

The Holy Cenobitic Skete of Prophet Elias

LEGAL MEMORANDUM

BEFORE

THE COUNCIL OF STATE

Athens
1995

INTRODUCTORY NOTE

This Legal Memorandum was presented to the Council of State, the Supreme Court of Greece, by the Fathers of the Holy Cenobitic Skete of Prophet Elias on the Holy Mountain Athos, due to the persecution of their Orthodox Faith, when they were illegally and arbitrarily expelled from the Holy Mountain, in support of their Petition for the Annulment of the actions of this unjust and lawless persecution, in the case which, after several postponements, is scheduled to be heard in Court on October 10, 1995.

The Memorandum was translated into English and printed in booklet form in the Holy Monastery of Sts. Cyprian and Justina, near Fili, Attiki, Greece, in July and August, 1995, by fathers of the Skete of Prophet Elias and the Monastery of St. Cyprian, who prepared the text and translation for printing and added the Index of Names and Topics at the end.

Since the legal case treated in this Memorandum has far-reaching implications and significance, not only because of the defense of the faith but also in relation to human rights and the basic freedoms, all of which were brutally trampled in the persecution under consideration here, wide interest in the case has been shown outside of Greece. For this reason this English translation of the original Greek text has been prepared for circulation. Translations into other languages are to follow.

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"Let the inhabitants of the world learn righteousness"

(Isaias 26:9)

BEFORE THE COUNCIL OF STATE

LEGAL MEMORANDUM OF

1. Archimandrite Seraphim (Babich)
2. Priestmonk Ioannikios (Abernethy)
3. Monk Mitrophan (Bediat)
4. Monk Nicholas (Shevelchinsky)

all residents of the Holy Skete of Prophet Elias on the Holy Mountain Athos, pursuant to their uncanonical and illegal expulsion therefrom temporarily dwelling at the Holy Monastery of Sts. Cyprian and Justina near Fili, Attiki.

AGAINST

1. The Greek State, legally represented by the Minister of the Economy,
2. The Minister of Foreign Affairs,
3. The Minister of Public Order and
4. The intervention on behalf of the above on the part of the Holy Monastery of Pantokratoros of the Holy Mountain Athos.

CONCERNING

Their petition of October 5, 1992, for the annulment of:

- a. the actions and omissions committed on May 20, 1992, by the officials of the aforementioned Ministries of Foreign Affairs and Public Order and any other further officials of the State by whom the plaintiffs were evicted from the Holy Skete of Prophet Elias on the Holy Mountain, their monastic residence, and subsequently expelled from the Holy Mountain,
- b. the failure of the Minister of Foreign Affairs to act on the plaintiffs' subsequent petition to him concerning this matter dated August 8, 1992, insofar as the Civil Administration of the Holy Mountain is under the jurisdiction of this minister, requesting the revocation and reversal of the aforementioned actions and omissions and that the plaintiffs be returned to the Holy Mountain and to the same Holy Skete of Prophet Elias, thus rectifying the entire situation in general,
- c. the failure of the Minister of Public Order to act on the plaintiffs' subsequent petition to him concerning this matter dated August 17, 1992, insofar as the police officials who committed the aforementioned actions are under the jurisdiction of this minister, requesting the revocation and reversal of the aforementioned actions and that the plaintiffs be returned to the Holy Mountain and to the same Holy Skete of Prophet Elias, thus rectifying the entire situation in general, and likewise concerning his failure to issue a new police card of identification to the first of the plaintiffs.
- d. every other action or omission on the part of these authorities in any matter related to the above petition.

According to the provision of article 105 § 1 of the Constitution of Greece,
"1. The Athos peninsula beyond Megali Vigla and constituting the region of the Holy Mountain [Aghion Oros] shall, in accordance with its ancient privileged status, be a self-administrated part of the Greek State, whose sovereignty thereon shall remain intact. Spiritually the Holy Mountain shall come under the jurisdiction of the Ecumenical Patriarchate. All persons leading a monastic life thereon acquire Greek citizenship without further formalities, upon admission as novices or monks."

Consequently:

a) The Holy Mountain [Aghion Oros] is an inseparable part of the Greek State according to the Constitution, and therefor as it is protected by the legal order pertaining in Greece, that is by the Constitution, the pertaining code of law and the international treaties and agreements binding upon Greece which guarantee human rights, the basic freedoms, etc.

b) All the monks of the Holy Mountain, as Greek citizens, have the duties and the rights which pertain to the status of a Greek citizen, regardless of national background and place of origin. It is to be noted, likewise, that phyletism has been condemned by the Panorthodox Council of Constantinople of 1872.

The provisions of §§ 3, 4 and 5 of the same article 105 of the Constitution of Greece set out the following:

"3. The determination in detail of the regimes of the Holy Mountain 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 Holy Mountain shall in the spiritual field be under the supreme supervision of the Ecumenical Patriarchate, and in the administrative, under the supervision of the [Greek] State, which shall also be exclusively responsible for safeguarding public order and security.

5. The aforementioned powers of the State shall be exercised through a Governor, whose rights and duties are defined 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 the Holy Mountain."

The above provisions of the Constitution of Greece are in full agreement with the code of law which comprises and expresses both the ancient traditional legal status of the Holy Mountain and in general of the Orthodox Church, as defined in article 3, § 1 of the Constitution, which guarantees the inviolability of *"the Holy Apostolic and Conciliar Canons and the Sacred Traditions"*.

Consequently, the Holy Mountain is under the legal authority of:

- a) the Holy Apostolic and Conciliar Canons and the Sacred Traditions of the Eastern Orthodox Church of Christ**, as the Constitution specifically states,
- b) the Constitution and the pertaining laws in accord therewith,**
- c) the international treaties and agreements binding upon Greece and in particular**
- d) the aforementioned code of law comprised by the Constitutional Charter of the Holy Mountain of May 10, 1924 and the Act of Ratification thereof of September 10, 1926.**

The aforesaid body of law, among other things, recognizes, secures and guarantees for the Holy Mountain the principles generally accepted by civilized humanity regarding respect for and defense of the dignity of man (article 2, § 1 of the Constitution of Greece), the freedom

of the individual and the corresponding prohibition of administrative measures restricting freedom of movement or residence in the country (article 5 of the Constitution), that *"no penalty is imposed which is not provided by law"* (article 7 of the Constitution), that *"no one is deprived involuntarily of the right to trial"* (article 8 of the Constitution), the asylum of one's home (article 9 of the Constitution), the right of recourse to law (article 10 of the Constitution), freedom of religious conscience (article 13 of the Constitution), the provision of legal protection, which includes the right to be heard, which pertains *"likewise to every administrative action or measure taken against the rights or interests"* of the interested party (article 20 of the Constitution).

To seal the aforementioned provisions in particular §§ 1 and 2 of article 25 of the Constitution lay down the following:

"1. Human rights, both individual and of members of society as a whole, are guaranteed by the State, all of whose institutions are obligated to secure their unimpeded exercise.

2. The recognition and defense of the fundamental and imprescriptible rights of man is regarded by the State as contributing to the realization of social progress in freedom and justice."

As for the Canons and the Tradition of the Orthodox Church, it is characteristic, among other things, that the following is provided by the IV Ecumenical Council:

"We rule that a person who was not present at his trial, or who was not even summoned to trial, is in no way affected by the sentence pronounced against him" (IV Ecumenical Council, Mansi 7, 250).

Also:

"Sentences against persons who were absent are annulled: on this we all agree: no one is tried in his absence" (IV Ecumenical Council, ibid.).

Likewise, St. Gregory of Nyssa writes:

"What court was held to judge the evidence and allegations against us? What proof of our guilt has been submitted? What Canons were cited against us? What lawful decision of any bishop ratified the verdict against us?" (St. Gregory of Nyssa, P.G 46, 1006 C).

All that is specifically provided by the Constitutional Charter of the Holy Mountain and the Act of Ratification is in agreement with the above.

Thus:

"No one is judged without being heard; no penalty is imposed that is not provided by law or the Holy Canons and no one is deprived involuntarily of the right to trial" (article 7, section 3 of the Act of Ratification of Sept. 10, 1926).

According to article 3 of the Act of Ratification:

"A Civil Governor is appointed to the Holy Mountain, with the rank and salary of a provincial governor [Nomarchis], under the jurisdiction of the Ministry of Foreign Affairs to supervise, in addition to public order and security, the observation of the Constitutional Charter, directing the attention of the Holy Community to violations by any of the monastic authorities on the Mountain. In case of a disagreement he is to refer to the responsible official in the Ministry of Foreign Affairs and follow his instructions".

According to article 5 of the same:

"The Civil Governor has under his direct command the police force and the personnel of the Civil Administration and exercises over the other employees of the State the powers of a bureau chief [Genikos Dioikitis]. The personnel of the Civil Administration is comprised of one secretary, with the rank of clerk [eiseigitis] and one assistant. The organization of the Civil Administration will be defined by executive order. The personnel of the Civil Administration is to be taken from the personnel employed by the Ministry of Foreign Affairs."

According to article 6 of the Constitutional Charter of the Holy Mountain:

"All the monks living on the Holy Mountain of whatever nationality they may be are considered to possess Greek citizenship".

According to article 7 of the same:

"Justice on the Holy Mountain is administered by the authorities of the respective Monasteries and the Holy Community, except for criminal offenses which fall under the public provenance of the State courts which are to be tried, as heretofore, in Thessaloniki".

According to article 8 of the same:

"The representative of the Greek State on the Holy Mountain executes and administers through the public officials under his authority the enforcement of the decisions of the respective Monasteries and the Holy Community, insofar as they are issued in agreement with the present Constitutional Charter".

Among the public institutions under the authority of the Civil Governor of the Holy Mountain is the police force, according to the provision of the Act of Ratification article 5, § 1, which provides that:

"The Civil Governor has under his direct command the police force and the personnel of the Civil Administration and exercises over the other employees of the State the powers of a bureau chief".

According to the provision of article 3 of the Act of Ratification the Civil Governor is under the jurisdiction of the Ministry of Foreign Affairs and supervises the observation of the Constitutional Charter.

Consequently, in order for the police force to have taken action in the case under consideration, there must have been a decision of the Holy Community in accordance with the Constitutional Charter of the Holy Mountain, which accordance had been determined by the Civil Governor.

Elsewhere, in article 78 of the Constitutional Charter of the Holy Mountain it is provided that:

"Decisions are to be enforced when, both from the standpoint of their contents and from the standpoint of the stipulations of the law they are canonical (Note: that is, they are in agreement with the Holy Canons) and are in agreement with the provisions of the present Constitutional Charter".

The established legal order of the Holy Mountain, and in particular the provisions for the administration of justice there, rests on the principle that legal procedures are recorded in writing, as stipulated by a multitude of provisions in the Constitutional Charter of the Holy Mountain, including articles 53, 55, 58, 60, 61, 62, 64, 66, 67, 69, 70, 72 and others.

For example, according to the above provisions, the accused is:

"summoned in good time and in writing before the court to defend himself. The written bill of indictment, which lists the charges to which the accused is being summoned to present his defense and which also states the exact time and date of his

appearance in court is to be served on the accused in good time under **written receipt signed by the accused**" (article 58).

"When the accused presents himself before the court on the day appointed for his trial... the **written bill of indictment** is read out... and the accused is then summoned to present his defense, which he can present **in writing** in addition to his oral defense" (article 61).

"When any decision is reached by a judicial body its verdict is issued in an official **written document**. The accused is presented with an official **written copy** for which he signs a **written receipt** and is thus called upon to observe the provisions of the court's decision" (article 69).

These provisions pertain also in those cases which, according to the Constitutional Charter of the Holy Mountain, fall under the jurisdiction of the Ecumenical Patriarchate.

Article 52 of the Constitutional Charter of the Holy Mountain provides the following regarding such cases:

"In those offenses for which the penalty of deposition [from holy orders] is provided, the competent court is the Ecumenical Patriarchate, to which the court of appeals refers all the written records of the case in keeping with the general procedures stipulated by the present Constitutional Charter".

Here it must be said that among the offenses for which the penalty of deposition is foreseen is that of schism, according to Canon 13 of the Protodeutera Council (*Pedalion*, p. 357).

Schism is created by a person who cuts off the commemoration of the local Patriarch or Metropolitan "prior to synodical judgment and his final condemnation".

This pertains when anyone ceases commemoration "prior to synodical judgment" for any other offense (for example, for fornication, sacrilege, etc.) **except for heresy**.

In this latter instance, the cessation of commemoration is provided for even prior to synodical judgment, and those who thus cease commemoration are not only not subject to canonical penalties but are even deemed worthy "of the honor due to the Orthodox".

This is provided by the 15th Canon of the Protodeutera Council, whose text is as follows:

"What is prescribed for Presbyters and Bishops and Metropolitans is all the more so applicable to Patriarchs. Hence, should any Presbyter, or Bishop, or Metropolitan dare to separate himself from communion with his Patriarch and not commemorate his name according to the established order in the divine services, prior to synodical judgment and his final condemnation, he creates a schism; the Holy Council judges such a one to be totally alien to every clerical office if only he be found guilty of such an offense. And this is sealed and defined concerning those who on the pretext of certain offenses separate themselves from their superiors and create schism and disrupt the unity of the Church. However, those who because of any heresy condemned by the Holy Councils and Fathers separate themselves from communion with their superior, because he publicly preaches heresy and teaches it with bared head in the churches, such persons not only are not subject to canonical penalty for walling themselves off from the so-called Bishop prior to synodical judgment, but they are deemed worthy of the honor due to the Orthodox. For they have condemned not Bishops but false bishops and false teachers, and have not disrupted the unity of the Church with schism but rather have striven to rescue the Church from schism and dissension."

St. Nikodemos of the Holy Mountain interprets this canon as follows:

"All that the preceding canons provided concerning Bishops and Metropolitans, is laid down with much greater emphasis by this present Canon concerning Patriarchs, stating that, should any Presbyter or Bishop or Metropolitan separate himself from communion with his Patriarch and not commemorate his name as is the custom (which applies only to the Metropolitans, for the Presbyter commemorates the name of his Bishop, and the Bishop the name of his Metropolitan) before the accusations against his Patriarch be presented to the Synod and he be condemned by the Synod, all such ones, I say, are to be completely deposed, the Bishops and Metropolitans from every episcopal function and the Presbyters from priestly ones. Now this applies in instances when, because of some offense, say, fornication or sacrilege or the likes, Presbyters separate themselves from their Bishops, Bishops from their Metropolitan, and Metropolitans from their Patriarch. If, however, the said superiors are heretics, and preach their heresy openly and it is because of this heresy that those in submission to them separate themselves prior to synodical judgment, then those who thus separate themselves are not only not condemned but are worthy of the honor which befits the Orthodox, because they did not create schism in the Church by this separation; rather, they delivered the Church from the schism and the heresy of false bishops. See also Apostolic Canon 31" (See this Canon and its Interpretation in the Pedalion, p. 358).

Following this Canon, many monks of the Holy Mountain, numbering in the hundreds, have already for many years ceased commemorating the name of the respective Patriarchs of Constantinople over the past decades, because these latter Patriarchs of Constantinople, one after another (Meletios Metaxakis, Athenagoras Spyrou, Demetrios Papadopoulos, Bartholomaios Arhontonis) are condemned as heretics, for *"preaching heresy in public and teaching it with bared head in the churches!"*

The heresy, or better to say the pan-heresy, which they propound is that of ecumenism. This heresy consists of the opinion that the Orthodox Church does not, as it were, alone possess the fullness of divine truth and grace, that is, that it alone does not comprise the only and entire One Holy Catholic and Apostolic Church of Christ confessed in the Creed, but only a portion thereof, whereas other portions or branches are comprised by "other Christian Churches or Confessions" which, as it were, possess truth, grace and Apostolic succession. This, however, is opposed to the dogmas of Orthodoxy, according to which, outside the Orthodox Church, no "other Christian Churches or Confessions" exist but only heresies, such as Papism, Protestantism and Monophysitism. That is to say, ecumenism would put Orthodoxy on the same level and in the same category as heresies, which it would have us call "sister Churches".

This contradicts what was instituted by the Holy Ecumenical Councils, which proclaim, among other things, the following: *"Let every heresy be anathema"* (II Ecumenical Council) and *"to all the heretics anathema"* (VII Ecumenical Council). And the later Fathers of the Church, observing the definitions, the canons and the decisions of the Holy Councils, say, continuing the ecclesiastical Tradition of Orthodoxy, such things as the following: The Latins (Papists) are heretics, therefore *"flee from them and from communion with them, as you would flee from a snake"* (St. Mark Evgenikos of Ephesus, 15th century). The Pope is anti-christ and *"curse the Pope, because he is the one who is responsible"* (St. Cosmas of Aitolia).

Therefore we also, following the Holy Canons and the Sacred Traditions of the Church, do not commemorate the name of Bartholomaios, just as we did not commemorate his predecessors Demetrios and Athenagoras, along with hundreds of other monks of the Holy Mountain who do likewise.

(**Note:** Specifically on the Holy Mountain some commemorate the Patriarch of Constantinople while others do not. Thus a division exists among the monks of the Holy Mountain between the commemorators and the non-commemorators, a division which has existed for many years, without any one down to the present day attempting to dispute it or to aggravate the existing state of affairs).

It is for this reason, and for no other, that we do not commemorate Bartholomaios, whom otherwise, that is were he not preaching heresy, we would in fact commemorate, which we are indeed prepared to do if only he renounce his heresy and return to Orthodoxy. The accusation that we supposedly commemorated another bishop on the Holy Mountain is not true.

This being the case, regardless of who is correct and who is not in the question of faith [dogma], that is who rightly divides the word of Orthodox Christian truth and who does not, be it we or kyr Bartholomaios, what is certain is that in order for a person to be labelled a schismatic and to be treated as such, he must first be found guilty of this accusation in a canonical, legal and official manner, something which in no way at any time has ever occurred with any of us.

We write this here, of course, not because the Council of State is to determine, like another Ecumenical Council, whether or not we are schismatics or whether or not kyr Bartholomaios is a heretic, but in order to demonstrate the self-evident prerequisite, that in order for a person to be expelled from the Holy Mountain as a schismatic, he must in fact be a schismatic and to have been found guilty of being a schismatic by the lawful decision of a competent judicial body in keeping with proper legal and canonical process, which does not correspond with the facts in the case under consideration here.

This is because not only were we not given a copy of such a verdict, but such a verdict does not in fact even exist. We were not tried. We did not present a defense. We were not ever summoned to be tried and to defend ourselves. We were never even presented with any form of written accusation of any offense, and certainly not of schism.

Now just as a person cannot be evicted from his home or be thrown into prison or be led to the gallows by arbitrary force alone, without any decision and without any trial, neither can a monk be expelled from his Monastery, and a monk of the Holy Mountain from the Holy Mountain, by naked force and the capricious will of anyone, whoever he might be. The latter, indeed, for many and various reasons is more frightening.

No written decision or accusation, etc., as has already sufficiently been demonstrated, was presented to us either before or even after the "job" of our sudden and forced expulsion from the Skete and our exile from the Holy Mountain. Only after this "job" and after the case was referred by us to the State authorities, when we inquired for what reason and on the basis of what decision by whom, etc., were we treated in the manner in which we were treated, and then after a long period of birth pangs and confusion on their part, did we receive from them unfounded and virtually monosyllabic replies, that we are "*schismatics*" and that we were expelled "*legally*". This is why we have written all the above.

Of course the fact that on the day and at the hour of our persecution, which was patterned after a barbaric invasion, we were asked whether or not we commemorate Bartholomaios and that our reply was negative does not fulfill the above described legal and canonical process of accusation, defense, trial and sentencing according to the law. "*Process*" on the model: "Do you commemorate? — No. — Get out!" surpasses even the most sinisterly swift procedures of field court-martials and the total irregularity of tyrannous regimes. In these latter instances, however, there is at least some sort of "*court*" and not simply the executioner who carries out the "*penalty*".

An attempt is being made to introduce a distinction between us. This consists of the assertion that the third and fourth of us were allegedly not tonsured monks canonically, because the ruling Holy Monastery of Pantokratoros had not granted its permission for this.

This allegation is unfounded. Our tonsure (of the third and fourth of us) was performed canonically by the Superior of the Skete (the first of us) in full accord with the written agreements between our Skete of Prophet Elias and the ruling Holy Monastery of Pantokratoros, which were ratified and guaranteed by the Patriarchal and Synodical Charter of August 20, 1892, from the Patriarchate of Constantinople.

According to this charter and the agreements which it enforces (see the text attached below) in article 7 of the 22 articles it is stated:

"those who are to be tonsured into monasticism to maintain the established number of fathers, after the canonical period of trial [novitiate] in the Skete, first are to be presented by the superior to the ruling Monastery to make the customary prostration [metanoia] and then receive the monastic schema from the Superior himself".

As is clear and can be readily deduced from this provision, the candidate for the monastic tonsure is simply presented by the Superior to the ruling Monastery and makes the customary prostration [metanoia]; he then receives the monastic schema from the Superior, without asking for any form of permission from the ruling Monastery for this. His presentation at the monastery is, on the one hand, an act of courtesy and tradition in order to show proper respect, and on the other hand fulfills the purpose of giving official notice of the tonsure of a new monk, and also in order to assure that the tonsure of new monks does not violate the agreement contained in article 7 concerning the established maximum number of monks who are to live in the Skete (130).

This is also confirmed by comparison with article 8 of the same agreement, according to which:

"When monks are presented to the ruling Monastery by the Superior of the Skete with the written petition that they be ordained, after they have been examined by the Superior, the Spiritual Father and the Elders of the Skete. The Monastery should willingly issue the customary canonical letter of the ruling Monastery to one of the local Bishops."

It is clear from this provision also, as in the case of the novice monk presented as a candidate for monastic tonsure, that no form of permission is requested from the ruling Monastery. The one receives the monastic schema from the Superior, while the candidate for ordination is granted the canonical letter. In the latter case a written petition is submitted to the ruling Monastery, which issues in writing its canonical letter "to one of the local Bishops". The Monastery is required to issue this letter ("The monastery should willingly issue").

Therefore, not only the first two of us, but all four of us are canonical monks of the Holy Mountain, with all that appertains to that status.

The agreements set forth in the Patriarchal Charter quoted just above are in force at the present time, without change, as is stated in article 160 of the Constitutional Charter of the Holy Mountain, according to which:

"In addition to the general provisions above, the Patriarchal Charters and Monastery Acts concerning the Sketes all remain inviolably in force".

This specific provision overrules any potential assertion to the contrary.

CONCERNING THE ADDITIONAL INTERVENTION

CONCERNING the additional intervention which has been entered by the Holy Monastery Pantokratoros, as it is presently administered and represented, and which has no legal interest in the matter — for this reason alone the intervention should be dismissed — the following must be noted:

This intervention is set out in a legal document which contains a series of inaccuracies which have no relation to fact. It is based upon misunderstandings, or misinterpretations, of the Holy Canons and the pertaining laws to the point of total distortion. It is based, then, upon a misrepresentation of reality and a distortion of the legal basis of the case.

Namely:

a) it is not true that we deviated from — and indeed, that "we in fact confess this" (!) — the "constitutionally established (article 105 of the Constitution) ecclesiastical order of the Holy Mountain" and that we "cut off" the Holy Skete of Prophet Elias from the spiritual and administrative unity of the rest of the Holy Mountain, because, instead of belonging to the legal bodies of the Holy Mountain and through them submitting to the direct jurisdiction of the Ecumenical Patriarchate, we separated ourselves "with a sectarian and schismatic organization which calls itself 'The Russian Church Abroad'".

It is not true, however, that we cut ourselves off from the jurisdiction of the Patriarchate of Constantinople and that we joined a separate sectarian or ecclesiastical organization or jurisdiction.

We are and we remain ever faithful and consistent in our status as monks of the Holy Mountain, from the beginning of our acceptance and residency there up to the present day. We have never denied our submission, as monks of the Holy Mountain, to the Patriarchate of Constantinople and have never left the jurisdiction of the Patriarchate of Constantinople, which extends over the Holy Mountain, nor have we left it to join another jurisdiction elsewhere instead. The cessation of commemoration of the Patriarch of Constantinople kyr Bartholomaios, based on the Holy Canons, does not concern the office which he holds but only his person, because of his unorthodox preaching "*in public with bared head in the churches*", as Canon 15 of the Protodeutera Council states; rather, this canonical cessation of commemoration is a demonstration of our unflagging and unshakable observation of, and not deviation from, the Holy Canons and the ecclesiastical order of the Holy Mountain in general, concerning which see above. The same applies to many, indeed hundreds, of other fathers on the Holy Mountain, who are strict observers of Orthodox dogma and zealots for the Traditions of the Fathers.

b) Further down, in the legal document of the intervention, the following is written:

"...all the procedures provided by the law and the Holy Canons were observed, that is, the interested parties were informed, they were asked for explanations, they were given the opportunity to be heard, time for reconsideration etc., by the common action of the Patriarchal Exarchia, the Commission of the Holy Community and the Council of Elders of the ruling Holy Monastery; it had been determined that if, up to the last moment, they do not repent and do not return to the bosom of the Church, their removal from the Holy Skete..."

The following must be noted concerning this:

First, the intervening party states on the one hand that "*all the procedures provided by the law and the Holy Canons were observed*", but not a single one of them is mentioned or cited. This reminds us of the reply to our related question which we received from the Assistant Governor of the Holy Mountain, according to which our expulsion was carried out "*lawfully*",

that is, a single word without any explanation whatsoever. This, of course, is not by accident. This confirms the fact that not a single one of the provisions of the Holy Canons and the pertaining laws was observed in this case.

The written statement, that *"the interested parties were informed, they were asked for explanations, they were given the opportunity to be heard, time to reconsider, etc."*, all typically and understandably general statements, clearly indicates what in fact transpired, that all this was done orally and with lightning speed in the course of a single, brief, surprise "visit" to the Skete *"of the Patriarchal Exarchia, the Commission of the Holy Community and the Council of Elders of the Holy Ruling Monastery"*.

Let it be stated here that this compound body, concerning whose unique composition the intervening party characteristically does not make any mention whatsoever, is not foreseen in any sense under any pretext by the Holy Canons or in particular by the pertaining laws for the Holy Mountain. There is no provision, that is to say, in the Constitutional Charter of the Holy Mountain or in the Act of Ratification thereof, nor does any provision exist anywhere else for such a body with such competence and powers. For this reason the intervening party does not cite such provisions. Instead, he speaks in generalities and makes improper judgments and assertions about the provisions of the law.

Since the compounding and working of the body under discussion was uncanonical and illegal and arbitrary we, of course, reject it and dismiss this intervention in its entirety and ask that it be totally disregarded, as being unfounded and inadmissible both according to the law and in view of its essence, along with all the unfounded allegations and improper expressions which this legal document employs against us.

Second, we note in particular and emphatically that we duly deny and reject the unfair allegations and expressions addressed against us, such as: *"that they return to the canonical order of the Church"*, *"that they repent and return to the bosom of the Church"*, *"that they afflict wounds upon the ecclesiastical order and the unity of the Body of the Church"*, *"that they place themselves under the canonical jurisdiction of the Mother Church"*, *"since they themselves declare (!) that they do not belong to any monastery or institution of the Holy Mountain, but to a different Church (!)"* and so forth.

We emphatically reject such allegations, because, first of all, we have **never** departed from *"canonical order"* or *"from the bosom of the Church"* and therefore there is no question of us returning. We have **never** afflicted wounds upon the *"ecclesiastical order and the unity of the Body of the Church"*, so we have no need to cease doing so. We are in full submission to the jurisdiction of the Mother Church, and therefore there is no need for us to place ourselves under it anew. We have **never** ceased belonging to nor indeed have we ever *"declared that ... we do not belong to any monastery or institution of the Holy Mountain"*, nor indeed does our illegal forced and arbitrary removal from the Holy Mountain mean that we have ever ceased to be monks of the Holy Mountain and, indeed, monks of the Skete of Prophet Elias.

Quite the contrary, it is the others who have trespassed the boundaries of the canonical order of the Church and of the Church itself. Thus the allegations and expressions of the intervening party are reminiscent of the "principle of reverse attack" developed by propaganda experts and summed up by the notorious Goebbels in Nazi Germany to mean "we make a 180 degree about face, that is, we reverse reality and strike back head on".

WE APPEND AND CITE THE FOLLOWING RELATED DOCUMENTS:

1. The Legal Opinion of the Professor of Canon Law of the University of Thessaloniki, Mr. Haralampos. Papastathis, concerning the legal question under consideration. This *ad hoc*

Legal Opinion was published in the official legal journal *Armenopoulos*, 1974, 7, p. 483 ff., from which we have photocopied it. It contains thorough and exhaustive replies to all the questions that arise in relation to the matter under discussion. These replies, whereby all the relevant problems are resolved, are based on unshakable logical, legal, canonical, judicial and theoretical foundations and are beyond doubt and question.

2. The Letter dated 22.2.93 of the Greek League for the Rights of Man, a member of the International Federation for Human Rights, which is addressed to the Civil Governor of the Holy Mountain, with copies to the Ministers of Foreign Affairs, of Justice and of Public Order, and also to our attorney, Mr. Th. Theodoropoulos; it was signed by its President Mr. Ph. Vegleris and its General Secretary, Mr. N. Frankakis. The Greek League for the Rights of Man, along with the International Federation for Human Rights of which it is a member, is one of the best known and most significant organizations of its kind in our country as well as on an international level. It is comprised of professors of constitutional law and of jurisprudence, along with other persons in public life. The legal opinion which this document contains is the result of an extended discussion of the matter at a meeting of the League's Executive Committee. On the one hand it serves as an example of the opposition of social conscience and sensitivities, and on the other hand it is the legal opinion of serious authorities on constitutional law concerning the question under consideration, in particular from the viewpoint of the Constitution and of human rights in general. This is a foretaste of the opposition of international organizations should this question be brought before them.

3. The Open Letter of Information and Appreciation and Appeal dated 20.7.1992 of our brotherhood "to all pious and Orthodox Christians, to every Hellene and to all men who love freedom and justice". This *Open Letter*, which was translated into several languages and circulated in many countries, presents a brief but complete account of the case in general and in some measure touches on all the related questions.

4. The Open Letter of our brotherhood to all the fathers and brothers on the Holy Mountain, dated 20.7.92. This letter, while it is of specific interest to the monks of the Holy Mountain, nonetheless is also of general interest and presents the scriptural, patristic and canonical bases for our position and our petitions.

5. Issue no. 211 of the religious periodical *Pneumatika Thesavrimata*, which eloquently expresses the position and opposition of the Orthodox Greek conscience concerning this case in virtually every corner of our country; it circulated in thousands of copies and evoked lively interest in the matter.

6. The Letter to the Holy Community of the Holy Mountain Athos dated 6.2.1993, signed by two of the plaintiffs, Fathers Ioannikios and Nicholas of the Skete of Prophet Elias, expressing the views of all the plaintiffs, although two were absent at the time of writing, in which a final appeal is addressed to the Holy Community for a settlement of the case out of court, in keeping with monastic life and tradition, and that of the Holy Mountain in particular. This was done not only for our own acquittal and restoration, without worldly disturbance, but primarily out of reverent concern for the authority, the prestige and genuine interests of our true homeland on earth, the Holy Mountain Athos. Not only this, but also in seeking to further both the real worldly interests as well as the spiritual benefit and salvation of all the members of the Holy Community and all the monks dwelling on the Holy Mountain, who are as yet, willingly or unwillingly, our persecutors.

6a. The Letter to the Holy Community of the Holy Mountain Athos dated 17.2.1994 by the same.

7. The Open Letter boldly signed by 160 and more monks of the Holy Mountain who live in the Holy Monastery Esphigmenou and in other locations, sketes, kellia and houses on the Holy Mountain, primarily in its desert areas. This letter expresses the convictions, apart from

those who signed it, of a great many other monks of the Holy Mountain, who avoided signing it "*out of fear of the Jews*". It is understandable that expulsion and exile is not a small woe for a monk of the Holy Mountain... In relation to this case, this letter presents an Orthodox Christian Witness of the struggling monks of the Holy Mountain in our favor and against our persecutors. This letter is presented here as it was published in the journal of the Holy Mountain *Agios Agathangelos Esphigmenitis* in a special issue in May, 1992.

8. The article concerning our persecution published on page 1 of issue No. 131, May-June, 1992, of this same Orthodox journal *Agios Agathangelos Esphigmenitis*. It is characteristic that the cover of this issue of this journal, as well as of the special issue just above, carries the icon of "*The Monastic Saints of the Holy Mountain Martyred by the Latin-minded Patriarch Bekkos*". As is known from Church History and from the living tradition of the Holy Mountain and all of Orthodoxy, these Saints were martyred by the latinizers, that is the pro-papist Patriarch of Constantinople John Bekkos (1275-1282), because they, just as we do today, remained faithful to Orthodoxy and refused to unite with the Pope. For these Orthodox convictions of theirs and their steadfastness in the Faith they were put to death in terrible ways: some were beheaded, others were burned alive, others were drowned in the sea and others suffered in other ways, as the holy icon on the cover clearly records and portrays. On the inside of the cover is published the icon "*Never-fading Rose*", the work of the Abbot of the Holy Monastery Esphigmenou, Archimandrite Euthymios. This icon is a characteristic expression of the feelings which we monks of the Holy Mountain nourish towards our All-Holy Lady, the Theotokos, from whose "Garden", * the Holy Mountain Athos, we were so unjustly and forcibly expelled, with the result that since then we have been living up to the present day in bitter exile.*

9. The book entitled *Papas o Sfagevs kai Airesiarhis [The Pope, Butcher and Heresiarch]* by the Monk of the Holy Mountain Kallistos Polatidis, which contains, among other things, two very interesting chapters: one (pp. 53-58) concerning those martyred by Bekkos and the other (pp. 143-147) concerning commemoration of the Patriarch and the cessation thereof.

10. The book by the Monks of the Holy Mountain entitled *Peri Ekklesiastikis Koinonias kai Mnemosynou kai tou shetikou autis Ierou Kanonos tis A kai B Agias Synodou [Concerning Ecclesiastical Communion and Commemoration and the Related Holy Canon of the Protodeutera Synod]*. This book contains an exhaustive study, firmly based on a canonical and patristic foundation, of the question of commemoration and the cessation thereof. In the Foreword, on page 3, there is an account of the persecution of the Orthodox and the crimes committed in Constantinople by the papal legate named Pelagius against those who refused to commune with the Pope, that is for the same reason as we are being persecuted, with the significant difference that our "penance" is exile, rather than death.

11. Another book by other Monks of the Holy Mountain on the same topic with the title *Ypomnima-Ekklesis pros tous Kathegoumenous kai Proistamenous ton Eikosin Ieron Monon tou Agiou Orous Atho [Memorandum-Appeal to the Abbots and Superiors of the Twenty Holy Monasteries of the Holy Mountain Athos]*. This book also presents a solidly canonical and patristic examination of the case and a defense of our position. [This book has been published in English translation under the title: *Memorandum - Appeal to the Abbots and Superiors of the Twenty Sacred Monasteries of the Holy Mountain Athos* by the Center for Traditionalist Orthodox Studies, Etna, California, 1993, Translator.]

* "*For this reason it is right that they all call it the garden of the All-Holy Lady*" (Caesarius Dapontes).

12. Our correspondence with the Police Department of the Holy Mountain.
13. Our correspondence with the Civil Administration of the Holy Mountain.
14. Our correspondence with the Holy Community of the Holy Mountain.
15. Our correspondence with the Patriarchate of Constantinople.
16. Our correspondence with the Ministry of Foreign Affairs.
17. Our correspondence with the Ministry of Public Order.
18. The **Question** of Members of Parliament to the Ministers of Foreign Affairs and Public Order and the latter's replies.

19. **Photographs** of the Skete and of life there.

20. A reprint from the journal *Agios Agathangelos Esphigmenitis* (No. 132 and 133) of the collection of our published *Correspondence* with various political and church authorities and with newspapers and periodicals.

21. The booklet (16 pages) entitled *Airetikos Apodeiknyetai Patriarhis Konstantinopoleos Bartholomaios [The Patriarch of Constantinople Bartholomaios is Proven to be a Heretic]* which demonstrates in a clear and reasonable argument the unorthodox positions of the present Patriarch of Constantinople kyr Bartholomaios, for which reason — and for no other — we did not commemorate him, whereas otherwise we would have commemorated him and we are fully prepared to commemorate him, should he renounce his heretical ecumenism. This is not the question before the court, of course. The question before the court, rather, is whether or not our expulsion from the Holy Mountain was carried out according to the Canons of the Church and the law of the land. Since our persecutors call us "schismatics", however, it is necessary for us to defend our Orthodoxy and the correctness of our actions. We wish, therefore, to demonstrate here also that we are essentially correct independent of the fact that the question of whether or not we are "schismatics" had to be determined, first of all, by a competent ecclesiastical court in keeping with due legal and canonical process, and that no consideration can be given to enforcing such a verdict and to its consequences until such time as we be found guilty of the terrible and mortal crime of schism. Therefore, lest this frightful suspicion be attached to us and thus prejudice the course of the judgment of our case, we repeat our position on this matter.

For this reason we also attach:

22. The book entitled *Filimata Iouda [The Kisses of Judas]* (3rd edition), published by the journal *Agios Agathangelos Esphigmenitis*, 1993. This book contains undeniable photographic evidence which demonstrates why we are forced to cease commemoration, due to the frightful participation by the ecumenists posing as Orthodox in the deadly pan-heresy of ecumenism, a forerunner of the world religion of the Antichrist.

This is for history...

With this we close this extensive parenthetical section and return to the question before the court concerning our case, which concerns whether or not our forced removal from the Skete of Prophet Elias and the Holy Mountain was legal and canonical or uncanonical and illegal and why. Consequently, what were the circumstances of our unjust and barbaric persecution in general and specifically with reference to the legal claims which we are presenting here?

* * *

We have proven beyond any reasonable doubt the factual basis of our petition on the basis of the materials in the portfolio and the attached documents. This has been proven primarily from the affirmations made by the defendant, the Greek State (by the Minis-

tries of Foreign Affairs and Public Order) and likewise in the intervention entered against us by the Holy Monastery Pantokratoros.

These affirmations made by the opposing side comprise a confession of the historical basis of our presentation, according to which we were expelled from the Skete and from the Holy Mountain by a surprise attack, by force and shouting without presenting to us in advance, and indeed without doing so afterwards either, any form of written document, any form of legal decision, summons to answer charges or anything at all in written form, and of course without permitting us the opportunity to submit any form of document ourselves in our own defense. We have been given no information concerning the existence of any form of legal document or written act, not to mention having been presented with a copy thereof.

Instead, those who came to the Skete under such ill omens on the day of 7/20 May, 1992, immediately carried us off into exile with force and with the shouts, "You are schismatics!" This is no different from arresting a person and imprisoning him for a set term or for life or sending him into exile or leading him to the place of execution without trial and without due process, regardless of whether he be guilty or innocent, simply on the basis of the exclamation by the executioners that he is "*a thief*" or "*a terrorist*" or "*a murderer*".

Such facts stagger the human mind, make fantasy pale and far surpass the writings of an Orwell or Kafka.

But let us see, specifically, what is indicated by the case presented against us.

The conclusion it quite clearly implies is that it affirms that the entire "*process*" of our "*trial*" and "*condemnation*" consisted in and was exhausted by the oral "*proclamation*" that we are being removed from the Holy Mountain, because we are "*schismatics*" simply because we did not agree to commemorate kyr Bartholomaios.

This is clear from all the evidence that has been submitted, including the reply to us, through our attorney, of the Patriarchate of Constantinople as well as of the Civil Administration and the Police of the Holy Mountain — the Holy Community has not sent us any reply at all — and also of the Ministries of Foreign Affairs and Public Order, replying both to our own petitions and to the questions submitted by Members of Parliament.

In view of this, let us turn to the legal issue of what conclusions must be drawn from the above factual material.

The administration of Justice on the Holy Mountain, apart from the Holy Canons, the definitions and decisions of the Ecumenical Councils, which are recognized also by article 3 of the Constitution, is defined by the Constitution, by international treaties etc., the laws of the Greek State, and in particular by the Constitutional Charter of the Holy Mountain of May 10, 1924 and the Act of Ratification thereof of September 10, 1926.

From a multitude of provisions of the above ecclesiastical and civil legal codes it is clear that on the Holy Mountain and for the monks of the Holy Mountain the fundamental principles of Justice are in force, including "*no penalty is imposed that is not provided by law*", "*no one is deprived against his will of the right to trial*", etc. Also, the principles of equality and freedom are in force.

Furthermore, the principle of keeping written records of the judicial process applies. Thus, leaving aside the Constitution and the other laws, as they are better known, we refer to the Constitutional Charter of the Holy Mountain and the Act of Ratification thereof, which provide, among other things, the following:

"No one is judged without being heard; no penalty is imposed that is not provided by law or the Holy Canons and no one is deprived involuntarily of the right to trial" (article 7, section 3 of the Act of Ratification of Sept. 10, 1926).

This is in full accord with the tradition and the decisions of the Church.

Thus:

"What court was held to judge the evidence and allegations against us? What proof of our guilt has been submitted? What Canons were cited against us? What lawful decision of any Bishop ratified the verdict against us?" (St. Gregory of Nyssa, P.G 46, 1006 C).

Also:

"We rule that a person who was not present at his trial, or who was not even summoned to trial, is in no way effected by the sentence pronounced against him" (IV Ecumenical Council, Mansi 7, 250).

Also:

"Sentences against persons who were absent are annulled: on this we all agree; no one is tried in his absence" (IV Ecumenical Council, ibid.).

Likewise:

"summoned in good time and in writing before the court to defend himself. The written bill of indictment, which lists the charges to which the accused is being summoned to present his defense and which also states the exact time and date of his appearance in court is to be served on the accused in good time under written receipt signed by the accused" (article 58 of the Constitutional Charter of the Holy Mountain) (emphasis ours).

Further:

"When the accused presents himself before the court on the day appointed for his trial... the written bill of indictment is read out... and the accused is then summoned to present his defense, which he can present in writing in addition to his oral defense" (article 61 Constitutional Charter of the Holy Mountain).

According to article 62 of the Constitutional Charter of the Holy Mountain the accused has the right to examine all the documents of his case prior to his arraignment or trial, so as to be able to refute all the points of the accusations against him.

According to article 67, the court reaches its decision to acquit or find guilty according to majority vote, which is recorded in the official register of its legal records and which *"must include the historical background and the legal reasoning, set forth analytically and citing the facts upon which the judges based their findings and a judicial section which quotes the relevant articles of the present Constitutional Charter, which provide the penalty imposed"*.

According to article 69,

"When any decision is reached by a judicial body its verdict is issued in an official written document. The accused is presented with an official written copy for which he signs a written receipt..."

Further, according to article 78 of the Constitutional Charter of the Holy Mountain,

"Decisions are to be enforced when, both from the standpoint of their contents and from the standpoint of the stipulations of the law, they are canonical and are in agreement with the provisions of the present Constitutional Charter".

Article 8 of the Constitutional Charter of the Holy Mountain provides that:

"The representative of the Greek State on the Holy Mountain executes and administers through the public officials under his authority the enforcement of the decisions of the respective Monasteries and the Holy Community, insofar as they are issued in agreement with the present Constitutional Charter".

To conclude this specific listing of the provisions of the pertaining laws, we refer to the provision of article 2, § 1 of the Constitution of Greece, which sets forth the supreme principle of legal order in our land:

"Respect and defense of the dignity of man comprise the primal duty of civilized government".

We attach a detailed list of refutations of the allegations and materials submitted by the opponent in a separate *Appendix* of this *Legal Memorandum*.

Furthermore, we attach a copy of the *Legal Memorandum* and *Refutations* and attached materials which we submitted to the Civil Court of the First Instance of Athens, which has yet to hear this case. This is because, *mutatis mutandis*, what applies to the case as presented there applies to it here also.

* * *

In addition to the list of attached documents presented above, we attach the following documents as well, as relating to the case, continuing the numbering from above:

23. Our correspondence with the Chief of the Greek Police.

24. A photocopy of the journal *Protaton*, the official periodical of the Holy Community of the Holy Mountain, the issue No. 28 for March-April 1991, pp. 41-42, in which the Prohegoumenos of the Holy Monastery Pantokratoros, Fr. Euthymios Pantokratorinos, who expresses the views of the Holy Community, writes as follows: **"They are Orthodox and obedient and consistent in fulfilling their monastic duties"**. This is in response to allegations to the contrary.

25. A photocopy of the official journal of the Patriarchate of Constantinople, *Episkepsis*, issue no. 494, dated 31.7.1993, in which the Russian Church Abroad is recognized as a canonical jurisdiction.

26. A photocopy of the *Telegram* sent 7.3.1994 by our Fr. Ioannikios to the Holy Monastery Pantokratoros in which he rejects the unfounded and uncanonical canonical release [*apolyterion*] sent to him.

27. A photocopy of the text of the *Charter* dated August 20, 1892, which sets forth the relationship of the Skete of Prophet Elias with the Holy Monastery Pantokratoros, which is in effect down to the present day, as provided by article 160 of the Constitutional Charter of the Holy Mountain.

28. A photocopy of the relevant texts of the *Holy Canons and Patristic Writings*.

In Athens, December 5, 1994

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"Deliver the oppressed from the hand of the unjust"
(Wisdom of Sirach 4:9)

APPENDIX - REFUTATION

To the plea of incompetence of the Court (Case of the opponent, p. 3, item a).

- a) **It is not true** that we are appealing to the court simply regarding an illegal action "of the Holy Community of the Holy Mountain and the Civil Governor of the Holy Mountain." The truth is that we are appealing regarding illegal actions and omissions by the Greek State, and specifically of the Ministries of Public Order and Foreign Affairs, which are responsible for the police and administrative officials of the Holy Mountain.
- b) **The provision** of article 7 of the Constitutional Charter of the Holy Mountain is quite clear. Arbitrary and provocative "supplements", additions and changes are inadmissible. The courts in Thessaloniki have jurisdiction **only over criminal cases** which concern criminal actions committed on the Holy Mountain. According to this provision, the **criminal** courts of Thessaloniki have jurisdiction only over such cases. This law makes no provision whatsoever for what the opponent has attributed to it, with absolutely no basis, when he asserts: "the criminal and civil courts of Thessaloniki have jurisdiction over the other cases". The aforesaid article makes no mention at all of "other cases" in general nor of the "civil courts of Thessaloniki" in addition to the criminal courts, in spite of such a brazen attempt by the opponent to convince us otherwise.
- c) **The Greek State** in general and the Ministries of Public Order and of Foreign Affairs in particular have their headquarters in Athens. Consequently according to article 3 P.D. 341/78 it is the courts in Athens which have jurisdiction over this case and not those of Thessaloniki.

To the allegation by the opponent that **the joinder of parties is inadmissible.** (Case of the opponent, p. 3, item b).

According to the provision of article 8 § 1 of the P.D. 341/78, the joinder of parties depends on whether or not the litigants who enter a claim: "cite common reasons for annulment supported by legal and historical bases". This pertains in the case under consideration. The question of how well founded the allegations of the plaintiffs may be is a different matter. It is to be noted, however, that in this case they are fully supported.

**To the opponent's allegation that
the suit "for the 2nd and 3rd request" is inadmissible
(Case of the opponent, p. 3, item c).**

The petition to restore matters to their former state has a foundation that is clear to everyone. This in no way contradicts the principle of article 26 of the Constitution concerning the distinction of authorities. Pursuing such a line of argument would lead to the absurd conclusion that the State is generally free from being sued.

**To the opponent's allegation
concerning the vagueness of the petition.**

The legal document containing our petition, as is perfectly clear, meets all the requirements stipulated in article 25 of P.D. 341/78. Consequently, the allegation of the opponent to the contrary is proven to be unfounded and is to be dismissed.

**To the opponent's allegations under the heading:
"The restoration to health of the Monastery of Pantokratoros"
(Case of the opponent, p. 4, item 2b).**

The term "*restoration to health*" says nothing but implies a multitude of things about all the expelled brotherhood of the Holy Monastery Pantokratoros, who are not parties to the current case. The unspecified generalities of the intolerable slanders suggested by this deceitful expression, do the opponent no honor and are impermissible not only for him but even for blathering idiots. Furthermore, this improper and impermissible tone was set previously, for instance by the expression: "because of the condition which prevailed in the Monastery from religious, dogmatic, administrative, ethical and other aspects" (*sic*), without mentioning any specific facts. It is not our purpose here, nor is it within the scope of the case under consideration, to defend the brotherhood removed from the Holy Monastery Pantokratoros. However, we would like to ask, why is it, that since, according to the written statements of the opponent, it had been decided to establish a five-member brotherhood in the Skete of Prophet Elias taken from the brotherhood of the Holy Monastery Vatopediou, in the end the brotherhood which moved into the Skete was taken from the Skete of the Holy Monastery Xenophontos?

**To the opponent's allegations under the heading
"The restoration to health of the Holy Skete"
(Case of the opponent, p. 3, item 2b).**

We note, first, that here also we find a repetition of the same inadmissible method and expressions and impermissible "style" in such terms as "*restoration to health*", "*various rumors...*" (!) etc. This ploy may impress and influence stupid people, but it is not sufficient to sway the decision of a court of law and certainly not yours... Such tactics deserve no further commentary. However, it must be noted that the opponent writes untruths when he states "*commemoration of the Archbishop of New York instead of the Ecumenical Patriarch*". We ceased commemoration of the present Patriarch of Constantinople because of his heretical beliefs and actions, in agreement with the Holy Canons, as hundreds of other monks of the Holy Mountain are doing, and for no other reason — such as in order to commemorate another bishop instead, as the opponent falsely alleges. The above cited facts of our admission and acceptance and official enrollment as monks of the Holy Mountain is not an issue in the

case under consideration, however this was all fulfilled in keeping with article 6 of the Constitutional Charter of the Holy Mountain and article 105 of the Constitution of Greece.

This is clearly demonstrated by the following:

- a) We were written into the official register of monks [*monahologion*] of the Holy Mountain,
- b) We were given official approval only shortly before our expulsion in the periodical *Protaton*, the official organ of the Holy Community of the Holy Mountain (issue 28, March-April, 1991, pp. 41-42), where it is written concerning us that: "They are Orthodox and obedient and consistent in fulfilling their monastic duties",
- c) The "three bodies" themselves declare that they would offer us "forgiveness" if we were to deny "zealotism", that is to say, deny our stand for Orthodoxy and the cessation of commemoration of the Patriarch of Constantinople until such time as he repents of his errors and returns to Orthodoxy. There is no mention that we are to deny the Russian Church Abroad (see below also).
- d) The allegation of the opponent that this latter body is "schismatic", and that the Patriarchate of Constantinople does not recognize it, is proven false by the official periodical of this same Patriarchate *Episkepsis*, (Issue no. 494/31.7.1993, p. 28), where it is specifically stated that at a meeting in which "some 100 representatives of the **canonical** jurisdictions located in Germany participated", along with the other participants are listed "H.E. Metropolitan Ireneios of Vienna and Rt. Rev. Bishop Theophanes of Berlin (Patriarchate of Moscow), **Archbishop Mark (Russian Church Abroad)**" [emphasis ours]. From this one concludes that, according to the Patriarchate of Constantinople, the Russian Orthodox Church Abroad is recognized as a canonical jurisdiction.
- e) Furthermore, clergymen of the Russian Church Abroad performed sacred offices at various times on the Holy Mountain with the permission and approval of the Patriarchate of Constantinople.

Concerning the opponent's paragraph entitled

"The trial process"

(Case of the opponent, p. 5, item 2c).

- a) The minutes of the "2nd Extraordinary Session" of May 7, 1992, at no point and in no wise make any reference to any directive to the Patriarchal Exarchia and the Holy Community concerning our expulsion. In particular, it is impossible to derive anything of the sort from what is written in the final paragraph of the minutes, which is unclear and, especially in the second portion, completely lacks any logical meaning. In any event, the aforementioned had no power whatsoever to make any such decision, and especially without observing canonical and legal process and procedure at least in some symbolic, legalistic way.
- b) The opponent then proceeds to cite the directive Ref. No. 13338/F.24/2/21.7.92 of the Governor of the Holy Mountain, which is in fact a **legal confession** by the opponent of the actual facts of this case. From this account it is clear that:
 - i) We were "**informed**" of the accusation, that is, **orally**, "the afternoon of May 7/20, 1992" by the "aforementioned", that is by the Exarchia, the Commission of the Holy Community and the Council of Elders of the ruling Holy Monastery Pantokratoros.
 - ii) The "relevant accusation" contained two charges:
 - 1) "That they are in a state of schism with regard to the Church and do not commemorate the name of the Ecumenical Patriarch in the Sacred Offices and the Divine Liturgy (violation of articles 5 of the Constitutional Charter of the Holy Mountain and 105 of the Constitution and also of the *Typos* of the Holy Skete) and

- 2) that they "have accepted and tonsured monks without the permission of the ruling Monastery and the observation of the known procedures for establishing residence (violation of articles 177 and 178 of the Constitutional Charter of the Holy Mountain)";
- iii) "They were given time to consider, with the assurance that if they reject zealotism and submit to the canonical jurisdiction of the Mother Church and adhere to the provisions of the Constitutional Charter of the Holy Mountain and the order of the Holy Mountain, they will be able to receive forgiveness and a petition will be made to the Ecumenical Patriarchate for them to remain in the Holy Place";
- iv) "The accused not only replied in the negative but insulted the Holy President of the Holy Gathering", without any specific mention, however, of the way or expressions with which they "insulted" the "Holy President of the Holy Gathering"!
- v) "Then H.E. the President informed them of the unanimous decision of the venerable Patriarchal Exarchia, of the Commission of the Holy Community and the Holy Council of Elders concerning their immediate removal from the Holy Skete and the surrender of the keys to the Abbot [of the ruling Monastery]"!
- vi) "Subsequently, the Civil Administration of the Holy Mountain and the Police Force were summoned and informed of the decision of the three bodies with the request that they immediately execute the decision and that the four (4) illegal schismatic monks be removed from the Holy Mountain. The said Authorities immediately executed the decision after first granting the "4" sufficient time to gather their personal effects".

The above text comprises the opponent's **reply** to our claim. At the same time it comprises a **legal confession** of what transpired, that is, of the factual basis for our claim.

Concerning the "unsurpassed excellence" of the "legal process" observed according to the passages just cited, the following points in particular are worthy of note:

As is clear from the above reply-confession of the opponent:

- 1) At no time was any form of written accusation presented to us, and certainly not one concerning schism.
- 2) We were "informed" of the "relevant accusation" for the first time on the afternoon of May 7/20, 1992, when the Skete was visited by "the aforementioned and the Holy Council of Elders of the ruling Holy Monastery of Pantokratoros". These persons had already made up their minds concerning the "decision" to expel us from the Skete and exile us from the Holy Mountain; they had reached a previous agreement concerning our removal and exile.
- 3) At no time were we ever summoned to make a defense, and certainly not in writing, to the charge of schism. Nor was any trial ever conducted to which we could have been summoned or at which we could have been either present or absent.
- 4) We "were given time", in the course of a few seconds, to reply to the **ultimatum**: "Do you agree to commemorate kyr Bartholomaios, so you can be granted forgiveness and remain on the Holy Mountain?" Our reply, of course, was negative, because it is impossible for us to commemorate kyr Bartholomaios until he renounces the heresy, or better to say the pan-heresy, of ecumenism, which he is proclaiming both in words and deeds.

Thus we see that the only condition for us to remain in our home, that is on the Holy Mountain and in the Skete of Prophet Elias, was the commemoration of kyr Bartholomaios, and not the question about the Russian Church Abroad, which has been introduced subsequently, or the allegedly uncanonical residence of two wearers of the rason, etc.

This ultimatum is reminiscent of the ultimatum fascist Italy issued to Greece the morning of October 28, 1940, which was rejected at the time when Italian forces were already invading Greek territory.

- 5) The persons who presented this ultimatum to us were two Bishops from the Phanar, the representatives of the Commission of the Holy Community of the Holy Mountain and the Council of Elders of the Holy Monastery Pantokratoros. Thus, these were persons who were totally **unauthorized** to hold a trial and pronounce a verdict on the charge of schism, for which, according to the Holy Canons, the competent church court must be comprised of at least seven (7) Bishops.
- 6) These unauthorized persons entered the Skete carrying with them in their briefcases, or rather, not in their briefcases, as no written document existed, but in their skulls, the "decision" which had been reached prior to the "legal process" concerning our eviction and exile.
- 7) We were "informed" of this "decision" orally.
- 8) First the "decision" was reached and then we were "informed" of the "accusation".
- 9) In violation of the "pertaining laws" none of the proceedings were conducted in writing and everything was done orally.
- 10) Moreover, we have something here which cannot be found in judicial records of any kind, no, not even in the most surrealistic theatrical presentation of the most unbridled and wildest fantasy. This is the affirmation by the opponent, who has the audacity to claim before Your Court that "In this instance we have the unanimous decision of the three levels [court of trial, court of appeal, supreme court] of the administration of justice" (!!!) This is something which, as far as we know, has not even occurred in the shadow theater. Even a pop protagonist of such a theater could not have dreamed up the convocation, deliberation and decision all at once and all together of the three levels of the administration of justice, summoned together instantaneously on one occasion for one particular case.
- 11) Independent of this, none of the three groups of persons involved comprises any form of a legal body which is competent to judge a case concerning schism.
- 12) "Subsequently, the Civil Administration of the Holy Mountain and the Police Force were summoned and **informed** of the decision of the three bodies with the request that they **immediately** execute the decision and that the four (4) illegal schismatic monks be removed from the Holy Mountain. The said Authorities **immediately** executed the decision, after first permitting the "4" to gather their personal effects" [emphasis ours].
 This quick and sudden "job" (this term is not employed by accident, nor is it our own term, as we shall see below) comprises, as is self-evident, in reality a fusion and osmosis of summons, accusation, defense, deliberations, levels of appeal, presentation of arguments, the pronouncing and execution of sentences before which the human mind is not only stunned but horrified. All this would be comic if it were not tragic, due to its tragic consequences, which lead to the dissolution of legal order and the extermination of innocent people. It is reminiscent of the old joke that the ultimate in speed is to lock a drawer so fast that you manage to throw the key inside. It is also reminiscent of the infamous slogan: "Let's wet it down, sweep it up and be done with it". It is also reminiscent of the "lightning warfare" employed in World War II by the 3rd Reich of Nazi Germany. It is both similar enough to be a copy and serious enough to be a parody.
- 13) All these shameful acts were hazarded and committed, sad to say, by persons who wear the venerable garb of the Orthodox clergy. For this reason we noted that the word "job" was not employed by us by chance. Unfortunately, this expression was used by clergymen, and unfortunately by monks of the Holy Mountain, who, unfortunately, were boasting and extolling a bishop who came from the Phanar in order to "pull off this job" and for the effectiveness with which he did in fact pull it off. All this was done, as the opponent confesses without hesitation, so that our persecutors could get rid of us "immediately" by

using the methods employed and without "killing themselves" by observing the Holy Canons and the law of the land, which would have been not only time-consuming but also ineffective for them when in their administration of injustice (See the minutes of the 3rd Extraordinary Session of the Holy Community of the Holy Mountain, May 8, 1992). In other words, blessed are they who take over and make war from within and let law and justice be cast aside.

14) Now we leave aside the villainous activities of the churchmen both inside and outside the Holy Mountain and turn to the illegal actions of the civil authorities. It must first be noted that the organs of the Civil Administration and Police of the Holy Mountain had arrived first, that is before we were "informed" of the "accusation" against us, and they waited in full preparedness to be "informed" of the "decision of the bodies" — everything was done orally — so that they could execute this "decision" "immediately". It is perfectly clear that these authorities acted in violation of their duty when they executed this "decision" (?) without taking the trouble to determine, as they are supposed to do, whether or not it was a lawful decision that should be enforced.

15) As for the "sufficient time" granted "to gather our personal effects", the term "immediately" which the opponent employs more than once clearly describes it, along with the fact that the first of us did not even manage to take his identification card with him. Neither, it must be noted, did they give it to him later!

We think that the illegal actions, arbitrariness and injustice that show themselves in the above passages cry out so loudly that there is no need for us to dwell on the matter any further. On the other hand, no word is sufficient to describe the trampling of human rights and the dignity of man and the moral damages inflicted upon us.

Concerning the second charge of the accusation of which we were "informed" concerning the 3rd and 4th of us.

We (the 3rd and 4th of us) are accused of being illegally tonsured and accepted as residents on the Holy Mountain. In particular, the opponent alleges that our monastic tonsure was performed by the Superior of the Skete, Archimandrite Seraphim (Babich) without the permission of the ruling Monastery.

The following points must be noted: The relationship of the Skete of Prophet Elias with the Holy Monastery Pantokratoros was defined by the Patriarchal and Synodical Charter of the Patriarchate of Constantinople inscribed on parchment and dated August 20, 1892.

(Note: We note here also and emphasize, in order to avoid any misunderstanding, that we have never denied our subjection to the established order of the Holy Mountain, which, to the contrary, we cite in our defense, nor have we ever turned against the Patriarchate of Constantinople, to which we belong as monks of the Holy Mountain, but to the contrary, we stand in defense and fight for the Patriarchate, and this in particular by our cessation of the commemoration specifically of its present Patriarch kyr Bartholomaios, because he has strayed from the path of Orthodoxy; we are prepared to commemorate him as soon as he renounces his ecumenist heresy, which consists of putting Orthodoxy on the same level with heresies, such as Papism, Protestantism, Monophysitism etc. and our assimilation with them).

In keeping, therefore, with this charter, a copy of which is attached, the number of the fathers who reside in the Skete is not to exceed 130 tonsured monks plus 20 novice monks (provision of article 6). In agreement with the provisions in the following article 7:

"Those who are to be tonsured into monasticism to maintain the established number of fathers, after the canonical period of trial [novitiate] in the Skete, first are to

be presented by the Superior to the ruling Monastery to make the customary prostration [metanoia] and then receive the monastic schema from the Superior himself".

In the following article 8 it is provided that

"When monks are presented to the ruling Monastery by the Superior of the Skete with the written petition that they be ordained, after they have been examined by the Superior, the Spiritual Father and the Elders of the Skete. The Monastery should willingly issue the customary canonical letter of the ruling Monastery to one of the local Bishops."

These provisions are manifestly clear and explicit and are not subject to confusion or misinterpretation. A written petition and written permission are required and are to be granted forthwith only for the ordination of a monk to the lofty ministry of the priesthood (provision of article 8). On the other hand, as can be readily deduced from article 7, **both from its own text and by contrast with** the provision of the following article 8, the monastic tonsure is performed "by the Superior himself" without any form of permission, written or oral, being required for it. The presentation of the candidate for the monastic tonsure, on the one hand, expresses the traditional reverence for the ruling Monastery, and on the other hand clearly serves as a guarantee that the established number of tonsured monks that are permitted to reside in the Skete (130) is not being exceeded. Therefore, no permission is required in this case, and in particular no written permission, for the tonsure of a monk in the Skete by its Superior, in order to be legal and canonical.

Concerning the point presented by the opponent entitled

"Their lawful expulsion"

(Case of the opponent, p. 7, item 2c)

Apart from the inadmissible abusive expressions "two (2) schismatic priestmonks" and "the other two schismatics wearers of the rason"

(note: We underscore here for yet another time that whether or not we are schismatics -- which we both emphatically deny and which also is not the case -- is an **issue**, and not a given, which must be resolved by a competent authority through a canonical decision pursuant to due legal process; this is not something that can be determined by any single person acting on his own according to his personal whim and fancy.)

we note the following: The opponent, in keeping with the tried methods of propaganda, puts special emphasis on Russian nationality and American citizenship, facts which have been widely exploited by our persecutors, in order to make up for the lack of any basis for their allegations against us, in an effort to muster a variety of associated notions and negative impressions against us.

These persons overlook the following:

- a) **Phyletism** (or according to the current terminology "racism") is fundamentally opposed to the teachings of the Church, in which *"there is neither Greek nor Jew... Barbarian, Scythian..."* (Col. 3:11), and has been specifically condemned by the Panorthodox Council of Constantinople of 1872.
- b) **Racism** is foreign to the mentality and traditions of the Greeks.
- c) **The Holy Mountain** in particular has always consistently followed the Byzantine policy and tradition of embracing persons of various nationalities, enlightening them with Orthodoxy, and civilizing them with Greek values and traditions to the benefit not only of religion but also of the entire nation, for the more it imparts enlightenment, the more enlightened it becomes itself. For this reason, there have always been many residents on the Holy Moun-

tain from various national backgrounds, and among them there have been the descendants of royal families. This, as has been noted by authoritative historians, has given the Holy Mountain the quality of being a place not only for religious but also for cultural and ethnic interaction. For example, it was on the Holy Mountain that St. Sabbas, a royal son and the enlightener of the Serbs, became a monk and learned Orthodoxy. Apart from the Serbs, the Holy Mountain has been the monastic home of Russians, Bulgarians, Georgians and other monks, with the blessing of the Byzantine State and the Patriarchate of Constantinople, to the benefit of both and more generally for the benefit of Orthodoxy and the Nation.

Consequently, any notion of expelling foreigners, veiled under an ill-conceived nationalism, is fundamentally opposed to a properly understood patriotism and, in the last analysis, is betrayal both of our nation and our religion, because it serves the designs of dark forces working to isolate the Greeks from the other Orthodox peoples and to set them in opposition to one another to inflict maximal damage on both sides and on all the Orthodox in general. And so, let all the various propagandist types redirect their fire and hurl both their veiled and their unveiled filth elsewhere.

On the other hand, let us not forget what Isokrates said in his *Panegyric*, that Greeks are not those who are born such so much as "those who partake of our education". The residents of the Phanar, in particular, should beware of the designs of Turkish diplomacy.

We write all this not simply "*de lege ferenda*"; it is also enforced "*de lege lata*". This is because according to the Constitution of Greece (article 105), just as also according to the Constitutional Charter of the Holy Mountain (article 6),

"All the monks living on the Holy Mountain of whatever nationality they may be are considered to possess Greek citizenship".

And this, of course, holds true regardless of international situations, tensions and confrontations in which every attempt is made to label our nation as a hotbed of persecution and racism. On the other hand, the ideology of "racial cleansing" is not only intolerable but cannot possibly prosper in our particular climate.

Thus, all the attempts to create negative impressions, either openly or deviously, by exploiting foreign national origins and former citizenship are to no avail against us.

We think that enough has been said about this. Concerning the Russian Church Abroad, enough has been set forth above.

Concerning the opponent's allegations on pages 8, 9, 10 under item 3Aa and under the title "*Constitutional provisions*".

All that is written in this section is either superficial or superfluous. We do not contend that schismatics should be allowed to live on the Holy Mountain. Quite the contrary, we affirm that the human rights of the Orthodox monks of the Holy Mountain should not be violated on the basis of unfounded and arbitrary accusations that they are schismatics, without this accusation being submitted to the proper canonical process of examination and trial.

Furthermore, as has already been shown, we are not working against the Patriarchate of Constantinople, but rather we are defending it from heresy and, in keeping with the Holy Canons, have turned against the false teachings of specific persons, something which a large portion of the monks of the Holy Mountain is doing.

Concerning the allegations of the opponent written under items 3Ab, pp. 10, 11, 12.

Here the opponent presents a list of provisions of the Act of Ratification of 10/16.9.1926 and of the Constitutional Charter of the Holy Mountain. This list does nothing other than demonstrate how all these provisions have been violated in many ways by all the authorities represented by the opponent.

The allegations of the opponent written under the title "*Offenses of those expelled*" under item 3B, pp. 12, 13, 14, 15.

It is not true that on the Holy Mountain we commemorated, in place of kyr Bartholomaïos, Metropolitan Vitaly of New York, first hierarch of the Russian Church Abroad or that the first of us made any statement to this effect to the President of the Patriarchal Exarchia, as the opponent alleges. The truth is that for the present time we do not commemorate the present Patriarch of Constantinople Bartholomaïos, not because we belong to the Russian Church Abroad, but because of his heretical (ecumenist) positions. The same is done by hundreds of other fathers of the Holy Mountain. This is the only statement that was made by the first of us when he was questioned before the Patriarchal Exarchia. We do not refuse to commemorate the Patriarch of Constantinople in general but only the specific present Patriarch, not because of his rank but as a person.

We also refer to and cite the Charter of 1892. Consequently, its existence and authority is recognized and cited by both sides. We have already written about the relevant provisions which it contains.

The statement of the Patriarch of Moscow kyr Alexis, which is cited by the opponent, has no significance in the present case. We have already written at length about how a person is judged to be a schismatic.

The text which is then attached in the English language, without any translation into Greek being provided, for this reason cannot be taken into consideration, as a matter of principle. However, we note that we ourselves made a translation of this text and we cite this translation as evidence that supports us and not the allegations of the opponent. This is because, as the text relates, kyr Athanasios of Helioupolis (Note: the President of the Patriarchal Exarchia) specifically asked Father Seraphim (Note: the first of us) about his refusal to commemorate and the latter replied to him that they follow the example of the previous superior, Fr. Nicholas, who refused to commemorate, "because of the ecumenist and modernist conduct of the ecumenist throne". Thus, our declaration lent no support whatever to the allegation that our refusal to commemorate kyr Bartholomaïos supposedly stems from our being part of the Russian Church Abroad and our commemoration of its first hierarch. To the contrary, it is clear that our reply was to the effect that we do not commemorate the Patriarch of Constantinople, following the example of the former Superior of the Skete, Fr. Nicholas, because of the "ecumenist and modernist conduct of the ecumenist throne".

Concerning the canonicity of the monastic tonsures of the 3rd and 4th of us we have already written above.

Finally, regarding the opponent's quotation from the account written by the Civil Governor of the Holy Mountain, that "among the monastic community there were widespread rumors about their anti-patriarchal activities and about the moral offenses of the schismatic priestmonk Seraphim... and also that they had transformed the holy place of worship into a center of anti-Greek propaganda... For all this we possess serious evidence" we must note the following:

Apart from the fact that these vicious slanders are unfounded and false, rumors and "evidence" cannot be used to justify sentences that have already been carried out. Every accusation must be presented directly and openly before the competent judicial body, the proofs must be presented and the accused must be given the opportunity to present his reply and defense and then a lawful verdict is reached concerning the matter. This, however, is by no means accomplished by the "rumors" and "evidence" of the shameful slanders which we have before us in this case.

Concerning the matter of our citizenship
(Case of the opponent, p. 15).

Enough has been said about this already.

Concerning Part 3, chapter 1 of the case of the opponent,
p. 16, under the title

***"Their removal was legal in keeping with
the appropriate decision of the authorities".***

The opponent, citing article 9 of the Act of Ratification 10/16.9.1926, writes that

"Finally, the supreme court of appeal for decisions of the Holy Community is the Holy and Sacred Synod of the Ecumenical Patriarchate, which can confer this authority on an Exarchia consisting of three metropolitans".

The following must be noted concerning this:

First, the opponent, in keeping with his beloved tactic in this case, which he has employed from the very beginning, in the allegations that comprise his case against us, misconstrues, that is, he distorts the texts of the relevant provisions of law. Here he places in the mouth of the pertaining law the assertion that "the Patriarch" is the one who "can entrust this power to a three-member Exarchia", when in fact the law (Act of Ratification) states that this is done by "the Ecumenical Patriarchate, through a canonical, synodical decision". However, in the case under consideration, **no such synodical decision exists.**

Independent of this, the "Patriarchal Exarchia" in the case under consideration consisted of **two members**, whereas the law requires **three members**.

Furthermore, no patriarchal letter has been produced concerning the powers of even this two-member Exarchia. Such a letter is simply mentioned in the minutes of the 1st Extraordinary Session of the Holy Community on May 6, 1992, in which it is specifically stated that such a letter was read, by which

"the Holy Community is informed of the composition of the Patriarchal Exarchia which consists of Metropolitans H.E. kyr Athanasios of Helioupolis and Theiron, as president, and H.E. kyr Meliton of Philadelphia as a member. The aforesaid letter also refers to the matters which the Holy Community is to discuss with the Patriarchal Exarchia".

According to these minutes, kyr Athanasios then made a speech, in which he cites the matters listed in this letter for which the "Patriarchal Exarchia" under discussion was dispatched to the Holy Mountain. From this speech, it turns out that these matters consisted of the following three: **first**, the matter of the state of affairs in the Holy Monastery Pantokratoros, and **second**, the matter of protecting the environment of the Peninsula of the Holy Mountain and **third**, the renting of Kellia by brotherhoods who are not monks of the Holy Mountain and belong to other ecclesiastical jurisdictions. (note: Here we direct your attention to the fact that at the same time as we are being thrown out, without any hesitation or

reservations "Kellia are being rented out to brotherhoods which belong to other ecclesiastical jurisdictions"). After this, these minutes relate that the matter of the "restoration of health" in the Holy Monastery Pantokratoros was discussed, and that it was decided that the monastery would be converted from idiorhythmic to a communal [cenobitic] rule.

As we see, at no point is there any indication that this letter of the said two-member Exarchia empowers it to act as a surrogate church court in a case regarding schism. As has already been demonstrated from the Holy Canons, such a court must consist of at least seven (7) Metropolitans. According to the code of law pertaining on the Holy Mountain, the Holy Synod of the Patriarchate of Constantinople has jurisdiction over such cases. In any event, there is no provision in article 9 of the Act of Ratification 10/16.9.1926 that the aforementioned authorities for administering justice on the Holy Mountain are competent to judge a case concerning schism.

As to the powers of a Patriarchal Exarchia consisting of three Metropolitans, as this article provides, we point out that such an Exarchia, empowered by an appropriate directive of the Holy Synod of the Patriarchate, is entitled to participate in a court comprised of itself and an Extraordinary Session of the Double Holy Community, of the abbots and representatives of the 20 ruling Holy Monasteries of the Holy Mountain, as described in article 43 of the Constitutional Charter of the Holy Mountain, which can pronounce judgment on **appeals** of decisions of the Holy Community.

Now from where, we ask, did those who took action against us find the authority to exile us after condemning us as "schismatics" and, specifically, where is there any mention of the powers of the "three bodies" to try us and to find us guilty of schism, all gathered together at the same time, in one brief session, which comprises the first and second and third instance of trial and appeal, without, as would have seemed to be natural, observing any legal process etc. This is something which we do not know and are unable to understand; indeed, it surpasses the limits of the wildest fantasy.

Finally, we confess that the opponent's high-flying theories, as we find them set forth at the end of the first paragraph of this chapter, concerning the nature of the legal process provided for the administration of justice on the Holy Mountain, surpass our powers of comprehension. The only thing that we have been able to make out is that, according to the opponent's views, the essence of this system lies in its not being observed. The only thing that has significance for those carrying out this persecution is the **result**; as for the rest, such as the **canonicity** or **lawfulness** of the decisions or actions involved, as the ancient saying goes, "Hippokleides doesn't give a damn". Let the right of the strongest prevail.

May we be permitted here to recall the reply given by the ever-memorable professor of International Law at the University of Athens Ioannis Spyropoulos, a worthy scholar, when his students asked him by what right (in 1955 or 1956) those who had seized the islands of Kemon and Manchu had acted. "Very simple, gentlemen, by the right of the strongest".

Nonetheless, in our country there exists a legal order and the right of the strongest is not in force. In particular, the courts function according to an established due process and not according to the right of the strongest...

Moreover, views in favor of suspending the law and the established democratic order and its authorities according to the principle "*Salus populi suprema lex esto*" are totally alien and foreign to the climate and traditions of our country.

After this, the opponent states that

*"the Holy Community gave orders to the **Commission of the Holy Community** together with the **Patriarchal Exarchia** and the **Council of Elders** to present the charges against the schismatics and to enforce the law".*

The "surrealistic serial" thus continues.

What is stated here about the Commission of the Holy Community has no relationship at all, or better to say directly contradicts, what has just been written concerning article 9 of the Act of Ratification 10/16.9.1926, which provides for a combined court comprised of the Exarchia and the Extraordinary Double Session of the entire Holy Community, defined in article 43 of the Constitutional Charter of the Holy Mountain, not a commission of the Holy Community, etc.

What is written in the second paragraph of this same chapter of the presentation of the opponent, on p. 17, expresses his perception of interpretation and application of the laws; this has already been refuted above.

Concerning the opponent's allegations under the title

"The removal was carried out in fulfillment of the Constitution",
chapter 2 of Part 3 of the case of the opponent, pp. 17, 18, 19, 20.

In this chapter the opponent attempts to interpret the Constitution and to demonstrate that all the facts correspond to it.

We point out right from the beginning that the former rests on a false assumption, that is, on the falsehood of the latter.

Specifically, he writes, and underlines these words, that "the expelled persons did not recognize the spiritual jurisdiction of the Patriarch". This is a **lie**, as we have already pointed out at some length above. Two distinct and separate matters have been confused: the recognition of the spiritual jurisdiction of the Patriarchate, of the Patriarch of Constantinople, as an institution and the recognition of the specific person of the current Patriarch kyr Bartholomaios, a person who has strayed from the path of Orthodoxy. The confession of Orthodoxy, however, is an indispensable condition for any person to hold this lofty office... which, we repeat, we greatly revere and fully recognize.

The term "schismatic" is a **lie**; it is an **insult**; it is a **slander**; furthermore, it is totally **unfounded** and **inadmissible**, because there has been no competent legal and canonical decision concerning this matter.

The allegation that "they engaged in illegal propaganda activities" **apart from being a sweeping generality is a lie and a slander.**

The allegation about "illegal tansures" etc. regarding the 3rd and 4th of us is **unfounded**, as has already been demonstrated.

The same kind of false assumption underlies the unfounded and irrelevant sections which follow concerning enforcement of the Constitution when it is being violated and concerning other provisions of the Constitution, which have no bearing on the case before us. Furthermore, the provisions cited here by the opponent do not provide the basis for our claim.

We are happy to read that the opponent agrees that "it is the duty of all the Greeks to respect the Constitution (article 120)", but we regret that he himself does not do this.

In the following paragraph, on p. 19, the opponent employs the expression, "by means which they judged to be in agreement with and corresponding to the goal that was being pursued". He has the gall to set forth undisguised his concept of how justice should be administered, or rather how it should not be administered, following the papist principle that "the end justifies the means". Perhaps this does serve the interests of our persecutors, who maintain such intimate contacts with the heretical Papists and embrace their mentality.

We take pains to point out at this point, that we cannot tolerate wasting any more time on these and the following confused views expressed by the opponent concerning "public order

and public interests", in the name of which he pardons, as it were, the dissolution of legal order and the established democratic principles, that is, in the last analysis, the dissolution of public order and public interests themselves. The projection of such views, as well as the committing of such acts, if nothing else, violates the provisions of article 120 of the Constitution, which the opponent himself did not hesitate to quote. There is a limit to everything!

Furthermore, we cannot comprehend which of the two categories describes all that the opponent writes subsequent to this (pp. 19, 20): misunderstanding or distortion of the basis of our claim and of the actual facts?

His statements about the distinction of authorities etc. (p. 20) also are based on a false assumption, because, as legislation firmly guarantees, the various authorities of the Church and the civil administration are not included in the Constitution's definition of the judicial branch.

In conclusion, refuting the general orientation of the opponent, we repeat that we are entering a claim concerning concrete actions and failures to act by the responsible Ministries and their officials, which is clearly set forth at length in our presentation. All the rest that the opponent refers to and discusses, with such anxiety and bluster, is totally irrelevant.

Concerning the allegations under the title

"Reparations without illegal actions?",

in chapter 3 of Part 3 of the case of the opponent, pp. 20, 21.

We have already presented an exhaustive discussion of the actions and failures to act on the part of the responsible state officials on which our claim is based, both in our original presentation and in this appended list of specific refutations of the totally unfounded allegations of the opponent, including what he writes in this chapter. The responsibility of the State is confirmed undeniably and has been clearly demonstrated. As for what he writes concerning the Constitution of Greece, which is cited by him, we note that this is all irrelevant to the case under examination.

Concerning chapter 4 of Part 3,

pp. 21-22 of the case of the opponent under the title

"False assertions in actuality".

The basis of all our assertions has already been demonstrated in full on the basis of the opponent's own confession.

Concerning chapter 5 of Part 3 of the case of the opponent,

pp. 22, 23, under the title

"Unfounded legal assertion".

All the opponent writes in this chapter is unfounded, as is quite evident. As for enforcing the Constitution and the traditions of the Holy Mountain and its established order, we note in particular that we, on our part, have always observed them in their entirety; the officials represented by the opponent, however, have violated them, as has already been exhaustively demonstrated above.

Concerning chapter 6 of Part 3 of the case of the opponent,

pp. 23-24, under the title

"Reparations for moral damage".

Three things are set forth by the opponent in this chapter.

First, in keeping with the mentality he has manifested above on both suitable and unsuitable occasions, regarding the case in general, so here also with reference to paying for damages, he presents a negative picture of well-known theories of "social responsibility".

Second, he reiterates his allegation that everything was done fair and square and that none of our persecutors is subject to any reproach at all, nor is any of the officials whom he represents, that is, officials entrusted with executive powers. The fact that he calls violations of the Constitution and of the laws the enforcement of the same and the observance of them a violation, is contrary to all forms of legal order and process and is an insult to the Greek State.

Third, the opponent does not neglect to busy himself with the ecclesiastical position of the Holy Monastery of Sts. Cyprian and Justina near Fili, Attiki, which has offered us its hospitality. He unhesitatingly labels it "schismatic".

To this we point out that we would be happy to provide a thoroughly founded and shattering defense of the canonical position of this "Old-calendarist" Holy Monastery (Note: Let us not forget that, apart from the majority of the Orthodox Patriarchates, **the Holy Mountain is also "Old-calendarist"**) and we are prepared to do this at any moment. However, this is not related to the case under examination.

We observe with horror, however, that the opponent would be quite happy if we had not found any trace of human kindness or any hospitable shelter and had met our demise in the gutters or in the caves and crevices of the earth.

Concerning the extent of the deceit and the stance taken by our persecutors regarding the illegal actions they committed against us, all of which have been fully espoused and brought to completion by the officials whom the opponent represents, we wish to say the following in conclusion.

The "job" that was "*pulled off*" at our expense, which was an act of naked force and violation of the law, at the inspiration and under the guidance of, as has been shown, the "Holy President of the Holy Gathering", was shamelessly praised by the members of the Holy Community, as recorded in the minutes of the 3rd Extraordinary Session on May 8, 1992, in which it "*expresses its gratitude to the venerable Patriarchal Exarchia and the Commission of the Holy Community for their adroit handling of the matter and for pulling off the job successfully*" (sic!).

In Athens, January 20, 1995

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"They are deemed worthy of the honor due to the Orthodox"
(Canon 15 of the Protodeutera Synod)

APPENDIX A

THOSE WHO lowered themselves to the extremes of lawless persecution, force and arbitrariness assert that we were expelled "legally" from the Holy Mountain by way of enforcing the provisions which forbid the residence there of heterodox and schismatics, because we are supposedly schismatics!

This allegation is malevolent and **unfounded**.

This is why:

According to the provision of article 105 § 2, subsection 3 of the Constitution of Greece, it is stated that on the Holy Mountain *"The residence of heterodox and of schismatics is forbidden"*. According to the provision of article 5, § 2 of the present Constitutional Charter of the Holy Mountain of May 10, 1924, *"It is not permitted for any heterodox or schismatic to reside on the Holy Mountain"*.

On the part of the opponent, the unfounded allegation, that we were expelled from the Holy Mountain, because we are supposedly schismatics, that is are guilty under the constitutional provisions just cited, is offered in hindsight. The opponent attempts to affirm this allegation by citing only **one incidental fact**, that we ceased commemoration of the present Patriarch of Constantinople kyr Bartholomaios.

Consequently the question arises whether, in this particular instance, our removal was lawful or not on the basis of this explanation, which has been offered afterwards. In order to reply to this **crucial** question, on which the outcome of the current case depends, let us examine in order first, what precisely is a schismatic; second, how the provisions cited above are put into effect in forbidding the residence of schismatics on the Holy Mountain, in order to determine whether or not we are schismatics and whether or not we were expelled from the Holy Mountain on legal grounds and according to legal process.

We maintain quite emphatically that **we are not schismatics** and, in any event, that **our expulsion was not in keeping with the law**. Not only this, but it was carried out in a horrifying and cruel manner of **fascist arbitrariness** and in a rush of crude **barbarian force**.

Since the ancient saying, **"the beginning of education is the definition of terms"** holds true in a fundamental sense both for the interpretation and the application of the law, we need to discover the meaning of the word "schismatic" in the Church. This must be done on the basis of the Divine and Sacred Apostolic and Conciliar Canons of the Eastern Orthodox Church of Christ, the steadfast observation of which, according to article 3 § 3 of the Constitution of Greece comprises an essential element of its Church.

A schismatic is a person who either belongs to a schismatic religious community which is cut off from the Orthodox Church, which does not apply in this instance, or a person who,

while belonging to the Orthodox Church, cuts himself off from it by ceasing to commemorate his local Bishop, which is the accusation levelled against us by the opponent.

It must be noted at the very start, that the incidental fact that he does not commemorate his local Bishop is not sufficient for a person to be condemned as a schismatic. It must be demonstrated that he does this for some reason other than for reasons of faith and righteousness. If these comprise the reasons for the cessation of commemoration, he not only is not a schismatic but he is worthy of the honor due to the Orthodox, because in this way he did not disrupt the unity of the Church but is laboring to rescue the Church from schism and dissension.

Here is what the Sacred Canons state about this:

a) Apostolic Canon 31:

*"If any Presbyter, in contempt of his own Bishop, holds sacred offices in his absence or raises up another altar, **without his Bishop being at fault in matters of piety and righteousness**, let him be deposed as a lover of glory. For such a person is a tyrant just as the other Clergy and any other persons who join themselves to him are. If they be laymen, let them be excommunicated. Let this be done after a first, a second and a third summons by the Bishop".*

b) Canon 15 of the Protodeutera Council:

*"What is prescribed for Presbyters and Bishops and Metropolitans is all the more so applicable to Patriarchs. Hence, should any Presbyter, or Bishop, or Metropolitan dare to separate himself from communion with his Patriarch and not commemorate his name according to the established order in the divine services, prior to synodical judgment and its final decision, he creates a schism; the Holy Council judges such a one to be alien to every clerical office if only he be found guilty of such an offense. And this is sealed and defined concerning those who on the pretext of certain offenses separate themselves from their superiors and create schism and disrupt the unity of the Church. **However, those who because of any heresy condemned by the Holy Councils and Fathers separate themselves from communion with their superior, because he publicly preaches heresy and teaches it with a bared head in the churches, such persons not only are not subject to canonical penalty for walling themselves off from the so-called Bishop prior to synodical judgment, but they are deemed worthy of the honor due to the Orthodox. For they have condemned not Bishops but false bishops and false teachers, and have not disrupted the unity of the Church with schism but rather have striven to rescue the Church from schism and dissension.**"*

The following passages are also relevant:

The Apostle Paul commands:

"But though we, or an angel from heaven, preach any other gospel unto you than that which we have preached unto you, let him be anathema. As we said before, so say I now again: if any man preach any other gospel unto you than that ye have received, let him be anathema" (Gal. 1:8-9).

St. John Chrysostom states:

"If the bishop is "evil" "in matters of the faith", flee from him and renounce him, not only if he be a man, but even if he be an angel come down from heaven" (P.G. 63:231).

Therefore St. Theodore the Studite emphasizes:

"We have a commandment from the Apostle himself, that if anyone teaches dogma or requires us to act contrary to what we have received, contrary to what the

Canons of the respective ecumenical and local Councils have defined, we must not receive him or regard him as a member of the Sacred Clergy" (P.G. 99:988A).

On this basis then the Holy Fathers always walled themselves off (that is, cut off ecclesiastical communion and commemoration and enclosed themselves within the noetic walls of the sacred Canons for defense) from those who preached heresy and performed acts "*contrary to their duty and right*" as the jurist of Canon Law Zonaras notes (Zonaras, S.K. 2, 40).

For example, this is what, **St. Hypatios** did; as soon as he learned of the heresy of Nestorios he cut off all ecclesiastical communion before the Council was summoned to condemn the heretic. Likewise **St. Maximos the Confessor** cut off all ecclesiastical communion "*prior to synodical judgment*" with virtually all the episcopal sees of the East and West because of the heresy of Monotheletism, so that his opponents considered him "outside the Church" (!)...

This is because,

"when we behold the seamless Robe of the Church torn by communion with heresy". "through piety we always sew back together what is torn asunder by heresy" (St. Gregory of Nyssa, P.G. 44: 725).

Here it must be noted that in this present age, specifically in the years 1970 - three Metropolitans of the Church of Greece, Ambrosios of Eleutheropolis, Paulos of Paramythia and Augustinos of Florina ceased, for reasons of faith, to commemorate the then Patriarch of Constantinople Athenagoras, without being considered to be schismatics because of this.

Thus, how is it possible for us not to cease commemoration, until the much longed-for and desirable day of his repentance of the pan-heresy of ecumenism, in which kyr Bartholomaios is cooperating and allying himself with all the heresies and all the heretics? Kyr Bartholomaios calls the Pope his "beloved brother in Christ", worships together with him and commemorates him in the diptychs etc. St. Mark Evgenikos of Ephesus says that he is a heretic and that we must flee from him "*as you would flee from a snake*". St. Cosmas of Aitolia tells us that the Pope is "*antichrist*" and "*curse the Pope, because he is the one to blame*". Moreover, as monks of the Holy Mountain do we not have before our eyes the radiant fact and example of the Holy Martyrs of the Holy Mountain who suffered under the latin-minded Patriarch of Constantinople John Bekkos (1275-1282); they preferred martyrdom (some were beheaded by the sword, others were burned by fire and others were bound up and cast into the sea) to separation from Christ by union with the antichrist Pope?

Thus, according to the Holy Canons, the **meaning** of the term : "schism" and "schismatic" does not depend simply on the **condition** of "cessation of the commemoration of the local Bishop". The **meaning** of this term contains another element as well, the **condition** that this cessation of commemoration be motivated for reasons "*apart from matters of faith and justice*". In other words, the second condition is an **essential** element of the meaning of the term. (Concerning meaning and the conditions of meanings, see Theophilos Voreas *Logika* 2nd ed., OEDB, Athens, 1971, p. 49).

In other words, not everyone who ceases commemoration of his local Bishop is a schismatic. Only the person who does this for reasons which are not bound up with matters of faith and righteousness are schismatics (See the Holy Canons cited above).

Consequently, schism, in its precise meaning, refers not to one's relationship with the Bishop, no matter what sort of person he may be, but rather it refers to one's relationship to the Church.

This, then, is the proper understanding of the definition and essential elements of the term schismatic.

The following question then arises:

Who is competent to pass judgment, with the legal consequences thereof, as to whether or not a person is a schismatic? Is this done by chance and just as anyone pleases? That is, can any idiot or church or civil or any other official pass such judgment at will? Does this depend on the arbitrary volition and judgment of each person? Or must the question of whether or not a specific person is a schismatic, with all the pursuant consequences, be brought before a specific institution under specific circumstances and in keeping with a specific process? It is obvious that the latter is the case.

What is the competent institution, then, and what due process must be observed?

This question is answered by the Holy Canons of the Holy Apostles and the Ecumenical Councils and the other great Councils and the Sacred Tradition of the Holy Fathers of our Church. These provisions have been supplemented by general and specific provisions in the current pertaining law of the land.

Here, then, is what the Holy Canons and the pertaining laws say about this:

Schism is one of the most serious offenses against the Church and is punished by deposition. The competent authority to try a case for schism when the accused has the rank of Presbyter is a Church Court comprised of at least seven (7) Bishops: six (6) others plus the local Bishop. For the clergy of the Holy Mountain, the competent judicial body is the Holy Synod of the Patriarchate of Constantinople.

To be specific:

The penalty for schism is defined by Apostolic Canon 31 (*Pedalion*, p. 32) and also by Canon 15 of the Protodeutera Council (*Pedalion*, p. 358), where the former literally says "*let him be deposed*" and the latter "*let such a one be alien to every clerical office*". That is, they say the same thing.

It must be pointed out that deposition is the ultimate punishment for a clergyman, for it is "*a sword and death*" according to the Holy Fathers. Thus in Canon 55 of St. Basil the Great we read:

"Those who march out on campaign against bandits, if they be outside the Church, work for the good of society, whereas if they be Clergymen, they are deposed from their priestly rank. For it is said that he that takes up the sword shall die by the sword."

St. Nikodemos interprets this Canon in the *Pedalion* as follows:

"The present Canon provides that those who put to death the thieves that attack them, if they be laymen, are banned from communing the Holy Mysteries for three years, that is, in accordance with those who killed in wartime, as Balsamon and Zonaras explain. But if they be Clergymen in priestly rank, they are to be deposed, because, according to the word of the Lord, he that takes up the sword will die by the sword. See how the Saint calls deposition a sword and death, because for those who are endowed with understanding and knowledge, this is truly understood as the death penalty" (Pedalion, p. 620).

Thus, "*all things being well ordered by the divine Fathers*" they provided and instituted that in the event of an offense against the Church which carries the penalty of deposition, such as schism, because of the gravity of the offense and the punishment, that the trial be entrusted to a church court which has an increased number of members in order to assure a fair trial.

Thus, they determined, that the church court competent to try such cases be comprised of many members, namely of at least 3 or 6 or 12 Bishops, respectively, when the accused is a Deacon, a Presbyter or a Bishop.

Here is what the relevant Canon 18 of the Council of Carthage provides:

"If any Bishop fall into any offense and by great necessity many [Bishops] cannot be assembled, so that he not remain in his offense, let him be heard by twelve Bishops; if it be a Presbyter, by six plus the [local Bishop] himself and if it be a Deacon by three."

St. Nikodemos of the Holy Mountain gives the following interpretation:

"A Bishop who is accused, according to Canon 4 of the Council of Antioch, is tried by the Synod of his diocese. If it is difficult for many Bishops to assemble, the present Canon provides that the offense be tried by twelve Bishops plus his own Bishop, so that the Bishop accused not remain in his offense, that is, so that he not remain accused before his people without being acquitted or found guilty. Presbyters are tried for offenses by six other Bishops and their own. Deacons are tried by three other bishops and their own" (Pedalion, pp. 469-470).

Furthermore, the Fourth Ecumenical Council provides the following:

"We judge that a person who was not present at his trial, who has not even been summoned to trial, is by no means affected by the sentence pronounced against him" (IV Ecumenical Council, Mansi 7, 250).

Also:

"Sentences against persons who are absent are annulled; on this we all agree; no one is judged in his absence" (IV Ecumenical Council, ibid.).

This is the Tradition which from the beginning and in ancient times was observed in the Church, as is depicted, for instance, in the following passage of the "Father of Fathers", St. Gregory of Nyssa:

"What court was held to judge the evidence and allegations against us? What proof of our guilt has been submitted? What Canons were cited against us? What lawful decision of any Bishop ratified the verdict against us?" (St. Gregory of Nyssa, P.G 46, 1006 C).

These same provisions are repeated also in the more recent legislation that has been adopted and in international treaties, etc., which proclaim the principles of defense of human rights and basic freedoms, which are guaranteed by the constitutions of all civilized countries.

In particular, regarding the Holy Mountain, all the provisions of the Constitution of Greece and the Constitutional Charter of the Holy Mountain and the Act of its Ratification pertain there, as we have already demonstrated in adequate detail above.

How then did it come about that we "ended up" automatically "schismatics" and the horrible stigma of schism was placed upon us at the wish, by the decision and by the action of some irrelevant civil, church or other institution or functionary? How were we indicted, tried and condemned and thus awarded the identity of "schismatic" without ever having received at any time any accusation for this offense, without being presented with any written accusation or summons to defend ourselves?

We note once again and we emphasize, that **no penal measure could legally be taken against us by the civil authorities** for the reason that we are schismatics, as the opponent maintains, **before a canonical determination** of this, that is, that we are schismatics, **be issued by the Church**, which, obviously, has never occurred.

In conclusion, we note once again and forcefully emphasize the fact that our persecutors, represented by the opponent, giving vent to their fascist mentality and rushing in unity into the fascist abyss, without any hesitation or second thoughts, brandish as their most "convincing argument" the need to "suspend legal order" on the Holy Mountain, by disdaining, trampling and suppressing and, in any case, ignoring every form of ecclesiastical and civil

order, justice and legal process. They find it quite natural that the crystal-clear and indispensable provisions of the rule of law be sacrificed on the altar of dark and wretched expedience to the extent that in this spirit of theirs they themselves **confess** with provocative sincerity what actually was done to us in the case under consideration. They say, in other words, "We're supposed to talk about justice and legal process and laws and canons now? We have to finish within an hour! One swift kick is enough and... order has been restored!"

For this the opponent claims certain unique customs prevail on the Holy Mountain, which, according to him, supposedly permit, even though they may not impose, the prevalence of expedience over any form of legal process. However, the unique customs of the Holy Mountain, if indeed such customs actually exist at all, have the opposite meaning and purpose. They were constituted to meet the need to keep the Holy Mountain free from arbitrary and unjust force, so that just as elsewhere the rule of law, both divine and human, might be observed inviolable. This "Garden of the Mother of God", the blessed land of the Holy Mountain Athos, this holy place consecrated by so many Holy Martyrs for the Faith and radiant ascetics, cannot be allowed in any way or on any pretext to be transformed into a site for committing every form of illegality. The "Garden of the Mother of God" must not be turned into a jungle where the "right of the strongest" holds sway, or even more so, the states described by "the wild chase the peaceful" or "the robber yells for the master of the house to run away".

What is even yet more grievous and enraging is the fact that they have the audacity to state all this before the Council of State, so that they "are confident" that they can deceive and influence it, so that instead of a shield of defense **against** arbitrary actions by State officials it become a shield of defense **for** their arbitrary acts. This **hair-raising** fact alone, that is this mentality and attitude of the opponent, is sufficient in and of itself to comprise the key and clue and guide for solving the current case.

Finally, if, contrary to every expectation, which we consider to be most unlikely, the slightest doubt still exist concerning all the above, in view of the staggering significance of the issues involved and the dire consequences for our homeland and democratic society, we enter our petition for the case to be referred to the full assembly of your court.

In Athens, March 14, 1995

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A.D.T. - D.S.A. 1980

"I am the way and the truth and the life"
(John 14:6)

APPENDIX B

ON THE afternoon of Wednesday, **May 7/20, 1992**, the Feast of Mid-Pentecost, the Skete was suddenly visited by a large group of persons of various callings, some from the Holy Mountain and others from outside the Holy Mountain, with an armed guard, and after our statement, that in keeping with the Holy Canons we do not commemorate the name of kyr Bartholomaïos at the divine offices for reasons of faith and righteousness, a fact which was known to all, we were **immediately** forcefully expelled from the Skete by the police force and were transported, under guard like criminals, into exile, **without being given any kind of written decision** or order concerning our "*expulsion*", indeed, **without even being told whether or not such a decision or order exists at all.**

After this we addressed in writing the responsible authorities, namely, the Police Department, the Civil Administration and the Holy Community of the Holy Mountain, and confronted them with the question: **On the basis of what decision by whom, and determined by whom to be legal**, were we expelled in the way in which we were expelled from the Skete and from the Holy Mountain?

In particular, we sent registered express letters, dated **July 10, 1992**, to the Police Department, whose officers carried out this operation, and the Civil Administration, which has the responsibility for enforcing decisions which it has found to be legal and in keeping with the provisions of the Constitutional Charter of the Holy Mountain, and likewise to the Holy Community on July 23, 1992.

From the last we have received no reply at all.

From the police we received a written reply, dated August 3, 1992, which we received on August 11, 1992, and which stated the following verbatim:

"In reply to your letter of July 10, 1992 on behalf of your client Seraphim Babich to issue him a police identity card, we inform you that the same has been referred to the higher authorities of our service, from whom you will receive a prompt and appropriate reply."

From the Civil Administration we had received no reply by **August 13, 1992**, on which date we sent a reminder. After this, in **September, 1992**, we received a reply to our first letter (which had been mailed on **July 11, 1992**). This reply bore the date July 21, 1992; the envelope in which it arrived bore post mark "**4 IX 92**", that is **September 4, 1992**. This letter offered the explanation that the delay in reply (Note: what delay in reply if, in fact, the letter was written on July 27, 1992?) was due "to the vacation schedule of the Administration's personnel" (Note: what does this have to do with writing a reply to a simple question?). In any case, in this letter, which bore the signature of the Assistant Governor of the Holy Mountain, the following reply was given to our question:

"The schismatic priestmonks Seraphim Babich and Ioannikios Abernethy were expelled from the Holy Mountain legally. The other two schismatic wearers of the rason who were found in the Holy Skete, without being monks thereof, were also expelled legally"

In spite of the totally unjustified labels which are given us, it is quite clear that this provides no answer at all to our question: namely, who, and on the basis of what decision, ordered our "expulsion"? The phrase "were expelled legally" does not constitute, of course, a reply to this question. These letters are **most interesting**, and for this reason an acquaintance with their full contents is indispensable. (See the photocopies appended hereto under related documents 12, 13, 14).

Now in the records of the case we find that the opponent has provided a handwritten document, in photocopy, which bears the date of receipt in Court of January 16, 1993. The document itself bears the date **May 20, 1992** and the signature of the same Assistant Governor of the Holy Mountain who wrote the above reply to us.

We quote the following from this document:

"d. Articles 5, 8, 10, 177, 178 and 184 of the Constitutional Charter of the Holy Mountain.

e. The Minutes of the First Extraordinary Session (May 6/19, 1992) and of the Second (May 7/20, 1992) of the Holy Community of the Holy Mountain.

f. The unanimous decision and order of the venerable Patriarchal Exarchia, the Commission of the Holy Community and the Holy Council of the ruling Holy Monastery Pantokratoros for the immediate expulsion and removal of the two (2) schismatic priestmonks Seraphim Babich and Ioannikios Abernethy and two (2) wearers of the rason Nicholas Shevelchinsky and Metrophane Bediat from the Holy Skete of Prophet Elias and the Holy Mountain, which was legal, being founded on the aforementioned minutes, as we were informed by the Holy President H.E. Metropolitan kyr kyr Athanasios of Helioupolis and Theiron.

We order the competent authorities.

The immediate execution of the above decision, of which the interested parties had been informed according to the law

And we forbid

Their future entrance onto the Holy Mountain."

Hence, for every person who has at least an average level of intelligence, there is a basis for some perplexity. If this document, as the date which it bears would indicate, was issued already at the time of the "job", that is our "expulsion", why was it not given to us, or at least shown to us, at that time? Also, after our written and repeated specific requests, which were sent by registered mail, to the Police Department, the Civil Administration and the Holy Community, that they inform us on the basis of what decision reached by whom and, which had been judged by whom to be in keeping with the law, was this "job" carried out, why did the Police Department beg off, the Holy Community not reply at all, and the Assistant Governor of the Holy Mountain, after a delay of some months, reply in general and monosyllabic terms that "they were expelled legally", none of them making any reference to this document, not only failing to quote from it, but not even giving any indication that it existed at all? What does the silence of the Holy Community mean? (Note: concerning this, see below).

We leave you to draw your own conclusions and turn to the essential contents of the document under examination and its refutation.

We must note from the start that this document's contents are, in their entirety, unfounded, unspecific and totally inexplicable. They do not contain even a trace of logic or legal weight.

In particular:

First, we note that apart from article 5 of the Constitutional Charter of the Holy Mountain concerning "schismatics", which we have already discussed exhaustively above, the other provisions which are listed in item **d.** of this document, and in particular articles 177, 178 and 184 of the Constitutional Charter of the Holy Mountain are **irrelevant**, because the opponent alleges that we were expelled because we supposedly are "schismatics". The contents of these provisions, however, has no relationship at all with this accusation that is levelled against us, either in a general sense or in particular, since no concrete fact is cited, much less proven, which could lead to our being accused of the offenses treated by these provisions.

As for the document's reference in item **e.** to *"the Minutes of the First Extraordinary Session (May 6/19, 1992) and of the Second (May 7/20, 1992) of the Holy Community of the Holy Mountain"* and their contents, see our letter appended below.

Further in the text of this document it is written that the Assistant Governor of the Holy Mountain *"gave the appropriate orders to the competent authorities for the immediate execution of the above decision, of which the interested parties had been informed according to the law"*.

However, in keeping with the provision of article 8 of the Constitutional Charter of the Holy Mountain,

"The representative of the Greek State on the Holy Mountain acts and administers through the public officials under his authority the enforcement of the decisions of the Monasteries and the Holy Community, in so far as they are issued in agreement with the present Constitutional Charter".

Thus it is **only the decisions of the Monasteries and the Holy Community** which the representative of the Greek State on the Holy Mountain has the authority to enforce, and **only insofar as they are issued in agreement with the provisions of the Constitutional Charter**, concerning which point sufficient proof has been presented above.

In the case under consideration, the decision cited in the given document **was not** a decision of a Monastery or of the Holy Community. Rather it was a decision of a gathering not foreseen by the Constitutional Charter of the Holy Mountain or by any other legal provision, a body comprised *"of the venerable Patriarchal Exarchia* (and this comprised of two members), *of the Commission of the Holy Community* (Note: which was not fulfilling its purpose as such, because there was no relevant decision and instruction from the Holy Community, so that certain persons on their own initiative and on their own authority acted in place of the Holy Community) *and the Holy Council of Elders of the ruling Holy Monastery of Pantokratoros* (Note: which was not composed or acting in the valid sense of this term)". The representative of the Greek State on the Holy Mountain **under no circumstances** has authority to order the enforcement of such a decision, whose existence is still hypothetical.

Here, it must be noted and particular attention must be directed to the fact that the participation of the *"venerable Patriarchal Exarchia"* in reaching such a decision is **absolutely forbidden and extremely dangerous**, because thereby the constitutionally guaranteed **self-administration** of the Holy Mountain **is dissolved**.

This is because according to article 105, § 1 of the Constitution of Greece the Holy Mountain is

"a self-administrated part of the Greek State, whose sovereignty thereon shall remain intact. Spiritually the Holy Mountain shall come under the jurisdiction of the Ecumenical Patriarchate."

but **apart from spiritual matters** it has no jurisdiction.

According to article 5, § 1 of the Constitutional Charter of the Holy Mountain

"All the Monasteries on the Holy Mountain, being Patriarchal and Stavropegial, belong to the spiritual jurisdiction of the Great Eastern Church of Christ, there being no other commemoration permitted other than the name of the Ecumenical Patriarch".

The Patriarchate of Constantinople has **only spiritual jurisdiction**, as a spiritual institution, over this **truly autonomous region of the Greek State**. Consideration must also be given to the fact that the Patriarchate of Constantinople, according to its civil status, because of the Fall [of Constantinople] and Turkish rule, is, sad to say, an institution of the Turkish State, which specifically belongs to the region of Constantinople, and its Bishops, by necessity, are Turkish subjects.

How is it possible, then, for this institution to issue orders of an administrative nature to the authorities and officials of the Greek State, either directly or through any form of Exarchia, be it comprised of two, three or many members? Moreover, it has no authority to issue instructions for the expulsion of monks from the Holy Monasteries and Sketes, as if it were a Greek Court, competent to expel disagreeable tenants, and furthermore to act in the capacity of a "dynamic" owner of unmovable property who issues orders on his own authority for the eviction of unwanted tenants. Beyond this, it also imposes **exile**, which is a penalty unknown even to the current code of law in Turkey.

Furthermore, this decision of the "Three Bodies", hypothetical as its existence may be, was **neither legal nor founded**, as the Assistant Governor **most wickedly** asserts, moreover, it was not even set in writing, as is clear from the expression: "as we were informed by the Holy President H.E. Metropolitan kyr Athanasios of Helioupolis and Theiron".

* * *

(Note:

We note here, in parentheses, that "the Holy President H.E. Metropolitan kyr Athanasios of Helioupolis and Theiron" has publicly proclaimed, on his own behalf and in the name of kyr Bartholomaios, not only "panchristian" ecumenism, that is the "union" of Orthodoxy with heresies without the latter's' repentance and return to the healthy, that is Orthodox, faith, but also panreligious ecumenism, that is the union of all religions, thus including Christianity in a single world religion that is worse than Roman pantheism.

Specifically, according to the official journal of the Patriarchate *Episkepsis*, kyr Athanasios, speaking as the representative sent by kyr Bartholomaios to the Pope of Rome — who, according to St. Mark of Ephesus is a **heretic** and according to St. Cosmas of Aitolia an **antichrist and to be cursed** — for the patronal feast of the Vatican on June 26, 1994, addresses the Pope as "Your Holiness", calls upon him to continue his prayers and efforts "for the triumph of the ideals of peace and **equality** among the Christian Churches, the great monotheistic religions and the other religions of the nations, for the good of all men upon the earth" and other expressions of the same nature.

Similar things and even worse have been proclaimed by Kyr Bartholomaios himself, who publicly addresses the Muslims as "brethren in the one God" (!) (See *Episkepsis*, No. 507, 31.7.1994, pp. 3-4, No. 510, 31.11.94, pp. 27-28, appended as related documents numbers 30-32.)

This is what the present residents of the Phanar are preaching. But our Lord Jesus Christ says, "I am the Way and the Truth and the Life; no man cometh unto the Father but by Me" (Jn 14:6). That is, the Lord says that He is **THE** Way and **THE** Truth and **THE** Life, that there is **only one** Way and Truth and Life and not many.

*Likewise, no man comes to God the Father except by Him. Christ also says, "Go ye therefore, **and teach all nations...**" (Mt 28:19) and not confuse yourselves and equal yourselves and liken yourselves to all the devilish heresies and false religions and teachings.*

The Apostle of the gentiles Paul says, "Be ye not unequally yoked together with unbelievers: for what fellowship hath righteousness with unrighteousness? and what communion hath light with darkness? And what concord hath Christ with Belial? or what part hath he that believeth with an infidel? And what agreement hath the temple of God with idols? for ye are temple of the living God... Wherefore come out from among them, and be ye separate, saith the Lord, and touch not the unclean thing; and I will receive you. And I will be a Father unto you, and ye shall be my sons and daughters, saith the Lord Almighty" (I Cor. 6:14-18).

The Holy Ecumenical Councils laid down "let every heresy be anathema" (II Ecumenical Council) and "anathema to all heretics" (VII Ecumenical Council).

*For these reasons the Holy Martyrs always chose martyrdom rather than worship the idols or sacrifice to them or commune with heresies. This last holds true also, so as to conclude with the specific history and tradition of the Holy Mountain, for the monks of the Holy Mountain martyred under the latin-minded (papophile) Patriarch of Constantinople John Bekkos. When these Holy Martyrs refused to commemorate Bekkos, some were taken off and beheaded, others were strangled, others were burned, as is eloquently recorded in worthy style and suitably archaic language by the monk Fr. Kallistos Polatidis of the Holy Mountain in the appended book entitled *Papas o Sfagevs kai Airesiarhis [The Pope: Butcher and Heresiarch]* (pp. 53-58). Likewise see the colorful depiction of this martyrdom on the cover of the appended journal *Agios Agathangelos Esphigmenitis*.)*

* * *

After this parenthesis, we note that for those who do not commemorate in the divine services, those who by refusing to commemorate keep themselves away from heresy and apostasy, which means virtually a half of the fathers of the Holy Mountain, **it is quite clear that their turn is coming after us.**

We now append the text of our letter to the representatives of the Holy Monasteries of the Holy Mountain to the Holy Community, which was sent by registered and express mail, on March 22, 1995, and we insist on receiving their answers to the questions which we address to them. We also append, because of their exceptional interest and particular gravity, the texts of two legal opinions, which are independent one from another: one of the now professor of Church Law at the University of Thessaloniki Mr. Haralampos Papastathis and the other the letter of February 22, 1993 of the "Greek League for the Rights of Man" to the Civil Governor of the Holy Mountain (with appropriate copies).

In Athens, March 24, 1995

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A.D.T. - D.S.A. 1980

***"He that can prevent an action but does not act to prevent it
is one who commits it"***

(St. Nikodemos of the Holy Mountain, *Holy Pedalion*, p. 384)

Athens, March 9/22, 1995

Memory of the Holy Forty Martyrs

A LETTER from

1. Archimandrite Seraphim (Babich) of the Skete of Prophet Elias
2. Priestmonk Ioannikios (Abernethy) of the Skete of Prophet Elias
3. Monk Mitrophane (Bediat) of the Skete of Prophet Elias
4. Monk Nicholas (Shevelchinsky) of the Skete of Prophet Elias

to

The Most Venerable Representatives of the Holy Mountain Athos who signed the official minutes of the First, Second and Third Extraordinary Sessions of May 6, 7, and 8, 1992, as members of the Holy Community of the Holy Mountain, that is the following:

Megisti Lavra Elder Bartholomaios
Iveron Prohegoumenos Kallinikos
Hilandar Priestmonk Moises
Dionysiou Elder Epiphanius
Koutlounousiou Priestmonk Gregorios
Pantokratoros Prohegoumenos Seraphim
Xeropotamou Elder Kyrillos
Zographou Priestmonk Leontios
Dochiariou Deacon Ioakeim

Karakallou Priestmonk Parthenios
Philotheou Elder Loukas
Simonos Petra Priestmonk Ioustinos
Agiou Pavlou Elder Ioasaph
Stavronikita Elder Theodosios
Xenophontos Elder Silouanos
Gregoriou Priestmonk Photios
Rossikon Priestmonk Nikolaos
Konstamonitou Elder Ephraim

Most Venerable Fathers:

As is known, after living on the Holy Mountain, our earthly homeland, for many years in devotion and peace, legally and without causing dissension, on May 7/20, 1992, the Wednesday of Midpentecost, we were expelled from the Holy Skete of Prophet Elias forcibly and illegally by the police, who were led and assisted and accompanied by other persons.

Insofar as, the case of our unjust persecution has now been brought before the civil courts, namely before the Civil Court of the First Instance of Athens and the Council of State;

Insofar as, this case has vital significance for us, and not only for us, because of its inescapable and immeasurable consequences, ramifications and influence which it has and can have;

Insofar as, according to both divine and human law, you have a sacred duty to speak before God and man the whole truth and nothing but the truth regarding this case;

Insofar as, the concealing of the truth is a lie;

Insofar as, *"the fearful and unbelieving... and all liars..."* (Rev. 21:8);

Insofar as, *"let the inhabitants of the world learn righteousness"* (Is. 26:9);

Insofar as, *"deliver the oppressed from the hand of the unjust"* (Wis. of Sir. 4:9);

Insofar as, *"relieve the oppressed"* (Is. 1:17);

Insofar as, according to the proverb, *"he that can prevent an action but does not act to prevent it is one who commits it"* (Pedalion, p. 384);

Insofar as, *"he who praises the sin is far worse than he who commits it"* (Chrysostom, P.G. 60:423);

Insofar as, great is *"the guilt of silence"* (Theodore Studite P.G. 99:1076

Insofar as, silence is *"a third form of atheism"* (St. Gregory Palamas, *Syngaramata [Complete Works]*, vol. 2, 482);

Insofar as, *"nothing is secret that shall not be made manifest; neither any thing hid, that shall not be known and come abroad"* (Lk 8:17);

Insofar as, the Holy Mountain, which is not the personal property of any landowner, is the devotion and comfort of Orthodoxy, and those who live the monastic life there are sojourners and *"must give an account"*, wherefore it behooves them to take care for the strict observance of the ancient Traditions, of their duties, their self-administration and their good witness to the outside world

Therefore

We call upon you, with respect and in good conscience and aware that we will all stand before the dread judgment seat of Christ as well as of men, to give us your reply to the following questions which we address to you:

a) Is it true, that the majority of you did not know about our *"expulsion"* from the Skete of Prophet Elias and from the Holy Mountain before it had already actually occurred? Yes or no?

b) Is it true, that you learned about this event afterwards, that is after our forced removal? Yes or no?

c) Is it true, that you had not made, since indeed you had not even been informed about this, any decision concerning our *"expulsion"* before it actually occurred, in other words, that the Holy Community took no part in the related *"decision"*? Yes or no?

d) Is it true, that the matter of our *"expulsion"* was not brought up in the official proceedings of the Sessions of the Holy Community prior to our *"expulsion"*? Yes or no?

e) Is it true, that the Patriarchal Letter to the Holy Community concerning our *"expulsion"* was not read before it had already actually occurred

f) Is it true, that our *"expulsion"* was planned and officially organized by certain persons who purposely concealed this from you until it had already actually occurred, so as not to be diverted and lose the element of **surprise**? Yes or no?

g) Is it true, that, in spite of all this and in spite of the emphatic perplexity and initial reservations of certain of you, you were all compelled to cover up for the illegal actions of third parties, not only not *"condemning"* the *"events"* which you learned about after the fact, but even to **thank** *"the venerable Patriarchal Exarchia and the Commission of the Holy Community for their adroit handling of the matter and for pulling off the job successfully"*? Yes or no?

h) Is it true, that after the accomplishment of our *"expulsion"*, at the following Extraordinary Session on the following day, or on the day thereafter, that there was a great dissension in your Holy Body, because many of you, either for reasons of conscience, or disturbed and disquieted, protested against this illegal oversight and what had transpired as a result? Yes or no?

i) Is it true, that after this, in the month of October, 1992, in view of the consequences of this, many of you once again expressed your disquiet and perplexity and, in order to cover up the affair, decided to resort to the advice and assistance of a person outside the Holy Mountain? Yes or no?

j) Is it true, that there was no lawful decision of the Holy Community concerning our "expulsion"? Yes or no?

Most Venerable Fathers,

Insofar as, "let your communication be Yea, yea; Nay, nay" (Mt. 5:37),

We call upon each of you, in view of the scheduled hearing of this case in the courts, both in the present and in the future, to reply individually to each of the above questions which we address to you, immediately upon receiving this letter, with a simple "yes" or a simple "no".

In the event, which may God forbid! that you do not reply, the conclusion that will be drawn from your failure to reply, is that the answer is **affirmative**, that is "yes", and that all the above is true.

Whereupon we conclude in expectation of your understandably much awaited reply, which we ask you to send us individually by registered mail to the signatory of this present letter, our fully empowered attorney, Mr. Georgios Sarantou Theodoropoulos, Omonia Square 12, 104 31 Athens.

1. Archimandrite Seraphim (Babich) of the Skete of Prophet Elias
2. Priestmonk Ioannikios (Abernethy) of the Skete of Prophet Elias
3. Monk Mitrophanes (Bediat) of the Skete of Prophet Elias
4. Monk Nicholas (Shevelchinsky) of the Skete of Prophet Elias

and on their behalf

Legal Representative of the Skete
Georgios Sar. Theodoropoulos
Lawyer licensed to the Areo Pagus
Omonia Square 12, 104 31 Athens
Telephone: 3218.168 - 3214.385
A.D.T. - D.S.A. 1980

"Relieve the oppressed"
(Isaiah 1:17)

THE IMPOSITION OF EXILE ON MONKS OF THE HOLY MOUNTAIN

A LEGAL OPINION

By Haralampos K. Papastathis, Attorney at law

[Translated from the Greek legal journal *Armenopoulos*, no. 7, 1974, pp. 483-487.]

THE Patriarchal Letter Ref. No. 52 of March 11, 1974, addressed to the Executive Committee and the Representatives of the Holy Community of the Holy Mountain, made known to them, among other things, the decision of the Ecumenical Patriarch, "after taking council with his Synod", that the "extreme zealots" priestmonk G. and monks Th., I, and Th should be removed from the Holy Mountain to an unspecified location, because of "the excessive amount of their activities, both oral and published, towards forming the now existent extremist zealot positions on the Holy Mountain". The Civil Administration was called upon, in view of the authority which it possesses in such instances, in agreement with the decision reached by the Patriarchate, to remove the said persons from the boundaries of Athos. No court decision preceded the Patriarchal Letter nor has any court action been entered against the four monks. This is emphasized in the Patriarchal Letter itself: "in her (the Church's) desire that all be put in proper order without resorting to penal sentences..." according to the written communication of the Letter to the Holy Monasteries Ref. No. Prot. 50/K/10.3.1974 of the Holy Community concerning a decision to be reached within the framework of the jurisdiction of the Ecumenical Patriarchate "as the Supreme Spiritual Authority". The Governor of the Holy Mountain by his act Ref. No. Prot. 26/4/10/21 March 1974 enforced the patriarchal request to him and removed the said persons from Athos.

In view of the above, the questions arise:

A) Can exile be imposed upon the four monks of the Holy Mountain on the basis of their formation of "extreme zealot positions" on the Holy Mountain?

B) Can the Ecumenical Patriarch and his Holy and Sacred Synod be regarded as a court of the first instance in the case under examination?

C) Is this the jurisdiction and administration thereof which is defined in the Constitutional Charter of the Holy Mountain?

D) Can the action of the Governor of the Holy Mountain to enforce what was set forth in the Patriarchal Letter be submitted to the Council of State for annulment?

REPLY TO QUESTION A.

The Canon Law of the Eastern Orthodox Church does not know exile. This penalty is defined and imposed only by civil and not by church courts and authorities. Canon 5 of the Council of Antioch (see the text in G. Rallis-M. Potlis, *Syntagma ton Theion kai Ieron Kanonon* [Constitution of the Divine and Sacred Canons], vol. 3, Athens 1853, p. 136; Am. Alivizatos, *Oi Ieroi Kanones* [The Sacred Canons], Athens, 1949, 2nd ed., p. 174) speaks of a request to the civil authorities to impose this penalty on clergymen as a penalty imposed by the civil

courts. This canon treats of a clergyman who has been deposed because of his stance against his own bishop and who remains unrepentant. It is only after he has been deposed by the Church that the Canon provides "for the external authority to deal with him as is necessary" (See K. Rallis, *Poinikos Dikaion tis Orthodoxou Anatolikis Ekklesias [Penal Law of the Orthodox Eastern Church]*, Athens, 1907, pp. 77-79; Ieronymos Kotsonis, *Semeioseis Kanonikou Dikaion [Notes on Canon Law]*, vol. 2, Thessaloniki, 1961, p. 128). The civil authority, then, and not the Church, is to take such measures as it sees fit against such a person. One such measure, should the civil authority find it proper to impose it, is the penalty of exile (See the interpretation of Canon 5 of the Council of Antioch by Zonaras in G. Rallis-M. Potlis, *op. cit.*, p. 136: "for him to be punished as is fitting by the external authority, that is of the State, so that he come to repentance" and of Balsamon, *ibid.*, p. 137: "for him to be punished by the civil authority"). That is to say, if a clergyman be deposed and still continue to maintain a position of opposition to his bishop, not recognizing [his deposition], the civil authorities can impose upon him the penalty of exile according to its own code of law, because such activity puts him in the category of violating the civil law, which the civil, and not the ecclesiastical, authorities are competent to enforce. It must be noted that in a number of the works on Canon Law, such as An. Christodoulou, *Ellenikon Ekklesiastikon Dikaion [Greek Ecclesiastical Law]*, Athens, 1965, 2nd ed., and P. Panagiotakis, *Systema tou Ekklesiastikou Dikaion kata tin en Elladi ischyn autou [A Systematic Ecclesiastical Law as it Pertains in Greece]*, vol. 3, *To Poinikon Dikaion tis Ekklesias [The Church's Penal Law]*, Athens, 1962 there is no mention at all of exile precisely because it is a civil and not an ecclesiastical penalty.

In keeping with the above, then, the requirements for exile are: a) Its imposition by the civil authority and not by the Church, b) Simply the Church's referral of the matter and only an appropriate request to the civil authorities, or as K. Rallis explains (*ibid.*, p. 78), "it [the penalty of exile] is nothing other than a request to the civil authorities to remove those who are causing dissension", c) The referral of this request can be made only after the person in question has already been deposed from the clergy and only if he is continuing, even after this, to create dissension, and d) The imposition of exile on schismatic deacons and priests who have already been deposed, that is upon clergy who have already been proclaimed schismatics by the Church and who have been deposed for this reason (See Sp. Troianos, *Ekklesiastiki Dikaion mehi ton Thanaton tou Konstantinou [Church Law up to the Death of Constantine]*, Athens, 1964, p. 152).

Hence, in the case under consideration, exile from the Holy Mountain "was determined" (as it is literally stated in the Patriarchal Letter) directly by the Patriarchate, which is not a civil authority. The deposition of the priestmonk G. did not precede this decision. The penalty of deposition cannot be imposed on the other three monks, because they are not ordained clergymen. Thus for all four of the persons involved the essential requirements for imposing exile are absent. Not a single one of them has been proclaimed a schismatic by the Church.

Furthermore, in the case of the three monks in particular, the imposition of exile is entirely incompatible both with the nature of the monastic identity and with the bond which is involved therein of a monk with the monastery where he was tonsured (such as where he is written into the monastic register [*monahologion*] etc.). The penalty of exile from his Monastery for a monk of the Holy Mountain is defined differently in article 71 of the Constitutional Charter of the Holy Mountain, namely as exile to one of the dependencies of the Monastery or to another Monastery on the Holy Mountain for a period of up to one year (for the appropriate law governing the Church of Greece, see article 17 of the law 5383/1932 providing for exile from the Monastery, annulled by article 7 of law 898/1943; see An. Christophilopoulos, *op. cit.*, p. 161). This however does not pertain to the case under consideration.

Consequently, the requirements for imposing the penalty of exile are not present here and for this reason the reply to the first question is negative.

REPLY TO QUESTION B.

According to Canon Law, as elsewhere in the civil penal code also, every penalty must be pronounced and imposed by a court decision (An. Christophilopoulos, *ibid.*, p. 279). The imposition of a penalty on the monks of Athos is not an exception to this principle (article 8 § 3 of the Act of Ratification of 10/16 September, 1926, of the Constitutional Charter of the Holy Mountain). The judicial process for the litigation of monks and priestmonks of the Holy Mountain is foreseen and defined by the Constitutional Charter of the Holy Mountain and the Act of Ratification of 10/16 September, 1926, of the Constitutional Charter of the Holy Mountain.

According to article 52 of the Constitutional Charter of the Holy Mountain, the competent court for trying offenses for which the penalty is deposition is the Ecumenical Patriarchate, to which such cases are referred by the "court of the second instance", that is the Holy Community, which sends a complete copy of the court records "in keeping with the general procedures stipulated by the present Constitutional Charter". According to the interpretation of article 52 of the Constitutional Charter of the Holy Mountain (See P. Panagiotakis, *ibid.*, vol. 3, *To Dikaion ton Monahon [The Code of Law for Monastics]*, Athens, 1957, p. 497), the Ecumenical Patriarchate tries such cases as a court of the first instance and without appeal.

The provision of the Act of Ratification (article 7 § 1 and article 9 § 1 pt. 1) is clearer than the Constitutional Charter of the Holy Mountain. Article 9 § 1 pt. 1 of the Act of Ratification states: "All the ecclesiastical and punishable offenses of the brothers of the Monastery and its dependencies" are tried "in the first instance" by the Monastery's Council of Elders.

According to the above interpretation of article 52 of the Constitutional Charter of the Holy Mountain, the Ecumenical Patriarchate comprises the spiritual court which tries in the first instance and also without appeal those canonical offenses which bear the penalty of deposition. According to the Act of Ratification (article 9 § 3), the Ecumenical Patriarchate is a court not of the first but of the third instance, which passes decisions which cannot be appealed and this only for appeals of decisions of the court of the second instance.

Thus it appears that between the Constitutional Charter of the Holy Mountain (as article 52 is interpreted) and the Act of Ratification, which ratified the Constitutional Charter of the Holy Mountain, there is a radical difference in the definition of the competence of the judicial relationship between the Monastery authorities and the Ecumenical Patriarchate.

This difference is decided in favor of the process defined in the Act of Ratification, because a) article 1 of the Act of Ratification states: "The Constitutional Charter of the Holy Mountain of May 10, 1924, is declared in force..., insofar as it does not contradict the following provisions", that is the provisions of this Act of Ratification, among which is article 9 § 3 (See in general concerning the ratification of the provisions of the Act of Ratification in the event of a difference with provisions in the Constitutional Charter of the Holy Mountain in P. Panagiotakis, *ibid.*, p. 421 ff; N. Antonopoulos, *I Syntagmatiki Prostasia tou Agioreitikonou Kathestotos [The Constitutional Guarantee of the Established Order of the Holy Mountain]*, Athens, 1958, pp. 136-137 and 235-236, in particular concerning the provisions for judicial process in the Act of Ratification and Constitutional Charter of the Holy Mountain) and b) Article 122 § 5 of the Constitution speaks of the clarification by law of the judicial powers of the Monastic authorities and the Holy Community (and not of the Ecumenical Patriarchate), thus recognizing, indirectly, the competence of the first two as courts.

Apart from the above, article 52 of the Constitutional Charter of the Holy Mountain provides that for the trial of offenses for which the penalty is deposition the competent court is the Ecumenical Patriarchate "to which the court of appeals refers all the written records of the case in keeping with the general procedures stipulated by the present Constitutional Charter". It is typical that article 52 of the Constitutional Charter of the Holy Mountain does not define such competence of the Ecumenical Patriarchate as a court of the first instance and

that it uses the term "court of the second instance" for the Holy Community, which means, upon comparison with articles 41 and 44 of the Constitutional Charter of the Holy Mountain, that offenses for which Canon Law provides the penalty of deposition are to be tried in the first instance by the local Monastery, which, should it find that the penalty of deposition should be imposed, a penalty which can be imposed only by a bishop, refers the case to the "court of the second instance" mentioned in article 52 of the Constitutional Charter of the Holy Mountain, that is, to the Holy Community, which for the same reason then refers the full records of the case to the Ecumenical Patriarchate. This interpretation of article 52 of the Constitutional Charter of the Holy Mountain I find to be founded also on § 2 of article 43 of the Constitutional Charter of the Holy Mountain, which recognizes in spiritual matters the Ecumenical Patriarchate with its Sacred Synod as the "supreme court", which means that other spiritual courts exist and are recognized, but the "supreme court" of the spiritual courts is the Ecumenical Throne. Consequently the spiritual jurisdiction of the Ecumenical Patriarchate over the Holy Mountain is placed by the Constitutional Charter of the Holy Mountain within a specific framework, which, it is understood, is not to be overstepped.

It must be emphasized that the competence of the Monastery's authority as the spiritual court of the first instance in trying offenses for which the four monks in the case under consideration stand accused was recognized by the Civil Administration of the Holy Mountain in its document Ref. No. 41/12 March 1928 to the Holy Community (See Ir. Doens-Haral. Papastathis, *Nomiki Bibliographia Agiou Orous, 1912-1969* [Legal Bibliography of the Holy Mountain, 1912-1969], "Makedonia" 10, 1970, p. 235, No. 252).

Accordingly, every monk of the Holy Mountain who falls into any form of offense, apart from those who are tried by the criminal courts of Thessaloniki (articles 7 § 2 of the Act of Ratification) is tried in the first instance by his own Holy Monastery (article 7 § 1 and article 9 § 1 pt. 1 of the Act of Ratification), in the second instance by the Holy Community (article 9 § 2 of the Act of Ratification) and in the third instance by His Most Divine All-Holiness the Ecumenical Patriarch with His Holy and Sacred Synod (article 9 § 3 of the Act of Ratification). The appropriation of judicial authority is not forgiven as an element both of the Holy Mountain's autonomy and fundamental legal established order guaranteed by the Constitution regarding both the Greek State and the Ecumenical Patriarchate and also due to article 7 § 3 of the Act of Ratification which provides that "...no [monk of the Holy Mountain] is deprived involuntarily of the right to fair trial" (See P. Panagiotakis, *I Organosis tou Monahikou Politeumatou en Agio Orei Atho* [The Organization of Monastic Life on the Holy Mountain Athos], *Arheion Ekklesiastikou kai Kanonikou Dikaίου*, 4, 1949, p. 143).

Consequently, the reply to the second question likewise is negative.

REPLY TO QUESTION C.

Forgetting for a moment the existence of the Act of Ratification and the constitutional guarantee of the established order of the Holy Mountain, let us examine the case under consideration were it to be handled in keeping with the above interpretation of article 52 of the Constitutional Charter of the Holy Mountain, without the Act of Ratification, and that the competence of the Ecumenical Throne is unlimited by Canon Law as a court of the first instance to try the case of these four monks without appeal and on its own initiative. Let us assume, in other words, that the jurisdiction of the Ecumenical Patriarchate empowers it to try the four monks as a spiritual court of the first instance and without appeal.

The Constitutional Charter of the Holy Mountain provides specifically and clearly in article 53 and following for the judicial process and submission of evidence for every trial of a monk accused for an offense under Canon Law. It specifically provides in article 56 for a court summons and the defense of the accused, as also for the accusations against him and

the court's examination of witnesses for the defense. According to article 58, the court is required to summon the accused in good time and in writing for him to appear at an inquiry to answer to the charges listed in the written bill of indictment presented to him. The summons given at the inquiry must indicate what charges the accused must answer to and also the exact time when he is to appear before the court (article 58). Upon the appearance of the accused before the court the written bill of indictment is read out, along with the testimony of witnesses and the other pertinent documents, after which the accused is called upon to present his defense (article 62). The accused who cannot answer the accusations of witnesses, is brought to trial; before he defends himself at the inquiry and the trial, however, he may request to acquaint himself with all the written records of the case so that he can refute the accusations brought against him (article 63). The decision of the court must be supported by a historical account, and a legally founded and clearly argued presentation which cites the specific articles of the Constitutional Charter of the Holy Mountain which provide for the penalty which is imposed (article 67). An official copy of the court's decision is issued to the accused under a signed receipt (article 69).

None of the above provisions of the Constitutional Charter of the Holy Mountain were observed at any point of the case under consideration. The four monks were summoned orally to appear in Karyes before the Patriarchal Exarchia, under article 9 § 3 of the Act of Ratification, but in contradiction of which they were not permitted to present any defense, as the Constitutional Charter of the Holy Mountain provides. No bill of indictment was presented to them; they were not summoned to appear before the court, and the decision issued against them does not bear the elements prescribed by the Constitutional Charter of the Holy Mountain. No judicial process was observed which the accused could regard as valid according to the Constitutional Charter of the Holy Mountain. The drama that was played out at their expense cannot be recognized as judicial proceedings defined by the Constitutional Charter of the Holy Mountain and as such they are invalid.

It is to be noted that the Patriarchal Exarchia, which summoned the monks to a meeting and not to defend themselves according to the meaning and requirements of the Constitutional Charter of the Holy Mountain, is not recognized as a court of inquiry or as a trial court by the Constitutional Charter of the Holy Mountain. It can comprise -- and this exclusively and only according to the Act of Ratification (article 9 § 3) -- together with the Extraordinary Double Session of the Holy Community, a court to hear appeals of decisions of the Holy Community, when and if the Ecumenical Patriarchate, not wishing to hear the appeal itself, refers this judicial power on such an Exarchia together with the Extraordinary Double Session of the Holy Mountain. According to the Act of Ratification, the Patriarchal Exarchia does not perform the function of conducting an inquiry. In the case under consideration, however, as is set forth in the Patriarchal Letter, it presented a systematic and analytic account to the Patriarchate. In other words, the Patriarchal Letter itself recognizes the total absence of any form of due legal or canonical process against the four monks.

Consequently the Ecumenical Throne acting as the supreme spiritual court in this case, according to article 52 of the Constitutional Charter of the Holy Mountain, bases its decision on the "account" of a body which is not recognized by the Constitutional Charter of the Holy Mountain. Moreover not a single aspect of the judicial process defined by the Constitutional Charter of the Holy Mountain was observed in the case under consideration. All the process that took place and that followed in the condemnation of the four monks in no wise agrees with the specific stipulations of the Constitutional Charter of the Holy Mountain and for this reason it is totally invalid.

Consequently the reply to the third question is also negative.

REPLY TO QUESTION D.

According to article 4 § 4 of the Act of Ratification, the Civil Governor of the Holy Mountain in enforcing the observance of the established order (See K. Babouskos, *Enheiridion Ekklesiastikou Dikaïou* [*Handbook of Church Law*], Thessaloniki, 197, 2nd ed., p. 152) cannot interfere with "court decisions lawfully issued and published for enforcement".

From the provision of the Act of Ratification it follows that the Civil Governor is obliged a) To examine the legal status of the decision of the court, b) To intervene in a court decision that is not issued in keeping with the law and c) To refuse to enforce a decision that has not been issued and published according to the law, that is, when it contradicts the specific provisions of the Constitutional Charter of the Holy Mountain and the Act of Ratification and, in general, of the constitutionally guaranteed legal status and traditional self-administration of the Holy Mountain, the observance of which are entrusted to the Civil Governor (article 122 § 5 of the Constitution; article 3 § 4 of the Act of Ratification). The Civil Governor is obliged not to enforce a decision referred to him for execution (article 3 § 4 of the Act of Ratification), should he determine, in keeping with article 4 § 4 of the Act of Ratification, that the decision was not issued in keeping with the law and consequently that it was not lawfully published by the court that issued it for enforcement, since, according to article 78 of the Constitutional Charter of the Holy Mountain, a decision is to be enforced, when "both from the standpoint of its contents and from the standpoint of the stipulations of the law it is canonical and in agreement with the provisions of the present Constitutional Charter of the Holy Mountain". The Civil Governor is obliged not to order the enforcement of a decision which was not issued in keeping with the law and which consequently was not lawfully published for execution, for such a decision is totally deprived of any legal significance (See P. Panagiotakis, *Systema Ekklesiastikou Dikaïou* [*Systematic Church Law*], vol. 4, *To Dikaion ton Monahon* [*The Code of Law for Monastics*], Athens, 1957, p. 502).

Consequently, according to the Act of Ratification (article 4 § 4), the Civil Governor examines the lawfulness of any court decision, that is whether or not it is in agreement with the pertaining laws governing the Holy Mountain in general; he does not perform simply the role of executioner, and for this reason it follows that his decision to enforce or not to enforce comprises an executive decision and not simply an act of execution. And as an executive decision it can be submitted to the Council of State for annulment (See the legal opinion concerning this of P. Panagiotakis, *Systema... op. cit.*, pp. 502-503 and *I Organosis... op. cit.*, p. 170. It is to be noted that P. Panagiotakis was Civil Governor of the Holy Mountain when the decision under question was enforced, and that no contrary opinion has been presented by anyone).

However in the case under consideration the Civil Governor of the Holy Mountain, accepting the decision of the Ecumenical Patriarchate and enforcing it at the request of the Patriarchate, by his order under Ref. No. Prot. 26/4/10/21 March 1974 concerning the removal of the four monks from the Holy Mountain, made this an executive decision which can legally be appealed to the Council of State.

Consequently, the reply to the fourth question is affirmative.

LETTER OF THE GREEK LEAGUE FOR THE RIGHTS OF MAN

GREEK LEAGUE FOR THE RIGHTS OF MAN

Kriezotou 6 - 106 71 Athens, Tel. 36.26.888

Athens, 22.2.93

To
The Civil Governor
of the Holy Mountain
Karyes
63086 Agion Oros

Mr. Governor,

Concerning the Expulsion of priestmonks

At its most recent meeting, the Executive Committee of the Greek League for the Rights of Man examined the declarations of four priestmonks concerning their arbitrary expulsion from the Holy Skete of Prophet Elias and from the territory of the Holy Mountain on May 19, 1992.

After examining the portfolio of documents, which includes the documents which the responsible civil and ecclesiastical officials submitted **after the fact** to the interested parties, through their attorney, the Greek League for the Rights of Man addresses your attention to the following:

1. The act of the expulsion from the territory of the Holy Mountain of the four priestmonks of the Skete of Prophet Elias, Greek citizens according to article 105 § 1 of the Constitution, without the decision of a court and without their being presented with an indictment for any criminal offense, is not supported by any provision of the law and is therefore an arbitrary act as defined by article 5 § 4 of the Constitution, which forbids the imposing of personal administrative measures against Greek citizens.

2. The ecclesiastical penalty which was imposed upon them prior to their expulsion was imposed arbitrarily, without any written legal process and without even the Holy Community being properly informed. For this reason alone it is illegal (articles 58 and 7 of the Constitutional Charter of the Holy Mountain). Consequently, this decision was not binding upon the civil and police officials of the Holy Mountain, who according to the Constitution are the only officials responsible for the maintenance of public order and security on the peninsula of Athos. Moreover, according to the Constitutional Charter of the Holy Mountain, it is only a lawfully imposed penalty of deposition that can be cited as the foundation for the imposition of the penalty of exile on priestmonks.

For these reasons, the Greek League for the Rights of Man calls upon you to take the necessary measures to permit the interested priestmonks to return to the Holy Mountain, from which they were expelled by methods which are incompatible with the rule of law.

For the Executive Committee of the Greek League for the Rights of Man,

Ph. Vegleris, President N. Frankakis, General Secretary

Copies:

- 1) The Minister of Foreign Affairs
- 2) The Minister of Justice
- 3) The Minister of Public Order
- 4) Mr. Th. Theodoropoulos, Attorney
Omonia Square 12
10481 Athens

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