

THE TITLE OF ORDINATION IN EASTERN ORTHODOX CANON LAW

Introduction

In preconciliar Latin canon law the term 'title of ordination' (*titulus ordinationis*), or 'canonical title' (*titulus canonicus*) designated the guaranteed income required by a cleric in order to receive ordination.¹ The income of ministers was an issue already in the New Testament;² however, the requirement of a title of ordination is usually traced back to canon 6 of the Council of Chalcedon (451).³ In the Tridentine canon law (*ius novissimum*) the title of ordination was practically synonymous with benefice.⁴ The codicary canon law (*ius codicarium*) of *Codex Iuris Canonici / 1917* retained the Tridentine regulations.⁵ The title could be a benefice, patrimony or pension.⁶ The requirement of a canonical title for ordination and the system of benefices has been abrogated in the *Codex Iuris Canonici / 1983* and *Codex Canonum Ecclesiarum Orientalium / 1990*.⁷ This essay will treat the title of ordination in Eastern Orthodox canon law.

The sources of Eastern Orthodox canon law

The common law of the Eastern Orthodox Churches is largely the *ius antiquum* (ancient law) supplemented with particular Byzantine canonical and legal sources. The canonical material is composed of the conciliar and patristic canons received by the Byzantine collections of canons.⁸ The

¹ Cf. G. Péries, „Titulus Ordinationis.” *The American Ecclesiastical Review* 3 N.S. (1895): pp. 269-281.

² Cf. 1 Cor 9.13-14; 1 Tim 5.17-18.

³ Cf. Péries, „Titulus Ordinationis,” pp. 270-272.

⁴ Cf. Council of Trent, session 21, ch. 2, „De reformation.” Edition and translation: N. P. Tanner, ed., *Decrees of the Ecumenical Councils*. London: Sheed and Ward, 1990, pp. 728-729.

⁵ Cf. can. 974 § 1, 979-982 CIC/1917.

⁶ Cf. can 979 § 1 CIC/1917.

⁷ Cf. can.1029, 1031, 1033, and 1035 CIC/1983; can.758 CCEO.

⁸ On the canonical material (*corpus canonum*) of Eastern Orthodox canon law see P. Menevisoglou, *Ιστορική εισαγωγή εις τοὺς κανόνας τῆς Ὁρθοδόξου Ἐκκλησίας*. Stockholm: Metropolis of Stockholm and All Scandinavia, 1990; S. N. Troianos, *Οι*

two most important collections were compiled in the sixth century: John Scholastikos' *Collection in 50 titles* and the anonymous *Collection in 14 titles*.⁹ These collections have been revised and expanded during the centuries.¹⁰ A large part of the canonical material has been explicitly ratified by canon 2 of the Quinisext Council (691/692) and implicitly by canon 1 of the Seventh Ecumenical Council (Nicaea II, 787). Since John Zonaras in the twelfth century, the canonical material has been divided into four categories: (a) the so-called canons of the apostles, (b) the canons of the ecumenical councils, (c) the canons of the local councils, and (d) the canons of the fathers.¹¹ The collections of canons gradually incorporated imperial legislation on ecclesiastical matters. These mixed collections composed of both canons and civil law became known as *Nomokanons* in the eleventh century.¹² The Byzantine imperial legislation on ecclesiastical matters has historically been an important subsidiary source of Eastern Orthodox ecclesiastical law.¹³

This *corpus canonum* constitutes the common sources of Eastern Orthodox canon law.¹⁴ The three classic Byzantine canonists of the twelfth century – Alexios Aristenos, John Zonaras, and Theodore Balsamon – have an influential place in ecclesiastical jurisprudence.¹⁵ The Ecumenical Patriarchs have also from time to time issued decrees which de facto have become a part of the common law of the Eastern Orthodox Churches.¹⁶ Beside the common sources the local Eastern Orthodox Churches have their particular sources of ecclesiastical law.¹⁷

This essay will be limited to the sources of the Greek Orthodox tradition. The two most influential modern editions of the Greek sources of canon law are the *Πηδάλιον* (1800; rev. ed. 1841) by Nikodemos Hagioreites and Agapios Leonardos and the *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*

Πηγές του Βυζαντινού Δικαίου. 3rd rev. ed. Athens: Sakkoulas, 2011, pp. 88-91, 202-206, 314-318; H. Ohme, „Sources of the Greek Canon Law to the Quinisext Council (691/2): Councils and Church Fathers” in *The History of Byzantine and Eastern Canon Law to 1500*. Edited by Wilfried Hartmann and Kenneth Pennington, pp. 24-114. Washington, D. C.: CUA Press, 2012.

⁹ Cf. Troianos, *Πηγές του Βυζαντινού Δικαίου*, pp. 185-212.

¹⁰ Cf. Troianos, *Πηγές του Βυζαντινού Δικαίου*, pp. 327-330.

¹¹ Cf. Menevisoglou, *Ιστορική εισαγωγή εἰς τοὺς κανόνας τῆς Ὁρθοδόξου Ἐκκλησίας*, p. 94.

¹² Cf. Troianos, *Πηγές του Βυζαντινού Δικαίου*, p. 197.

¹³ Cf. Troianos, *Πηγές του Βυζαντινού Δικαίου*, pp. 191-195.

¹⁴ R. Potz and E. Synek, *Orthodoxes Kirchenrecht: Eine Einführung*. Freistadt: Plöchl, 2007, pp. 204-223.

¹⁵ Cf. Troianos, *Πηγές του Βυζαντινού Δικαίου*, pp. 353-357; Potz and Synek, *Orthodoxes Kirchenrecht*, pp. 218-225.

¹⁶ Cf. Troianos, *Πηγές του Βυζαντινού Δικαίου*, pp. 318-330.

¹⁷ Cf. Potz and Synek, *Orthodoxes Kirchenrecht*, pp. 230-232.

(6 volumes; 1852-1859) by G. A. Rallis and M. Potlis.¹⁸ Neither of these editions can lay claim to be a critical edition. But the *Pedalion* is the most important monument of Greek Orthodox ecclesiastical jurisprudence from the Ottoman era (ca. 1453-1821).

The interpretation of canon 6 of Chalcedon

Canon 6 of Chalcedon is translated as follows in the edition of Tanner:

No one, whether presbyter or deacon or any at all who belongs to the ecclesiastical order, is to be ordained without title, unless the one ordained is specially assigned to a city or village church or to a martyr's shrine or a monastery. The sacred synod has decreed that the ordination of those ordained without title is null, and that they cannot operate anywhere, because of the presumption of the one who ordained them.¹⁹

Neither the Greek original nor the old Latin translation uses the term *titulus*. The Greek words which have been translated „without title” are ἀπολελυμένως and ἀπολύτως.²⁰ The old Latin has *absolute* in both places.²¹ Both Greek terms may be translated as ‘at large.’ Hefele and Leclercq say that the council requires the title „which later was called *titulus beneficii*.”²² They also say that this canon forbids „absolute ordinations” (*ordinationes absolutae*) and is explicitly reenacted for this reason by the council of Trent.²³ Also Van Espen interprets the canon (with reference to Zonaras, Balsamon, and the Arabic paraphrase) as forbidding absolute ordination and requiring that the ordinand be assigned to a specific place.²⁴ He also notes that the ancient church, unlike the schoolmen, not only considered an absolute ordination illicit but also invalid.²⁵ Bright interprets the prohibition against ordination without title (i.e., absolute ordination) as directed against practice of ordaining ministers, who would not exercise the ministry (e.g., St.

¹⁸ Cf. P. I. Boumis, *Κανονικόν Δίκαιον*. 3d rev. ed. Athens: Grigoris, 2008, pp. 46-47.

¹⁹ Tanner, *Decrees of the Ecumenical Councils*, p. 90.

²⁰ Tanner, *Decrees of the Ecumenical Councils*, p. 90.

²¹ *Ibid.*

²² C. J. Hefele and H. Leclercq, *Histoire des conciles*, vol. 2. Paris: Letouzey et Ané, 1908, pp. 787-788.

²³ Hefele and Leclercq, *Histoire des conciles*, vol. 2, p. 788. Cf. Council of Trent, session 23, can. 16, “De reformation.” Edition and text: Tanner, *Decrees of the Ecumenical Councils*, p. 749.

²⁴ Z. B. Van Espen, *Commentarius in canonesjurisveteris, ac noviset in jus novissimum*, Louvain: 1759, pp. 190-191.

²⁵ *Ibid.*

Jerome, Paulinus of Nola, and others).²⁶ L'Huillier interpret canon 6 as a continuation of canon 5 which forbids clerical vagrancy.²⁷ He says that the *ratio legis* of the prohibition against absolute ordination was to prevent the "abuse" of making the ministerial orders into merely honorific titles without the exercise of orders and subjection to the proper ecclesiastical authority.²⁸ It is interesting that L'Huillier, who was an Eastern Orthodox scholar, does not mention a guaranteed income of sacred ministers as a part of the *ratio legis*.

After these modern interpretations of canon 6 of Chalcedon, we now turn to the interpretation in Eastern Orthodox ecclesiastical jurisprudence. The Byzantine epitome of this canon states that "ordination is for martyr's shrines or monasteries but not at large or else the ordinand is not ordained."²⁹ Aristenos says in his interpretation of the epitome that ordination presbyter or deacon without assignment to a specific church is invalid (ἄκυρος).³⁰ Both Zonaras and Balsamon interpret this canon to mean that the ordained ministry cannot be exercised without incardination; therefore, is ordination at large an invalid ordination.³¹ Zonaras says that this only applies to the orders of presbyter and deacon, while Balsamon also includes the order of subdeacon.³² Balsamon is explicit in his interpretation that the prohibition against absolute ordination makes the subjection of clerics in major orders to the eparchial bishop mandatory and he discusses dismissorial and commendatory letters.³³

In the eighteenth century Nikodemos Hagioreites developed this understanding of the prohibition against ordination at large further. He says that ordination at large results in the vagrancy of priests, deacons and other ecclesiastics and the council wished to forbid this.³⁴ He says that the bishop must announce the assignment to a specific church or monastery in the ordination prayer.³⁵ He even goes so far as to say that the grace of order is

²⁶ Cf. W. Bright, *The Canons of the First Four General Councils of Nicaea, Constantinople, Ephesus, and Chalcedon with Notes*. 2nd ed. Oxford: Clarendon, 1892, pp. 166-168.

²⁷ Cf. P. L'Huillier, *The Church of the Ancient Councils: The Disciplinary Work of the First Four Ecumenical Councils*. Crestwood, New York: St. Vladimir's Seminary Press, 1996, pp. 222-224.

²⁸ Cf. L'Huillier, *Church of the Ancient Councils*, p. 223.

²⁹ My translation. Edition: Rallis and Potlis, *Σύνταγμα*, vol. 2, p. 232.

³⁰ Ibid.

³¹ Edition: Rallis and Potlis, *Σύνταγμα*, vol. 2, pp. 231-232.

³² Ibid.

³³ Ibid.

³⁴ *Pedalion*, p. 190.

³⁵ Ibid.

imparted to a specific ordinand at the annunciation of the assignment to a specific church or monastery in a specific eparchy.³⁶ He says that a person who has received an invalid ordination cannot exercise the ministry.³⁷

Conclusion

The doctrine of Eastern Orthodox canon law does not interpret the title of ordination as a guarantee of clerical income, but as a provision against clerical vagrancy. Balsamon interprets the mandatory title of ordination as a provision to ensure the subjection of sacred ministers to the bishops. The title of ordination has ecclesiological implications. It supports the episcopal constitution of the church by ensuring the incardination of sacred ministers. Nikodemos interpretation of the title of ordination is sacramental. The ministry cannot exist without a congregation. The mandatory title of ordination protects both the episcopal polity and congregational foundation of the ministry in the Eastern Orthodox Church. The Western interpretation of the title of ordination as a guarantee of clerical income (i.e., *titulus beneficii*) is most likely a later reinterpretation caused by the origin of the system of benefices in the Western Church from the ninth century and onwards.³⁸ Clerical income is not primarily associated with the title of ordination in the doctrine of Eastern Orthodox canon law.³⁹

Summary

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The Title of Ordination in Eastern Orthodox Canon Law

The „title of ordination“ refers to the requirement of an ordinand to be assigned to a specific place of worship. This requirement is derived from canon 6 of the Council of Chalcedon (451). In Latin canon law the title of ordination came to be perceived as a way of guaranteeing clerical income (e.g., *titulus beneficii*). This essay studies how the title of ordination is interpreted in the doctrine of Eastern Orthodox canon law.

Keywords: canon law, Council of Chalcedon, Eastern Orthodoxy, ordination, ecclesiology.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Cf. H. E. Feine, *Kirchliche Rechtsgeschichte, Band 1: Die katholische Kirche*. 3d ed. Weimar: Hermann Böhlhaus Nachfolger, 1955, pp. 184-191.

³⁹ Cf. N. Milaš, *Das Kirchenrecht der morgenländischen Kirche*. rev. ed. Mostar: 1905, pp. 539-551.