic model of relations between the Church and the state was ideal or was strictly observed in practice, yet it was built on clear principles, deviations from which were perceived extremely negatively” (Desnitsky, 2000). There are those convinced that the concept of tsarist power generally cannot be described in terms of law, and refers to an exclusively religious concept, as P. Florensky wrote. M.V. Zyzykin believed there is an insurmountable difference between the royal and secular authorities which may belong to the uncrowned monarch or to any other person. Unable to cover the entire diverse palette of views on tsarist-church relations, the author of the present research singles out the most characteristic works of those authors that reflect the opinion of most of their associates.

4.2. Apologetics of the priority of the clergy. The preferences that many authors give to the priesthood over the tsardom are based on their understanding of the Byzantine historical and legal experience. In this regard, we should mention the famous Russian scientist A.A. Vasiliev (1867-1953). In his



opinion, the rule of Justinian, the ancestor of the ‘symphony’, was not at all a collaboration of two types of authorities. A.A. Vasiliev saw the dictator in Justinian, and called his rule of the empire ‘Caesarepapism’ (Vasiliev, 1998). Foreign scientists, such as J. Dragon, D. Geanakoplos, H.-G., Beck, S. Runciman, D. Hussey held similar views; the same opinion was shared by G.A. Ostrogorsky, but contradicted by J. Meyendorff, V.V. Zenkovsky and E.I. Smirnov. The opinion of the supreme power of the Byzantine Basuleus as a manifestation of Caesarepapism is also expressed by the modern Ukrainian scientist S. B. Sorochan. Referring to the VI-century church historian Zacharias Rhetor, who wrote: “The loving king should not only subjugate enemies and barbaric peoples but also neutralize the traps of spiritual enemies and direct the light of true faith to the Orthodox people”, Sorochan concludes that "This was the idea of Caesarepapism – the idea of a theocratic monarchy" (Sorochan, 2011). Clarifying his conclusion, he notes that “the Christian kings in Byzantium were the successors of pagan Roman emperors. Constantine the Great and his successors up to Theodosius I at the end of the IV century retained the

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title of great pontiff, that is, a religious Head. Finally, Christianity itself in the lines of the Holy Scriptures spoke of the divine origin of state power: “There is no power not from God, the existing authorities are established from God. Therefore, one who opposes authority opposes God's institution” (Rome 13: 1, 2). This helped the Byzantine emperors to gradually concentrate in their hands those functions that belonged to representatives of the Church” (Sorochan, 2011). L.Yu. Kostogryzova writes about a clear demarcation of the sphere of authority between the tsardom and the priesthood. She emphasizes that the tradition started by Justinian of normative regulation of royal-church relations was continued. Its completion and ‘decorative design’ were done by the emperors Vasily I (867-886) and Leo VI the Wise (886-912), the authors of the last officially published collections of laws (Isagoge and Basilika), in which the spheres of secular and of church authority were divided, the competence of the emperor and of the patriarch was established, and the contours of the relations between these authorities were clearly outlined, based on the concept of a symphony (Kostogryzova, 2007).



According to Archbishop Seraphim (Sobolev), who belongs to those authors who consider the synodal period a violation of the ‘symphony of authorities’, its idea came to Russia through the Nomocanon of *John Scholasticus*, “where, according to his teaching, the relations between the great Moscow princes and tsars were normalized, right down to Alexei Mikhailovich who began its violation to the death of Russia” (Sobolev, 2002), that is, the dominance of tsarist power over the Church in Muscovy until the reign of its last autocrat was not discussed. The famous Russian theologian and canonist E.V. Berdnikov (1839-1915) advocated the restoration of the patriarchate in Russia and, thus, bringing the ‘symphony of power’ to its original position. Exploring state-church relations in Byzantium, he pointed to the role of the emperor as a legislator, since without his participation church provisions could not enter into force, and noted that they became civil law only after they were approved by the ruling monarchs (Berdnikov, 1902), who themselves “issued many laws on church affairs” (Berdnikov, 1903).

4.3. Recognition of the right of the monarch to the regulation of

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tsarist-church relations and the separation of the legal functions of the sovereign and the clergy. This position was held by many famous scientists starting from the middle of the XIX century. According to T.V. Barsov (1836-1904), a researcher in tsarist-church relations who was awarded the degree of Doctor of Canon Law in 1888 for his study “On the Canonical Element in Church Administration”, and since 1889 the title of Honored Extraordinary Professor of the St. Petersburg Academy of Arts, the idea of the symphony boiled down to that “only such state interference in the affairs of the Church which encroaches on faith itself is forbidden” (The Orthodox Encyclopedia). I.I. Sokolov gave a detailed explanation of the theory of ‘symphony of power’ at the beginning of the XX century. He showed the dominant role of the monarch in the regulation of tsarist-church relations, substantiating this argument with the fact that “the tsar is the legislator, the supreme ruler and judge of the people. The ultimate purpose of the tsar is to do good, therefore the tsar is called the benefactor (εὐεργέτης); the very nature of royal power is perverted when the tsar is weakened in doing good deeds. In



relation to the Church, the tsar is the guardian of piety and law, the exact performer and patron of church dogmas and canons; he must be distinguished among all by zeal for God (Sokolov, 1903). Russian Orthodox theologian and historian of the Church F.A. Kurganov (1844-1920), like his pupil I.I. Sokolov (1865-1939), completely rejected the idea of Caesarepapism in relation to Byzantine state practice. Church historian and Byzantinist N.A. Skabalanovich (1848-1918), Professor of the Department of the New Common Civil History of Saint Petersburg Theological Academy, Doctor of Theology and editor of 'Church Herald', noted that the separation of functions of the authorities did not impede the right of clergy to participate in many matters related to the implementation of internal and foreign policy of the Byzantine state (Skabalanovich, 2010).

The idea that the Byzantine legal heritage had a noticeable influence on the development of Russian statehood in general and on tsarist-church relations in particular was shared by researchers of the XIX and early XX centuries with various nuances. This was discussed, for example, by V. Sokolsky, A.N. Filippov (1907), N.S. Suvorov (1908), P.A.

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Lashkarev (1873), and N.A. Zaozersky (1891). V. Sokolsky, for instance, considered the "Sovereigns of Moscow as deputies of the Orthodox Byzantine kings" (Sokolsky, 1902).

The most definite supporter of the tsar's dominance in matters of legal regulation of tsarist-church relations is the contemporary author E.A. Zhukov. In his study 'Priesthood and Tsardom', relying on the argument regarding God's establishment of the supreme autocratic authority, he writes that it is Holy Scripture that gives every reason to affirm the priority of royal authority over spiritual authority (Zhukov, 2011). Without diminishing the need to bring into study the interaction of the tsardom and the priesthood of the books of the Old and New Testaments and patristic literature in clarifying the dominance of imperial authority over spiritual authority, one should obviously turn to the study of the connection between canonical and legal norms, as indicated by A.A. Dorskaya in her monograph "The Influence of Church Law on the Development of Branches of Russian Law" (Dorskaya, 2007). She believes that the 'symphony of authorities' retained its influence not only during the period of Muscovy but also during the St.



Petersburg period of the Russian monarchy. She rightly notes that the system of interaction between the Church and the state, based on the ‘symphony of authorities, did not disappear in Russia by the XVIII century. On the contrary, it finally established itself (Dorskaya, 2008), and its elimination would lead to the destruction of the religious support of the Russian state’’, as Church historian S.A. Firsov (1996) adds.

5. Conclusion

It would be a mistake to believe that the ‘symphony of authorities’ brought out by the Byzantine emperor is some kind of ideal tsarist-church relations based on the absolute equality of their two subjects – the tsardom and the priesthood. Even a brief legal analysis of the Justinian formula (containing a hidden imperative norm indicating the dominance of the ruling sovereign in regulating his relations with the Church) does not allow such conclusion. Moreover, such conclusion would not be justified for Russia during the period of Muscovy and the Russian Empire. Russian autocrats always played a leading role in organizing church life, participated in its dogmatic debates and

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defended the Orthodox faith and its purity by means of state regulation, and, if necessary, by methods of state coercion. It is scientifically unproductive to discuss the dominance of the tsardom over the priesthood or vice versa, or to assess the role of autocratic power from the Catholic point of view of the Church and the state, thus making the conclusion about the Caesarepism of the Russian sovereigns. The numerous legal competences of two subjects of the tsarist-church legal relations in the Russian Empire were strictly measured by law, despite the fact that the unlimited legal nature of the tsarist government as one of the most important principles of its organization affected the practice of regulating church life some cases both in a positive and in a negative sense. Another thing is that history always has room for exceptions that do not define a general rule and therefore do not make it possible to take individual cases as the norm. This understandable consideration relates, for example, to the widespread misconception that the Russian clergy for the most part sought some kind of complete freedom from the sovereignty of the tsarist autocracy, including by gaining power over it like the papal one. On the same basis, the synodal period of



the Russian Empire is often evaluated as a negative phenomenon, as the time of derogation of canonical legality by means of state pressure, although there are no legal grounds for this conclusion. From the point of view of law, there are no violations in the change of patriarchal rule to the church-collegiate rule and in the further introduction of the reigning autocrat as the Head of the Church into the current legislation. Legally and canonically, this step arose from a special decision of the Patriarchs of Constantinople and Antioch, although disputes about this have not subsided to this day. Dissatisfaction of some clergy, mainly in the early XX century, with the rules of the synodal period was caused by relations established by law between the ruling monarch and the clergy; this law provided for their implementation through the Holy Synod acting as the tsar's organ of supreme autocratic power with special powers in relation to church activity.

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