Summary and main points of the Legal Document presented by the Professor of Canon Law, Dr. Anastasios Vavouskos.

Topic: Regarding the requests of clergymen of the Patriarchate of Alexandria to come under the canonical jurisdiction of the Patriarchate of Moscow.

Background

According to the News Item of 29/12/2021 of the Department of External Church Relations of the Patriarchate of Moscow that was uploaded on its official site (see https://mospat.ru/gr/news/88740/), but also related extended articles published on the electronic media, from the 8th of November 2019, on which His Beatitude the Pope and Patriarch of Alexandria and All Africa, Theodoros II commemorated the Metropolitan of Kiev Epiphanios for the first time, a group of the Holy Clergy of the Patriarchate of Alexandria, after having declared their disagreement with the position of their Primate, appealed to the Patriarch Kyrill of Moscow and All the Russias, asking to be included within the fold of the Russian Orthodox Church.

Following the decision of the 24th of September of the Holy Synod of the Patriarchate of Moscow, Archbishop Leonid of Yerevan and Armenia, examined numerous requests of clergymen of the Patriarchate of Alexandria and it was found that one hundred and two priests – with their parishes- declared their desire to be included within the fold of the Russian Church.

All these requests, as it seems, were accepted by the Patriarchate of Moscow. With the decision of its Holy Synod of 29th December 2021, it incardinated the applicants within its canonical jurisdiction, declaring as a reason, its inability to deny further the request of the abovementioned clergymen.

Further, according always to the abovementioned News Item and related articles, the Patriarchate of Moscow decided to form a Patriarchal Exarchate, headed by Archbishop Leonid of Yerevan and Armenia, who up until that moment was Deputy Chairman of the Department of External Church Relations of the Patriarchate of Moscow. He gave an interview related to this upon assuming his new duties.

Based on the abovementioned background, both the actions of the clergymen of the Patriarchate of Alexandria as well as those of the Patriarchate of Moscow are open to examination from a canonical viewpoint.

A. Regarding the actions of the Clergymen of the Patriarchate of Alexandria making the request.

 The established order of the canonical jurisdiction of the clergy that made the request.

As evident from the above-mentioned News Item of the Patriarchate of Moscow, the clergymen of the Patriarchate of Alexandria making the appeal to ne included within the jurisdiction of the patriarchate of Moscow, are all from the second rank of the priesthood, that of presbyter. The News Item makes constant reference to 'priests' and 'parish priests. The News Item also makes one mention to 'parishes', creating a confusion as to whether the requests of these clergymen are personal or institutional, in other words, that of their parish or even that of their parish alone.

Following on from this, one must examine their position regarding their canonical jurisdiction or powers.

Authority within Canonical Law consists of three parameters- that of *place*, that of *object/matter* and that of *person*. (References available). Specifically, that of place is governed by the principle of canonical jurisdiction and the principle of location. The principle of canonical jurisdiction determines the wider boundaries in which a single person or collective ecclesiastical body exercises its authority of the Holy Canons.

For the interpretation of the above principle, the criterion of the differences in the orders of the Church is used, as well as the begetting cause of each circumstance as they enter as members of the Church within any one of the orders. This cause is different for each order/degree. For clergymen it is the ordination or laying-on of hands, for monastics the tonsure and for laity their baptism. This cause is significant as it signifies the beginning and movement, within time, of belonging to a specific canonical jurisdiction.

The principle of canonical jurisdiction is determined by two elements, that of the responsibility of location and that of person. Canonical jurisdiction is directly related to a specific geographical region, determined and marked-out as a specific area, within which it is exercised. This geographical region is identical with the corresponding ecclesiastical administrative area, resulting in us having a full overlap of boundaries of both areas.

This association took form from the first stages of the foundation of the administrative boundaries of the Church, who not having any previous examples of administrative organization and seeking to find solutions with which to deal with the increasing demands brought about by its expansion, used the administrative base and structure of the Empire. This took on a binding canonical character with the 38th canon of the Quintisext Ecumenical Council according to which, "The canon, which was made by the Fathers we also observe, which thus decreed: if any city be renewed by imperial authority, or shall have been renewed, let the order of things ecclesiastical follow the civil and public models."

This connection between canonical jurisdiction and territory was indelibly impressed by the Fathers of the Church and the Holy Canons in two ways. Firstly, this connection was made evident by the clear establishment of boundaries and the safeguarding of the authority to be exercised within each geographical boundary. (34th Canon of the Holy Apostles; 6th and 7th Canon of the First Ecumenical Council; 2nd Canon of the Second Ecumenical Council and 28th Canon of the Fourth Ecumenical Council.)

Secondly, it was forbidden to ignore boundaries and become involved in the affairs of another ecclesiastical region (35th Canon of the Holy Apostles; 2nd of the Second Ecumenical Council; 8th of the Third Ecumenical Council; 13th of the Council of Antioch). In both cases though, the basic point of reference was the right of ordination that played a decisive role in defining the boundaries of authority within the development of the administrative structure of the Church. (See the comment of Zonaras on the 6th Canon of the First Ecumenical Council).

Canonical boundaries are also set in place and determined by *person*, in other words the authority that is defined by the persons involved in the issue and its implementation. These persons are the body of the members of the three orders within the Church, serving the spiritual authority of the Church, whether that authority is a single person or has a collective character, within the boundaries of its territory.

The ordination of a clergyman or the tonsure of a monk becomes the crucial moment at which the ordaining or tonsuring minister begins to have canonical jurisdiction over the priest or monk. While they remain within the geographical boundaries of the ecclesiastical jurisdiction and exercise their priestly duties therein, then the boundaries of canonical jurisdiction coincide with the geographical boundaries of the ecclesiastical territory. Things would be different should the clergyman or monk leave the geographical boundaries in which he exercises his duties. This distance abolishes the connection between geographical boundaries and canonical jurisdiction, placing the latter above the former. This is precisely where the primary role of authority of person comes into play. The clergyman who has distanced himself from his area of geographical jurisdiction, nevertheless, has a duty of obedience towards his ecclesiastical authority.

The orders of presbyter and deacon belong under the canonical jurisdiction of a single person, the single bishop that ordained them. (2nd Canon of the Holy Apostles). This jurisdiction includes judicial judgement by Episcopal Council regarding canonical misdemeanors (31st of Apostles; 5th of the First Ecumenical; 8th and 9th of the Fourth Ecumenical; 3rd, 4th, 5th, 6th and 12 of Antioch, 13th of Sardica, 10th, 11th, and 123rd of Carthage).

The person exercising the canonical jurisdiction is undoubtedly always the bishop. This is evident in the constant use of the term 'Bishop' in all the relevant canons (31st of Apostles; 5th of the First Ecumenical; 8th and 9th of the Fourth Ecumenical; 3rd, 4th, 5th, 6th, and 12 of Antioch; 13th of Sardica; 10th, 11th and 123rd of Carthage).

It is worth examining which bishop is implied here- the one who ordained or the one in whose jurisdiction the priest may now be serving. The canons are not too clear on this, but it is worth noting that the 8th Canon of the Fourth Ecumenical Council uses the terms 'the same bishop' and the bishop within each city' together, thereby leading us to conclude that the criterion is one of *location*. The bishop referred to is not the ordaining bishop but the one in whose jurisdiction the priest is serving. Of course, the bishop may be one and the same -the one who ordained and the one who exercises canonical jurisdiction in that area. (Zonaras' comments on the 8th Canon agree with this conclusion).

Based on all the above, the clergymen that requested transfer to the jurisdiction of the Patriarchate of Moscow, fall without doubt under the jurisdiction of the Patriarchate of

Alexandria and, more specifically, under their Bishops or Metropolitans, of the territory in which they exercise to date their priestly duties. It is these Hierarchs that are able to judge any canonical misdemeanors that were committed or will be committed by these clergymen. Their answering to the local bishop would change only if they themselves were raised to the level of bishop, in which case they would then be answerable to a synodal body. Any action or decision of theirs till then- canonical or not- is answerable to the bishop who is the only person able to judge.

Considering all this, the appeals of the said clergymen made to His Beatitude the Patriarch of Moscow as Chairperson of the Holy Synod of the Patriarchate of Moscow requesting their incardination into the jurisdiction of the Patriarchate of Moscow in general, not to a specific Bishop, are without substance and unacceptable canonically. This is because they appealed to a body with no authority, to the Chairperson of the Holy Synod of the Patriarchate of Moscow and were approved by a body with no authority to do so, the Holy Synod of the Patriarchate of Moscow.

Furthermore, the requests of the said clergymen are in essence, in opposition to the canonical law. Specifically:

The permanent commitment and connection between a clergyman (presbyter or deacon) with his parish is consolidated in a multifaceted way, foreseeing various exceptions in which this connection can be severed, but severed canonically.

Firstly, the duty of clergymen (except bishops), to remain in the parish of their ordination and exercise their priestly duties, is made official. (17th Canon of the Quintisext and the 10th of the Seventh Ecumenical Council).

Furthermore, the permanent departure of a clergyman from his parish with the intention of moving to a new parish in another ecclesiastical jurisdiction (bishop)is permitted only with the permission of the bishop whose jurisdiction he belonged to till then. (17th of Quintisext). This permission is granted through a dismissal letter. (17th of Quintisext; 10th of the Seventh Ecumenical Council; the comments of Zonaras, Balsamon and Aristinos regarding the 11th Canon of the Fourth Ecumenical Council).

Should a clergyman depart without the abovementioned permission of his Bishop, then the canonical censure comes into play, forbidding his acceptance by any other bishop (16th of the First Ecumenical Council). Should a clergyman, without having provided a dismissal letter, nevertheless become accepted by another bishop, he commits the misdemeanor of deserting his community and canonical law provides the implementation of penances in many canons. Specifically:

According to the 15th Canon of the Holy Apostles, the anticipated punishment is suspension, "we order him not to celebrate the Liturgy....". and in the case of refusal to return, the sentence is to return him to the ranks of the laity, which according to Aristinos is the equivalent of excommunication.

According to the 16th Canon of the First Ecumenical Council, if the clergyman refuses to return, his behaviour merits the heavy sentence of aphorism. (Zonaras interprets this as excommunication). The 17th Canon of the Quintisext Ecumenical Synod, the sentence imposed is that of excommunication, both for the clergyman having deserted his parish, as well as for the bishop who accepted him. The 10th Canon of the Seventh Ecumenical Council, if the clergyman insists and refuses to return to his community that he deserted uncanonically, the sentence expected is that of defrocking.

Bearing all the above-mentioned in mind, it is self-evident that a clergyman that deserts his parish uncanonically, in other words, without the permission of his bishop, suffers the sentence of suspension until he returns, within a reasonable period. The reasonable period is judged according to the time an average clergyman would require completing the process of his return. If this reasonable period is exceeded then the sentence of defrocking is imposed, both on the clergyman that deserted his parish and on the bishop that accepted him without the required dismissal letter.

Under these pre-conditions, the clergymen that have made their appeals to the Patriarchate of Moscow, apart for the nonsensical character of their requests, have in fact committed the canonical misdemeanor of deserting their communities. Their requests submitted to the Patriarchate of Moscow regarding their willingness to join its canonical jurisdiction may not display 'in corpore' (bodily) distancing from their communities, they do however undoubtedly and in a very clear way display their decision to desert them.

The Holy Synod of the Patriarchate of Moscow, regardless of the meaningless requests it received and, according to the article regarding the decision the Holy Synod made, meaninglessly approved, has essentially accepted (de facto), the said clergymen, each member of the Holy Synod of the Patriarchate of Moscow breaking all the above-mentioned canonical ordinances.

II. The reason of refusing obedience to their bishop by the clergymen making the request.

According to the News Publication, the appeal of the clergymen of the Patriarchate of Alexandria to the Patriarchate of Moscow took place "due to the Patriarch of Alexandria, Theodoros II, joining the schism, his commemoration during the Divine Liturgy of the 8th of November 2019, of the Primate of what is called 'the Orthodox Church of the Ukraine' among the other Primates of the Autocephalous Churches, the recognition of the said schismatic group and the concelebration with its Head on the 13th of August 2021." These events led the clergymen making the request, to disagree with the position of the Patriarch of Alexandria.

This behaviour constitutes a refusal of obedience to the bishop and may or may not be compatible with the Holy Canons depending on the fulfilment of certain preconditions. This issue of refusal of obedience to the bishop is set-out by three canons of the First-Second Ecumenical Council – the 13th, 14th, and 15th. They define the preconditions of exercising the refusal of obedience to Bishops (13th), to Metropolitans (14th) and to Patriarchs (15th). Since in the 15th canon the recipient of the refusal is a Patriarch, those exercising the right of this refusal are presbyters, bishops, or metropolitans, and by interpretation of the 13th canon, deacons, the lower clergy and laity who may even be excommunicated if found to join a clergyman that challenges the jurisdiction of his bishop uncanonically. Of course, hieromonks and even novice-monks, even though not explicitly mentioned, would be included in this.

The receptor of the refusal of obedience is specifically the local Bishop, Metropolitan or Patriarch. It cannot be applied to Primates of other Autocephalous Churches and must be exercised within the jurisdiction of the receptor of that refusal to obey. The ways in which this disobedience is expressed (refusal to commune with the bishop and commemorate his name) can only be expressed within the ecclesiastical territory of that bishop, regardless of the position he may hold- Bishop, Metropolitan or Primate of an Autocephalous Church.

The refusal of obedience is regarded as uncanonical when:

- a) It is expressed in action by the refusal of the clergyman to concelebrate with his local Bishop, Metropolitan or Patriarch and to commemorate his name (see the 13th, 14th, and 15th Canons of the First-second Council). The refusal to concelebrate must be in writing to avoid misunderstandings caused by absences due to other reasons. The refusal to commemorate the name could be in writing or not, since not mentioning the name of the local bishop in the Liturgy would be an obvious omission. Either one of these two actions- the refusal to concelebrate or to commemorate the name of the local bishop- is enough to prove doubt in the authority of the bishop. In reality, these two actions are done together, or both not done at all, since refusal to concelebrate with the bishop would be ludicrous if one were to continue commemorating his name in other circumstances.
- b) When it is based on the assertion of the disobedient clergyman that the Primate has committed a canonical misdemeanor (see the 13th, 14th, and 15th Canons of the First-second Council). Should the clergymen refuse to obey his Primate because he may have fallen into a known heresy condemned by a Council or the Fathers of the Church, they are not punished but are worthy of honour by those true to the orthodox faith. Canonical misdemeanor, therefore, does not include cases in which heresy is involved. It includes rather things like fornication, sacrilege, simony etc. The reaction of the clergymen therefore, if not based on heresy, is uncanonical and is itself a canonical misdemeanor.
- c) When the local Bishop, Metropolitan or Patriarch has no sentence or judgement weighing against him, whether he has been accused of something or not. An accusation is not reason enough. He must be tried and found guilty by a synod. (See the 13th, 14th, and 15th Canons as well as the explanations by Zonaras of these canons).

In light of this, the refusal of the clergyman to concelebrate or not commemorate his Bishop based on his own assertion that his Bishop, Metropolitan or Patriarch committed a canonical misdemeanor, specifically that of schism, is in itself the canonical misdemeanor of uncanonical disobedience towards his Bishop and is punishable a) according to the 13th Canon; b) if it is towards his Metropolitan by Canon 14 and, c) if it is against his Patriarch, by the 15th Canon.

The refusal of obedience is in accordance with the Holy Canons when:

- a) it is founded on a decision made by a trial that then passes a sentence. The decision must therefore be a judgement. (See the 13th, 14th, and 15th Canons as well as the explanations by Zonaras and Balsamon of these canons).
- b) this decision is to be taken by a council whose character will be determined by the position of the accused and the level of his jurisdiction.
- c) This decision is not subject to judicial means or criteria, in other words on an appeal.

 The decision is to be 'perfect' (used in Canons 13 and 15), in other words:
 - i) Issued by consensus under the precondition that all the bishops of the territory have taken part in the court case (15th Canon of Antioch).
 - ii) Is regarded as perfect due to the recent behaviour of the accused (4th and 12th
 Canons of Antioch).
 - iii) Is issued by a body whose position in ecclesiastical justice does not allow an appeal. Decisions of Ecumenical Synods cannot be appealed against, nor can those of Patriarchal Synods which are considered the Highest Ecclesiastical Court within that jurisdiction.
 - iv) Is issued during the special process of choosing ecclesiastical judges, with the agreement of both the accuser and the accused. (Canons 15 and 122 of Carthage).

If any one of the above-mentioned conditions is not met, the refusal of obedience becomes uncanonical and whatever has been previously mentioned regarding uncanonical disobedience, applies. In the case of clergymen, the three Canons of the First-Second Council foresee defrocking. The same applies to clergymen, monks, and laity that side with the clergymen that refuse obedience. The clergymen are defrocked while monks and laity are excommunicated until such time as they express, in action, their repentance and cease to refuse obedience. (See the 13th Canon and the explanations given by Zonaras, Balsamon, and Aristinos).

"Clergymen" and "monks" include the lower clergy, deacons, presbyters and Bishops and monks and nuns. Hieromonks should be included in the ranks of the priesthood rather than the monastics since the priesthood is of higher dignity than that of monasticism. In which case, the hieromonk would suffer the same sentence of defrocking and demotion to the ranks

of the monastics and, unless he repented, would then be excommunicated. Lastly, novice monks would be demoted to the ranks of laity since they were not yet incorporated within the orders of monasticism.

Based on the above, no element is present that leads us to the conclusion that the preconditions regarding the behaviour of the clergymen making the request are canonical and excuse the refusal of obedience. On the contrary, the actions of these clergymen to fall under another canonical jurisdiction, in connection with the decision of the Holy Synod of the Patriarchate of Moscow, leads us easily to the conclusion that this (behaviour) constitutes a canonical refusal of obedience, constituting a canonical misdemeanor and brings with it, according to 15th Canon of the First-Second, the threat of excommunication.

B. Regarding the actions of the Patriarchate of Moscow encroaching into the canonical jurisdiction of the Patriarchate of Alexandria.

When Canonical Law uses the term 'intrusion', it refers to the uncanonical infringement of the borders of a canonical jurisdiction and the exercising of activities by an external institutional single-person or communal body of the Church, without correspondingly standardizing certain actions that would set the term apart and defining correspondingly a sentence of any sort. 'Intrusion' therefore refers to the forbidden infringement of the boundaries of a canonical territory that receives further definition by the activities that accompany that intrusion. 'intrusion' is not a canonical misdemeanour but necessarily requires a canonical misdemeanour to be entrenched. The action of an institutional body, whether of a single person or collective that moves beyond its own boundaries of canonical jurisdiction, since it is uncanonical and consequently constitutes an accomplished canonical misdemeanour, is only then characterized as 'intrusion'.

In the specific situation we are examining, the Patriarchate of Moscow, as evident in its own News Item of 29th December 2021, went ahead with the following actions:

a) It accepted, without right, requests by clergymen of another Autocephalous Church, that of the Patriarchate of Alexandria, to be accepted within its fold. These were addressed to the Patriarch of Moscow in his capacity as Chairman of the Holy Synod of the Patriarchate

- of Moscow and not as a bishop of a diocese. This action of the Patriarchate of Moscow does not constitute a canonical misdemeanour but a preparatory action. In any case, even according to the view of the Russian Church, this action does not fall under canonical scrutiny since the submitted requests are invalid and not worthy of canonical scrutiny since they were submitted to unqualified body.
- b) It uncanonically approved them even though they were unqualified to do so since they were addressed to an incorrect receptor, in other words to a synodal body and not to a specific bishop or bishops, and they were not accompanied by the necessary dismissal letters of their former Bishops as demanded by the Holy Canons This action constitutes a de facto canonical misdemeanour that of receiving a clergyman that uncanonically deserted his community- but even this action does not require canonical scrutiny since the decision of receiving the clergyman is not valid, even according to the Russian Church, since it was based on invalid requests and granted by a body not qualified to do so. The assertion of the Patriarchate of Moscow that the requests of clergymen are also requests of their parishes is false. Nowhere do we see corresponding requests from the members of the relevant parishes.
- c) The Russian Church, with the same decision of the 29th of December 2021, also went ahead and established a Patriarchal Exarchate for Africa that will be constituted by the ecclesiastical territories of North and South Africa, geographical regions that belong to the canonical jurisdiction of the Patriarchate of Alexandria for centuries according to the 6th Canon of the First Ecumenical Council. It appointed as its head the Archbishop of Yerevan and Armenia, Leonid, as Metropolitan of Klin and Patriarchal Exarch for Africa. This action by the Patriarchate constitutes a definite deed of intrusion into the canonical jurisdiction of the Patriarchate of Alexandria since the decision to establish the Exarchate of Africa includes its geographical boundaries which rightly belong to the canonical jurisdiction of the Patriarchate of Alexandria. This fact is known to the Holy Synod of the Patriarchate of Moscow. The intrusion is thus wilful and intentional.

Besides this, the decision is based on the requests of the clergymen, which are however invalid since they were submitted to an inappropriate body. This has an impact on their acceptance and the decision based on them. As a result, the decision to establish an Exarchate for Africa is invalid.

Concluding, all the above-mentioned actions of the Patriarchate of Moscow are uncanonical. Foremost, canonically they are unfounded and invalid, regardless of the Patriarchate of Moscow's view of them. As a result, they produce no result even for the Patriarchate of Moscow as well as for any other Autocephalous Church.

Based on all the above, I believe the Patriarchate of Alexandria should:

- 1. To take heed that both the matter of the requests made stemming from clergymen that belong to more than one of the territories of the Patriarchate, as well as the issue of the establishment by the Patriarchate of Moscow of the Exarchate for Africa, constitute matters of great importance and since both fall within the Patriarchate of Alexandria's area of concern, they ought to be dealt with.
- 2. Decide both on the invalidity and canonically unacceptability of the requests made, their reception and the reasons given for this, as well as the decision to establish a Russian Exarchate in Africa. The Patriarchate of Alexandria ought to address the Patriarchate of Moscow in the strictest terms, pointing-out the above issues and calling it to refrain from any action of intrusion into the jurisdiction of the Patriarchate of Alexandria, threatening that should this be ignored it will move towards implementing the procedures foreseen by the Holy Canons for the return of the Patriarchate of Moscow to canonical order.
- 3. Address the clergymen that seem to have signed the requests to come under the canonical jurisdiction of the Patriarchate of Moscow and, after it has pointed out the ineffectiveness of their action, call them within reasonable time, to each separately present in writing a Declaration of Rescinding their request made to the Patriarchate of Moscow, recognising the non-canonical character of that request, and placing them under suspension until they present their rescinding statement. Failing this, any of them that do not make these moves, should be defrocked for the canonical misdemeanour of disobedience to their Patriarch as foreseen by the 15th canon of the First-Second. In this way, the Patriarchate of Moscow will be unable to bring its decision to fruition because the said clergymen:
 - a) Will either rescind their request and return to their communities
 - b) Will be defrocked, rendering them useless for the purposes of the functioning of the newly established Exarchate. This is because, according to the prevailing canonical principle of the catholicity of the authority of the ecclesiastical

judgement, a sentence od defrocking passed by the Holy Synod of the Patriarchate of Alexandria and not some regional Episcopal Court, once accepted as binding, has validity and authority throughout Orthodoxy and naturally this would include the Patriarchate of Moscow.

Thessalonica, 5th of January 2022

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