

THE MOUNT ATHOS AVATON

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I. The occasion; II. The avaton in general: a. Concept, b. State Legislation, c. Ecclesiastical Legislation, d. Monastic Typika; III. Status of Mount Athos; IV. The Mount Athos avaton: a. Historical Origin, b. Effective Law; V. Constitutional Reservations: a. The Principle of Equality, b. Free Movement of Persons; VI. Constitutional Grounds of the avaton: a. Self-Government of Mount Athos, b. Religious Freedom, c. Protection of Ownership; VII. Mount Athos and the European Union; VIII. Conclusions.

I

During the 15 September 1997 meeting of the EC Council of Ministers for Foreign Affairs, the then Greek Minister for Foreign Affairs Theodoros Pangalos, responding to the expressed wish of the Athonite monks, attempted to have the unilateral “Declaration by Greece concerning the Declaration on the status of churches and non-confessional organisations”, annexed to the final Act of the Amsterdam Treaty, adopted as a joint declaration by all 15 member-states. By virtue of the 1997 Declaration the content of the Joint Declaration on Mount Athos annexed to the Final Act of the Treaty of Accession of the Hellenic Republic (1979) to the European Communities is recalled and renewed.

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Two members of the Council of Ministers reacted. The Ministers for Foreign Affairs of two new member-states of the European Union, Lena Hjelus of Sweden and Tarja Halonen of Finland, availed themselves of the opportunity to note the existing prohibition against the entry of women to Mount Athos (*avaton*), despite the fact that the latter is a region of the European Union.

This occasion provides a good opportunity for a comprehensive overview of the issue of the Mount Athos *avaton*, a subject often debated without due scrutiny and consideration.

II

a. The promise of carnal continence, that is, virginity, is a fundamental manifestation of the monastic confession, the promise given by a monk or nun when entering monastic life, at the time of their tonsure. A series of practices and consequences emanate from this condition, usually presented under the term *avaton*.

In the broad sense, the term includes the following specific prohibitions: men are forbidden entry and sojourn in convents and women are forbidden entry and sojourn in monasteries; eunuchs and children are forbidden entry and sojourn in monasteries; monks are prohibited from keeping female animals in monasteries; monks or nuns are prohibited from leaving the monastery or convent without important reason and without the abbot's or abbess's permission; and monks and nuns are prohibited from swearing oaths of blood-brotherhood, becoming godparents or guardians.

In particular, the prohibition of men's entry and sojourn in convents and the prohibition of women's entry and sojourn in monasteries, that is, the *avaton* in its strict sense, is a very old concept deriving from the very essence of the monastic movement, especially since the abandonment of every material pleasure by the first anchorites included sexual continence in the broadest sense.

Thus, the origins of the *avaton* can already be traced in the Canons of such Fathers of the Church as St Anthony, St Pachomios and St Basil, appearing in the form of prohibition of communication between the two sexes, or the taking of precautions against sexual temptations, when such communication was allowed or inevitable in exceptional cases.

b. As it is the case with most issues of monastic and ecclesiastical life, this prohibition was finalised in the legislation of the Emperor Justinian. Pursuant to the *Novella* 133 (539 AD), persons of the opposite sex were

forbidden entry into cloisters – a prohibition which included even the remains of the deceased for burial. The same stipulation provided for a sole exception: in the event of a woman's burial in a convent, the persons attending to the burial were allowed entry; however, such persons were obliged to leave the convent immediately after digging the grave and covering the corpse. Only the abbess and the guardian of the convent's gate were allowed to attend the funeral, while the other nuns were prohibited therefrom. Subsequent codices or collections of laws repeated this provision without any further modification or addition.

c. It was only much later that ecclesiastical legislation dealt with the issue of *avaton* concerning persons of the opposite sex. Canon 47 of the Quinisext Oecumenical Council (692 AD) prohibited women from spending the night in monasteries and men from spending the night in convents. Almost a century later, Canon 18 of the Seventh Oecumenical Council (787 AD) prohibited women not only from spending the night, but also from sojourning in bishops' quarters and monasteries in general.

Thus, the rule in official Byzantine legislation, both state and ecclesiastical, notwithstanding certain cases breaching this uniformity, was the establishment of the *avaton* in the form of a twofold prohibition, whereby neither women were allowed to enter and sojourn in monasteries nor men in convents. This prohibition was universal, since it covered both the living and the dead, and encompassed not only visitors but also special groups of people, for whom one might reasonably have considered an exception, such as relatives of monks and nuns belonging to the opposite sex, or even priests, cantors, suppliers etc. in convents.

d. This strict principle was adopted and emphasised by all the monastic *typika* (i.e., regulations of administration of the monasteries during the Byzantine period), which stipulated that no cloister should be entered, trespassed or seen by persons of the opposite sex. As a rule, the author of every *typikon* confines himself to the cloister to which the *typikon* refers. It is emphasised that that men are forbidden entry and sojourn in convents; the prohibition of women's entry and sojourn is also provided for in the case of monasteries. In a few cases both aspects of the *avaton* are exceptionally mentioned, to the effect that persons of the opposite sex are not to be admitted into the cloister and members of the cloister's community to which the *typikon* refers are prohibited from attempting to enter and sojourn in cloisters of the opposite sex.

However, in addition to the stipulation of the general principle, which is accompanied in some *typika* by specific sanctions in case of breach, the authors of the *typika* supplement the *avaton* prohibition with some details which can be useful for better understanding the application of

this institution. For example, the *Typikon* of Pakourianos (1083) extends the principle to prohibit married couples from residing near the cloister; the *Typikon* of the Convent of Keharitomeni (1118) expressly prohibits cantors from entering the convent; while the *Typikon* of the Monastery of Kosmosotira (1152) thus construes the concept of the *avaton* as to even prohibit the monks from offering charity to women at the gate of the monastery.

The peculiarities of the *avaton* issue in the monastic *typika* are multiplied by the exceptions to the prohibition of entry and sojourn to persons of the opposite sex, introduced and regulated in detail by these texts. A common exception, applicable both in monasteries and convents, is the breach of the *avaton* principle by significant persons, the Emperor and his retinue and the Empress and her retinue, and by the potentates. The reasons for these exceptions can be easily understood: such royal visits to cloisters were scarce, no moral damage could possibly be caused by such public visits, and above all, what Neilos Damilas mentions succinctly in his *typikon* (1400), "we cannot resist these persons".

Finally, exceptions to the *avaton* principle are occasionally provided for by monastic *typika* for worship during a cloister's fest, for the priests of convents, for burials and memorial services and even for meetings between recluses and their close relatives.

III

The *avaton* principle has been faithfully observed by all the Monasteries of Mount Athos without exception ever since they were founded. A brief introduction to the status of Mount Athos would perhaps be useful at this point.

Pursuant to article 105 of the 1975/1986 Constitution, the Athos peninsula beyond Megali Vigla, constituting the region of Mount Athos (Holy Mountain/*Άγιον Όρος*), is, in accordance with its ancient privileged status, *a self-governed part of the Greek State*, whose sovereignty thereon remains intact.

There exist today twenty sovereign Monasteries, which are legal entities of public law. Attached to them as dependencies are other monastic establishments, such as *sketes*, *kellia*, *kalyves* etc., with no separate legal personality.

The Monasteries of Mount Athos, which are all coenobitic again today, are directly subject to the spiritual jurisdiction of the Oecumenical Patriarchate of Constantinople. Mount Athos is also supervised by the Greek

State through the Governor of Mount Athos, appointed by presidential decree on a recommendation from the Minister for Foreign Affairs and having the rank and remuneration of the Secretary General of a Region.

Within Mount Athos, there is a clear distinction between the administration of the monastic community of the twenty Monasteries and the administration of each Monastery.

The administration of the entire Mount Athos is exercised by the *Holy Community*, which consists of twenty members representatives of the twenty Monasteries, with its seat at the capital municipality of Karyes. These representatives are elected pursuant to each Monastery's By-Law and hold office for one year. The executive authority is exercised by the four-member *Holy Epistasia*, i.e. representatives chosen by rotation on the basis of a tetrad system: the twenty Monasteries are divided into five tetrads, with one of the five senior Athonite Monasteries as the first member of each tetrad. Each tetrad in turn takes over the *Holy Epistasia* for a year, headed by a member of the senior monastery of the tetrad as chief monk, the *Protepistates* (or *Protos*, i.e. first elder).

The supreme administrative organ, meeting twice a year, namely fifteen days after Easter and on 20 August, is the extraordinary twenty-member *Holy Assembly*, consisting of the Abbots of the twenty Monasteries.

Each one of the Holy Monasteries of Mount Athos is administered by the Abbot, the Assembly of the Elders and the Abbot's Council. The abbot is elected by secret ballot for a life term of office by all the members of the brotherhood, who have completed at least six years after their tonsure. The Assembly of Elders is elected for a life term of office according to the provisions of the internal organisation of each Monastery. Finally, the Abbot's Council consists of two or three members, depending on the provisions of each Monastery's internal organisation, and is elected every year by the Assembly of Elders from among its members.

Within the Mount Athos territory, only the twenty Holy Monasteries have the right of ownership. The entire peninsula of Athos is divided among them and its territory is exempt from expropriation, according to express constitutional provision (article 105 of the Constitution). The monastic brotherhood attends to the administration of the movable and immovable property of the Monasteries, which is, however, exercised by the Abbot and the Abbot's Council in the Monasteries.

IV

a. A large number of Athonite sources mention the effect of the *avaton* principle within the territory of Mount Athos. Emperor Basil I the Macedonian, by his *sigillion* (sigillated decree) issued in 883 (many years before the establishment of the first coenobitic Monastery, the Monastery of Great Lavra, when Mount Athos was still inhabited mainly by anchorites) already prohibited entry into the Mount Athos territory to shepherds and their flocks.

There followed the *Typikon* (959) of St Athanasios the Athonite, the founder of coenobitic life on Mount Athos; the *Typikon* of the Emperor Ioannis Tzimiskes (972); that of the Emperor Constantine Monomachus (1046); the Tome and *Typos* (Rule) concerning the Protaton (1394); and the chrysobul (royal decree) of the Emperor Manuel II Palaeologus (1406), expressly forbidding entry to children, beardless persons and eunuchs, female animals and, impliedly, women, who – it is expressly mentioned – might try to enter Mount Athos disguised as men, pretending to be eunuchs or beardless persons.

Similar provisions are included in various sources of Athonite law from the period of Turkish domination. Such sources include the *Sigillion* of the Patriarch Joachim (1498), the *Typikon* of the Patriarch Jeremiah II (1574), the *Typikon* concerning the *Protos* (1780), the Synodal Tome of the Patriarch Gregory V (1806), the By-Law of the Holy Monastery of Xenophon as from 1839 and 1905 and the General Regulations of Mount Athos as from 1912.

These provisions refer mostly to the prohibition of entry to Mount Athos of impubescent persons, eunuchs and female animals, probably because such were the most frequent cases of violation; less mention is made of women. Thus, the *avaton* principle concerning women is not included *expressis verbis* in all regulatory texts of Athos, precisely because it was taken for granted and it had absolute and continuous effect. This is confirmed by the fact that its sparse violations, for example by the wife of the British ambassador Stratford Canning (1850), provoked the immediate reaction of the competent authorities.

Consequently, the *avaton* for women has been in force in Mount Athos, according to the ancient custom and the holy traditions of the area, absolutely respected both by monks and laymen, as a rule of customary law.

b. The customary origin of the *avaton* is also confirmed in the legislation in force, namely article 186 of the Constitutional Charter of Mount Athos (1924), effective since 1926 through its ratification by the

Greek State by the Legislative Decree of 10/16 September 1926. According to this provision of the Constitutional Charter, the entry of females in the Athos peninsula is, *according to the ancient custom*, forbidden. However, from the point of view of public law, this provision was a *lex imperfecta*, since it did not provide for sanctions in the event of violation. Only the measure of deportation from the Mount Athos territory could be taken against a woman violating the *avaton*.

However, this provision was subsequently complemented by a law penalising the violation of the *avaton*, as a result of the disembarkation of several ladies on the Mount Athos territory during the 9th International Congress of Byzantine Studies, convened in April 1953 in Thessaloniki. Legislative Decree 2623/1953 stipulated that the violation of the *avaton* incurs a penalty of imprisonment for a period between two months to one year, which, according to the general provisions of the Penal Code, can now be commuted to a pecuniary penalty.

V

We shall now proceed with the discussion of the possible reservations that have been raised from time to time as to constitutionality of the legal provision establishing the Mount Athos *avaton*. For the record, it should be noted at this point that in 1975, with the opportunity of the “International Year of the Woman”, the then PA.SO.K. (Panhellenic Socialist Movement) Member of Parliament Ioannis Koutsoheras, submitted to the Parliament a proposal for the abolition of the Mount Athos *avaton*, which was, however, voted down by the vast majority of Members of Parliament.

A first superficial approach might lead to the conclusion that the prohibition of women’s entry into the Mount Athos territory contravenes the principle of equality and/or constitutes a restriction of personal freedom. Both the principle of freedom and free movement of persons are enshrined not only in the Constitution of Greece, but also in many international treaties that have been ratified by Greece and constitute an integral part of Greek law and, what is more, prevail over any opposite provision of law as prescribed by the Constitution.

a. The principle of equality, enshrined in article 4 of the Constitution, obligates the legislator to treat in an equal or similar manner all Greek citizens under the same or similar conditions and prohibits any favourable or unfavourable treatment of the same by way of exception from the general rule.

However, the principle of equality does not preclude the different statutory regulation of dissimilar or different cases, or cases occurring under different or special conditions. On the contrary, in such cases different treatment is imperative, because various special reasons, social, economic, religious etc., fully justify different treatment, provided that such different treatment is objective and is based on general and impersonal criteria.

Such is the case with the *avaton*. All women are forbidden entry in Mount Athos, without any exception. There would be a case of violation of the principle of equality, only if specific categories of women or only women meeting some specific criteria were allowed entry.

b. Personal freedom, which according to article 5 paragraph 1 of the Constitution is inviolable, is not unlimited – as indeed, is the case with any other individual right. The Constitution expressly mentions that freedom of movement may be restricted, when and as stipulated by law. Naturally, such restrictions on personal freedom and particularly the free movement of any person cannot be arbitrary. They should be justified by sufficient reasons serving the general public or social interest and it is up to the courts to examine whether such conditions concur.

So, as none has ever thought of contesting the constitutionality of other restrictions on the free movement of persons, such as the prohibition of entry into military areas or the prohibition of hunting or fishing in several areas or during certain seasons etc., for the same legal reason there is no violation of the Constitution in the case of the *avaton*.

VI

a. Since the reservations that could be raised at first sight as to the constitutionality of the provision concerning the *avaton* have been overcome, we shall proceed with its constitutional grounds.

The long prevailing opinion held that the Mount Athos *avaton* principle was grounded on article 105 of the Constitution currently in force as indeed on the respective articles of the preceding ones, since the relevant provision first appeared in the 1927 Constitution. The argument went that the *avaton* principle is included in the Constitutional Charter of Mount Athos, which the Greek Parliament must ratify exactly as voted by the twenty sovereign Holy Monasteries without being able to make any change, as part of the privileged status of Mount Athos as a self-governed territory enshrined in article 105 of the Constitution.

However, there are arguably other more secure constitutional grounds for

the *avaton*. These grounds, to which I subscribe, are based on two pillars:

b. The first pillar is religious freedom. The Mount Athos *avaton* is based, from a constitutional point of view, on the individual right of religious freedom enshrined in article 13 of the Constitution and in a series of international treaties ratified by Greece. This right to religious freedom, differing in quality from tolerance, implies a positive obligation of the State to secure its undisturbed enjoyment.

As already indicated, for monks, and particularly those that have been leading monastic life on Mount Athos for centuries, adherence to virginity constitutes a fundamental element of their monastic confession; is connected with the way of offering their worship to God; it constitutes an integral part of their religious convictions; in other words, it is a part of the monk's conscience, which is precisely protected by the constitutional provision safeguarding religious freedom.

Thus, the *avaton* principle has a constitutional basis and the Athonite monks are entitled to demand from the State to protect and secure their quasi-isolation there. Exactly for this reason, any legal provision allowing women to enter Mount Athos would be contrary to the Constitution, unless the Holy Community itself granted its consent.

c. The second pillar is the protection of ownership. As already indicated, according to article 105 of the Constitution *only the twenty Holy Monasteries have the right of ownership over the Mount Athos territory; the entire Athos peninsula is divided among them and its territory is exempt from expropriation.*

It is therefore quite clear that the entire peninsula of Athos constitutes the private property of the twenty Holy Monasteries, vested in them many centuries ago by virtue of the chrysobuls of the Byzantine Emperors. The prohibition of expropriation, enacted by the same provision, corroborates this view, since it intends to prevent both the State itself from expropriating part of the territory and the Monasteries from selling to third parties part of their property. Thus, the Athos peninsula has a private character, it is the exclusive property of the twenty Holy Monasteries of Mount Athos.

Therefore, on grounds of protection of property as well, the Monasteries – and by extension the Holy Community of Mount Athos – are entitled to prohibit any person from entering their property and, consequently, forbid women to enter.

This should not be astonishing, because it is known that in every country where the rule of law prevails both the violation of the sanctuary of home and disturbance of peace constitute criminal offences.

VII

Last, but not least, I would like to examine the relation between Mount Athos and the European Union and, in particular, whether the accession of Greece to the then European Communities prejudices the privileged status of Mount Athos and, as a consequence, the *avaton* principle.

The region of Mount Athos, as part of the Greek State, constitutes Community territory since 1 January 1981, when the Hellenic Republic became a full member of the European Communities.

The Treaty establishing the European Economic Community, signed in Rome in 1957, provides in article 1 for the creation of a common market, to be gradually achieved by the progressive convergence of the economic policies of the member states as determined in article 2.

Thirty years later, the renewal of the agreement for the creation of this Common Market had become necessary. Thus, the Inter-Governmental Conference concluded in February 1986 the Single European Act, which upon ratification by the Parliaments of the twelve member states, including Greece (by Law 1681/1987), came into force on 1 July 1987. The effect of the Single European Act was the creation by 31 December 1992 of an integrated internal market, a “Europe without frontiers”, in which *the free movement of persons, services, goods and capital is secured*.

The privileged status of Mount Athos, as enshrined in the Constitution of Greece, presents certain peculiarities that obviously contravene the common legal status of Community territory. Such are the prohibition of settlement on Mount Athos against ‘heterodox or schismatic persons’ and, by way of extension, persons of other religions; the prohibition of women’s entry into Mount Athos; the compulsory acquisition of the Greek citizenship by persons leading a monastic life on Mount Athos, already from the beginning of their noviciate; the compulsory issuance of an entry and sojourn licence (*διαμονητήριο*) for a simple visit to Mount Athos; the prohibition of establishing associations; the prohibition of any professional activity or commerce etc. Beyond any doubt, such provisions are in direct contravention of the rights of free settlement, free movement and free provision of services, which constitute the cornerstones of European Community Law.

The peculiarities of the ancient privileged status of Mount Athos directly contravening European Community Law could be treated in a piece-meal fashion, so that the grounds for the non-application of each specific Community provision in the case of Mount Athos could be

established when the occasion arose. Naturally, that would not have been necessary in those few cases where the Mount Athos region has been expressly exempt from the application of Community provisions, for example the levy of value-added tax (as per Schedule I, Part VI of the Accession Treaty, see also Law 1642/1986). Several other peculiarities could be addressed on the basis of the general clause included in article 56 of the EEC Treaty, concerning reservations related to public order, public security and public health.

The comprehensive settlement of the problem was attempted by the "Joint Declaration concerning Mount Athos", annexed to the Final Act of the Treaty of Accession of the Hellenic Republic to the European Communities of 29 May 1979. It reads as follows:

Joint Declaration concerning Mount Athos

Recognising that the special status granted to Mount Athos, as guaranteed by article 105 of the Hellenic Constitution, is justified exclusively on grounds of a spiritual and religious nature, the Community will ensure that this status is taken into account in the application and subsequent preparation of provisions of Community law, in particular in relation to customs franchise privileges, tax exemptions and the right of establishment.

As a result, the status determined by article 105 of the Hellenic Constitution has become Community law since the accession of Greece to the European Communities and is binding, without any exception, upon all member-states having acceded ever since. What is more, the accession treaties of new member-states expressly provide for their accession to the founding treaties, *as they have been amended and supplemented*. Besides, new member-states are obliged to respect the principles and guidelines emanating from the declarations, resolutions or other positions of the Council and to take such steps as are necessary for securing their implementation. Such provisions are expressly included in the Treaties of Accession of Sweden, Finland and Austria.

Besides, the primary rules of Community law, that is the founding treaties of the Community and supplementary treaties, may be amended only by a unanimous decision of all the member-States and not by the institutional organs of the Community and nowadays the European Union as well. The institutional organs of the Community and the Union cannot reverse treaties signed by all the member-States and ratified by the national Parliaments.

It is a totally different matter the attempt by the Holy Community to upgrade from a technical point of view the Joint Declaration, the binding force of which has not been contested, and give it the status of a Protocol, in an effort to create a special relation with the European Union

similar to that of other territorial entities: such is the case of the Vatican City or the Republic of San Marino in relation to Italy; or the Principality of Monaco, resulting from its relation with France and Luxembourg; or Helgoland, resulting from its relation with Italy and Switzerland; or even East Berlin before the unification of Germany on account of the special status governing it.

Such is the context for understanding the Greek Government's wish for the repetition by the 15 now member-states of the Joint Declaration on Mount Athos included in the Treaty of Accession of Greece and the recalling Declaration of the Hellenic Republic in the Treaty of Amsterdam.

VIII

To sum up:

The Mount Athos *avaton* is principally a manifestation of religious freedom and, in particular, of the exercise of worship. The prohibition of entry against persons of the opposite sex is a matter of religious conscience for the monks dwelling on the Holy Mountain and should be respected as such.

For those having difficulties in understanding religious peculiarities, there is a justification of the *avaton* on the basis of the right to own property, since the entire Athos peninsula belongs to the Monasteries and their dependencies and, as a result, constitutes the property of the monastic Community as a whole.

The Mount Athos *avaton* is not prejudiced by the accession of Greece to the European Communities (and now the European Union). Besides, its singularities are enshrined in the Joint Declaration of the member-states in the Treaty of Accession of the Hellenic Republic to the European Communities, which is recalled by Greece in the Treaty of Amsterdam.

Mount Athos, a place of spiritual and religious character, should preserve its character through its privileges and peculiarities as a cultural and religious "reserve" within the European Union. Its preservation constitutes our obligation towards Mount Athos, its history, its present and its future.