

преступностью, в том числе организованной, для защиты прав и свобод граждан, обеспечения курса развития страны, защиты своей территории и населения страны. Оно должно иметь достаточно сил для самодерживания, самоограничения свои действия, деятельности государственных органов и служащих юридически и политически в разумных пределах.

Сильное государство, если оно правовое, должно быть способно к самоочищению от различных оборотней в погонах и при должностях, обеспечивая равенство всех перед законом и судом. Соблюдение верховенства права государством, в конечном счете, содействует укреплению правового компонента государственной силы.

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AKRIBEIA AND OECONOMY AS THE METHODS OF LEGAL REGULATION IN CANON LAW

In the modern science of canon law recognizes the existence of two specific methods of canonical and legal regulation: *akribeia* and *oeconomy*. Both terms entered the national canonistics in the twentieth century and were borrowed from the Greek sources — the Apostolic Canons, the Canons of the Ecumenical and Local Councils, the Canons of the Holy Fathers, and from the works of the Byzantine canonists.

The Greek word οικονομία (housekeeping) is found in many texts, for example, in the Canon 102 of the Council of Trullo: «οἰκονομοῦντι σοφῶς», which is translated as «wisely manage», i.e. «by greater softness and mild medicines, to resist this sickness and exert himself for the healing of the ulcer». The word ακριβεια (precision) occurs in the same Canon, which refers to the application of the Canon in all its severity against the unrepentant sinner: «to follow the traditional form in the case of those who are not fitted for the highest things». However, the Byzantine chronicler and canonist John Zonaras gives the following commentary on the Canon 102 of the Council of Trullo: «the spiritual physician should pay attention to the location of the sickness... to weaken the penance for poor-spirited, and to strengthen it for a man of spirit; all is done in mercy clean in order to clean the one from filth and not to irritate the ulcer of the other and not to make the wound bigger».

Both words οικονομία and ακριβεια frequently occur in the Greek texts and in almost all cases we are talking about the contrast between repentant and unrepentant sinner. Thus, oeconomy and akribeia are mentioned in the Canon

4 of St. Gregory of Nyssa: «For any man who on his own initiative and of his own accord proceeds to confess the sins, the mere fact that he has condescended on account of secret acts to become an accuser of himself as a result of an impulse of his own, is to be considered proof that the cure of the disease has already begun, and since he has shown a sign of improvement, he is entitled to kinder treatment. One, on the other hand, who has been caught in the act of perpetrating the offense, or who has been exposed involuntarily as a result of some suspicion or of some accusation, incurs an intensification of the penalty, when he returns; so that only after he has been purified accurately may he then be admitted to communion of the Sanctified Elements».

Obviously, oeconomy and akribeia, as methods of canonical and legal regulation, have a special nature that cannot be fully disclosed from the standpoint of dogmatic jurisprudence only.

Akribeia has a mandatory beginning, manifested in the need for exact (literal) compliance with canonical precepts and the avoidance of deviations from canonical requirements. The use of akribeia is limited to matters of dogmatic significance; regarding the subjects whose actions qualify as «the blasphemy against the Holy Ghost»; and also in cases when the exact application of canons is appropriate. In this connection, the mentioned above Canon 102 of the Council of Trullo and the commentary given by John Zonaras draw our attention again: on the one hand, severe penance is imposed on an unrepentant and persistent sinner, as explicitly written in the Canon 102; on the other hand, Zonaras states that penance should be strengthened in mercy for a man of spirit, «... in order to clean [him] from filth».

In «Addressing Clergy and Parochial Church Councils of the City of Moscow» dated December 21, 1995, Patriarch of Moscow and All Russia Alexy II talks about ideas of the Byzantine canonist: «The purpose of penance is not to punish, but to correct, return the clean, repentant, and reconciled with conscience sinner to fellowship with God. If nowadays we do not consider the spiritual state of most people and deprive them of the Holy Communion for years, this penance will give the opposite result... it can lead to further cooling of religious feeling in the person and departure from the Church. The excision is efficient and therefore applicable only to deeply religious people... For most people, it is not enough. Another penance would be much more useful for them — going to church more frequently, reading the Holy Scripture, reading prayers in the morning and in the evening, social service to ill, poor and brokenhearted, in expiation of the sins» [Cit.: 1, p. 646].

Oeconomy suggests the possibility of avoiding strict compliance with canonical precepts (usually, softening). However, it is not always possible to clearly distinguish oeconomy from akribeia: in connection with this, the mentioned above commentary by John Zonaras is more appealing, as he requires to increase the penance in mercy for the man of spirit, though the Canon itself does not contain such requirement, on the contrary, it suggests to treat the repentant with «greater softness and mild medicines». While the Canon contains

the formalized requirement, its commentary is more meaningful — both the fact of outer repentance and spiritual traits of the repentant are important in this case. Hence, it is possible to conclude: the method of akribeia is used out of motives of oeconomy, in other words, strict application of canonical regulations, as well as its evasion, have the same purposes — the salvation of the human soul, the preservation of unity and conciliarity of the church, the protection of fundamental principles of religion, dogmas.

Careful consideration of the method of oeconomy does not allow us to agree with D. D. Borovoy, who compares it with the «method of legal fiction» and the dispositive method [2, p. 94]. If legal fiction is «the recognition by certainly existent of non-existent, or vice versa, by non-existent of existent» [3, p. 43], then the method of oeconomy does not create anything fictitious, but merely gives the possibility of wide discretion for law enforcer. Contrary to the dispositive method, the principle of oeconomy does not imply equality of the parties in canonical and legal relations, but recognizes the unilateral order of its application, as only clergymen have the right of spiritual healing.

Thus, both akribeia and oeconomy are based on the mandatory beginning, as their application is carried out by the church hierarchy, already supposing the inequality of subjects. The specific nature of akribeia and oeconomy reveals in that these methods are used for the purpose of healing of spiritual and emotional damage to the individual and the church, and these goals cannot be achieved solely by legal means, without mercy and compassion. That is, human justice, administered in the Church by successors of the Apostles, should be based on idea of divine justice, which lies in the theanthropic nature of the Church.

References

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