



St. Nicodemus of the Holy Mountain on the powers of the Patriarch of Constantinople as arbiter of fate



Presentation by the rector of the Kiev Theological Academy and Seminary (KTAS) the bishop of Belogorod Sylvester at the opening of the XI annual students' conference on 30th March 2021 on scholarship among students at the theological schools organized by the KTAS.

The turn of the twenty-first century has witnessed a noticeable rise in the temperature in disputes concerning Orthodox ecclesiology. It is important to note that today between the Local Orthodox

Churches there is an absence of unity in the understanding of a number of doctrines on the Church. Radically differing points of view are expressed on the nature and scope of primacy within the Universal Church, on the mechanism of creating new autocephalous and autonomous Churches, on the canonical status of the Orthodox diaspora. These issues, moreover, are not merely the topic of abstract theoretical debate. They have given rise to serious problems in mutual relations between the Local Churches. It is particularly important, therefore, today to conduct a balanced and responsible dialogue on the issues of the Orthodox doctrine on the Church. It is the patristic inheritance that is to be the foundation of this discussion.

The problem of appeals and the ‘Ukrainian church problem’

One such problem in inter-Orthodox relations is the issue of the right of the Patriarch of Constantinople to hear appeals from bishops, priests and deacons who are within the jurisdiction of other Local Churches and who do not agree with the decisions taken against them by ecclesiastical courts. At present the official position of the Patriarchate of Constantinople is restricted to the notion that the Ecumenical Patriarch (and only the Ecumenical Patriarch) has the right to hear appeals of condemned clerics of all the Local Orthodox Churches, to review judicial sentences handed out in the other Local Orthodox Churches and to take decisions with no right of appeal on these cases.

By insisting on this interpretation of his rights, the Patriarch of Constantinople Bartholomew heard the appeal of the former metropolitan of Kiev Philaret (Denisenko), who was excommunicated from the Church by the Episcopal Council of the Russian Orthodox Church in 1997. As a result, on 11th October 2018 the Holy Synod of the Patriarchate of Constantinople took the decision to remove the anathema from the former metropolitan Philaret and restore him to his episcopal rank. The Synod of the Church of Constantinople then received into communion all members of the Ukrainian Orthodox Church of the Kiev Patriarchate (UOC KP) and the Ukrainian Autocephalous Orthodox Church (UAOC). All judicial decisions adopted by the Russian Orthodox Church were annulled in relation to those clerics who had gone into schism. Without consulting the Russian Orthodox Church, it was declared that that the “aforementioned persons are canonically restored to their episcopal and priestly rank.”[1]

In the Tomos of autocephaly granted to the Orthodox Church in Ukraine (UCO) published in January 2019, as well as in the Statute of the UCO, the draft of which was compiled in Greece, it was specially emphasized that clergy “of any rank” (that is, both bishops, priests and deacons), condemned by “their own church authorities to any punishment”, have the right to appeal to the Ecumenical Patriarch. In the Statute of the OCU the right of the Patriarch of Constantinople to receive appeals is based on the 9th and 17th canons of the Fourth Ecumenical Council and the “centuries-old practice of the Church” (Statute of the OCU, section XI).[2]

This stance is shared today by both Greek canon law specialists and many bishops of the Greek Churches. For example, the archbishop of Athens Ieronymos II on 12th October 2019 in his report at the session of the permanent Synod of the Orthodox Church of Greece directly stated: “The Ecumenical Patriarch enjoys the privilege of the ‘right to hear appeals’ from bishops of another church jurisdiction in the instance if, in appealing, the bishop wishes to submit such a request.” As confirmation of this theory archbishop Ieronymos referred to the same 9th and 17th canons of the Fourth Ecumenical Council.[3]

There then arises the inevitable question of how the present-day position of the Patriarchate of Constantinople corresponds to Church Tradition and the practice of the early Church. Is it necessarily true that the canons of the Ecumenical Councils grant to the Patriarch of Constantinople the right to hear appeals from clerics of the other Local Orthodox Churches?

In search of answers to these questions we decided to turn to the legacy of St. Nicodemus of the Holy Mountain (1749-1809). Although he lived in modern times, it is impossible to overestimate his influence on the development of the Orthodox Church. He has left a vast literary legacy, and his works enabled the spiritual renaissance in the Christian East. This renaissance extended to both theology and the monastic life, to both the sphere of canon law and preaching.

The Pedalion as a guide to the canons of the Church

It is evident that St. Nicodemus believed his main task was to popularize and make relevant the legacy of the holy fathers of the Church. It has to be stated that St. Nicodemus filled his publications with numerous commentaries and notes, which demonstrated his profound erudition. St. Nicodemus humbly stood in the shadows of his works, endeavouring not to be an obstacle for the reader on the path to the Church’s ancient legacy. At the same time, his commentaries today have great significance for an understanding of the history of theological thought in Greece during the period of Ottoman rule.

We shall further devote attention to one of St. Nicodemus’ works which has made a vital contribution to the development of church canon law. I mean, of course, the book he prepared for print known as the Pedalion (The Rudder). It was first printed in Leipzig in 1800. The Pedalion is analogous to the renowned book in the Slavic world known as the Book of the Rudder (Kormchaya kniga) and which is a compilation of the canons of the Ecumenical and Local Councils and holy fathers with multiple commentaries.[4]

The Pedalion was prepared by St. Nicodemus in collaboration with hieromonk Agapius the Elder. The compilation contains the canons of the holy apostles, the canons of the Ecumenical Councils, the canons of the Local Councils (of Constantinople in 861 [known also as the Protodeutera], of Constantinople in 394 and 879, of Carthage in 256 and 419, of Ancyra, Neo-Caesarea, Gangra,

Antioch, Laodicea and Sardis) and the canons of the holy fathers (Dionysius the Great, Gregory the Wonderworker, Peter of Alexandria, Athanasius the Great, Basil the Great, Gregory of Nyssa, Gregory the Theologian, Amphilochius of Iconium, Timothy of Alexandria, Cyril of Alexandria, Gennadius of Constantinople, John the Faster, Tarasius of Constantinople and Nicephorus of Constantinople).

The Pedalion has a well thought through structure. Before each group of canons there is historical information on the Council or the holy father at or under whom they appeared, there is then given the text of the canons in the Ancient Greek original, there then follows a translation of the canons (or rather retelling) into modern Greek, there then follow concordances linking a particular canon to other canons and, finally, there are the compilers' own commentaries. These commentaries embrace a wide range of theological, historical and canonical topics.

As they prepared the Pedalion, St. Nicodemus and Fr. Agapius were motivated by the desire to present the Greek clergy with a reliable compilation of the canons which they could use in church life. Moreover, the notes in the compilation took into account the classical commentaries by Alexios Aristenos, John Zonaras and Theodore Balsamon.

In spite of the universal approval of the Pedalion, the Synod of the Patriarchate of Constantinople nonetheless did not grant it official status.^[5] However, the Pedalion has become the most authoritative collection of canons in modern times. The Greek text of the Pedalion has been published eighteen times and is studied vigorously by canon law specialists, historians and theologians. St. Nikodim Milaš believed that the Pedalion could be recognized as the official compilation of canons of the Greek Church.^[6] The Pedalion influenced the content and structure of the Book of Canons used presently by the Russian Orthodox Church.^[7]

Commentaries in the Pedalion on the 9th Canon of the Fourth Ecumenical Council

We have decided to turn to the Pedalion in order to ascertain what light it sheds on the issue of appeals. Does St. Nicodemus of the Holy Mountain recognize the exclusive right of the Patriarch of Constantinople to receive appeals from clergy without regard to the other Local Orthodox Churches?

It ought to be stated that St. Nicodemus gives a particularly close analysis of the 9th canon of the Fourth Ecumenical Council. The canon deals exclusively with how ecclesiastical law is implemented. It primarily deals with the impermissibility of reexamining ecclesiastical cases in the secular courts. Clerics are subject to the judgment of their bishop. If a cleric has a disagreement with the bishop, then the case is sent for reexamination to a provincial church council. If, though, a bishop or a cleric "has something

against” the metropolitan of the province in question, then they should appeal to “the exarch of the diocese (in Greek, tou exarchon tis dioikeseos, i.e., literally “the exarch of the eparchy”) or to the see of the imperial city of Constantinople and let him be given justice there.”

According to the letter of the canon, a bishop who is in disagreement with the court decision of his metropolitan may appeal to the “exarch of the diocese” or to the Patriarchate of Constantinople.

St. Nicodemus writes that this canon has caused many disputes among canon law specialists both in antiquity and in modern times. He at the same time notes that many Greeks, when polemicizing with the Roman understanding of primacy, were eager to especially “revere the primate of Constantinople” and therefore elevated his rights. The metropolitan of Ancyra Macarius, for example, who lived at the turn of the fifteenth century, in his treatise entitled *Against the Errors of the Latins* wrote that the phrase “the exarch of the diocese” ought to be understood in this canon as “all the other patriarchs.” If we are to understand it in this way, it transpires that the Patriarch of Constantinople has the right to hear appeals only against the decisions of the other patriarchs. Hence, Macarius of Ancyra wrote that the Patriarch of Constantinople is the “first and supreme judge over all the patriarchs.”**[8]** As St. Nicodemus indicates, a similar opinion may be encountered in author Byzantine authors who wrote anti-Latin works.

It is a well-known fact that Latin authors, too, interpreted the 9th canon for their own ends. Thus, Pope Nicholas I, in his letter to the Byzantine emperor Michael in which he criticizes Patriarch Photius, wrote that the phrase “the exarch of the diocese” ought to be understood as “the bishop of Rome.” Then the meaning of the canon can be thus interpreted: whoever is dissatisfied with the judgment of their metropolitan may appeal primarily to the bishop of Rome and they may, “by his grace,” be judged by the Patriarch of Constantinople.**[9]**

St. Nicodemus, however, believes these interpretations to be erroneous. He insists that neither the bishop of Rome, nor the Patriarch of Constantinople has the right to receive appeals from bishops and clerics who do not come under their jurisdiction.

St. Nicodemus proposes a number of arguments to support his assertion. We shall note only two of them. He reminds readers that a common principle of canon law is the interdiction placed upon bishops, metropolitans and patriarchs in acting beyond the confines of their ecclesiastical provinces. If we admit the possibility of appeals to Constantinople of other patriarchs, then this would come into conflict with the aforementioned principle.

St. Nicodemus, moreover, appeals to the legislation of the Byzantine emperors within which an interpretation of ecclesiastical canons may be seen. In particular, he refers to the 123rd novella of emperor Justinian. The 22nd chapter of this novella concerns ecclesiastical implementation of canon law and may be used as an interpretation for the 9th canon of the Fourth Ecumenical Council. This section states that in the instance of differences between bishops their case may be reviewed by a metropolitan senior to them with two other bishops from the same province. If the sides cannot come to an agreement in this court, then they can turn to the patriarch of “that diocese.” After the patriarch has pronounced his verdict, “neither side can then appeal these decisions.” The same order ought to be observed also in the instance when a cleric makes accusations against his bishop.**[10]** An analogous procedure was also established by the legislation enacted by emperor Leo VI the Wise.

Thus, according to Byzantine laws, each patriarch pronounced his judicial decisions which could not be subject to appeal. Hence, the Patriarch of Constantinople had no right to hear appeals against the decisions of the other patriarchs.**[11]**

The question does arise, though, as to who is to be considered to be the “exarch of the diocese” (exarchos tis dioikeseos). St. Nicodemus states that the text indicates that “exarch” denotes a spiritual rank higher than that of the metropolitans but lower than that of the patriarch. It is his opinion that the “exarch of the diocese is the metropolitan of the diocese who enjoys a certain advantage over the other metropolitans of the same diocese”, that is, “the first among the metropolitans.”

With reference to Zonaras, St. Nicodemus notes that these “exarchs” were in antiquity the metropolitans of Caesarea, Cappadocia, Ephesus, Thessalonica and Corinth. However, after the Fourth Ecumenical Council this term acquired a new meaning and content. In the fifth century (a time of adopting reviewed canons) the “exarchs of the dioceses” still existed, but by the sixth century the situation had begun to change, and therefore the word “exarch” acquired a new meaning. The old understanding of the word was forgotten. It is for this reason that the interpretation of the 9th canon began to present difficulties.

Hence, Justinian’s 123rd novella no longer mentions the exarchs. The novella deals with how after the level of the metropolitan provincial court the next level is the patriarch.**[12]** St. Nicodemus especially emphasizes the fact that the 9th canon does not provide for the opportunity for clerics of all the Local Churches to be judged in Constantinople. The Patriarch of Constantinople only has the right to hear appeals from clerics of his own patriarchate. St. Nicodemus drew a quite straightforward conclusion

from this: “The primate of the Church of Constantinople is the first, sole and last judge over the metropolitans subject to him – but not over those metropolitans who are subject to other patriarchs. That is to say, the ultimate and universal judge over the patriarchs is the Ecumenical Council and nothing or nobody else.”**[13]**

Thus, according to St. Nicodemus, those bishops and priests who are dissatisfied with the judicial decision of their patriarch can appeal only to an Ecumenical Council. That is, the highest level in judicial ecclesiastical disputes is a conciliar body, but not any of the patriarchs alone. This is St. Nicodemus’ principled position.

We ought to note here that St. Nicodemus’ stance has remained traditional for all of Orthodox canon law. Hence, the aforementioned John Zonaras, who lived in the twelfth century, wrote: “The Patriarch of Constantinople is not set over all the other metropolitans without exception but only over those who are subject to him. For this reason, he cannot impose his judgment upon the metropolitans of Syria, or Palestine and Phoenicia or Egypt against their will, for the metropolitans of Syria are subject to the judgment of the Patriarch of Antioch, while those of Palestine to the judgment of the Patriarch of Jerusalem, and those of Egypt are to be judged by the Patriarch of Alexandria from whom they have received their ordination and to whom they are subject.”**[14]**

The renowned Serbian canon law specialist from the turn of the twentieth century St. Nikodim Milaš was in complete agreement with this interpretation of the 9th canon. He noted that the “exarch of the diocese” was the “first hierarch of a large ecclesiastical province which has several metropolitans with bishops under his authority, and this first hierarch with metropolitans and bishops under him comprise a ‘provincial council’ or ‘patriarchal’ or ‘national’ council to which clerics and bishops can go with their complaints.”**[15]** Thus, St. Nikodim believed that at all levels the ecclesiastical court should be conciliar in nature. It is in this sense that the judgment of the exarch is the judgment of the “national council.”

Canon law specialist archbishop Peter L’Huillier noted that there was no “exarch of the diocese” in any of the ecclesiastical provinces in antiquity. In particular, he believed that in Pontus, Asia and Thrace (which made up the diocese of the Patriarchate of Constantinople) there was no exarch. “In this case,” writes archbishop Peter, “the appeal to the see of Constantinople for the settling of disputes was a logical solution.” Therefore, the mention in the 9th canon of both the “exarch of the diocese” and the Patriarch of Constantinople means that in those provinces where there was an exarch, it is he to whom appeals must be made. In the see of the Patriarch of Constantinople there were no exarchs, so here it was necessary to turn to the Patriarchal court. Any other interpretation of this canon archbishop Peter

considers artificial.[16]

St. Nicodemus touches upon the issue of appeals also in the foreword to the canons of the Local Council of Sardis in 343. As is known, this council adopted three canons (3rd, 4th and 5th) which established the right of the bishops of Rome to hear appeals. Using these canons as justification, the bishops of Rome insisted on their supreme authority in the Universal Church. In Latin church literature these canons were interpreted as the unique right of the Popes to receive appeals on judicial decisions adopted by all the Local Churches.

Reflecting on the provisions of the Council of Sardis, St. Nicodemus expresses ideas analogous to those which we saw in the commentaries on the 9th canon of the Fourth Ecumenical Council.

Firstly, St. Nicodemus notes that the Council of Sardis was a Local Council of the Western Church since the majority of the Eastern bishops had left Sardis and held an “alternative” council in Philippolis.[17] Therefore, the decisions taken in Sardis were considered to be decisions exclusively of Western bishops. And, moreover, the Popes tried to present the canons of the Council of Sardis as canons of the First Ecumenical Council and thereby confirm their universal jurisdiction by using them.[18]

In order to show that the Church never elevated the Council of Sardis to the status of Ecumenical Council, St. Nicodemus refers to the notorious dispute between the Churches of Rome and Carthage which flared up between 417 and 422. The then-condemned priest in Carthage Apiarius appealed to the bishop of Rome Zosimus. The latter heard his appeal and sent to Africa two of his legates who were to organize a second review of his case. The Pope did so by referring to the canons of the Council of Sardis as the canons of the First Ecumenical Council. As a result, there was held in Carthage in 419 a council which demonstrated that these canons bore no relation to the Council of Nicaea and therefore had no authority for the Church of Carthage. The Council at Carthage outrightly forbade African clerics from sending appeals “over the seas” (that is, to the bishops of Rome).[19]

Subsequently, the bishop of Rome Celestine I attempted to vindicate his right to receive appeals from Africa, but the Church of Carthage did not recognize the judicial authority of the bishops of Rome.

St. Nicodemus quotes this important polemical dispute to arrive at the conclusion that appeals can be made to the bishop of Rome “but not by all bishops, only those who are under his authority.” For us it is

especially important that, according to St. Nicodemus, this canon by analogy can be applied also to the four other patriarchs: "Each of them may apply it to the cases and appeals of persons under their jurisdictions and belonging to their patriarchal province. None of these canons can reduce all appeals and all church administration to the see of Rome as this is impossible and alien to the Church."**[20]** Which is to say that here St. Nicodemus once more emphasizes that each patriarch has the right to hear appeals solely within the confines of his Local Church. None of the primates has the right to hear appeals regarding the decisions of the other patriarchs.**[21]**

Conclusion

Thus, the Pedalion clearly rejects one of the central tenets of the modern-day doctrine on the special rights of the Patriarch of Constantinople. St. Nicodemus on principle does not admit the right of any of the Orthodox patriarchs to hear appeals against the judicial decisions of the other patriarchs. It is possible to appeal against the decisions of one of the patriarchs only at an Ecumenical Council, which is to say that St. Nicodemus believes that each autocephalous Orthodox Church enjoys equal rights in the sphere of the implementation of canon law. Therefore, judicial decisions taken by one of the patriarchs can be reviewed only by conciliar bodies in which representatives of all the Local Churches participate.

The text of the Pedalion makes abundantly clear the differences in the issue of the scope of the rights of the Patriarch of Constantinople even in the Byzantine era. At the same time, St. Nicodemus offers his own interpretation of the 9th canon of the Fourth Ecumenical Council which far more consistently embodies the conciliar principle in the life of the Orthodox Church. He attempts to safeguard the Church from the danger of autocratic rule.

In the modern-day polemic debate between the Local Churches on the question of primacy in the Universal Church the voice of St. Nicodemus of the Holy Mountain has to be heard loud and clear. His legacy may become one of the most vital elements in overcoming the crisis which has engulfed all of world Orthodoxy.

[1] Official communiqué on decisions taken by the Synod.

https://www.fanarion.blogspot.com/2018/blog-post_11.html

[2] The text is published on the official site of the OCU at:

<https://www.pomisna.info/uk/document-post/statut-ptsu>

[3] For the complete text of the report see: <https://rwmio.blogspot.com/2019/10/blog-post.html?m=1>.

[4] We here use the following edition: The Pedalion: the canons of the Orthodox Church with commentaries (in Russian) in 4 volumes, Yekaterinburg, 2019.

[5] For more on this, see: F. Yang, The Pedalion: history and publication (in Russian) in Canons of the Orthodox Church (in Russian), vol. 1, Yekaterinburg, 2019, pp.65-73.

[6] The Canons (Kanonies) of the Orthodox Church with commentaries by Nicodemus, bishop of Dalmatia and Istria. Vol. 1, St. Petersburg, 1911, p.18.

[7] For more on this, see: Fr. D. Artemkin, The Pedalion (in Russian), in the Orthodox Encyclopedia, vol. 56, Moscow, 2019, pp.375-377.

[8] The Pedalion, vol. 2, p.146.

[9] The Pedalion, vol. 2, p.146.

[10] The complete text of the chapter is to be found in: K.A. Maximovich, “Novella CXXIII of emperor Justinian I (527-565) ‘on various church questions’” (translation and commentary)’ (in Russian) in the Herald of the St. Tikhon’s Orthodox Humanitarian University (in Russian), series 1: Theology, Philosophy, 2007, issue 3 (19), pp.40-41.

[11] The Pedalion, vol. 2, p.147.

[12] The Pedalion, vol. 1, p.247.

[13] The Pedalion, vol. 2, p.148.

[14] The Pedalion, vol. 2, p.149.

[15] Quoted from: The Canons (Kanonies) of the Orthodox Church with commentaries by Nicodemus, bishop of Dalmatia and Istria. Vol. 1, St. Petersburg, 1911, p.374.

[16] Archbishop Peter L'Huillier, The Church of the Ancient Councils: The Disciplinary Work of the First Four Ecumenical Councils, Crestwood, New York, 1996, pp.235-236.

[17] The Canons (Kanonies) of the Orthodox Church with commentaries by Nicodemus, bishop of Dalmatia and Istria. Vol. 1, St. Petersburg, 1911, p.352.

[18] For the history of this council, see: Anton Kartashev, The Ecumenical Councils (in Russian), in two parts. Part 1, Moscow, pp.64-68.

[19] The Pedalion, vol. 3, pp.193-196

[20] For more on this, see: L.V. Litvinova, 'The Councils of Carthage' (in Russian) in the Orthodox Encyclopedia, vol. 31, Moscow, 2013, pp.447-461.

[21] The Pedalion, vol. 3, p.197.