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**Opinion on act (decision), adopted by the Holy Synod  
of the Patriarchate of Constantinople on 11 October 2018 \***

**SUMMARY: 1. Introduction - 2. Main Part. An Examination - 3. Complete exhaustion of the subject of the executive act adopted by the Patriarchate of Constantinople in 1686 - 4. Assessment of the actions from the perspective of the legislation of the Republic of Turkey - 5. Conclusions.**

**1 - Introduction**

The subject of this opinion is the analysis of the content, legal validity and legal effect of the act (decision), adopted by the Holy Synod of the Patriarchate of Constantinople on 11 October 2018<sup>1</sup> of the annulment ("to revoke the legal binding") of the 1686 decision of the Patriarchate of Constantinople, which legally transferred the Kiev Metropolia to the jurisdiction<sup>2</sup> of the Moscow Patriarchate<sup>3</sup>, as well as an assessment of the

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\* Article not evaluated.

<sup>1</sup> Announcement (October 11, 2018) – (<https://www.patriarchate.org/-/communiq-1>).

<sup>2</sup> Strictly speaking, it is competence of a religious organization that we should be discussing, since it is customary to discuss only the jurisdiction of public authorities. However, the application of a broader and less binding interpretation of the concept of "jurisdiction", including in relation to nongovernmental and non-municipal organizations, is becoming increasingly a part of scientific and legal-practical discourse (in legal regulation of government/religious relationship, as well as in sports law, and in a number of other areas), synonymizing, to some degree, the concepts of "jurisdiction" and "competence". The term "jurisdiction" will therefore continue to be used hereinafter (with this reservation).

<sup>3</sup> We are referring to a complex (set) of documents ("charters"), see:

Archive of South-Western Russia, published by the Provisional Commission for the analysis of ancient acts, supremely established under the jurisdiction of the Governor General of Kiev, Podolsk and Volynsk. Part One. T. V: Acts, relating to the case over subordination of the Kiev Metropolia to the Moscow Patriarchate, Provincial Typography, Kiev, 1872.

Collection of State Charters and Agreements, kept in the National Collegium of Foreign



specified decision of the Patriarchate of Constantinople and its Primate (Head) Dimitrios Arhondonis (Patriarch Bartholomew I) of 11 October 2018, from the standpoint of general legal (recognized) principles and established legal approaches to understanding and interpretation of the ontology of law and of legal (and, more broadly, normative) space and order, as well as from the point of view of the legislation of the Republic of Turkey.

The analysis of this decision of the Patriarchate of Constantinople of 11 October 2018 from the standpoint of the Orthodox canon law is set out in the documents of the Russian Orthodox Church of the Moscow Patriarchate and the Ukrainian Orthodox Church of the Moscow Patriarchate and a number of other well-known materials, such analysis lies beyond the scope of this opinion.

## 2 - Main Part. An Examination

The decision of the Patriarchate of Constantinople of 11 October 2018 refers to the "Synodal Letter of the year 1686, issued for the circumstances of that time, which granted Patriarch of Moscow the right to ordain the Metropolitan of Kiev through oikonomia"<sup>4</sup> "revoked" by this decision.

The decision taken on 11 October 2018 by the Patriarchate of Constantinople (Ecumenical Patriarchate) to abolish the act signed by the Patriarch of Constantinople Dionysius IV and the Holy Synod of the Church of Constantinople for over 3 centuries ago, which also provided in that time (in the seventeenth century) the transfer of the Kiev Metropolia (legally, as per totality of irrevocably transferred sufficient amount of ecclesiastical and canonical jurisdiction) to the ecclesiastical jurisdiction of the Moscow Patriarchate (and, respectively, immediate admission of the Kiev Metropolia by the Moscow Patriarchate as part of its structure), is in grossly contradiction to the church canon law, normative validity and importance of which in its regulatory scope is recognized<sup>5</sup> in virtually every

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Affairs, Part Four, The Selivanovsky Typography, Moscow, 1826, pp. 509–519 (<https://www.runivers.ru/lib/book6820/174870/>).

See also: **V.G. CHENTSOVA**, *Synodal Decree of 1686 Concerning the Kiev Metropolia*, in *Ancient Rus. Issues in Medieval Studies*, 2017, No. 2, pp. 89–110 ([http://www.drevnyaya.ru/vyp/2017\\_2/part\\_9.pdf](http://www.drevnyaya.ru/vyp/2017_2/part_9.pdf)).

<sup>4</sup> Announcement (October 11, 2018) – (<https://www.patriarchate.org/-/communiq-1>).

<sup>5</sup> For details, see: **I.V. PONKIN**, *On the content of the concept of respect by the state for the internal regulations of religious organizations*, in *Religion and law*, 2015, № 2, pp. 10-15. **I.V. PONKIN**, *Autonomous non-legal normative order in the sphere of religion and state protection of*



contemporary legal state (including the Russian Federation, according to paragraph 2 of Article 15 and paragraph 5 of Article 4 of the Federal Law No. 125-FZ "On Freedom of Conscience and Religious Associations" of 26 September 1997).

It is necessary to take into account the realities of the time and the specifics of the subject-object area discussed. It is obvious, that it was the vocabulary similar to that used in the 1686 charters was applicable, rather than the legal vocabulary more familiar to modern lawyers, that was used at that historical time. Such expressions as "we transfer under your sovereignty", "we alienate (transfer) a canonical territory", "we transfer the authority in respect of a territory", etc., cannot be found in documents of that time, and therefore statements to that effect that the vocabulary used in said 1686 charters allegedly indicates that in 1686 the canonical territory of the Kiev Metropolia was not legally handed over to the ecclesiastical jurisdiction of the Moscow Patriarchate, and that "something minor, and nothing substantial, was handed over" are devoid of any substance. Legally, as per totality of irrevocably transferred sufficient amount of ecclesiastical and canonical jurisdiction (powers) which had hitherto been enjoyed by the Patriarchate of Constantinople in relation to the Kiev Metropolia, it was indeed a transfer of the Kiev Metropolia to ecclesiastical and canonical jurisdiction of the Moscow Patriarchate.

It is no coincidence that the decision of the Patriarchate of Constantinople of 11 October 2018 focuses on the fact that the 1686 decision was taken "for the circumstances of that time"<sup>6</sup>.

Said decision (the relevant executive act<sup>7</sup>) of the Patriarchate of Constantinople of 11 October 2018 is illegitimate, null and void and defective (from the standpoint of general legal principles and established legal approaches to understanding and interpretation of the ontology of law and legal (and, more broadly, normative) space and order, in the interrelation with the time, as well as from the standpoint of the Orthodox canon law (detailed proof based on canon law are not provided herein)) for the following reasons:

1) complete exhaustion (many centuries ago) of the subject of the ancient act of 1686, which was "cancelled" by the decision of 11 October 2018, namely, of the complex of relations concerning the transfer of virtually the

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*religious feelings and dignity of believers*, in *Religion and law*, 2014, № 3, pp. 8-11.

<sup>6</sup> Announcement (October 11, 2018) – (<https://www.patriarchate.org/-/communiq-1>).

<sup>7</sup> The generalized name of the form of the canonical act "executive act" for canon law is given by analogy with the administrative-executive act in the legal system of a state.



entire scope of the powers the Patriarchate of Constantinople had over the Kiev Metropolia, as well as the centuries-old and current non-existence, in the exact ecclesiastical and canonical status in which it existed at the time before being transferred to the Moscow Patriarchate in 1686, of the Kiev Metropolia. It is impossible to cancel an act which provided a cumulative multitude of events, each of which being practically irrevocable and irreplaceable, neither legally, nor actually; they remained in that remote times to which it is impossible to return by means of making any decision nowadays (it is similar to a hypothetical attempt to "cancel", for example, any acts of the times of the Golden Horde today);

2) the act of 11 October 2018 adopted by the Patriarchate of Constantinople (regarding the cancellation of the 1686 act) does not correspond to any form of legal act applicable to the modern ecclesiastical canon law (recognized by the Orthodox Churches);

3) the Patriarchate of Constantinople has no ecclesiastically and canonically defined competence based on the provisions of canon law<sup>8</sup> which would give it appropriate authority to adopt (publish) such an act<sup>9</sup>;

4) in the 1686 executive act (and related documents) nothing was said about the temporary nature of the transfer of the Kiev Metropolia to the jurisdiction of the Moscow Patriarchate and the possibility of the abolition of said act;

5) essential canonically significant transformation (change) of decentralized relations between the Orthodox Churches, of the canonical Orthodox ecclesiastical normative order and, in particular, of the competence of the Patriarchate of Constantinople in relation to other Orthodox Churches, which took place more than 3 centuries ago (since 1686); this transformation determines the exhaustion of the subordination and jurisdiction of the Patriarchate of Constantinople in this part and the absence of its appropriate ecclesiastically and canonically justified powers and tools for their implementation, excludes the possibility of any change

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<sup>8</sup> Canon law (in relation to Orthodox churches) is a system of autonomous normative control (regulation) (other than the law adopted and sanctioned by the public authority) within the competence of the Orthodox Churches, based on the Holy Scripture and Holy Tradition, acts of synods and other sources recognized by the Orthodox Churches, proceeding from the traditional church hierarchy and applying in connection with a certain range of subjects and relations pertaining to the religious activities of people and religious organizations in the canonical jurisdictions of the Orthodox Churches.

<sup>9</sup> See: Statement of the Holy Synod of the Russian Orthodox Church of 15 October 2018 concerning the uncanonical intervention of the Patriarchate of Constantinople in the canonical territory of the Russian Orthodox (<http://www.patriarchia.ru/db/text/5283708.html>) October 15, 2018.



(cancellation or revision) of said 1686 Act (even if the Patriarchate of Constantinople had the above-mentioned competence);

6) the transfer of the Kiev Metropolia to the Moscow Patriarchate in 1686, was not, by its nature, a unilateral act within the framework of canon law, these relations included two acting parties (they were, in fact, the result of negotiations, an agreement implemented in a specific form of a unilateral act) and implied obligatory existence of the consent of the second party (in addition to the Patriarchate of Constantinople), which assumed canonical jurisdictional obligations with regard to the canonical territory of Ukraine (of that time), and therefore it is legally impossible, from the point of view of general principles of law, to terminate the relations established by the 1686 act and cancel its results without both parties of these relations, including the Moscow Patriarchate, consenting to take such a decision.

Thus, the act of the Patriarchate of Constantinople of 11 October 2018 has the properties of legal fiction and a critically defective (by subject, object and means) act.

### **3 - Complete exhaustion of the subject of the executive act adopted by the Patriarchate of Constantinople in 1686**

The current situation, in addition to its assessment from the standpoint of ecclesiastical canon law (which is not discussed in detail in this opinion), can be legally assessed within the framework of a complex ontology "law - time".

The subject of the 1686 executive act was the transfer of the Kiev Metropolia (legally, as per totality of irrevocably transferred sufficient amount of ecclesiastical and canonical jurisdiction) to the ecclesiastical jurisdiction of the Moscow Patriarchate.

After more than 3 centuries since the adoption of the said act (decision) (which took place in accordance with the canonically established order) in 1686 by the Patriarchate of Constantinople, after its execution, already back then (in 1686) it became an act that legally (ecclesiastically and canonically) could not be abolished by virtue, as already mentioned above, of the complete exhaustion (many centuries ago) of the subject of the 1686 act, "cancelled" by the decision of the Patriarchate of Constantinople of 11 October 2018. It was not an "act of privilege" that could be revocable, it was, by its legal nature, an irrevocably exhaustible executive act.

This decision had already been taken and had been implemented; indeed, it resulted in a colossal, both in term of scale and size, aggregate of subsequent interrelated ecclesiastical and canonical actions and events,



associated legally significant actions and events, as well as political events, material (including property) and organizational consequences affecting the interests of many millions of people.

Said exhaustion of the subject of the executive act should be considered by analogy with the concept of exhaustion of law (erschöpft, erschöpfung), set out in the works of Josef Kohler<sup>10</sup>, the concept of exhaustion of the method of legal (and, in a wider sense, normative) regulation reflected, for example, in the works of G.V. Maltsev<sup>11</sup>, with other similar concepts of many other well-known legal scholars. The concept of "exhaustion" is, in general, well-known in law, including its effect on time and remedies.

In the legal sense, the exhaustion (full execution) of the subject of an executive-administrative (in the case under consideration, a canonical executive) act means that the goal of this act has been fully exhausted (fulfilled) (as the goal has been achieved, a certain amount of public relations has been changed in accordance with this goal) and the administrative effect of this act (the changes provided for by the act have taken effect) was ultimately and finitely (finally as per provisions) exhausted, resulting in the provisions of this act and the specified obligations of the parties established by this act having been exhausted (fulfilled) through the actual actions of the parties to the legal relations.

In view of the foregoing, all hypothetical possibilities of reusing the executive content of the 1686 act in future and the hypothetical possibility of revoking or revising the 1686 decision in future are fully exhausted and unrealizable in future.

In addition, with regard to this situation, the canonical jurisdiction and the associated rights of the Patriarchate of Constantinople to control the fates of other Orthodox Churches in the territories that are currently the territories of Ukraine and Russia had been already completely exhausted by then (in 1686).

Another essential legally important circumstance in the justification of the complete exhaustion of the subject of the 1686 executive act is a rather critical divergence (discrepancy) in the size, boundaries and territorial reference of the canonical territories in respect of which the 1686 act was

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<sup>10</sup> J. KOHLER, *Deutsches Patentrecht, systematisch bearbeitet unter vergleichender Berücksichtigung des französischen Patentrechts* [In zwei Abtheilungen ausgegeben], Bensheimer, Mannheim & Strassburg, J. 1878, vi; p. 739 s. – S. 13, 237 und andere. (<http://www.koeblergerhard.de/Fontes/KohlerJosefDeutschesPatentrecht1878.pdf>).

<sup>11</sup> See, for example: G.V. MALTSEV, *Social Grounds of Law*, Norma, Infra-M, Moscow, 2011, p. 306.



adopted, since the canonical territory of the Kiev Metropolia of the 17th century differs very significantly from the modern canonical territory of the Ukrainian Orthodox Church of the Moscow Patriarchate, just as the canonical territory of the Moscow Metropolia of the 17th century differs very significantly from the modern canonical territory of the Russian Orthodox Church of the Moscow Patriarchate. Formal arbitrary "redistribution" of territories "in retrospect", at a whim of the Patriarchate of Constantinople is impossible and completely devoid of legal sense, which only goes to reconfirm the exhaustion of the subject of the 1686 executive act.

#### **4 - Assessment of the actions from the perspective of the legislation of the Republic of Turkey**

Resident of Turkey (probably, a citizen of the Republic of Turkey) Dimitrios Arhondonis - Patriarch Bartholomew I (*Turkish*: Patrik I. Bartholomeos, born Turkish Dimitrios Arhondonis) has, by virtue of his act of 11 October 2018 (juridical fictitiousness, defectiveness and obvious extremely negative consequences of which Dimitrios Arhondonis could not but be aware of), committed a range of unlawful acts characterized by essential elements of criminal offences under the legislation of the Republic of Turkey, as well as elements of administrative offenses.

The interference of the authorities and representatives of the United States and the Ukrainian authorities with the exclusively internal relations of religious organizations closed to a secular state, relations between religious organizations and the activities of one of them on the territory of Turkey clearly demonstrates the United States and Ukraine's disregard of the principle of autonomy of religious organizations (related to the principle of a secular state) in the context of these events and gives grounds for asserting the legal and factual validity and possibility of using (applying) the norms of the legislation of the Republic of Turkey to resolve this extremely dangerous situation.

Fundamentally, this situation should be seen as a continuation of a series of aggressive economic and legal warfare campaigns of the United States and the United Kingdom against present-day Russia<sup>12</sup>.

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<sup>12</sup> See, for example, on legal warfare in sports: **I.V. PONKIN, A.I. REDKINA, V.V. GREBENNIKOV, M.N. KOUZNETSOV, V.K. BOTNEV, A.G. BOGATYREV**, *Hybrid (juridical, organizational, informational) war against Russian sport Juridical analysis of the WADA's and IOC's documents against the Russian sports in 2015–2017*, Compiled by I.V.



Said act of the Patriarchate of Constantinople of 11 October 2018 is, in its purpose and content, de facto aimed at a forced radical dismantling of the entire network of intra-religious and inter-religious relations and associated inter-ethnic relations that have developed in Ukraine and Russia, bearing in mind the fact that these relations in Ukraine have been extremely conflict-prone for many years now. Quite predictably, it will lead to very serious social upheavals, will very likely spark another civil war in Ukraine (one of the sides to which will be Russian Orthodox), and an aggravation of the already negative relations between Ukraine and Russia.

These actions of Dimitrios Arhondonis, as Head of the Patriarchate of Constantinople, committed on 11 October 2018, entered into a gross contradiction with the Article 24 of the **Constitution of the Republic of Turkey of 18 October 1982** (ed. 16 April 2017)<sup>13</sup> which imposes a ban on malpractice for religious purposes and on establishment of personal influence on the social, political, legal order of the state in religious interests, as well as with the provisions of the preamble of the Constitution of the Republic of Turkey, which prohibits the imposition of religion in public affairs, and thus grossly violated these constitutional norms.

These actions of Dimitrios Arhondonis also grossly contradict Article 14 of the **Constitution of the Republic of Turkey** which prohibits encroachment on fundamental rights and freedoms, but it is the rights of Orthodox believers in Ukraine that have been severely violated by said actions of the Patriarchate of Constantinople.

These actions of Dimitrios Arhondonis, as Head of the Patriarchate of Constantinople, come into conflict with the charter (constituent) documents of the Patriarchate of Constantinople which do not allow and do not establish the possibility of actions that, in essence, constitute an interference of this organization in the canonically autonomous ("sovereign") affairs of other autocephalous Orthodox Churches, as well as in the domestic affairs of other sovereign states and, as a consequence, aimed at provoking, and active involvement in, national and international conflicts.

For example, Article 5 of **Law No. 5253 "On associations" of the Republic of Turkey of 04 November 2004** (ed. 09 July 2018)<sup>14</sup> limits the

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Ponkin, Consortium of experts in sports law, Buki Vedi, Moscow, 2018, 401 p.

<sup>13</sup> Constitution of the Republic of Turkey of 18 October 1982 [Türkiye Cumhuriyeti Anayasası], R. Gazete, 09 November 1982, No. 17863, Ed. 16 April 2017 (<https://www.lexpera.com.tr/mevzuat/kanunlar/turkiye-cumhuriyeti-anayasasi-2709>).

<sup>14</sup> The act of the Republic of Turkey dated 04 November 2004 № 5253 "On associations" [Dernekler Kanunu], R.Gazete, 23 November 2004, № 25649, Current edition





associations' implementation of their international activities by the scope of the goals outlined in their charters.

The Treaty of Lausanne of 24 July 1923<sup>15</sup> which provided (Articles 37-45) for a special legal regime in Turkey for non-Muslim minorities, including Orthodox Greeks (the Patriarchate of Constantinople falls under it), does not allow and does not provide for the duty and possibility of the Turkish state to ignore the attempts of certain non-Muslim religious leaders to incite inter-religious wars abroad.

On the contrary, the tasks of the state authorities in the sphere of religion provided for by the legislation of Turkey include ensuring inter-religious peace<sup>16</sup>.

These actions of Dimitrios Arhondonis (as well as persons who have taken direct complicity in these actions) constitute crimes under the **Penal Code of Turkey No. 5237 of 26 September 2004** (ed. dated 09 July 2018)<sup>17</sup>, namely:

- part 1 of Article 216 "Provoking the Public to Hatred, Hostility or Degrading" of the Penal Code of Turkey, which establishes criminal liability for incitement to hatred and enmity (hate speech) on the basis of religion which is precisely the essence and consequences of the intentional actions of Dimitrios Arhondonis, doing all possible things to collide, radically opposing the believers not only in Ukraine, but also in Turkey - where a significant number (congregation) of believers of the Russian Orthodox Church of the Moscow Patriarchate and the Ukrainian Orthodox Church of the Moscow Patriarchate live - to each other,;

- parts 2 and 3 of Article 216 "Provoking the Public to Hatred, Hostility or Degrading" of the Penal Code of Turkey, which establishes criminal liability for public condemnation of the religious values of a part of the society which leads to a breach of public peace which is precisely the essence and consequences of the intentional actions of Dimitrios Arhondonis, who falsely imputes to the leaders of the Moscow Patriarchate (both of the Russian Orthodox Church and the Ukrainian Orthodox Church of the Moscow Patriarchate) an anti-canonical behavior and grave

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(<https://www.lexpera.com.tr/mevzuat/kanunlar/dernekler-kanunu-5253>).

<sup>15</sup> Treaty of Peace with Turkey Signed at Lausanne, July 24, 1923, The Treaties of Peace 1919-1923, Vol. II, Carnegie Endowment for International Peace, New York, 1924 ([https://www.lib.byu.edu/index.php/Treaty\\_of\\_Lausanne](https://www.lib.byu.edu/index.php/Treaty_of_Lausanne)).

<sup>16</sup> Diyanet İşleri Başkanlığı Kuruluş ve Görevleri Hakkında Kanun (<https://www.lexpera.com.tr/mevzuat/kanunlar/diyanet-isleri-baskanligi-kurulus-ve-gorevleri-hakkinda-kanun-633>).

<sup>17</sup> Penal Code of Turkey, 26 September 2004, No. 5237 (ed. 09 July 2018) [Türk Ceza Kanunu] - (<https://www.lexpera.com.tr/mevzuat/kanunlar/turk-ceza-kanunu-5237>).



violations of ecclesiastical and canonical order, provokes and excites, by virtue of said act of 11 October 2018, aggressive inter-religious clashes and, as a consequence and with high probability, a civil war in Ukraine (violent clashes between the believers of the Ukrainian Orthodox Church of the Moscow Patriarchate and the Ukrainian "schismatics" has actually already been going for many years). In addition, these actions of Dimitrios Arhondonis provoke large-scale public unrest and inter-religious conflicts in Turkey between the believers of the Russian Orthodox Church of the Moscow Patriarchate and the Ukrainian Orthodox Church of the Moscow Patriarchate living on its territory, on the one hand, and the Ukrainian "schismatics" and the Patriarchate of Constantinople, on the other hand;

- part 2 of Article 304 of the Penal Code of Turkey (in conjunction with article 219 of the Penal Code of Turkey, with regard to abuse of religious services), which establishes criminal liability for committing a criminal encroachment on the security of the Turkish state, including, obviously, through the destruction of peaceful relations of Turkey with a foreign state (in this case, with Russia) which is precisely the essence and consequences of the intentional actions of Dimitrios Arhondonis, since the actions of this person entail and provoke the incitement of inter-religious conflicts and, as a consequence, a civil war in Ukraine, with high risks of escalating into a war between Russia and Ukraine which will quite likely lead to involving Turkey in this war. In addition, such actions objectively contribute to a sharp deterioration of Russian-Turkish relations, and will inevitably provoke such deterioration.

## 5 - Conclusions

From the standpoint of general legal principles and established legal approaches to understanding and interpretation of the ontology of law and of legal (and, more broadly, normative) space and order, and also from the standpoint of the Orthodox canon law, the act of the Patriarchate of Constantinople of 11 October 2018 on the "cancellation" of the 1686 act (decision) of the Patriarchate of Constantinople, which legally transferred the Kiev Metropolia to the jurisdiction of the Moscow Patriarchate, is illegitimate (unlawful), null and void, has the properties of legal fiction and a critically defective (by subject, object and means) act.

From the point of view of the legislation of the Republic of Turkey, said act of the Patriarchate of Constantinople of 11 October 2018 is illegal, grossly violates the Constitution and laws of the Republic of Turkey, while the actions of the relevant persons to adopt this act have obvious features



of a number of criminal offences under the Penal Code of the Republic of Turkey.