

## DISCUSSION

FOUNDATIONS RIGHT OF CHURCH ASYLUM IN THE CONTEXT  
OF THE COURT OF PATRIARCH IN BYZANTIUM

Nazarov Iliya\*

**Abstract:** *The article examines the question of the moral content of the church asylum (jus asyli) in the context of patriarchal courts in Byzantium. Much attention is paid to the history of the phenomenon under investigation, as well as the justification of the need to consider criminal cases Patriarchal court in the analyzed period. The empirical material presented article quotes from legal Byzantine monuments confirming the theoretical arguments of the author. This article was prepared on the basis of pre-revolutionary works of specialists in the field of church history and canon law.*

**Keywords:** *the right of the church asylum, jus asyli, the patriarchal court, penance, punishment*

History of the Byzantine is closely linked to the Christian religion. In the minds of the Romans secular sovereign (the Emperor) is not only not opposed to the supreme pastor (the Patriarch), but created with him a union, which was based on the idea of harmony and consent of the authorities involved, but do not merge with each other, enrich, but enslave by its orientation.

This relationship of secular and ecclesiastical authority was reflected in the term “symphony” for the first time use in the preface to the VI novel Justinian I: “The greatest gifts of God to people of humanity over the data - the priesthood (ιερωσύνη) and kingdom (βασιλεία), one serving the divine, the other human caring and controlling - from the same start out, and put in order of human life. Therefore, there is nothing that would not be very welcome kingdom as priest’s majesty, if only for himself, they always prayed to God. For if the first would be blameless comprehensively and with sincerity of belonging to God, the second right and properly entrusted to him the government would put in order, it would be kind of a good agreement, so that all the good of the human race would be donated to”<sup>1</sup>.

Reaching Byzantine society ideals of Christianity: love for one’s neighbor and forgiveness, backed by the idea of peace and prosperity based on the subjects of unanimity and harmony of the royal and the patriarchal power<sup>2</sup>, have contributed to the expansion of the influence of the latter on all spheres of public life.

A striking example of the privileges of the Church in relation can be considered as the right of the church asylum to the secular authorities (jus asyli) according to which the

\* Iliya Nazarov, Graduate student department of Philosophy and Religion “Ivanovo State University” (Shumsky branch), Shuya, Ivanovo Region, The Russian Federation

<sup>1</sup> FLAVIUS JUSTINIANUS IMPERATOR *Novellae*. In: SCHOLL, R., KROLL, W. (eds.). *Corpus iuris civilis*. Berlin: Weidmann, 1895.

<sup>2</sup> PAVLOV, A. Greek record of a church trial of the killers, resorting under the protection of the church. *Byzantine annals*. 1897, Vol. 4, p. 342.

Christian monastery had an opportunity to give under its shelter the necessary protection to persons who are threatened with a clear risk of becoming victims of human wickedness and injustice, or, in certain cases, undergo a set of secular power penalty for the offense committed. It should be noted that all those who applied to the church asking for mercy, when they suffered injustice from the other, or for violating the law were sentenced to severe penalties, is in the temple inviolable asylum (refuge), where the refuge seeker cannot be extracted from the monastery by force, and the local bishop or the patriarch he took them under his protection and immediately petitioned the emperor for mercy.

The moral side of the church the right of asylum is more pronounced in times of political unrest, palace coups, popular unrest, when underdog rendered defenseless and doomed to the inevitable repression, and only under the protection of the church might find yourself the winner of salvation from tyranny. Thus, the temple is a debtor protection, are persecuted by cruel and unmerciful creditors, involuntary and random killers facing the death penalty, slaves, hiding from persecution and a host of anger and other persecuted and oppressed members of Byzantine society.

Since the end of the IV BC the right of the church asylum was regulated by special laws of the Byzantine emperors, which extended the effect of this legal structure is created within it certain restrictions.

Thus, the Emperor Theodosius I his law from 392 ordered to take shelter from the places of the state treasury debtors, and if the bishops and clergy refused his extradition, the latter were required to pay the arrears of the state's own funds. Emperor Arcadia Laws 397 and 398 years further limited the possibility of applying *jus asyli* depriving the right of asylum is not only the debtors of the treasury, but also individuals. In accordance with the law, saving the churches, took up the defense of debtors were obliged to cover their debts<sup>3</sup>.

Imperator Theodosius II Junior edict of 409, reversed the existing restrictions on *jus asyli*, expanded asylum the right to the entire space around the temples, to external inputs, inclusive (*ad extremas fores ecclesiae*)<sup>4</sup>. A similar approach with regard to *jus asyli* was designated Emperor Leo I in the law 466 of the year<sup>5</sup>.

Other decisions on the right of the church asylum have been made by Imperator Justinian I. reviving approach to *jus asyli* laid by Imperator Arcadius, he drew particular attention to the use of the rights criminals. So, I. Sokolov noting changing circle of persons entitled to asylum, has translated short stories published in the XVII year 535, in which the Emperor legalized the following: “the murderers, adulterers, thieves virgins should not provide any security in any limits (the church), but they should extract (from places of refuge) and give punishment: it is necessary to spare not those who have committed such crimes, but the victims, to the latter are not taken

---

<sup>3</sup> THEODOSIANUS Codex, lib. IX, tit. XLV (De his, qui ad ecclesias confugiunt), § 3. <http://ancientrome.ru/ius/library/codex/theod/liber09.htm#45> (29. 11. 2016).

<sup>4</sup> THEODOSIANUS Codex, lib. IX, tit. XLV (De his, qui ad ecclesias confugiunt), § 1. <http://ancientrome.ru/ius/library/codex/theod/liber09.htm#45> (29. 11. 2016).

<sup>5</sup> JUSTINIANUS Codex, lib. I, cap. XII (De his, qui ad ecclesias confugiunt vel ibi exclamant), § 6. <http://droitromain.upmf-grenoble.fr/Corpus/CJ1.htm#12> (29. 11. 2016).

up such (unhappiness) by more daring people, in other words - the law provided security at the temples are not criminals, but the offense, and is not possible to let the one and the other, the perpetrator of the crime and the victim equally enjoyed security in places of refuge”<sup>6</sup>.

The content of this novel is of great importance for the understanding of moral guidelines existed in Byzantium in the specified period. Saying that the perpetrator, unlike the spoiled (the victim), under no circumstances are not allowed to use the church sanctuary, Justinian, in essence, creates his own moral principles significantly different from that of Christian morality: “He saved us, not by works of righteousness, which we have done, but according to his mercy” (Titus 3: 5.); “For by grace are ye saved through faith; and that not of yourselves the gift of God: Not of works, lest any man should boast” (Ephesians 2: 8-9.); “For if ye forgive men their trespasses, forgive you your Heavenly Father. And if you do not forgive men their trespasses, neither will your Father will not forgive your trespasses” (Matthew 6: 14-15.).

This conflict is not accidental, but carries a very definite context. The purpose of the secular authority is the competent state administration, the achievement of which is carried out, in particular, by the maintenance of public and most importantly legal order. If the efforts of secular power aimed at preserving and healing “the body” of contemporary society, the purpose of church government is the preservation and recovery of its “soul”. Means is an enormous difference, forcing the device with one hand, and the commandment, calling for repentance and humility, on the other.

Overcoming this conflict is reflected in § 1 title XVII Eclogue Leo Isaurian and Constantine Copronymus adopted in the year 740. According to him: “No one took refuge in the church, cannot be take out by force, but the wine must be known to harbor priest, and then to take refuge can be taken under the provision for legal investigation and consideration of his case. If anyone thinks of for any reason to lay hands on to take refuge in the church, he will receive twelve strokes, and then, as it should be, it's taken refuge would be subjected to the investigation”<sup>7</sup>. Similar prohibitions on forced removal of persons harboring the temple contains the title XXXIX Prohirona Emperor Basil the Macedonian (876) and the title XXX Epanalogi Basil I (885).

Published by Emperor Leo VI the Wise monument to Byzantine law - Vasiliki contains a synthesis of views on the legal jus asyli. It outlines the limits of church asylum, the question of weapons is pursued has brought with him to the walls of the monastery, confirms the acceptance of Justinian asylum limit for murderers, adulterers and thieves virgins prohibited forcibly removed from the temple of individuals to exercise this right. In addition, Vasiliki determined value of the bishop and the clergy in the direct application of this right. So, if pursued in places of refuge is not willing to speak publicly about the response of the fault, and preferred to remain within the church, the Economy invites him to submit evidence to the court under his patronage. If pursued excited against the court a civil suit, it could conduct their business in person or by means of specially authorized church attor-

<sup>6</sup> SOKOLOV, I. Patriarch trial of the murderers in Byzantium X-XV century: a historical sketch. *Christian reading*. 1909, Vol. 2, p. 218.

<sup>7</sup> *Eclogue. Byzantine legislative codex of the VIII century*. Moscow 1965, p. 68.

neys. After that, the economy presented to the court the property that the defendant brought with him to the fence of the church<sup>8</sup>.

Thus, the church asylum law has developed in the Byzantine Empire under the auspices and with the participation of the spiritual power and regulated in civil law in connection with a favorable moral influence of the Church in the Byzantine society.

Further development of legislation in the sphere of *jus asyli* possible to extend the right of the church shelters and on those who have committed murder. This is evidenced, in particular, two novel Emperor Constantine VII Porfirorodnogo a church trial of the killers, to resort under the protection of the Christian Church and the Patriarch of Constantinople.

Drawing attention to the limitation of Justinian against the church of refuge for murderers, the brought in Vasiliki, Constantine VII found it possible to change it, basing their arguments on the provisions of Christian morality.

The Emperor gives the following example. The man committed murder, with murder, committed by them remains a mystery and unsolved. Subsequently, one starts to think about the moral aspect of the act committed, and with the help of confession, will seek to cure inflicted wounds. Thinking about what he had done, he comes to believe that as soon as he announced the death, it will be captured and subjected as a murderer, the court according to the law and by the archon. In order to clear the conscience and to avoid punishment, he is in the temple, proceeds to the priest and, having comprehensive safety, he brings his confession and received absolution after. Thus, the observed and the definition of the law, and the sanctity of the temple.

If we are talking about the killers explicit, to exercise the right of church asylum. These must first be subject to ecclesiastical penance in accordance with the canons, and then subjected to expulsion from the scene of the murder, followed by imprisonment in a monastery when the murder was committed deliberately and pre-cooked means<sup>9</sup>. Regarding penance, it was realized in accordance with rules 56 and 57 communication. Basil the Great: "Will killed, and then repented; twenty years shall be no communion of the Holy Mysteries ... captive killed ten years but is not involved in the holy mysteries"<sup>10</sup>.

On the right of the Byzantine Patriarch ecclesiastical court judge said the killers and the story of the Emperor Manuel Comnenus of 1166. Said novel Balsamon included in the comment to Rule 8 St. Basil the Great. If the perpetrator of the murder, manages to escape and to resort to the great Church of God, the patriarch, before subjecting it to the church court and penance should ask for information about the crime to the bishop and the clergy of the diocese to which the offender belongs, as well as to the local district judge in order to more precisely determine on what grounds and how, deliberately or not, the murder was committed. And ecclesiastical judges, acting on the orders of the Patriarch

---

<sup>8</sup> SOKOLOV, I. Patriarch trial of the murderers in Byzantium X-XV century: a historical sketch. *Christian reading*. 1909, Vol. 2, p. 219.

<sup>9</sup> PAVLOV, A. Greek record of a church trial of the killers, resorting under the protection of the church. *Byzantine annals*. 1897, Vol. 4, pp. 155–156.

<sup>10</sup> *Right jurisprudence. With the blessing of Metropolitan of Tashkent and Central Asia Vladimir*. Moscow 2008, p. 764.

should be punished for the murder of a proper canonical rigor: the timing of penance not to cut at its own discretion and does not provide adequate softness beyond where it is unnecessary. Perpetrators of voluntary and premeditated murder can - by definition, short stories - and subject to the tonsure at the monastery, but this act is necessary to make with particular rigor and prudence, after the test during a sufficient time. If the perpetrator of the murder would be unworthy of vows as a monk, the emperor or his authorized - Eparch capital after the above will make a guilty church penance, exiled him in any area where it remains until the end of life<sup>11</sup>.

Thus, in the Byzantine Patriarchal Court was made even on criminals. Heaviest of crimes, violation of divine and human laws, murder, subject to, first of all, management and review of the patriarch, who executed judgment on the basis of ecclesiastical laws, punished the offender by the verdict of the sacred canons, provided him the opportunity to atone for sin, to save his soul and, for 15 years, to protect him from the punishment of secular law and revenge murdered relatives<sup>12</sup>, in order to fully apply the canonical penalties and moral means correcting the offender.

---

<sup>11</sup> *Right jurisprudence. With the blessing of Metropolitan of Tashkent and Central Asia Vladimir*. Moscow 2008, pp. 714–715.

<sup>12</sup> PAVLOV, A. Greek record of a church trial of the killers, resorting under the protection of the church. *Byzantine annals*. 1897, Vol. 4, pp. 131–132.