

# *Legal Status of Mount Athos and Modern Challenges*

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**Abstract:** Holy Mountain Athos has a unique legal status, with self-government of twenty monasteries between which the entire Athos peninsula is divided, the state sovereignty of Greece over this territory and the canonical submission to the Constantinople Patriarchate. Such "trilateral" subordination leads to the fact that, on the one hand, the European Union, of which Greece is a member, is trying to encroach upon the unshakable thousand-year avaton rule. On the other hand, the anti-canonical actions of Patriarch Bartholomew led to the fact that the Russian Orthodox Church was forced to stop the Eucharistic communion with the Patriarchate of Constantinople, to which the monasteries of Athos are canonically subordinated, including the Russian St. Panteleimon Monastery. Moreover, the actions of Patriarch Bartholomew are not related to internal church issues, but are the result of the policy pursued by Western states in Ukraine. The position of Athos, as the chief custodian of the purity of the Orthodox faith, was in the center of attention of the international community, since it was supposed, as it seemed, to separate politics from faith, and to set things straight. This would help to stop the mass persecution of Orthodox Christians in Ukraine, which is comparable to the persecution of faith in the Soviet Union. However, at the moment, Athos found itself in a "political crisis".

## 1. Introduction

In the Orthodox tradition the Holy Mountain Athos is considered the earthly lot of the Blessed Virgin Mary. This is a unique center of Orthodox Christianity, where spiritual traditions and values have been carefully preserved and multiplied for more than a thousand years.

From a political and geographical point of view, Mount Athos is a peninsula in northeastern Greece washed by the Aegean Sea.

In the VII-IX centuries Athos became an exclusively monastic place. In 680, Athos was placed at the disposal of the monks by the Byzantine emperor [1] and was directly subordinated to the emperors until the XIV century, "until ... Andronicus the Elder refused from the direct control of Athos and submitted it to the power of the Patriarch of Constantinople" [2]. Thus, from the point of view of international law, Athos is a territory within Greece which is self-governing on the basis of

its own Charter of 1924. The Charter, in turn, rests on the bull of the Byzantine emperor Constantine Pogonat, who transferred Athos to the eternal property to the monks-inhabitants in 676 [3].

The Russian Empire played an important role in preserving monastic life on Athos and its status. As for the foreign policy of the Russian Empire, the interests of all Orthodox Christians have always been a priority. Russia has repeatedly defended them in relations with Turkey. At the same time, as the researchers note, “paradoxically, having achieved some success due to the huge bloody losses in wars, Turkey immediately lost its political influence on the liberated Slavic and Greek lands” [2]. Thus, preservation of the monasteries of Athos in the XIX century became possible only thanks to the patronage of the Russian Emperor Alexander I: “In 1821, during the uprising of the Greeks, Turkish troops entered Athos and occupied the monasteries; a large contribution was taken, some monasteries were robbed and plundered; monks were partly dispersed, and partly put to death. Sultan Mahmud wanted to demolish the monasteries, but spared only at the request of Emperor Alexander I, who insisted on saving them. After that, Athos began to be replenished by monks only after the conclusion of peace between the Russians and the Turks in Adrianople in 1829. If it were not for the intercession of the great Russia, there could be no talk of any Athos monasteries as the most valuable cultural heritage of all Europe” [2].

In 1878, the Berlin Treaty, which finally ended the Russian-Turkish war, “guaranteed the rights of all the monastic communities of the Holy Mountain Athos, which for the first time received international approval of their privileges” (Article 62) [2]. “This legal provision was maintained even after the Bolshevik coup, when Russia was in no way able to conduct active foreign policy. Under the Treaty of Sevres of 1920, the obligations “to recognize and protect the traditional rights and freedoms enjoyed by non-Greek monastic communities of Mount Athos, according to the provisions of the Berlin Treaty” were imposed on Greece. The reason for this was the annexation of Athos peninsula by the Greeks proclaimed in Royal decree of November 2, 1912, which was reflected in the Bucharest peace treaty of 1913. It turns out that on the eve of the world war of 1914-18, during which the allies carried out mobilization twice on Mount Athos, taking the entire younger generation of novices to the Thessaloniki front, a monopoly was established over the non-Greek communities on Mount Athos by the Greek government. Until 1926, the same historical conditions were preserved, when suddenly, regardless of international treaties and obligations, the Greek government issued a law of September 10, 1926 “On the approval of the Charter of the Holy Mountain”, declaring Athos Greek territory, and since then access thereto has been completely limited to all monks who are not Greeks [2]. The sovereignty of Athos was reflected in the Treaty of Lausanne of 1923, and since 1926 the peninsula has become a part of Greece [4].

In the modern period, the monastic republic of the Holy Mountain is a self-governing community, consisting of 20 Orthodox monasteries, and is based on the provisions of the first Charter of the Holy Mountain of Athos (“Tragos”) [4]. As noted by the modern writer S.L. Senkin, Athos reminds of a “small country with monastic cities, hermit villages and small farm yards of lonely cells” [5].

## **2. The Legal Status of Mount Athos under Greek Law and the “Avaton” Rule**

Currently, the special legal status of this territory is set forth in the art. 105, part of Chapter 3. “Regime of Mount Athos”, Section E of Part III of the 1975 Constitution of Greece, which includes the following provisions:

“1. The Athos peninsula extending beyond Megali Vigla and constituting the region of Aghion Oros shall, in accordance with its ancient privileged status, be a self-governed part of the Greek State, whose sovereignty thereon shall remain intact. Spiritually, Aghion Oros shall come under the

direct jurisdiction of the Ecumenical Patriarchate. All persons leading a monastic life thereon acquire Greek citizenship without further formalities, upon admission as novices or monks.

2. Aghion Oros shall be governed, according to its regime, by its twenty Holy Monasteries among which the entire Athos peninsula is divided; the territory of the peninsula shall be exempt from expropriation.

The administration of Aghion Oros shall be exercised by representatives of the Holy Monasteries constituting the Holy Community. No change whatsoever shall be permitted in the administrative system or in the number of Monasteries of Aghion Oros, or in their hierarchical order or in their position to their subordinate dependencies. Heterodox or schismatic persons shall be prohibited from dwelling thereon.

3. The determination in detail of the regimes of the Aghion Oros entities and the manner of operation thereof is effected by the Charter of Aghion Oros which, with the cooperation of the State representative, shall be drawn up and voted by the twenty Holy Monasteries and ratified by the Ecumenical Patriarchate and the Parliament of the Hellenes.

4. Faithful observance of the regimes of the Aghion Oros entities shall in the spiritual field be under the supreme supervision of the Ecumenical Patriarchate, and, in the administrative, under the supervision of the State, which shall also be exclusively responsible for safeguarding public order and security.

5. The afore-mentioned powers of the State shall be exercised through a governor whose rights and duties shall be determined by law.

The law shall likewise determine the judicial power exercised by the monastic authorities and the Holy Community, as well as the customs and taxation privileges of Aghion Oros” [6].

When Greece joined the EU, the special regime of Athos was guaranteed by a joint Declaration, which is attached to the final act of the agreement on Greece’s accession to the EU. Respect for this special regime has been confirmed by general statements made in the Schengen Agreement and the Amsterdam Treaty [7].

A special condition of the Athos regime is a ban on the admission of women (the principle of avaton), which is extended even to animals. Basically, this prohibition is connected with the covenant of the Virgin and the maintenance of the exclusively monastic way of life of the peninsula, where all the monasteries are for men: “According to the covenant of the Mother of God, no woman other than Her can set foot on the land of Athos”. Officially, the tradition to prevent women from entering the territory of Mount Athos was established in 1045 by the decree of the Byzantine emperor Constantine IX Monomakh.

The ban on women’s presence on Mount Athos has existed even after the fall of Constantinople. Turkish sultans affirmed the right of the Athonites to live in accordance with their ancient principles. In the modern era, the special status of Athos was secured by a decree of the Greek President of 1953. Thereunder, a woman who deliberately violated the ancient tradition and got into Athos can be imprisoned for a term of two to twelve months [see in details: 8].

This prohibition has recently been criticized from a position of alleged protection of human rights, which sees the avaton as discrimination. Thus, already in the 90s, some MEPs demanded to open Athos for women. The motive was to ensure equality for women. The initiatives were supported by the Finnish and Swedish Foreign Ministries. It was noted that the avaton rule contradicts the law of the EU, which largely takes precedence over the national legislation of the Member States of the Union.

In 2001, the European Parliament adopted a resolution on the situation concerning basic rights in the European Union. Clause 98 of the resolution is devoted to Athos and calls for “the lifting of the ban on women entering Mount Athos in Greece, where women's access is prohibited in accordance with a decision taken in 1045 by monks living in the twenty monasteries in the area, a decision

which nowadays violates the universally recognized principle of gender equality, Community non-discrimination and equality legislation and the provisions relating to free movement of persons within the EU". The resolution was not binding, but reflected the mindset of the majority of members of the highest legislative body of the EU.

Requests of the MEPs, who criticized the special status of Athos, continued. For example, in 2001, an Italian representative of the Social Democratic party of the European Parliament, Gianni Vattimo indicated that Athos was included in the list of UNESCO World Heritage Sites and received financial assistance from the EU for the restoration of ancient monuments. "Cultural sites should be accessible to all", the member continued, "nevertheless, women do not have access to them on Athos". A similar request was sent in 2004 by a Social Democrat, Maria Rojo, a MEP from Spain.

In 2003, a Dutch court upheld a private lawsuit and declared Greece's law, which approves the avaton, to be "contrary to human rights". The Greek government reacted negatively, citing the reservation on the special regime of Athos in the agreement on Greece's accession to the EU. Nevertheless, according to the practice of the EU, the issue of the alleged unlawfulness of the avaton could be referred to the European Court of Human Rights in Strasbourg, whose verdicts are in principle obligatory for execution by the EU member states. This possibility exists to this day.

The European Commission and other executive bodies of the European Union do not officially challenge the avaton. However, there is a tendency to open Athos for tourists as widely as possible. There is a certain pressure on the Sacred Council, as an authority of the Holy Mountain, and on individual monasteries. Allocation of assistance from the EU budget for road construction, modernization of infrastructure and reconstruction of monasteries is linked to the reception of an increasing number of tourists, without distinction between their faith and intentions. Some European officials would like to turn Athos into a tourist zone that is accessible to almost everyone, though only to men for now [3].

Under these conditions, it is worth emphasizing once again that the status of Mount Athos is set forth in international legal acts and national laws of Greece, including the Constitution. This legal status has been under formation for more than 1000 years, and today it is unshakable. Attempts to change it violently are not legal and must be stopped.

### **3. Mount Athos and Persecution of the Russian Orthodox Church in Ukraine**

The anti-canonical intervention of Patriarch Bartholomew of Constantinople in the affairs of the Ukrainian Orthodox Church of the Moscow Patriarchate threatened the inner church world of the One, Holy, Catholic and Apostolic Church, and also led to mass persecution of Orthodox Christians in Ukraine by the government.

On April 17, 2018, in violation of Art. 35 of the Constitution of Ukraine, which, in particular, states that "the Church and religious organizations in Ukraine are separated from the state" President of Ukraine P. Poroshenko announced his intention to appeal to Patriarch Bartholomew to grant autocephaly to the "united local Orthodox church in Ukraine", and also urged the Verkhovna Rada to adopt such appeal to Patriarch Bartholomew. On April 19, 2018, the Ukrainian parliament adopted the corresponding appeal to the Patriarch of Constantinople. It should be noted that the appeal contained a request to provide autocephaly to Ukraine [9], that is, the state, and not to the Church, which in itself testifies to the political nature of this appeal. With these actions, Ukraine has blatantly violated its international human rights obligations concerning the freedom of conscience, thought and religion, as well as the prohibition discrimination, here against Orthodox Christians.

It is also important to clarify that the Ukrainian Orthodox Church of the Moscow Patriarchate - the only canonical Church in Ukraine - did not apply for autocephaly. The request was about the

provision of “autocephaly” to dissenters who are outside of the church fellowship. Despite the fact that on August 31, 2018, the Patriarch of Moscow and All Russia Kirill personally conveyed to the Patriarch Bartholomew the deep concern of the Russian Orthodox Church on the erroneous and distorted perception of the Constantinople Church about what was happening in Ukraine, a week after the meeting, the Constantinople Patriarchate published an anti-canonical decision about appointment of its “Exarchs” to Kiev [10].

These actions led first to the suspension of the prayer commemoration of the Patriarch of Constantinople Bartholomew during worship and co-service with the hierarchs of the Patriarchate of Constantinople, and of the participation of the Russian Orthodox Church in the Episcopal assemblies, as well as in theological dialogues, multilateral commissions and all other structures in which the representatives of the Patriarchate of Constantinople preside or co-chair [10]. Then, it led to an end of the Eucharistic communion with the Patriarchate of Constantinople [11].

The Statement of the Holy Synod of the Russian Orthodox Church of October 15, 2018, in particular, goes as follows: “To admit into communion schismatics and a person anathematized in other Local Church with all the ‘bishops’ and ‘clergy’ consecrated by him, the encroachment on somebody else’s canonical regions, the attempt to abandon its own historical decisions and commitments – all this leads the Patriarchate of Constantinople beyond the canonical space and, to our great grief, makes it impossible for us to continue the Eucharistic community with its hierarchy, clergy and laity. From now on until the Patriarchate of Constantinople’s rejection of its anti-canonical decisions, it is impossible for all the clergy of the Russian Orthodox Church to concelebrate with the clergy of the Church of Constantinople and for the laity to participate in sacraments administered in its churches”. This means that members of the Russian Orthodox Church cannot participate in the sacraments performed in the monasteries of Athos, including in the Russian St. Panteleimon Monastery.

On December 15, 2018, a council was held in Kiev, at which the state authorities of Ukraine, with the support of the Constantinople Patriarchate, established a “church” independent of the Moscow Patriarchate and uniting representatives of schismatics. On January 6, 2019, the Patriarch of Constantinople handed tomos about autocephaly to the head of the new “church”. To date, none of the local Orthodox churches, except for Constantinople, recognized this “church” and did not declare their intention to send a delegation to the enthronement of its leader, but at the same time, none of them interrupted Eucharistic communication with the Constantinople Patriarchate.

In this situation, everyone was waiting for the official position of Mount Athos, which has always tried to defend the purity of Orthodoxy. It was necessary to give an answer to the canonical question about the possibility of continuing church communion with the Patriarchate of Constantinople, who had deviated into schism. As stated in the Statement of the Holy Synod of the Russian Orthodox Church of October 15, 2018, “Entering into communion with those who deviated into schism and the more so with those who are excommunicated from the Church is tantamount to deviation into schism and is severely condemned by the canons of the Holy Church: “If any one of the bishops, presbyters, or deacons, or any one in the Canon shall be found communicating with excommunicated persons, let him also be excommunicated as one who brings confusion on the order of the Church” (Council of Antioch Canon 2; Apostolic Canons 10, 11)”.

On January 28, the Holy Kinot of Athos - the congregational authority of the Holy Mountain Athos - decided not to send a delegation to Kiev and not to send greetings to the head of the new “church”, and to continue to refrain from supporting the parties to the church conflict in Ukraine.

In February 2019, two more Holy Kinot meetings were held behind closed doors. The decisions of the Kinot were not officially published. At the moment, it is known that several monasteries did not let the delegation of the new “church” of Ukraine onto their territory, having closed their doors. Some monasteries received a delegation, and in one of them representatives of the delegation

participated in a joint divine service. It is also known that the Holy Kinot retained spiritual unity with the Patriarchate of Constantinople, without deciding to break the Eucharistic communion.

As the well-known Russian canonist and church historian Archpriest Vladislav Tsyplin writes, “the severity of the experienced crisis is comparable to the most tragic events in the history of the Church: the backslide of the Roman throne from Orthodoxy, the adoption of the Union of Florence by the Patriarchate of Constantinople in 1439” [9]. And these tragic events directly affect Mount Athos, since it is under the jurisdiction of the Patriarchate of Constantinople.

From the point of view of church canons, Athos could have come out from under the jurisdiction of the Patriarchate of Constantinople, which had deviated into schism. And such decision would be correct, since, as St. John Chrysostom writes, “nothing so provokes God’s anger as the division of the Church. Though we have achieved ten thousand glorious acts, yet shall we, if we cut to pieces the fullness of the Church, suffer punishment no less sore than they who mangled His body” (Conversation XI, interpretation on Eph. 4:4-7) [12]. It seems that such position of Athos could help - if not stop, then, at least, weaken the persecution of Orthodox Christians in Ukraine.

#### 4. Conclusions

In conclusion, it is important to note that Western states, primarily the United States, are actively trying to draw the Church into their political provocations, which, of course, is unacceptable in the 21st century - the century of the protection of human rights and freedoms. Of particular concern is the fact that the above states ignored mass violations of human rights of Orthodox Christians in Ukraine, which resulted from their political provocations. The mass persecution of Orthodox Christians, as well as the facts of pressure on the Orthodox Church, including Mount Athos, are a violation of the basic principle of international law - respect for human rights and freedoms, and should be subject to international proceedings.

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#### References

- [1] Lisovoy, N.N. *Athos and Russia: patristic covenant, national myth or challenge of the age?* URL: <http://fund-panteleimon.ru/library/history-monastery/afon-i-rossiya-svyatootecheskij-zavet-natsionalnyj-mif-ili-vyzov-epokhi>.
- [2] Ulianov, A.G. *1700-year-old fate of the main Russian shrine on the Holy Mountain Athos of St. Panteleimon Monastery.* URL: <http://fund-panteleimon.ru/library/shrines/1700-letnyaya-sudba-glavnoj-svyatyni-russkogo-na-svyatoj-gore-afon-svyato-panteleimonova-monastyrya>.
- [3] Zinkovsky, O. *The status of Athos and the possible threats thereto in the modern world.* URL: <http://www.pravoslavie.ru/47653.html>.
- [4] *General information on Athos.* URL: <http://www.grekomania.ru/athos>.
- [5] Senkin, S.L. *Amazing stories about life and wonders on Mount Athos.* Elets, 2015.
- [6] *Constitutions of the foreign states: textbook. 2nd ed., revised and extended / Content by: V.V. Maklakov. M.: BEK, 1999.* URL: <http://textbook.news/pravo-zarubejnyih-konstitutsionnoe/status-gorvi-afon-95706.html>.
- [7] Amanatidis, I. (2016) *The peoples of Greece and Russia are closely tied with the history, RIA “Novosti”, 20.02.2016.* URL: <https://ria.ru/interview/20160220/1377696386.html>.
- [8] Shlenov., D., Hegumen. (2016) *The concept of “Avaton” (ἄβατον) in Christian literature and Byzantine monastic tradition. The theological bulletin, 22-23, 3-4, 266 -299.*

- [9] Tsybin, V., Archpriest. *“Let not the arrogance of the temporal authority creep into the Church”*. Canonical and ecclesiological evaluation of the actions of the Patriarchate of Constantinople. URL: <http://www.pravoslavie.ru/115957.html>
- [10] *Statement of the Holy Synod of the Russian Orthodox Church in connection with the illegal invasion of the Constantinople Patriarchate into the canonical territory of the Russian Orthodox Church* adopted at the extraordinary meeting of the Holy Synod of the Russian Orthodox Church on September 14, 2018 (Journal No. 69). URL: <http://www.patriarchia.ru/db/text/5268260.html>
- [11] *Statement of the Holy Synod of the Russian Orthodox Church in connection with the encroachment of the Patriarchate of Constantinople upon the canonical territory of the Russian Church* adopted at the meeting of the Holy Synod of the Russian Orthodox Church on October 15, 2018 in Minsk (Journal NO. 71) / URL: <http://www.patriarchia.ru/db/text/5283708.html>
- [12] *Works of our Holy Father John Chrysostom, Archbishop of Constantinople (2005), in Russian translation. V. 11. Holy Dormition Pochayiv Lavra, 2005.*