

I.

The Threefold Summons at Late Antique Church Councils

Von

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The threefold summons of an absent defendant in the context of synodal proceedings – which had been admittedly formed by influence from the respective process in Roman law – is an important component of the ecclesiastical judicial procedure. In this paper I examine in detail all the extensive narratives of threefold summonses preserved in conciliar acts of the fifth and sixth centuries, that is, the cases of Nestorius of Constantinople and John of Antioch at the council of Ephesus (431), the case of the archimandrite Eutyches at the Resident Synod of Constantinople (448), the case of Athanasius of Perrhe at the local synods of Hierapolis (early 440s) and Antioch (445) as well as at the Council of Chalcedon (451), the case of Dioscorus of Alexandria at the Council of Chalcedon, and the case of Anthimus of Constantinople at the Resident Synod of Constantinople (536). In the final part I proceed to an assessment of this process' evolution over the period in question. The principal conclusion is that by the time of Justinian the ecclesiastical threefold summons procedure had become consolidated and systematised.

Key Words: church councils, threefold summons, ecclesiastical trial, trial in absentia, notaries

Zusammenfassung: Die dreimalige Ladung eines abwesenden Angeklagten – die unter dem Einfluss der entsprechenden Prozedur im römischen Recht entstanden war – ist ein wichtiger Bestandteil des spätantiken synodalen kirchlichen Verfahrens. In diesem Aufsatz untersuche ich ausführlich alle umfangreichen Berichte von dreimaligen Ladungen, die in konziliaren Akten des 5. und 6. Jahrhunderts überliefert sind, d. h. die Fälle des Nestorius von Konstantinopel und des Johannes von Antiochia im Konzil von Ephesus (431), den Fall des Archimandriten Eutyches in der Synode von Konstantinopel (448), den Fall des Athanasius von Perrhe in den Synoden von Hierapolis (Anfang der 440er Jahre) und Antiochia (445) sowie im Konzil von Chalcedon (451), den Fall des Dioscorus von Alexandria im Konzil von Chalcedon und den Fall des Anthimus von Konstantinopel in der Synode von Konstantinopel (536). Im letzten Teil des Aufsatzes ziehe ich meine Schlussfolgerungen hinsichtlich der Entwicklung dieses Verfahrens im untersuchten Zeitraum. Mein Hauptresultat ist, dass die Konsolidierung und Systematisierung des kirchlichen dreimaligen Ladungsverfahrens zur Zeit von Justinian erfolgte.

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I. Introduction

The early Christian church established a conciliar system in order to deal with internal disciplinary and organisational issues, as well as to settle doctrinal questions. The abundant surviving documentation from late antique church councils bears witness to a synodal procedure which was by the fourth century fully developed and standardised. Scholars studying the church council acts have long observed that ecclesiastical conciliar procedural norms were formed and elaborated by influence primarily from imperial law courts and political assemblies²). The forensic character of synodal proceedings, which is most relevant to the subject of this paper, is best demonstrated in hearings concerned with disciplinary disputes. It should be noted, nevertheless, that in many instances non-discipline pertained to accusations of heresy, while the task of defining orthodox doctrine often involved the condemnation of heretical beliefs by means of convicting the persons representing them³). Accounts of such processes attest to the employment and adaptation of legal formats such as the accusatory petition, the formal summons of the accused, the inquiry of witnesses and investigation of evidence in synodal tribunals⁴).

This paper will deal with one aspect of the synodal judicial procedure,

²) On the development of the ecclesiastical conciliar procedure see, e.g., Hamilton Hess, *The Early Development of Canon Law and the Council of Serdica*, Oxford 2002, 5–53; Hermann Josef Sieben, *Die Konzilsidee der Alten Kirche*, Paderborn 1979; Jean Gaudemet, *L'Église dans l'Empire romain: IV^e–V^e siècles*, Paris 1989, esp. 451–466; Klaus M. Girardet, *Kaisergericht und Bischofsgericht: Studien zu den Anfängen des Donatistenstreites (313–315) und zum Prozess des Athanasius von Alexandrien (328–346)*, Bonn 1975; see also Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity*, Oxford 2007, 199–213 on the role played by forensically trained ecclesiastics in the formation of early canon law and ecclesiastical juridical proceedings.

³) On the interrelated aims of church councils see Thomas Graumann, *Council Proceedings and Juridical Process: the Cases of Aquileia (AD 381) and Ephesus (AD 431)*, in: Kate Cooper/Jeremy Gregory (eds.), *Discipline and Diversity: Papers Read at the 2005 Summer Meetings and the 2006 Winter Meeting of the Ecclesiastical History Society*, Woodbridge (Suffolk) 2007, 100–113; *idem*, *Alt-kirchliche Synoden zwischen theologischer Disputation und rechtlichem Disput*, in: Christoph Dartmann/Andreas Pietsch/Sita Steckle (eds.), *Ecclesia disputans: Die Konfliktpraxis vormoderner Synoden zwischen Religion und Politik*, Berlin 2015, 35–60.

⁴) The components of the synodal judicial procedure have been analysed by Arthur Steinwenter, *Der antike kirchliche Rechtsgang und seine Quellen*, ZRG KA 23 (1934) 1–116 and Spyridon N. Troianos, *Η εκκλησιαστική δικονομία μέχρι*

namely the threefold summons of the defendant in case of default⁵). In most cases, synodal hearings commenced with the presentation of an accusatory petition (λίβελλος or δέησις και ἰκεσία) by the plaintiff, which normally contained a demand for the summoning of the accused to the assembly, in case he was not already there⁶). The synod granted the request by appointing envoys from among the members of the episcopal council or clerics of lower rank present to execute the summons. The service of summons to the accused, designated as κλήσις or ὑπόμνησις, was carried out either by the oral transmission of the invitation or by the reading out of a letter of summons (γράμμα κλήσεως or παραναγνωστικόν). In the event of the defendant's contempt of the first summons, the council had to announce its decision to summon him a second time, and if neither that was obeyed, to invite him a final third time, in each instance appointing a different delegation to execute the summons. Non-compliance with the third summons without the submission of a legally acceptable excuse resulted in a synodal trial entailing the examination of the evidence (ἐξέτασις) in the presence of only the accuser(s). The outcome of such a trial was the condemnation of the absent defendant, not on account of contumacy as a crime in its own right, but rather on account of the absentee's inability to defend himself against the accusations which justified his summoning in the first place⁷).

The ecclesiastical procedure of the threefold summons is repeatedly designated as 'canonical' or 'in accordance with the proper ecclesiastical procedure' in conciliar acts. It is not clear whether certain canons lay behind such references, or rather the standard, universally observed ecclesiastical procedure was implied⁸). The best single piece of evidence comes from the

του θανάτου του Ιουστινιανού [The Ecclesiastical Juridical Procedure Until Justinian's Death], Athens 1964.

⁵) The fundamental scholarly treatments of the ecclesiastical threefold summons and the subsequent trial *in absentia* are Steinwenter, *Kirchlicher Rechtsgang* (fn. 4) 44–46, 65–75 and Troianos (fn. 4) 78, 83–88.

⁶) The accusatory petition could be submitted either directly to the synod, or to the emperor, see Troianos (fn. 4) 53 with n. 18 for references.

⁷) This is made clear in the wording of the verdicts, as it will be demonstrated in the analysis of the evidence below; cf. Steinwenter, *Kirchlicher Rechtsgang* (fn. 4) 69; Troianos (fn. 4) 127.

⁸) See, for instance, Hess (fn. 2) 77–78, 165 and Heinz Ohme, *Kanon ekklesiastikos: Die Bedeutung des altkirchlichen Kanonbegriffs*, Berlin 1998, 359–363, who point out that the term κανών in some cases denoted universally observed ecclesiastical procedures.

collection of the apostolic canons⁹⁾: according to canon 74, an accused bishop who defied a first summons to appear and make his defence had to be summoned two more times by two bishops; in case of contempt, the synod had to pronounce a judgement in his absence¹⁰⁾. This canon apparently points to

⁹⁾ The pseudepigraphic apostolic canons are considered to have been compiled in c. 380 in the region of Antioch, possibly by the editor(s) of the Apostolic Constitutions. The origin of these canons is not clear: some repeat or resemble earlier canons from the so-called 'Antiochian corpus' (see fn. 10), some may derive from other councils of the second and third centuries, and others may merely reflect the 'canon' in the sense of church customary rules. On the date, origin, compiler(s) and content of the apostolic canons see Marcel Metzger (ed.), *Les constitutions apostoliques*, tome I (= *Sachesse Chrétienne [SC] 320*), Paris 1985, 22–23, 54–62; Eduard Schwartz, *Über die pseudoapostolischen Kirchenordnungen*, Strasbourg 1910 = *Ders.*, *Gesammelte Schriften*, vol. 5: *Zum neuen Testament und zum frühen Christentum*, Berlin 1963, 192–273; Hess (fn. 2) 48–49; Ohme (fn. 8) 485–498. The oldest reference to 'apostolic canons' appears to be found in a statement of Nectarius of Constantinople at the Synod of Nicaea 325, where he mentions that the apostolic canons dictated that a bishop could not be deposed by two or three bishops, but by the vote of a larger synod of bishops of the respective province; for the text see Périclès-Pierre Joannou, *Fonti*, Fasc. IX: *Discipline générale antique (IV^e–IX^e s.)*, Grottaferrata 1962, here p. 443 lin. 19–20. According to Schwartz, *op. cit.* 214–215, this is a reference to apostolic canon 74 (*cf.* fn. 10), since the latter refers to the summoning and trial of a bishop by a synod.

¹⁰⁾ Apostolic canon 74, in: Metzger (n. 9) tome III, Paris 1987, 302, Ἐπίσκοπον κατηγορηθέντα ἐπὶ τινὶ ὑπὸ ἀξιόπιστων καὶ πιστῶν ἀνθρώπων, καλεῖσθαι αὐτὸν ἀναγκαῖον ὑπὸ τῶν ἐπισκόπων· κἂν μὲν ἀπαντήσῃ καὶ ὁμολογήσῃ, ἐλεγχθέντος αὐτοῦ ὀριζέσθω τὸ ἐπιτίμιον· ἐὰν δὲ καλούμενος μὴ ὑπακούσῃ, καλεῖσθω καὶ δευτέρον, ἀποστελλομένων ἐπ' αὐτὸν δύο ἐπισκόπων· ἐὰν δὲ καὶ οὕτως μὴ ὑπακούσῃ, καλεῖσθω καὶ τρίτον, δύο πάλιν ἐπισκόπων ἀποσταλέντων πρὸς αὐτὸν· ἐὰν δὲ καὶ οὕτως καταφρονήσῃ μὴ ἀπαντήσῃ, ἡ σύνοδος ἀποφαιnéσθω τὰ κατ' αὐτοῦ δόξαντα· ὅπως μὴ δόξῃ κερδαίνειν φυγοδικῶν: When a Bishop has been accused of something by trustworthy and faithful men, it is necessary that he be summoned by bishops; and if he appears and confesses after having been interrogated, let the penalty be imposed. But if when summoned he does not obey, let him be summoned a second time by sending two bishops to him. If even then he does not heed, let him be summoned a third time, by sending two bishops to him again; but if even then he shows contempt and fails to appear, let the synod decide whatever seems best against him, so that he may not seem to get a benefit by avoiding the trial. The only other canon that mentions a loosely similar summons procedure is Canon 5 of Antioch (*circa AD 328*), also preserved as apostolic canon 31, which refers to schismatic presbyters or deacons who are to be deposed if not heeding two summonses by the bishop, see Joannou I.2 (fn. 9) 108–109. The same canon is cited twice at the Council of Chalcedon, at the fourth session, *cf.* *Acta Conciliorum Oecumenicorum I–III*, ed. Eduard Schwartz, Berlin 1914–1940 [ACO], here t. II vol. 1 part 2 § 90 p. 118

an already established ecclesiastical practice¹¹), which was, in all likelihood, developed by influence from and in parallel with the respective processes of the Roman *cognitio* trial and the later *litis denuntiatio* and ‘libellary’ procedures¹²). In the *cognitio* judicial process the summons was conducted either through a private invitation (*denuntiatio*)¹³, oral or written, or through one executed by a magistrate (*evocatio*), in response to the plaintiff’s request¹⁴). The *evocatio* was carried out by means of a letter (*litterae*), or, especially in cases when the defendant could not be located, by means of an *edictum*, which consisted of a public announcement by proclamation and posting. When cited, the defendant was compelled to appear at the next session of the tribunal; if he failed to do so, the plaintiff could request a second summons

lin. 9–15; and at the session on Carosus and Dorotheus (ACO II.1.3 § 10 p. 101 lin. 6–12) where three summonses are mentioned instead. The canons of Antioch (*circa AD 324*) were included in the ‘Antiochian corpus’, comprising also the canons of the synods of Ancyra (314), Neocaesarea (314/319), Gangra (*circa AD 340*), and Laodicea (before 380). This collection was compiled sometime between 360 and 378, possibly at the direction of the Homoean bishop of Antioch, Euzoius, and was later adopted by the Nicene party: possibly by Melitius after he was restored to the see of Antioch in 379. The Nicene collection was later enlarged by the canons of Constantinople (381) and Chalcedon (451); on the ‘Antiochian corpus’ see Eduard Schwartz, *Die Kanonensammlungen der alten Reichskirche*, ZRG KA 25 (1936) 1–114; Hess (fn. 2) 53–54; David Wagschal, *Law and Legality in the Greek East: the Byzantine Canonical Tradition 381–883*, Oxford 2015, 33–41.

¹¹) See Eduard Schwartz, *Der Prozess des Eutyches*, Sitzungsberichte der Bayerischen Akademie der Wissenschaften, Philosophisch-Historische Abteilung, Heft 5/1929, 72, who also suggests that this canon may be modelled on Matthew 18,15–17; cf. Troianos (fn. 4) 78.

¹²) Steinwenter, *Kirchlicher Rechtsgang* (fn. 4) 69–75. Here follows a brief outline of the summoning procedure in Roman Law. The fundamental treatments of the subject are Artur Steinwenter, *Studien zum Römischen Versäumnisverfahren*, Munich 1914; Luigi Aru, *Il processo civile contumaciale: studio di diritto Romano*, Rome 1971; Max Kaser, *Das römische Zivilprozessrecht*, rev. Karl Hackl, Munich 1996. Also, recently, Claudia Kreuzsaler, *Säumnisladung und Säumnisfolgen: ein peremptorisches Edikt auf einem spätantiken Papyrus* (P. Vindob. G 14475), in: Rudolf Haensch (ed.), *Recht haben und Recht bekommen im Imperium Romanum, Das Gerichtswesen der Römischen Kaiserzeit und seine dokumentarische Evidenz, Ausgewählte Beiträge einer Serie von drei Konferenzen an der Villa Vigoni in den Jahren 2010–2012*, Warsaw 2016, 633–658 examined papyrological material from Egypt from the fourth to fifth centuries.

¹³) The *denuntiatio* could also be carried out with the assistance of a magistrate under official authorisation (*denuntiatio ex auctoritate*).

¹⁴) On the summons procedure and the ensuing default trial in the Roman *cognitio* see, e.g., Kaser/Hackl (fn. 12) 472–481.

and, if necessary, a third one¹⁵). Following this, a final summons, the *edictum peremptorium* designating the day of the final judgement (*dies peremptorii*) was issued¹⁶). If the defendant did not appear on that day either, he was tried *in absentia* and, provided that all the procedural requirements were met, a default judgement was passed against him on the grounds of his *contumacia*. In the period from the fourth to the early fifth century litigation was initiated by means of the *litis denuntiatio*, a written ‘dispute announcement’ containing a summons which the plaintiff addressed to the defendant with the permission and, in many cases, the assistance of the court¹⁷). There started a period of four months within which the litigants had to appear before the judge. If the defendant failed to do so, he received three edictal summonses and if he defied them, too, he was tried in absence. An additional feature of these proceedings was that a default judgement could be brought also against an absent plaintiff¹⁸). In the mid-fifth century the *litis denuntiatio* was replaced by a more formal procedure which was put in motion by means of a petition which the plaintiff submitted to court, the *libellus conventionis*¹⁹). This included a brief exposition of the facts which justified the complaint as well as a request to summon the defendant (*postulatio*). If the demand was regarded admissible, the judge ordered the service of an official summons (*conventio, commonitio, ὑπόμνησις etc.*) by a judicial magistrate, the *exsecutor*. In the event of the defendant’s failure to appear to court even after three edictal summonses (at least 30 days from one another), he was tried in default. Justinian by his Novel 112 (541 AD) regulated the same procedure in case of the plaintiff’s withdrawal from the lawsuit²⁰). In addition, he made more explicit the formalities of edictal summonses of absent litigants; according to the relevant clause from the same Novel, the absentees had to be summoned not only by the voice of heralds (κηρύκων φωνᾶς) but also by the posting of

¹⁵) A period of at least ten days had to intervene between each summons, see Ulp. D. 5,1,68–70.

¹⁶) Ulp. D. 5,1,70–73,3. An *edictum peremptorium* could be issued without the preceding summonses (*unum pro omnibus*), if the judge wished to do so, see Ulp. D. 5,1,72; cf. Kaser/Hackl (fn. 12) 478.

¹⁷) The *litis denuntiatio* was served on the basis of a statement of claim application (*postulatio simplex*) which had to be approved by the court, see Kaser/Hackl (fn. 12) 566–570.

¹⁸) In the *cognitio* procedure the mere consequence in case the plaintiff did not appear to court on the *dies peremptorii* was that the summons procedure had to be conducted again from the beginning, see Kaser/Hackl (fn. 12) 480.

¹⁹) On the libellary procedure see Kaser/Hackl (fn. 12) 570–576.

²⁰) Just. Nov. 112,3.

edicts (ιδίκτων προτιθεμένων), since only a few people present could hear the voice of heralds, while everyone could know of edicts posted for several days²¹). This is apparently an attestation of the fact that the posting of edictal summonses was not always observed and thus had to be regulated²²).

It is fortunate that the details of the parallel ecclesiastical threefold summons procedure and the way it evolved can be deciphered from the copious pertinent evidence from conciliar acts of the fifth and sixth centuries²³). The fact that detailed accounts of threefold summonses are a substantial and extensive part of conciliar proceedings and the minutes thereof does not come as a surprise, since the validity of a trial in absence depended upon the attestation of the orderly conduct of the summons²⁴). What follows is a case study of all the extensive narratives of threefold summonses preserved in

²¹) *Ibid.* κελεύομεν γὰρ τοὺς ὀρδιναρίους δικαστὰς μὴ μόνον ταῖς τῶν κηρύκων φωναῖς, ἀλλ' ἔτι μὴν καὶ ιδίκτων προτιθεμένων οἰονδήποτε τῶν δικαζομένων μέρος ἀπολιμπανόμενον καλεῖν εἰς τὸ δικαστήριον· τῆς γὰρ τῶν κηρύκων φωνῆς ὀλίγοι παρόντες εὐρισκόμενοι ἀκοῦσαι δύνανται, τὰ μέντοιγε ἴδικτα ἐπὶ πολλὰς ἡμέρας προτιθέμενα πάντες σχεδὸν γινώσκειν δύνανται.

²²) Cf. Kreuzsaler (fn. 12) 641.

²³) The relevant accounts are preserved in the acts of the Council of Ephesus, the Council of Chalcedon and the Resident (Ἐνδημοῦσα) Synod of Constantinople 536, all published in *Acta Conciliorum Oecumenicorum* t. I–III, ed. Eduard Schwartz, Berlin 1914–1940 [ACO]. References to the acts of the Council of Ephesus and the Council of Chalcedon consist of a Roman numeral designating the tome, followed by numbers indicating the volume, part, paragraph (§) and page. In the case of the acts of Constantinople 536, the citations consist of the tome, section, paragraph (§) and page number. When necessary, line numbers are also supplied after page numbers.

²⁴) A trial *in absentia* without three summonses was considered illegal, since the accused had to be given the opportunity to defend himself. It is indicative that the condemnations at the Second Council at Ephesus 449, almost all of which were imposed on absentees and uninvited, were unanimously declared void at the first session of the Council of Chalcedon; see, for instance, the bishops' request to annul the deposition of Ibas of Edessa at the tenth session of Chalcedon: κακῶς ἐποίησαν οἱ παρὰ τοὺς κανόνας κατακρίναντες αὐτόν. τὰ κατὰ ἀπόντος γενόμενα ἀργεῖω. ταῦτα πάντες λέγομεν· οὐδεὶς ἀπόντα κατακρίνει: Those who condemned him contrary to the canons did so wrongly. The proceedings against an absentee should be annulled. We all say this: nobody condemns someone in his absence, ACO II.1.3 § 5 p. 17 lin. 16–18; cf. also the verdict regarding Ibas' reinstatement pronounced by Francion of Philippopolis and Basil of Trajanopolis: τὸν ἐν τῇ κρίσει μὴ παρόντα, ἀλλὰ μῆτε προσκληθέντα κατὰ μηδένα τρόπον βλάπτεσθαι ὑπὸ τῆς ἐξενεχθείσης κατ' αὐτοῦ ψήφου δοκιμάζομεν: Since he was not present at the trial and was not even summoned, we decide that he should in no way be wronged by the sentence passed against him, ACO II.1.3 § 175 p. 41 lin. 31 to p. 42 lin. 2; cf. Steinwenter, *Kirchlicher Rechtsgang* (fn. 4) 66–67; Troianos (fn. 4) 78 with n. 49.

conciliar acts of the fifth and sixth centuries²⁵), ensued by an assessment of this procedure's evolution over the period in question.

II. The case of Nestorius at the Council of Ephesus 431

The first account of a threefold summons in conciliar acts is that of the bishop of Constantinople Nestorius, summoned and condemned *in absentia* at the opening session of the First Council of Ephesus. This council had been convoked by the emperor Theodosius II with the purpose of discussing the matter of the faith and restoring unity in the church, following the outbreak of an intense doctrinal struggle between Nestorius and the bishop of Alexandria, Cyril²⁶). Theodosius in his letter of convocation of 19 November 430 set the Pentecost, 7 June 431, as the date for the general council's formal beginning and designated Ephesus as the place of congregation²⁷). Nestorius arrived in Ephesus some weeks before the date, along with a group of bishops and other supporters, including his friend Count Irenaeus. Cyril, accompanied by a large number of bishops from Egypt, monks and others, arrived in the city just before the set date. Also present in Ephesus was the imperial envoy *comes domesticorum* Candidianus, who was dispatched by the emperor alongside a mass of soldiers in order to ensure the orderly conduct of

²⁵) The accounts on John Chrysostom's summoning to the Synod of the Oak in 403, since they are not preserved in conciliar acts, will not be discussed individually and in detail here; however, references to them will be made in footnotes. The summoning of Catholics and Donatists to the Conference of Carthage 411 is completely exempted from this discussion, as it concerned an imperial adjudication process rather than a synodal trial; especially with regard to the summoning at the conference see Artur Steinwenter, *Eine kirchliche Quelle des nachklassischen Zivilprozesses*, in: *Acta Congressus Iuridici Internationalis: VII Saeculo a decretalibus Gregorii IX et XIV a codice Iustiniano promulgatis* (Romae 12–17 Novembris 1934), Rome 1935, vol. II 123–144; Maureen A. Tilley, *Dilatory Donatists or Procrastinating Catholics: The Trial at the Conference of Carthage*, *Church History* 60 (1991) 7–19.

²⁶) On the First Council of Ephesus 431 and the Nestorian controversy see Richard Price/Thomas Graumann, *The Council of Ephesus of 431: Documents and Proceedings*, Liverpool 2020; George A. Bevan, *The New Judas: the Case of Nestorius in Ecclesiastical Politics, 428–451 CE*, Leuven 2016, esp. 149–204; Susan Wessel, *Cyril of Alexandria and the Nestorian Controversy: The Making of a Saint and of a Heretic*, Oxford 2004, 138–180; Fergus Millar, *A Greek Roman Empire: Power and Belief under Theodosius II (408–450)*, Berkley 2006, 152–162; on the first session in particular see André De Halleux, *La première session du concile d'Éphèse (22 Juin 431)*, *Ephemerides Theologicae Lovanienses* 69 (1993) 48–87; for this session's Acts see ACO I.1.2 § 33–62 p. 3–64.

²⁷) ACO I.1.1 § 25 p. 114–116.

the proceedings. However, the council's opening had to be postponed, since many of the bishops from the diocese of Oriens, led by the bishop of Antioch, John, encountered difficulties in their journey and did not manage to reach Ephesus by the Pentecost. On 21 June however, some envoys sent ahead by John of Antioch arrived in Ephesus and informed the residing bishops that the rest of the Oriens travelling party would come in three to five days²⁸). Cyril's immediate reaction to this news was to send out invitations for the convening of the council on the following day, 22 June²⁹).

At the outset of the meeting of 22 June, *comes* Candidianus was persuaded to read out the imperial letter addressed to the council³⁰), despite his own and some bishops' protests for the premature opening of the council³¹). The congregated bishops regarded this citation as the formal opening of the council³²) and soon afterwards expelled Candidianus on the ground that the imperial orders had charged him merely with the task of maintaining peace, and they explicitly excluded him from doctrinal discussion. The formal minutes of the session do not evince the protesting, neither the departure of the dissenting bishops along with Candidianus³³), but begin instead with the Alexandrian presbyter and notary Peter announcing the issues to be discussed: Nestorius' teachings had brought distress to the church and led to an exchange of letters between him and Cyril; both Cyril and Nestorius had tried to communicate

²⁸) This is attested in John's letter (ACO I.1.1 § 30 p. 119) which they had brought with them to Ephesus.

²⁹) In the council's letter sent to Celestine in Rome after the deposition of Nestorius and John of Antioch, Cyril justified this decision by saying that the two envoys sent ahead by John had assured them that the message John had instructed them to convey was that the bishops in Ephesus ought not to postpone the council if John's party was further delayed; besides this, Cyril interpreted John's delay and general stance as signs of his reluctance to be present at a session against Nestorius; for this particular section of the letter see ACO I.1.3 § 82 p. 6 lin. 8–25.

³⁰) ACO I.1.1 § 31 p. 120–121. This letter was not included in the record, since Candidianus did not submit it to the council, *cf.* Price/Graumann (fn. 26) 213–214, 218. Cyril mentions in his first interjection that there was a second imperial letter (*i.e.* other than the letter of convocation) which had been read out by Candidianus, however he does not refer to its content, see ACO I.1.2 § 36 p. 9 lin. 2–5.

³¹) Before the start of the council's proceedings, sixty-eight bishops had signed a letter of protest, see ACO I.4 § 82 p. 27–30.

³²) On the performative value of the act of recitation of the imperial letter see Bevan (fn. 26) 156; *cf.* De Halleux (fn. 26) 70.

³³) These events are known from Candidianus' note of protest which he publicly posted up in Ephesus after his exclusion (ACO I.4 § 84 p. 31–32), as well as from his pronouncements at the counter-council (ACO I.1.5 § 151.1 and § 151.3 p. 119–120).

their cause to the bishop of Rome, Celestine, who had eventually communicated to Cyril a decree of deposition which he and the Roman Synod of 430 had issued against Nestorius³⁴). All the relevant documents were at hand to be investigated, but before that, the imperial letter of convocation had to be recited in order to be inserted in the minutes³⁵). The observation from the bishop of Ephesus, Memnon, that sixteen days had passed from the date appointed in the imperial letter of convocation, led to Cyril's proclamation that the council had to cease the waiting and proceed to fulfil the emperor's orders³⁶). Therefore Nestorius had to be present at the council as well 'so that matters of piety may be determined by common judgement and assent', according to the bishop of Ancyra, Theodotus³⁷). The need for Nestorius' presence at the council was implied in the letter Theodosius II had sent to the council, where he mentioned Nestorius by name, clarifying that Irenaeus had travelled with him as a friend and not in an official capacity³⁸). However, what was not mentioned or hinted at in neither of the imperial missives was that Nestorius was to be treated as an accused. Yet the latter was insinuated in the Alexandrian notary's opening pronouncement on the council's agenda, which apparently resonated Cyril's and Memnon's plans for the course of the council's proceedings³⁹).

Immediately after Theodotus' interjection, that is, without a respective request from the council, the four bishops who had been sent to invite Nestorius to the council on the previous day presented their reports. It thus became clear that the initial invitation sent out to all the bishops sojourning in Ephesus was deemed as the first summons of Nestorius. All four envoys recounted that they went to his residence and announced to him in person that

³⁴) See ACO I.1.2 § 34 p. 7–8; the notary Peter mentions that Celestine's letter contained a decree (lin. 13 τύπον), but does not specify that it was one of deposition for Nestorius; on Celestine's involvement in Cyril's and Nestorius affair see Price/Graumann (fn. 26), esp. 42–44.

³⁵) ACO I.1.2 § 35 p. 8. This is different from the letter addressed to the council which was read out by Candidianus (cf. fn. 30).

³⁶) *Ibid.* § 36 p. 8–9.

³⁷) *Ibid.* § 37 p. 9,8 ὥστε τὰ τῆς εὐσεβείας στήναι ἐκ κοινῆς γνώμης καὶ συναιρέσεως; for the joint presidency of eight senior bishops at the First Council of Ephesus see Richard Price, *Presidency and Procedure at the Early Ecumenical Councils*, *Annuaire Historiae Conciliorum* 41 (2009) 241–274, esp. 244–245.

³⁸) ACO I.1.1 § 31 p. 121 lin. 12–16.

³⁹) The notary's pronouncement may be understood as substituting an accusatory document. De Halleux (fn. 26) 70 mentions that the notary's pronouncement corresponds to the *relatio* at a senatorial session.

he had to attend the council which was to take place the next day⁴⁰). Nestorius said he was already aware of the council's date, but was uncertain whether he would attend. His response is rendered in direct speech in all four bishops' testimonies, with the first three reporting it as 'I will think about it, and if it is necessary to come, I shall come'⁴¹), while the fourth bishop transmitted it slightly differently, 'if I decide, I shall come then'⁴²). Two of the envoys mentioned they had addressed the invitation also to the other bishops who were present there with Nestorius, to receive a similar response from them (rendered in direct speech in one of the reports)⁴³).

Upon the completion of the testimonies, the bishop of Philippi, Flavian, announced the council's decision to send another delegation to invite Nestorius to the council⁴⁴). The second delegation consisted of three envoys, but this time a notary accompanied them, carrying with him a written message (*παραναγνωστικόν*) from the council⁴⁵). This document is quoted in the text of the minutes, yet nowhere is it specified if it was recited publicly at the meeting. In it, the synod censured Nestorius for not having fulfilled his duty to join the council, albeit invited, and informed him that the named envoys had to be sent to summon him another time, for the imperial order had dictated that all bishops had to congregate for the confirmation of the faith⁴⁶). The letter was not delivered or read out to Nestorius, since, according to the envoys' report, they did not manage to meet him in person: his residence was guarded by soldiers who refused to announce them, claiming they had been given orders by Nestorius himself not to permit entry. Nestorius' clerics gave them a similar reply, however the envoys decided to wait, insisting on receiving a response from the bishop himself. What they obtained instead was merely Nestorius' declaration conveyed to them by Florentius, a tribune in the service of Candidianus, that he would join the council only when all the bishops were present⁴⁷). In this way, Nestorius, knowing that he would face hostility at the council, raised his objections to the early start of the council, hence challenging the legitimacy of its proceedings⁴⁸). The details of the sec-

⁴⁰) ACO I.1.2 § 38.1–4 p. 9.

⁴¹) *E.g. ibid.* § 38.1 p. 9 lin. 12 τέως σκοπῶ, καὶ ἐὰν δεήσῃ με ἐλθεῖν, ἔρχομαι.

⁴²) *Ibid.* § 38.4 p. 9 lin. 28 εἰ δοκιμάσω, φησί, τὸ τῆνικαῦτα παραγίνομαι.

⁴³) *Ibid.* § 38.3 p. 9 lin. 20–22; § 38.4 p. 9 lin. 28–30.

⁴⁴) *Ibid.* § 39.1 p. 9.

⁴⁵) *Ibid.* § 39.2 p. 10.

⁴⁶) *Ibid.* § 39.3 p. 10.

⁴⁷) *Ibid.* § 40.1 p. 10.

⁴⁸) *Cf.* De Halleux (fn. 26) 72.

ond summons were reported by the first of the episcopal envoys only, while the other two merely affirmed in brief this full testimony⁴⁹). The notary and lector, on the other hand, did not testify at all.

Thereupon, Flavian of Philippi proclaimed the necessity of executing a third summons by a written message in accordance with the proper ecclesiastical procedure⁵⁰). Four different bishops were thus assigned to execute the third summons and departed along with a notary and lector carrying with him another *παραναγνωστικόν*. In this case, the letter did not merely invite Nestorius, expressly for a third time, to join the council's deliberations, but also informed him about the allegations against him and the consequences in the event of his defiance. More specifically, it bade him to appear to defend himself regarding his heretical doctrines, for if he did not vindicate himself against the charges made against him orally and in writing, he would suffer the canonical penalties⁵¹). It became obvious by this point that Nestorius was assigned the role of an accused and that the *παραναγνωστικόν* in question equaled a definitive summons, an *edictum peremptorium*. Eventually, neither this *παραναγνωστικόν* reached Nestorius, since the soldiers guarding his residence not only refused to let the envoys enter or to announce them, but pushed them away, telling them they would not receive any other response from Nestorius, no matter how long they waited, because the bishop had given specific orders to hinder emissaries from the council⁵²). Again, all the details of the summons were presented by the first bishop to testify, with the other three bishops merely pronouncing a brief affirmation of their veracity⁵³). Likewise, the notary and lector who accompanied them did not testify.

Although with the third attempt to deliver the summons the canonical requirement of the three summonses was met, the bishop of Jerusalem, Juvenal, remarked that the council would have been willing to send Nestorius an additional, fourth letter of summons (*παραναγνωστικόν*)⁵⁴). However, because

⁴⁹) *Ibid.* § 40.1 p. 11 lin. 1–4.

⁵⁰) *Ibid.* § 41.1 p. 11 lin. 5–8 ἐπειδὴ οὐδὲν προσήκει παραλιπεῖν τῶν ἡκόντων εἰς ἀκολουθίαν ἐκκλησιαστικὴν [...] καὶ τρίτῳ πάλιν παραναγνωστικῷ ὑπομνησθήσεται: Because it is not proper to omit any of the stages of the ecclesiastical procedure [...] he shall be notified again by a third letter of summons.

⁵¹) *Ibid.* § 41.3 p. 11.

⁵²) *Ibid.* § 42.2 p. 11–12.

⁵³) *Ibid.* § 42.3–5 p. 12.

⁵⁴) *Ibid.* § 43 p. 12. For an additional summons which could be issued following the prescribed three summonses see Paul. D. 5,1,55; cf. Steinwenter, *Kirchlicher Rechtsgang* (fn. 4) 72. A fourth summons took place at the trial of John Chrysostom ἐκεῖνος δὲ τέταρτον προσκληθεὶς οὐ παρεγένετο, cf. Photius, *Bibl.* 59,18b,14, ed.

by having soldiers guarding the entrance, he made clear he was not willing to join the assembly on account of his bad conscience, the council could proceed with the examination of the matter in his absence. The reference to a fourth *παραναγνωστικόν* by Juvenal presupposes that three *παραναγνωστικά* had been delivered. In fact, in the instructions and the reports of the third summons the envoys were said to have been commissioned to summon Nestorius by means of a third *παραναγνωστικόν*⁵⁵), even though in the description of the first summons there is no mention of a written message from the council. This is proof that the letter of invitation which Cyril had circulated to all the bishops sojourning in Ephesus the day before was considered as a first *παραναγνωστικόν*, as stated before. There is no explicit evidence that the letter of invitation was delivered by the first delegation; on the contrary, Nestorius' assurance that he had already known the date of the council may speak against this. At any rate, the absence of a notary from the first delegation most likely points to the lack of a separate *παραναγνωστικόν*, especially when considered that the notary's function as the bearer of the summons letter is explicitly mentioned in the description of the third summons⁵⁶).

Related to the presence or absence of a notary might also be the differences in the way the testimonies were conducted each time after the delegations' return to the council: in the first summons where no notary was present, each envoy gave his own report, whereas in the next two only one of the bishops presented a thorough testimony, which the other bishops – but not the notaries – simply confirmed. It may be suggested that the reports read out by the first bishop to testify after the second and third summonses were composed by the notaries who took down the minutes of the summonses⁵⁷). In essence, the notaries' role appears to have been solely auxiliary (that is, merely to produce accurate minutes), which explains why they did not need to testify. The absence of a notary from the delegation of the first summons may also explain the disparities between the envoys' reports, for example with regard to Nestorius' actual words in response to the summons; that is, it could be

René Henry, Paris 1959, 54; τετράκις αὐτὸν ἐκάλεσαν, Socrates Schol., in: *Historia Eusebii* 6.15, ed. Pierre Maraval/Pierre Périchon, Paris 2006.

⁵⁵) *Ibid.* §41.1 p. 11 lin. 7–8 καὶ τρίτῳ ἄλλιν παραναγνωστικῶι ὑπομνησθήσεται; §42.2 p. 11 lin. 24 διὰ τοῦ παραναγνωστικοῦ τοῦ τρίτου ὑπομνήσαι.

⁵⁶) *Ibid.* §41.2 p. 11 lin. 12–13 Καὶ ἀπῆλθον μετὰ Ἀνυσίου τοῦ νοταρίου καὶ ἀναγνώστου Φίρμου τοῦ ἐπισκόπου Καππαδοκίας, ἐπιφερομένου [τὸ] παραναγνωστικόν.

⁵⁷) See the case of Dioscorus, below, for the role of the notaries in taking down the minutes of the summons.

inferred that the bishops testified from memory or based on their own notes and not on a single, common record.

It is important to note that the fact that the *παραναγνώστικά* in the second and third summons were not delivered or read out to Nestorius, because he refused to meet the delegations, did not render these summonses invalid. On the contrary, the council considered – or sought to show – that the procedure of the threefold summons was carried out in the proper way and in accordance with ecclesiastical order, thus it was possible for an investigation of Nestorius' orthodoxy – which had come to be the main concern of the council – to commence in his absence. Eventually, following an examination of the documents pertinent to the case, as well as various testimonies, a sentence of deposition was pronounced against Nestorius⁵⁸). From the verdict's wording, it becomes clear that Nestorius' non-compliance with the threefold summons was not a crime which could lead to his conviction in its own right. It was rather emphasised that, because he did not heed the summons, out of necessity the council proceeded to the examination of his misdeeds, through which he was found guilty of impiety and thus had to be deposed⁵⁹). His 'violation

⁵⁸) For the process of 'reading' and examining documents at the first session of Ephesus and the signs of editorial reworking of the minutes for propaganda purposes see Thomas Graumann, 'Reading' the First Council of Ephesus (431), in: Richard Price/Mary Whitby (eds.), *Chalcedon in Context: Church Councils 400–700*, Liverpool 2009, 27–44.

⁵⁹) ACO I.1.2 § 61–62 p. 54 lin. 17–28 Πρὸς τοῖς ἄλλοις μῆτε ὑπακοῦσαι βουληθέντος τοῦ τιμιωτάτου Νεστορίου τῆι παρ' ἡμῶν κλήσει μῆτε μὴν τοὺς παρ' ἡμῶν ἀποσταλέντας ἀγιωτάτους καὶ θεοσεβεστάτους ἐπισκόπους προσδεξαμένου, ἀναγκαίως ἐχωρήσαμεν ἐπὶ τὴν ἐξέτασιν τῶν δυσσεβηθέντων αὐτῶι καὶ φωράσαντες αὐτὸν ἐκ τε τῶν ἐπιστολῶν αὐτοῦ καὶ ἐκ τῶν συγγραμμάτων τῶν ἀναγνωσθέντων καὶ ἐκ τῶν ἀρτίως παρ' αὐτοῦ ῥηθέντων κατὰ τὴνδε τὴν μητρόπολιν καὶ προσμαρτυρηθέντων δυσσεβῶς φρονούντα καὶ κηρύττοντα, ἀναγκαίως κατεπειθέντες ἀπὸ τε τῶν κανόνων καὶ ἐκ τῆς ἐπιστολῆς τοῦ ἀγιωτάτου πατρὸς ἡμῶν καὶ συλλειτουργοῦ Κελεστίνου [τοῦ] ἐπισκόπου τῆς Ῥωμαίων ἐκκλησίας δακρύσαντες πολλάκις ἐπὶ ταύτην τὴν σκυθρωπὴν κατ' αὐτοῦ ἐχωρήσαμεν ἀπόφασιν: Ὁ βλασφημηθεὶς τοίνυν παρ' αὐτοῦ κύριος ἡμῶν Ἰησοῦς Χριστὸς ὤρισε διὰ τῆς παρουσίας ἀγιωτάτης συνόδου ἀλλότριον εἶναι τὸν αὐτὸν Νεστόριον τοῦ τε ἐπισκοπικοῦ ἀξιώματος καὶ παντὸς συλλόγου ἱερατικοῦ: Because in addition to other things the most honourable Nestorius did not wish to comply with our summons and did not even receive the most holy and most religious bishops sent by us, we were obliged to proceed to an examination of his impieties, and discovered from his letters and writings which had been recited, as well as from statements he made in this metropolis recently, which have been borne witness to, that he holds and preaches impious things. Having been pressed by the canons and by the letter of our most holy father and fellow minister Celestine, bishop of the church of Rome, after

of the canons' together with his 'impious preaching' are nevertheless given as reasons for his deposition in the brief notification sent to Nestorius by the council on the day after the first session⁶⁰).

A necessary disclaimer is that the acts were compiled in such a way so as to prove the council's legitimacy⁶¹), which was contested from the beginning, not only on account of its premature opening and partial attendance, but also because of the manner its proceedings were conducted, in that it contradicted the emperor's instructions to hold an open theological debate⁶²). The irregularities of the process are pointed out by Nestorius himself in a letter he addressed to the emperor after his deposition, where he explains that by refusing to attend the council before everyone had arrived in Ephesus, in reality he heeded the emperor's instructions for a general council which would conclude with a common statement of the faith issued by everyone. In the same document he includes a description of the turbulences and the hostile environment that Cyril, Memnon and their followers created for him in the city before the council, even threatening him and the bishops supporting him with death⁶³). Moreover, from Nestorius' own words in his Book of Heraclidis, it becomes clear that he perceived from the beginning that Cyril had taken over the proceedings and had turned the intended discussion on the faith into a trial against his own 'heresy'. Even so, in his view, the procedure was not conducted in the proper way, for Cyril was in complete control of the

shedding many tears, we proceeded out of necessity to this grievous sentence against him: 'Our Lord Jesus Christ, who has been blasphemed by him, has decreed through the present most holy council that the same Nestorius is alien to episcopal rank and the entire priestly order'.

⁶⁰) *Ibid.* § 63 p. 64 lin. 8–11 Γίνωσκε σεαυτὸν διὰ τὰ δυσσεβῆ σου κηρύγματα καὶ τὴν πρὸς τοὺς κανόνας ἀπειθειαν κατὰ τὸ δοκοῦν τοῖς ἐκκλησιαστικοῖς θεσμοῖς Ἰουνίου μηνὸς τοῦ ἐνεστῶτος δευτέρα καὶ εἰκάδι παρὰ τῆς ἀγίας συνόδου καθηρηθῆσθαι καὶ παντὸς ἐκκλησιαστικοῦ βαθμοῦ ὑπάρχειν ἀλλότριον.

⁶¹) On the question of the reliability of conciliar acts in general see Richard Price, Truth, Omission, and Fiction in the Acts of Chalcedon, in: Price/Whitby (fn. 58) 92–106; Tommaso Mari, Working on the Minutes of Late Antique Church Councils: A Methodological Framework, *Journal for Late Antique Religion and Culture* 13 (2019) 42–59, esp. 43–46.

⁶²) See Graumann, Council Proceedings (fn. 3) 108–112 and *idem*, 'Reading' (fn. 58), who considers the theological investigation by proxy of documents as fictional in its greatest part; *cf.* De Halleux (fn. 26) 82–83.

⁶³) ACO I.1.5 § 146 p. 13–15. Nestorius initially went to Ephesus having the emperor's support. In fact, he had been chosen for the see of Constantinople by Theodosius II himself; on Nestorius' election see Bevan (fn. 26) 72–76. The presence of soldiers and other officials at this residence confirms the imperial protection.

proceedings, having assumed the roles of the judge, the accuser, the emperor and the bishop of Rome⁶⁴). Therefore, he had to evade the summonses, since their acceptance would have been interpreted as his own acknowledgement of the council's legitimacy⁶⁵).

III. The case of John of Antioch at the Council of Ephesus 431

It has been mentioned above that the proceedings of the Council at Ephesus commenced before the bishop of Antioch, John, and the bishops of the diocese of Oriens with him had reached the city. When John finally arrived in Ephesus on 26 June, upon learning that the council had started in his absence and that Nestorius had already been deposed, he convened a counter-council in his residence⁶⁶). The outcome of this assembly's deliberations was the issuing of a decree of deposition against Cyril of Alexandria and Memnon of Ephesus on account of the lawlessness and tumult they had spread in the city, as well as their defiance of the canons and imperial decrees (in convening a partial council and not allowing for a peaceful discussion on the faith)⁶⁷). In

⁶⁴) See Nestorius, *Liber Heraclidis*, ed. Paul Bedjan, Leipzig 1910, 195; *The Bazaar of Heracleides*, trans. Godfrey R. Drivers/Leonard Hodgson, Oxford 1925, 132; *Le Livre d'Héraclide de Damas*, trans. François Nau, Paris 1910, 117. In fact, in the list of attendees of the first session, Cyril is mentioned as representing the bishop of Rome, Celestine, see ACO I.1.2 § 33.1 p. 3; cf. Graumann, *Council Proceedings* (fn. 3) 100.

⁶⁵) In Nestorius' own words, the reason why his opponents had sent out the envoys to summon him was to make possible the claim that Nestorius did not belong to those who rejected the convening of the council before the arrival of all the bishops; see *Liber Heraclidis* (fn. 64), ed. Bedjan 198–199; *ibid.* ed. Drivers/Hodgson 134–135 and ed. Nau 119–120.

⁶⁶) The record of the proceedings of the counter-council is found in ACO I.1.5 § 151 p. 119–124, and sections of them in Latin translation in ACO I.4 § 87–88 p. 33–39. The participants in this council were the bishops who had travelled with John of Antioch, mainly from Syria Mesopotamia, as well as many of the bishops from other dioceses and provinces who had signed the note of protest before the opening of the first session of Cyril's council (see fn. 31).

⁶⁷) John explicitly asked Candidianus if the proper conciliar procedure had been followed, that is, whether an investigation in the presence of everyone and an appropriate interrogation had been conducted in accordance with the canons, the ecclesiastical laws and the imperial letter, or Nestorius had been condemned by default: ἢ ἐρήμην κατεδίκασαν τὸν ἄνδρα. Candidianus replied that the verdict had been issued without any hearing, examination or investigation: χωρὶς τινος κρίσεως καὶ ἐξετάσεως καὶ ζητήσεως τὰ παρ' αὐτῶν τετύπεται, ACO I.1.5 § 7–8 p. 120 lin. 26–32.

addition, Cyril's Twelve Anathemas and their adherents, that is, all the participants in the Cyrillian council, were anathematised by John's council⁶⁸).

Cyril and Memnon reacted to these events accordingly: in the fourth session of the Council of Ephesus on 16 July, they submitted an accusatory petition (λίβελλος) against John of Antioch and the bishops in the counter-council, aiming at the annulment of the sentence of deposition which the latter had imposed on them⁶⁹). In the justification of their plea they underlined that John of Antioch did not possess the authority by any ecclesiastical law or imperial decree to make a judgement against them; and even if he did, he would still be in the wrong, since he had not followed the proper procedure by not having cited them to defend themselves. For that reason, they requested that John and his associates be summoned to their council to make their defence about their outrages⁷⁰). The assembly decided to grant this demand, even though it was said to be superfluous, as John and the bishops in council with him had no authority to condemn the presidents of the 'official' council⁷¹).

The three bishops who were dispatched to summon John presented similar – but not identical – accounts of what they encountered when they arrived at John's residence. According to these, a mass of soldiers and other people carrying weapons and swords guarded John's residence and obstructed their entrance, while a crowd gathered there pronounced insults and blasphemies against the envoys. Despite the latter's claims that they had gone peacefully, their appeals to be announced in order to deliver the council's message to John (nonetheless without saying explicitly that they had been sent to invite him to answer specific charges) were not admitted, because, as two of the envoys presumed, John knew already why the envoys had been sent there⁷²). From the emissaries' references to the council's message as *ρήματα* it can be deduced that they did not carry with them a written message but were rather instructed to summon John orally⁷³).

⁶⁸) ACO I.1.5 § 151.15 p. 122–123.

⁶⁹) ACO I.1.3 § 88.2 p. 16–17.

⁷⁰) *Ibid.* § 88.2 p. 17 lin. 6–7 μεταπεμφθῆναι αὐτόν τε τὸν Ἰωάννην καὶ τοὺς συνδραματουργήσαντας αὐτῶι ὥστε ἐλθόντας εἰς τὴν ἁγίαν σύνοδον ἀπολογησασθαι ὑπὲρ τοῦ ἰδίου τολμήματος.

⁷¹) *Ibid.* § 88.3 p. 17.

⁷²) *Ibid.* § 89.2–4 p. 17–18.

⁷³) *Ibid.* § 89.2 p. 17 lin. 30–31 ἡ ἁγία σύνοδος ἀπέστειλεν ἡμᾶς *ρήματα* ἔχοντας εἰρηνικὰ κανονικοῦ ἕνεκα πράγματος πρὸς τὸν εὐλαβέστατον ἐπίσκοπον Ἰωάννην: The holy council has sent us to the most devout bishop John with a peaceful announcement about a canonical matter; *ibid.* § 89.4 p. 18 lin. 10 τὰ παρὰ τῆς ἁγίας συνόδου διακονῆσαι *ρήματα* τῶι εὐλαβεστάτῳ ἐπισκόπῳ Ἰωάννῃ: To convey the

Back to the council's proceedings, Cyril took the opportunity to ask for the immediate annulment of his own and Memnon's deposition by the counter-council, as well as for John's punishment, since by obstructing the delivery of the summons with weapons, he had proved the lawlessness of his actions⁷⁴). The bishop of Jerusalem, Juvenal, nevertheless announced the council's decision to adhere to the canons and due procedure by sending John a second summons⁷⁵). Upon their return, the three bishops who had executed the second summons presented individual, detailed reports of the events at John's residence: once more they had found the building guarded by soldiers with drawn swords, though this time some clerics who were present granted their requests to go in and announce them to John; soon afterwards they came back conveying John's reply that he would not answer to men deposed and excommunicated by him, hence they ought not to tire themselves by summoning him repeatedly⁷⁶). When the council's envoys tried to persuade the clerics to tell them their names, these refused to answer by saying 'we are clerics and not *tabullarii*', keepers of the records, or, as rendered by another envoy, 'we would not refuse [to give more information] if the *tabullarii* were here'⁷⁷). By pointing out that they were not ταβουλάριοι, the clerics made clear that they were not willing or allowed to engage in a conversation with the emissaries of the opposing council in the absence of their own notaries who would record the conversation. The disparities in the way the clerics' words were transmitted by the council's emissaries, as well as other variances among the three testimonies, are indications that the bishops testified from memory, or each based on his own notes; at any rate, no notary had accompanied them. Moreover, as was the case in the first summons, the delegates did not carry with them a written message from the council, since, according to them, they had asked to be admitted to say in person to John what they were instructed to say⁷⁸).

statements of the holy council addressed to the most devout bishop John; cf. *ibid.* § 89.1 p. 17 lin. 22 οἱ τὸ δῆλωμα διακονῆσαι πρὸς τὸν εὐλαβέστατον ἐπίσκοπον Ἰωάννην ἐπιταχθέντες; Those charged with conveying the announcement to the most devout bishop John.

⁷⁴) *Ibid.* § 89.5 p. 18.

⁷⁵) *Ibid.* § 89.6 p. 19 lin. 4–5 οἷς κανόνιν ἡμεῖς ἐπόμενοι καὶ τὴν ἀκολουθίαν φυλάττοντες πάλιν ἐκ δευτέρου αὐτὸν ὑπομνησθῆναι ὀρίζομεν.

⁷⁶) *Ibid.* § 89.7–9 p. 19.

⁷⁷) *Ibid.* § 89.9 p. 19 lin. 32–33 ἐπειρώμεθα δὲ μαθεῖν τὰ ὀνόματα τῶν εἰσελθόντων μηνῦσαι, καὶ εἰπεῖν οὐκ ἠβουλήθησαν, λέγοντες· κληρικοί ἐσμεν καὶ οὐ ταβουλάριοι; § 89.7 p. 19 lin. 19 ὡς δὲ ἐπέμψαμεν ἀκριβέστερον μαθεῖν, ἔφασαν ὅτι ἐπὶ ταβουλαρίων ταῦτα οὐ παραιτούμεθα εἰπεῖν.

⁷⁸) *Ibid.* § 89.8 p. 19 lin. 22–23 κατὰ πρόσωπον εἰπεῖν τὰ ἐντεταλμένα ἡμῖν; sim-

Following the reports of the second summons, Cyril and Memnon put forth another plea for the annulment of their deposition, because, as they said, it was manifest from John's stance that he had deliberately avoided appearing before the council to answer the charges⁷⁹). Cyril did mention though that John had to be summoned a third time and after that to be subjected to the appropriate penalty in accordance with the canons⁸⁰). In response, the council granted the appeal for the annulment of the counter-council's proceedings, while declaring that the council would impose the penalty prescribed by the canons upon John, if he refused to heed the third summons⁸¹). This concluded the session of 16 July, however formal action for the assignment and execution of the final summons was not taken until the next session which took place on the following day, 17 July. In this meeting, Cyril repeated his request to summon John and the bishops with him who had brought false allegations against him and Memnon, for they had to either appear and prove the accusations of heresy they had raised against him and Memnon⁸²), or, if they refused to attend (on account of not being able to prove the accusations) to be convicted⁸³). A delegation consisting of three bishops and one notary bearing a written message (*παραναγνωστικόν*) was in turn dispatched to deliver the final summons to John⁸⁴). The summons letter – whose contents are quoted in the minutes without any indication that it was read out publicly – announced to John that because he had ignored the first two summonses (*διττῆ κλησίς*), the council forbade him to exercise any episcopal function and warned him that if he did not comply with the third summons, he and his associates would suffer the canonical penalties⁸⁵). As the first envoy's particularly detailed

ilarly, *ibid.* § 89.9 p. 19 lin. 29 εἰπεῖν τὰ παρὰ τῆς ἁγίας ταύτης συνόδου δι' ἡμῶν δηλωθέντα αὐτῷ: To convey orally the announcements addressed to him through us by this holy council; § 89.7 p. 19 lin. 13–14 ἀπεστάλημεν παρὰ τῆς ἁγίας συνόδου ἀπαγγεῖλαι τινὰ ῥήματα τῷ εὐλαβεστάτῳ ἐπισκόπῳ Ἰωάννῃ: We have been sent by the holy council to convey certain announcements to the most devout bishop John.

⁷⁹) *Ibid.* § 89.10–11 p. 19–20.

⁸⁰) *Ibid.* § 89.10 p. 20 lin. 13–15 κληθέντα δὲ καὶ εἰς αὐθις ὑπὲρ ὧν δέδρακεν ἀνοσίως, ἐννόμῳ καὶ δικαιοτάτῳ ἀποφάσει τῆι παρ' ὑμῶν καὶ ἀπὸ τῶν κανόνων ὑπενεχθῆναι.

⁸¹) *Ibid.* § 89.12 p. 21 lin. 3–5 ὁ δὲ εὐλαβέστατος ἐπίσκοπος Ἰωάννης καὶ τρίτη προσκληθεῖς κλήσει εἰ μὴ ἀπαντήσῃ, τηλικαῦτα τὰ ἐκ τῶν κανόνων αὐτῷ ἢ ἁγία καὶ οἰκουμένη συνόδος νηφιῖται.

⁸²) Cyril purportedly did not make any reference to the charges regarding the early convening of the council.

⁸³) *Ibid.* § 89.13 p. 22 lin. 16–21.

⁸⁴) *Ibid.* § 89.14–15 p. 22–23.

⁸⁵) *Ibid.* § 89.16 p. 23.

report of the events at John's residence revealed, this letter never reached its intended recipient. In fact, the envoys were even compelled to pretend they had not carried with them a written message, in order to justify their refusal to receive a document (χαρτίον, γραμμάτιον) from John's counter-council (designated as *ἅγια σύνοδος*) which was conveyed to them by John's archdeacon. The envoys claimed instead that they were solely charged with transmitting a peaceful – oral – message (*δήλωμα εἰρηνικόν*) which entreated John to join in council⁸⁶). The archdeacon went in to transmit this to John, but upon his return, he insisted once more on handing the emissaries the document which he had offered them before, declaring that he would not listen to the Cyrillian council's message as long as they did not accept that document. Nevertheless, the council envoys did render orally to John's presbyters, who were escorting them on their way out, the most important points from the council's *παραναγνωστικόν*⁸⁷). Unlike what happened at the council after the first two summonses, only one of the episcopal envoys presented a report containing all the details of the third summons, while the other two merely confirmed with a brief statement that they had witnessed what the first envoy testified⁸⁸). The notary, on the other hand, did not testify.

It is no coincidence that a notary was included only in the delegation of the summons which involved a letter, as it was his duty to carry it (and presumably to read it out). The notary's presence in the third delegation may in turn explain why only one episcopal envoy delivered an exhaustive report on the third summons: it seems that whenever a notary accompanied the council's emissaries, he produced a single common record of the summons which was meant to be read out by one of the episcopal envoys at the assembly – as demonstrated also in Nestorius' second and third summons. Related to the notary's doings may also be the more thorough character of the report in question, in comparison to the previous ones.

From the council's affirmation that the third summons had been properly carried out and John could not claim ignorance, it emerges that the oral notification of John's subordinate clergy was considered as equivalent to the for-

⁸⁶) *Ibid.* § 89.17 p. 23 lin. 18–23 ὁ ἀρχιδιάκονος αὐτοῦ [...] ἐπιφερόμενος χαρτίον, ὃ προσφέρων ἡμῖν ἔλεγεν ὅτι ἡ ἅγια σύνοδος ὑμῖν ἀπέστειλε τοῦτο ὥστε ὑποδέξασθαι. εἰρήκαμεν· ἡμεῖς ἀπεστάλημεν εἰπεῖν τὰ παρὰ τῆς ἁγίας συνόδου, οὐ μὴν δεξασθαι γραμμάτιον. οὔτε γὰρ ἡμεῖς χάρτην ἐκομίσαμεν οὔτε ὑποδεχόμεθα χάρτην, δήλωμα δὲ εἰρηνικὸν ἐκομίσαμεν. παρακαλεῖ γὰρ ἡ ἅγια σύνοδος συνεδρεῦσαι τὸν κύριον Ἰωάννην καὶ ἀπαντῆσαι εἰς τὴν σύνοδον.

⁸⁷) *Ibid.* § 89.17 p. 23 lin. 24–34.

⁸⁸) *Ibid.* § 89.18–19 p. 24.

mal service of the summons. Hence, on account of the offences against which John refused to defend himself, he and his accomplices (who are named in detail) were declared excommunicated and excluded from episcopal and priestly functions until they acknowledged their mistake⁸⁹). The reason why John refused to appear before the council is apparent: he did not recognise its proceedings as legitimate and compatible with the imperial orders. Both John's refusal to receive the summonses and the council's envoys' unwillingness to accept the letter from the counter-council, which most likely contained John's deposition of Cyril and Memnon, demonstrated exactly this: the mutual repudiation of the two opposing councils as illegitimate.

IV. The case of Eutyches at the Resident Synod of Constantinople 448

The record of the threefold summons of the Constantinopolitan archimandrite Eutyches at the Resident Synod of Constantinople 448 was quoted and inserted in the minutes of the Second Council of Ephesus 449, which were in turn recited at the first session of the Council of Chalcedon 451 and incorporated in its acts⁹⁰). Eutyches was accused of heresy by the bishop of Dorylaeum, Eusebius, in a petition (*λίβελλος*) the latter presented at the first session of the Resident Synod, on 8 November 448, by which he demanded the monk's summoning⁹¹). After two failed attempts to convince Eusebius to settle the matter through a private discussion with Eutyches at the latter's monastery⁹²), the bishop of Constantinople Flavian who presided over the synod granted Eusebius' request. Two emissaries were dispatched with the task to meet Eutyches, read to him Eusebius' petition and summon him to appear (*ὑπομνήσουσιν ἀπαντῆσαι*) before the synod to defend himself about the allegations⁹³). Since Eutyches was not a bishop himself, the envoys sent

⁸⁹) *Ibid.* § 90 p. 24–25.

⁹⁰) On the trial of Eutyches see, e.g., Schwartz, *Der Prozess* (fn. 11); Georg May, *Das Lehrverfahren gegen Eutyches im November des Jahres 448: Zur Vorgeschichte des Konzils von Chalkedon*, *Annuaire Historiae Conciliorum* 21 (1989) 1–61; George A. Bevan/Patrick T.R. Gray, *The Trial of Eutyches, A New Interpretation*, *ByzZ* 101 (2009) 617–657; Richard Price/Michael Gaddis, *The Acts of the Council of Chalcedon*, Liverpool 2005, vol. I 25–30, 115–118; also in ACO II.1.1 § 225–885 p. 100–186.

⁹¹) *Ibid.* § 230 p. 101. The synod originally convened to examine a different matter: a dispute between the bishop of Sardis and two of his suffragans, cf. *ibid.* § 223 p. 100.

⁹²) *Ibid.* § 231–234 p. 102. Eusebius in his responses to Flavian made two oral requests to summon Eutyches.

⁹³) *Ibid.* § 235 p. 102 lin. 25–29.

to him were clerics of lower rank, that is, the presbyter and *ecclicus*⁹⁴) John and the deacon Andrew.

The reports of the first summons were delivered at the third session of the synod, on 15 November. A detailed account was provided by the presbyter and *ecclicus* John, according to which they had met Eutyches at his monastery, read out to him Eusebius' accusatory petition and handed him a copy of it; they also named his accuser and announced to him the summons (κλησις) to appear before the synod to defend himself⁹⁵). Eutyches emphatically refused to heed the summons on account of an oath he had made to never leave his monastery, while he expressed his conviction that Eusebius, a known enemy of his, merely intended to slander him; this he requested to be communicated to the synod. Subsequently, he made various doctrinal pronouncements, also by reading from a certain document (βιβλίον). These pronouncements were rendered by John in indirect speech with seeming thoroughness⁹⁶). The second emissary, deacon Andreas, simply confirmed John's testimony⁹⁷), while an additional verification was provided by the deacon Athanasius who happened to be present at the monastery when Eutyches made the said declarations⁹⁸).

Following Eusebius' plea for a second summons to be sent to Eutyches (δεύτερον αὐτὸν κληθῆναι)⁹⁹), another delegation consisting of two presby-

⁹⁴) The *ecclicus* was a legal consultant of the church. Among his duties was law enforcement; for instance, he was responsible for the fulfilment of the penalties imposed by ecclesiastical tribunals. The ecclesiastical *ecclici* had to be scholastics and usually were presbyters. On the history and responsibilities of the ecclesiastical ἔκδικος or ἐκκλησιτέκδικος (as he was called in Constantinople) see Vasiliki Leontaritou, *Εκκλησιαστικά αξιώματα και υπηρεσίες στην πρώτη και μέση βυζαντινή περίοδο* [Ecclesiastical offices and services during the early and middle Byzantine period], Athens 1996, 197–213; François Martroye, *Les 'defensores ecclesiae' aux V^e et VI^e siècles*, *Revue historique de droit français et étranger* 2 (1923) 597–622; Jean Darrouzès, *Recherches sur les ὀφφίκια de l' église byzantine*, Paris 1970, 323–324; Caroline Humfress, *A New Legal Cosmos: Late Roman Lawyers and the Early Medieval Church*, in: Peter Linehan/Janet L. Nelson/Marios Costambeys (eds.), *The Medieval World*, London 2018, 653–673, esp. 659–666.

⁹⁵) *Ibid.* § 359 p. 124 lin. 12–14 τούς τε λιβέλλους αὐτῶι ὑπανεγνώμεν και τὰ ἴσα αὐτῶι δεδώκαμεν και τὸν αἰτιασάμενον κατεδηλώσαμεν και κατεμηνύσαμεν αὐτῶι τὴν κλησιν και τὴν ἀπολογίαν τὴν ἐπὶ τῆς ὑμετέρας ἀγιοσύνης.

⁹⁶) *Ibid.* § 359 p. 124 lin. 20–35. John added that Eutyches explicitly requested that his statements be conveyed to the synod, *Ibid.* § 361 p. 124,38–125.1; *Ibid.* § 364 p. 125 lin. 11–12.

⁹⁷) *Ibid.* § 363 p. 125.

⁹⁸) *Ibid.* § 375 p. 125.

⁹⁹) *Ibid.* § 376 p. 125 lin. 26–27.

ters, Mamas and Theophilus, was appointed to summon him (ὕπομνήσουσιν αὐτόν) by delivering to him a letter of summons (κλήσεως γράμμα)¹⁰⁰. In accordance with Eusebius' request, this letter was read out and inserted in the minutes before the envoys departed¹⁰¹. The missive's purpose was to notify Eutyches that he was being summoned a second time through the named emissaries, in order that he would appear and answer the allegations which Eusebius had brought forward against him about his erroneous beliefs; if not, he would have to incur the penalties prescribed by the canons. In addition, it dismissed as unconvincing Eutyches' excuse that he was bound by an oath not to leave the monastery¹⁰². According to Mamas' report of the summons¹⁰³, their task to deliver the summons letter to Eutyches was not an easy one: the monks they encountered at Eutyches' monastery repeatedly tried to convince them to convey the message to them instead, claiming that Eutyches was unable to see them due to illness. However, the synod's emissaries demanded to meet the accused monk in person because they were fulfilling a written commission¹⁰⁴. Indeed, in none of the known cases of threefold summons is the letter of summons delivered to anyone other than the accused. When the envoys informed the monks that the letter they wanted to deliver contained the second summons, they were finally admitted to see Eutyches in person. Eutyches once more refused to comply with the summons by presenting the same excuse about his oath not to leave the monastery, supplemented by his assertion that he was old and infirm. He requested thus not to be summoned a third time, maintaining that it would be best if the synod proceeded with its transactions before summoning him again. By saying this, he was evidently attempting to set them a trap, as he was certainly aware that a condemnation without an ultimate third summons would be rendered illegitimate¹⁰⁵. He furthermore insisted on reading and handing to the envoys a document (χάρτης) he had composed for the synod. Upon receiving their refusal, he signed it and announced he would send it himself to the synod. Mamas' report was briefly affirmed by Theophilus, who merely added Eutyches' proclamation that only death will make him leave the monastery¹⁰⁶.

¹⁰⁰) *Ibid.* § 377 p. 126 lin. 3–5.

¹⁰¹) *Ibid.* § 378–379 p. 126.

¹⁰²) *Ibid.* § 380 p. 126.

¹⁰³) *Ibid.* § 397 p. 127–128.

¹⁰⁴) This statement alarmed the monks, who possibly thought the document contained Eutyches' conviction.

¹⁰⁵) *Cf.* Price/Gaddis (fn. 90) vol. I 205 n. 224.

¹⁰⁶) *Ibid.* § 399 p. 128–129.

The document that Eutyches insisted to be passed on to the envoys was possibly identical with the tract (τόμος) containing a statement of faith which he had circulated to certain monasteries asking from the monks to subscribe to it, according to an additional charge that Eusebius presented just before the arrival of the envoys of the second summons¹⁰⁷).

Following the accounts on the second summons, Eusebius entreated that Eutyches be ordered to appear, even against his will¹⁰⁸). This, rather than indicating that Eusebius requested that Eutyches be dragged by violence to court, should be understood as an exaggerated statement which made the demand for a third summons and Eutyches' presence at the hearing more compelling¹⁰⁹). The synod decided to send Eutyches a third summons (τρίτον ὑπομνησθῆναι), as this was 'right' (εὐλογον)¹¹⁰). The third delegation consisted of the presbyter Epiphanius, the presbyter and sacristan (σκευοφύλαξ) Memnon and the deacon Germanus, who carried with them the letter of the third summons¹¹¹). This document's wording was certainly more imposing compared to the previous ones: Eutyches was aware of what the canons dictated against those who did not heed the third summons, thus, in order to avoid the punishment, he had to present himself before the synod on the fol-

¹⁰⁷) *Ibid.* § 381 p. 126. The same applies to the βιβλίον from which he read when he had been delivered the first summons, as well as to the document he attempted to present at the synod's seventh session, when he finally appeared and was interrogated about his faith, *Ibid.* II.1.1 § 494 p. 141 lin. 6–7 γέγραπται γὰρ ἐν τῷ χάρτι τούτῳ τὸ ὅπως φρονῶ, καὶ κελεύσατε αὐτὸν ἀναγνωσθῆναι; see Schwartz, *Der Prozess* (fn. 11) 81; May (fn. 90) 45. According to the monks to whom Eutyches' delegates tried to deliver the latter's tract, that document contained a version of the Acts of the First Council of Ephesus, *Ibid.* § 438–440 p. 133–134. It could be that it contained the creeds and/or extracts of the theological discussion at Ephesus along with his own comments on them.

¹⁰⁸) *Ibid.* § 400 p. 129 lin. 8–10 ἀλλὰ παρακαλῶ, ἡ δυναστεία τῶν ἁγίων κανόνων καὶ νῦν ἐπαγρυπνήσῃ ἐπὶ τῷ κατατιθέντι καὶ κελεύσατε αὐτὸν καὶ ἄκοντα ἐνταῦθα ἐλθεῖν: I entreat this: the authority of the holy canons shall now be put into effect against the accused, and order him to come here even against his will.

¹⁰⁹) Troianos (fn. 4) 86–87 n. 20 rightly points out that the verb ἐλθεῖν does not imply violent dragging. However, he observes that it was possible to drag someone by force to the ecclesiastical court – but only by an imperial order, see *ibid.* for references. *Contra*, Steinwenter, *Kirchlicher Rechtsgang* (fn. 4) 67 n. 2 interprets Eusebius' words as a request for a violent dragging of Eutyches to court; likewise, May (fn. 90) 28.

¹¹⁰) *Ibid.* § 402 p. 129 lin. 14–15 Εὐλογόν ἐστιν καὶ τρίτον ὑπομνησθῆναι παρὰ τῆς ἁγίας ταύτης καὶ μεγάλης συνόδου.

¹¹¹) *Ibid.* § 403 p. 129. The letter is referred to both as τρίτον τῆς κλήσεως γράμμα (lin. 20) and παραναγνωστικόν (lin. 23).

lowing day, 17 November¹¹²). The date given was two days after the synod's third session, since the summons was expected to be delivered a day later, that is, 16 November. On this very day, in the course of the synod's fourth session, some monks appeared on behalf of Eutyches to announce that he was unwell and had asked the monk Abramius to convey orally (εἰπεῖν) a message from him¹¹³). The request was dismissed, as according to Flavian, it was impossible for an absentee to be represented by someone else¹¹⁴).

At the fifth session, on the day appointed for Eutyches' appearance (17 November), the envoys who had been sent out to execute the third summons appeared before the synod to report on what had happened the day before¹¹⁵). According to the Acts, the first emissary related that they had delivered the letter of the third summons to Eutyches, who read it in their presence and said he had dispatched the presbyter and archimandrite Abramius to make a profession of faith on his behalf at the synod, since he himself was ill. Upon the envoys' compelling appeals to appear in person before the synod, however, Eutyches asked to be granted a postponement until Monday, 22 November¹¹⁶). This was briefly confirmed by the other two envoys¹¹⁷). Thereupon, some clerics, who had been charged with conducting an investigation related to the information that Eutyches had circulated a tract at the monasteries, appeared before the synod and confirmed the allegations, specifying that these events took place on 12 November, that is, after Eutyches' first summons¹¹⁸). The session concluded with Flavian's proclamation that all the testimonies which had proved Eutyches' heretical beliefs and his attempts to cause turmoil in the church (meaning the circulation of the tract), already justified his condemnation, however they would grant him the postponement so as to examine him in person¹¹⁹). At the sixth session, two days before the new date appointed (20 November), Eusebius requested the interrogation of the presbyters who had executed the second summons with regard to some alleged

¹¹²) *Ibid.* § 404 p. 129.

¹¹³) *Ibid.* § 414 p. 130; § 416 p. 130.

¹¹⁴) *Ibid.* § 417 p. 130 lin. 19–30 Ὁ ἀγιώτατος ἀρχιεπίσκοπος εἶπεν· Πῶς δυνατόν, παρακαλῶ σε, ἄλλου κατηγορουμένου ἄλλον εἰπεῖν ὑπὲρ αὐτοῦ;

¹¹⁵) *Ibid.* § 420 p. 131.

¹¹⁶) *Ibid.* § 422 p. 131; § 427 p. 132.

¹¹⁷) *Ibid.* § 429 p. 132; § 431 p. 132.

¹¹⁸) *Ibid.* § 432–442 p. 132–134.

¹¹⁹) *Ibid.* § 444 p. 134. Eutyches' attempt to agitate the monks in Constantinople by taking advantage of the time between the summonses was a breach of discipline which could possibly justify his condemnation without a third summons; see Schwartz, *Der Prozess* (fn. 11) 73.

heretical statements made by Eutyches, which were not included in the text of the minutes¹²⁰). Both presbyters admitted that they had omitted much of the doctrinal conversation they had with Eutyches, which they reported in detail at this session, thus securing its insertion in the text of the minutes. The justification for the exclusion of Eutyches' statements from their accounts was that they considered it beyond their mission to report anything unrelated to the summons and its execution¹²¹). Eutyches finally appeared on the set date, 22 November, at the seventh session of the Resident Synod. He was accompanied by imperial officials and monks, while by imperial order the patrician Florentius also attended the session¹²²). The minutes of the acts until that very moment were read out¹²³), allowing for Eutyches' interrogation to take place. Eventually, Eutyches was condemned on account of his heretical beliefs¹²⁴).

Nevertheless, the veracity of the Resident Synod's minutes was put into question in a series of hearings held by imperial order in Constantinople on 13 April 449¹²⁵). These were stirred by a petition Eutyches had submitted to the emperor, where he asserted the falsification of the minutes for the purpose of ascribing to him incriminating statements¹²⁶). Exceptionally, Eutyches had acquired the emperor's permission to be represented at the hearing by three monks¹²⁷). The objections regarding the accuracy of the text of the acts focused on the section where the reports of the summons were recorded. The envoys of the first summons and the deacon Athanasius were

¹²⁰) *Ibid.* § 447 p. 135.

¹²¹) *Ibid.* § 451–456 p. 135–137. From their testimonies it emerges that Eutyches tried to make them engage in a doctrinal dialogue with him, which they tried to avoid by saying that the instructions they had received from the synod were to merely deliver the letter of summons and receive a reply from him if he would appear or not.

¹²²) *Ibid.* § 464–475 p. 138–139.

¹²³) *Ibid.* § 475 p. 139.

¹²⁴) *Ibid.* § 551 p. 145.

¹²⁵) *Ibid.* § 555–828 p. 148–176. The minutes of these hearings were quoted at the Second Council of Ephesus 449 and subsequently at the Council of Chalcedon 451; see Price/Gaddis (fn. 90) vol. I 28–30.

¹²⁶) *Ibid.* § 572 p. 152–153.

¹²⁷) *Ibid.* § 569 p. 152. The bishops at the hearing strongly objected to Eutyches' representation by other men (§ 563; § 565 p. 151), although the imperial order explicitly allowed it (§ 567 p. 151). Later on in the proceedings one of the bishops present said that if the emperor decided that a criminal trial could be carried out by means of an attorney, even though it was not in accord with the laws, then they would have to obey (ACO II.1.1 § 634 p. 158). Hence, it emerges that it was possible for a defendant to be represented by someone else if the emperor issued a respective order; cf. Troianos (fn. 4) 76–77 with n. 36.

interrogated, with the presbyter and *ecclicus* John offering his aide-memoire (ὕπομνηστικὸν) to be compared to his testimony recorded in the minutes¹²⁸). It thus emerged that a part of Eutyches' words was not recorded accurately, which John tried to justify by claiming that it is impossible for anyone to record with precision every word a person pronounces¹²⁹). The interrogation of the emissaries of the second summons, on the other hand, did not result in any objections over the truthfulness of their testimonies¹³⁰). Two weeks later, at another hearing before the master of the divine offices, the silentiary Magnus testified that before the synod's final session Flavian had tried to persuade him that the patrician Florentius needed not attend the synod's last session, as Eutyches' condemnation had already been drawn up on account of his failure to heed the second summons¹³¹). This accusation was presented as a proof of Flavian's prejudice against Eutyches, however Eutyches' appeal was not given a definitive conclusion until the Second Council of Ephesus 449, when his condemnation was annulled on account of his orthodox faith¹³²), and Flavian and Eusebius were deposed because of their transgression from the creeds of Nicaea and Ephesus¹³³).

The account of Eutyches' threefold summons and the events surrounding it is revealing in many respects. Notably, it explicitly attests the practice of careful – or not – recording of the summoned person's responses by the synod's envoys, as well as the significance of this record being accurate and consistent with what the emissaries reported at the assembly¹³⁴). Essentially, it explains why the reports on the summons were a crucial part of the proceedings; that is, not only they proved the orderly conduct of the procedure, but also comprised additional evidence – such as incriminating statements on the part of the accused – which could be used in the investigation. With regard to the other components of the procedure, Eutyches' threefold summons is unique in that it is the only instance where a copy of the accusatory

¹²⁸) *Ibid.* § 644 p. 160.

¹²⁹) *Ibid.* § 644 p. 160, 21–22; § 656 p. 161.

¹³⁰) *Ibid.* § 693–719 p. 165–166.

¹³¹) *Ibid.* § 838 p. 178 lin. 18–19 ἤδη τύπος ἐδόθη περὶ τούτου καὶ καθιρέθη Εὐτυχής ὁ μονάζων, ἐπειδὴ δεύτερον ἐκλήθη καὶ οὐχ ὑπήκουσεν: A sentence has already been delivered on this case, and the monk Eutyches has been deposed, because he was summoned a second time and did not heed.

¹³²) ACO II.1.1 § 884 p. 184–186.

¹³³) ACO II.1.1 § 966 p. 192.

¹³⁴) It is interesting that no notary was present at any of Eutyches' summonses, that is, the only case where the reliability of the envoys' reports on the summonses was contested.

petition was delivered to the defendant, and the first example where a specific date was appointed for the defendant's appearance before the synod. Furthermore, the repeated refusals of the envoys to receive Eutyches' document as well as Flavian's rebuke of his attempt to be represented by one of his monks, confirm the necessity of the defendant to appear in person at the hearing. It must be observed, though, that the thoroughness of the process may be explained by the fact that the procedure was conducted from the beginning as a formal court case, that is, a trial of a cleric of lower rank before a synodal tribunal of bishops¹³⁵).

V. The case of Athanasius of Perrhe at the Council of Chalcedon 451

The case of Athanasius of Perrhe is distinctive in that it entailed two unheeded threefold summonses on two separate occasions, three trials *in absentia*, repeated depositions and appeals taking place over the span of almost ten years. The rather sketchy evidence of these events is gleaned from the minutes of the fourteenth session of the Council of Chalcedon (31 October 451), which dealt with Athanasius' and Sabinianus' rival claims to the see of Perrhe.

This affair began in the early 440s, when Athanasius' subordinate clerics presented serious charges against him at a hearing before Panolbius of Hيرapolis, the metropolitan bishop of his province. No record of this hearing is preserved, but we know from the discussion at the later Antiochian synod (see below) that Athanasius was summoned three times to appear to defend himself, however every time he declined by sending a letter of excuse¹³⁶). Eventually, a trial *in absentia* was conducted and a sentence of deposition was pronounced against him. Athanasius' immediate reaction was to appeal to Proclus of Constantinople and Cyril of Alexandria, claiming that Panolbi-

¹³⁵) See Schwartz, *Der Prozess* (fn. 11), esp. 65–69; May (fn. 90) *passim*; Steinwenter, *Kirchlicher Rechtsgang* (fn. 4) 45; Graumann, *Council Proceedings* (fn. 3) 102 n. 6.

¹³⁶) See ACO II.1.3 § 32 p. 70. These letters are designated as *παρατήσεις* (*ibid.* § 35 p. 70 lin. 31), *παραιτητικά ἐπιστολαί* (§ 44 p. 71 lin. 21–22) and *παραιτητικά γράμματα* (§ 53 p. 72 lin. 15–16). Similar requests for the exemption of certain judges were made by John Chrysostom when he had been first summoned to the Synod of the Oak see Palladius, *Dialogus de vita Joannis Chrysostomi* 8.192–213, ed. Anne-Marie Malingrey/Philippe Leclercq (= SC 341), Paris 1988, 174, 176; Photius, *Bibl.* 59.18b,14–17, ed. Henry (fn. 54) 55; on the request for the exemption of court members see Troianos (fn. 4) 88–91; Steinwenter, *Kirchlicher Rechtsgang* (fn. 4) 47–51.

us was prejudiced against him. The two bishops wrote letters in his support to the bishop of Antioch, Domnus, informing him that Athanasius had suffered great injustice by his subordinates, who exceeded their powers in deposing him; hence, another hearing had to take place to examine the rightness of their actions, but that had to be assigned to someone other than the new bishop of Hierapolis, since Athanasius did not trust he would be unbiased¹³⁷).

In 445, after Cyril had died, Domnus convened a synod at Antioch to examine Athanasius' case. The minutes of this Synod do not comprise any of the documents mentioned as being read out at the assembly, while at places the transcription of the proceedings is incomplete. They do attest though that Athanasius was summoned to the synod three times, the first two by letters sent to him from Domnus, and the third by a synodical letter¹³⁸). The means by which the first two letters were delivered to Athanasius are not disclosed in the minutes. As for the synodical letter, Domnus' enquiry on the name of the person who delivered it to him reveals that it was conveyed to Athanasius himself¹³⁹). To all three letters Athanasius replied in writing¹⁴⁰), but the content of both the summons letters and the replies to them is not quoted in the minutes of the Antiochian synod. The same applies to Athanasius' oral response to the person who delivered the synodical letter to him¹⁴¹). Nevertheless, from Athanasius' initial pronouncement at the Council of Chalcedon, we learn that he had written to Domnus warning him that he would only appear at the hearing if Domnus abided by Cyril's and Proclus' instructions¹⁴²). His conviction about Domnus' impartiality is made even clearer at the end of the session at Chalcedon, when to the question on the reasons why he had not heeded the third summons at Antioch, Athanasius replied that he knew his judge was his enemy¹⁴³). The report on the summoning of Athanasius at the synod of Antioch appears much later in the record of the proceedings, since the hearing started with the presentation of accusatory petitions submitted by the clerics from Perrhe (not incorporated in the minutes)¹⁴⁴). There followed the examination of the evidence from the hearing at Hierapolis, that is, Panolbius' letter on these transactions' outcome, as well as Athanasius'

¹³⁷) *Ibid.* § 8–10 p. 66–68.

¹³⁸) *Ibid.* § 96 p. 75; § 99 p. 75; § 101 p. 76.

¹³⁹) *Ibid.* § 102 p. 76.

¹⁴⁰) *Ibid.* § 97–98 p. 75; § 100 p. 76; § 104 p. 76.

¹⁴¹) *Ibid.* § 103 p. 76.

¹⁴²) *Ibid.* § 8 p. 66 lin. 14–16.

¹⁴³) *Ibid.* § 158 p. 83.

¹⁴⁴) *Ibid.* § 16 p. 69–70.

three letters of excuse (none of which is quoted in the record). The latter were commented upon by the Syrian bishops, who deduced that Athanasius and Panolbius had been on friendly terms, thus Athanasius' refusal to entrust the hearing of his case to a person he considered his friend (demonstrated by his dismissal of the threefold summons) had to be understood as his admittance of his guilt¹⁴⁵). In addition, a statement which he had included in the third letter of excuse, that two or three years earlier he had thought of resigning the episcopate, was taken at face value and was regarded as his own denunciation of the see of Perrhe¹⁴⁶). Based on these observations, the Syrian bishops dismissed Cyril's and Proclus' letters on the ground that Athanasius had given them false reports¹⁴⁷). After more petitions with new charges were presented (not quoted in the minutes)¹⁴⁸), the synod decided to confirm his deposition and order the consecration of another bishop to replace him¹⁴⁹). In the pronouncements of the synod's verdict it was repeatedly emphasised that Athanasius' refusal to heed not only a third summons, but many more, thus failing to defend himself about the serious charges brought against him, did not leave any doubt that he had to be degraded¹⁵⁰).

Soon after the Synod of Antioch, the metropolitan bishop of Hierapolis consecrated Sabinianus bishop of Perrhe; however, four years later the Second Council of Ephesus reinstated Athanasius and deposed Sabinianus – that is, without summoning him. The Council of Chalcedon and its workings against the proceedings of Ephesus II provided Sabinianus with the best opportunity to request the cancelation of his deposition and his restoration to the see of Perrhe by means of petitions he had submitted to

¹⁴⁵) See the Syrian bishop's comments on the letters in *ibid.* § 38–60 p. 70–73. Obviously, the assertion that Athanasius and Panolbius were friends was not true, as attested in Cyril's and Proclus' letters.

¹⁴⁶) *Ibid.* § 76–80 p. 74.

¹⁴⁷) *Ibid.* § 76–95 p. 74–75.

¹⁴⁸) *Ibid.* § 107–121 p. 76–77.

¹⁴⁹) *Ibid.* § 123–147 p. 77–81.

¹⁵⁰) *E.g. Ibid.* § 123 p. 77 lin. 17–20 τί οὖν τοῖς ἐκκλησιαστικοῖς δοκεῖ θεσμοῖς; τὸν ἐπὶ τισιν ἀτοπίας ἐγκαλούμενον καὶ τρίτον καλούμενον καὶ μὴ παραγενόμενον ἐκπίπτειν ἧς ἔχει τιμῆς, φαίνεται δὲ ὁ μνημονευθεὶς Ἀθανάσιος οὐ τρίτον μόνον, ἀλλὰ καὶ πολλάκις κληθεὶς καὶ μὴ ὑπακούσας μηδὲ τοῖς ἐπαγομένοις ἐγκλήμασι βουληθεὶς ἀποκρίνασθαι: What then do the ecclesiastical statutes prescribe? Whoever is accused of certain misdeeds and, despite being summoned a third time, does not appear, he is to be deprived of his rank. It is apparent that the aforementioned Athanasius has been summoned not only a third time, but many more, and neither did he heed nor was he eager to answer the charges brought against him.

the emperor and to the council¹⁵¹). Following the quotation of the records of the proceedings at Antioch (after the recitation of Cyril's and Proclus' letters), the chairman asked from the bishops who had participated in the Antiochian synod to explain why they had condemned Athanasius. Most responses focused on his failure to heed the third summons, some adding that grave charges had been brought against him. One of the bishops provided the information not attested in the minutes that before the third summons, Athanasius had brought an imperial mandate by which two bishops had to be excluded from the proceedings; however, these remained at the hearing, even though they were not allowed to sign the minutes¹⁵²). Another bishop tried to present the proceedings in a more balanced way: the charges were not in reality examined, since only the accuser's side was heard; exactly because they did not want to have a one-sided hearing, they summoned Athanasius three times and deposed him only after he did not comply with the third invitation¹⁵³). Since the proceedings at the Second Council of Ephesus were annulled at the tenth session of Chalcedon¹⁵⁴), leaving thus Athanasius' deposition in force, it is not surprising that Sabianus was reinstated by the end of Chalcedon's fourteenth session. Nonetheless, it was agreed that the case had to be retried at a new hearing in Antioch within eight months¹⁵⁵).

Athanasius' case is significant in that it shows that non-compliance with a third summons was not necessarily terminal for a defendant. Athanasius' case in particular could not receive legal closure at Chalcedon, on the one hand because it was difficult to deduce the reasons for Athanasius' condemnation from the evidence presented at the council¹⁵⁶), and on the other hand because he abided by the procedural rules by sending letters of excuse to justify his failure to heed the summons. Thus, it appears that the objections concerning the impartiality of the judges was an admissible excuse¹⁵⁷). This is also supported by the fact that an imperial mandate for the exception of

¹⁵¹) *Ibid.* § 5–6 p. 65–66.

¹⁵²) *Ibid.* § 158 p. 82.

¹⁵³) *Ibid.* § 159 p. 82.

¹⁵⁴) *Ibid.* § 144–159 p. 38–39.

¹⁵⁵) *Ibid.* § 159 p. 82–83.

¹⁵⁶) The actual charges brought against Athanasius by the clergy of Perrhe were not attested in the minutes of the Synod at Antioch; that is, of course, if what survives corresponds to what had been in reality presented at the Council of Chalcedon.

¹⁵⁷) According to Troianos (fn. 4) 78 with n. 51, 90–91, the request for the exemption of members of the court was regarded sufficient justification for the defendant's absence, as opposed to the excuses presented, for instance, by Eutyches.

some members of the synodal tribunal in Antioch was issued on behalf of Athanasius¹⁵⁸).

VI. The case of Dioscorus at the Council of Chalcedon 451

Dioscorus, Cyril's successor in the see of Alexandria, was summoned and condemned *in absentia* at the Council of Chalcedon in 451 on account of the presiding role he had held at the Second Council of Ephesus in 449¹⁵⁹). The Council of Chalcedon was convened by the emperor Marcian's order precisely with the purpose of annulling the doings of the Second Council of Ephesus. The examination of Ephesus II records was conducted at the very first session of the council of Chalcedon (8 October 451), ending with the pronouncement of a sentence of deposition against Dioscorus and five more bishops, all present at the assembly¹⁶⁰). For the ratification of this condemnation by the council¹⁶¹), a formal trial of Dioscorus only¹⁶²) was carried out at the council's third session on 13 October 451.

The proceedings against Dioscorus commenced with the reading of a petition (λίβελλοι) submitted by the bishop of Dorylaeum Eusebius, that is, Dioscorus' main accuser also at the first session. This contained a list of allegations against Dioscorus, as well as requests for Eusebius' reinstatement – since he had been deposed at Ephesus II – and the imposing of punishment on Dioscorus¹⁶³). An appeal for Dioscorus' summoning to the council was not included in the document, but was put forth orally by Eusebius¹⁶⁴). The

¹⁵⁸) Cf. Troianos (fn. 4) 78; Steinwenter, Kirchlicher Rechtsgang (fn. 4) 65–66.

¹⁵⁹) For the background of the case of Dioscorus and his role in Ephesus II and Chalcedon see Price/Gaddis (fn. 90) vol. I 30–47, 118–121 and vol. II 29–37; Joseph Lebon, *Autour de cas de Dioscore d'Alexandrie*, Le Muséon 59 (1946) 515–528; Angelo Di Berardino (ed.), *Patrology, The Eastern Fathers from the Council of Chalcedon (451) to John of Damascus († 750)*, trans. Adrian Walford, Cambridge 2006, 343–345.

¹⁶⁰) ACO II.1.1 § 1068 p. 195.

¹⁶¹) The need for this sentence to be ratified by the council was not pointed out in the relevant announcement at the end of the first session, where there was only a reference to the requirement of obtaining the emperor's confirmation. The six deposed bishops were indeed excluded from the deliberations of the second session; see Price/Gaddis (fn. 90) vol. I 121 and vol. II 30.

¹⁶²) The five other bishops deposed together with Dioscorus were reinstated at the fourth session, ACO II.1.2 § 14–18 p. 109–110.

¹⁶³) ACO II.1.2 § 5 p. 9 lin. 16–19. Eusebius emphasised that he and Flavian were deposed at Ephesus II without being summoned to defend themselves.

¹⁶⁴) *Ibid.* § 6 p. 9 Ἄξιὸν τὸν ἀντίδικόν μου κατὰ πρόσωπόν μου κληθῆναι.

archdeacon and chief notary Aetius pointed out that Dioscorus had already been invited by two presbyters to attend the session, but he refused by claiming that his guards did not allow him to do so. Two other presbyters were dispatched to search for him near the council's venue, however to no avail¹⁶⁵). It was thus decided that a formal summons had to be sent to Dioscorus. Immediately a delegation of three bishops accompanied by a notary went to his lodgings to summon him to appear (ὕπομνησθῆναι ἐπὶ τῷ παραγενέσθαι) before the council¹⁶⁶). Upon their return, one of the episcopal envoys briefly recounted that they had conveyed to Dioscorus the council's message, however he left it to the notary who took down notes to read out the complete report of the emissaries' exchanges with Dioscorus¹⁶⁷). According to the notary's minutes, where all the pronouncements and interjections were rendered in direct speech, the envoys asked Dioscorus to appear before the council in order to answer the charges that Eusebius had brought against him in a petition, but he persisted on his claim that he was prevented by the guards. The notary went on to narrate (most likely independently from his notes) that on their way back they met the imperial official Eleusinius, who assured them that Dioscorus was not hindered from going to the council. Therefore, they went back and addressed their invitation to Dioscorus once more. In order to report the conversations with Dioscorus, the notary resorted to his record again, communicating that Dioscorus this time refused to heed the summons by posing a request that his case be re-examined in the presence of the imperial officials and the senate who were present at the first session, when his case was initially investigated¹⁶⁸). From both the bishop's and the notary's report, it emerges that the envoys did not carry with them a written message, but rather executed the summons orally¹⁶⁹).

Returning to the council's proceedings, the need for a second summons to be delivered to Dioscorus in accordance with the canons and due procedure

¹⁶⁵) *Ibid.* § 7–11 p. 9–10.

¹⁶⁶) *Ibid.* § 14–15 p. 10.

¹⁶⁷) *Ibid.* § 17 p. 10 lin. 35–37 ἀξιουόμεν τὸν συνόντα ἡμῖν Ἰμέριον τὸν ἀναγνώστην καὶ νοτάριον ἐξειληφότα εἰπεῖν τίνα ἐστὶν καὶ τὰ παρ' ἡμῶν λεχθέντα καὶ ποίαν ἀπόκρισιν ἡμῖν δέδωκεν.

¹⁶⁸) *Ibid.* § 19–22 p. 11–12.

¹⁶⁹) This is indicated by the phrase in the episcopal envoy's report, *ibid.* § 17 p. 10 lin. 35 ἐγγράφως τὰ ἐνταλθέντα ἡμῖν εἶπομεν αὐτῶι: We conveyed to him orally what we had been instructed in writing [to convey]. Richard Price, in: Price/Gaddis (fn. 90) II 44 *ad loc.*, translates this as: "We delivered to him in writing the message entrusted to us"; however, it seems more plausible that ἐγγράφως refers to the ἐνταλθέντα.

was twice pointed out¹⁷⁰). Despite a request for the summoning to be postponed for one or two days¹⁷¹), three bishops and a notary were sent out to cite Dioscorus once more. This time they carried with them a written message (quoted in the minutes) that notified Dioscorus about the second formal summons (δευτέρα κανονική κλήσις). In addition, it informed him that the task assigned to the council by the emperor was not to revise the previous transactions, that is, those carried out in the presence of imperial officials and the senate, but to conduct an examination (ἐξέτασις) of the new allegations presented by Eusebius in his petition¹⁷²). Apparently, this clarification, resonant of a statement pronounced by Eusebius at the outset of the session¹⁷³), was made in response to the requests presented by Dioscorus when he was delivered the first summons. The reporting on the second summons by the envoys upon their return followed the same pattern as that of the first summons: one of the episcopal envoys recounted succinctly that they fulfilled their mission, but requested from the notary who had taken down notes to present the full account of what had been said¹⁷⁴). This led to the recitation of an extensive log of exchanges between Dioscorus and the envoys: following the reading of the missive of the second summons and Dioscorus' failed attempt to excuse himself on account of illness, he reiterated his request for the officials to be present at the examination of his case¹⁷⁵), also inquiring the reason why only

¹⁷⁰) *Ibid.* § 24 p. 12 lin. 9–11 ἀκόλουθον δὲ κατὰ τοὺς κανόνας τῶν ἁγίων πατέρων καὶ αὐθις ἀποσταλῆναι πρὸς τὸν θεοφιλέστατον ἐπίσκοπον Διόσκορον τοὺς καλοῦντας αὐτὸν ἐκ δευτέρου ἐπὶ τῷ παραγενέσθαι; § 27 p. 12 lin. 21–22 ἀκόλουθόν ἐστι καὶ κανονικὸν καὶ δεύτερον αὐτὸν κληθῆναι.

¹⁷¹) *Ibid.* § 29 p. 12.

¹⁷²) *Ibid.* § 31 p. 12.

¹⁷³) *Ibid.* § 25 p. 12 lin. 15–18 φανερά γὰρ κεφάλαια ἤδη διηλέγχθη καὶ ἐπὶ τῆς ὑμετέρας ἀγιοσύνης καὶ ἐπὶ τῆς λαμπρᾶς καὶ ἐνδόξου συγκλήτου καὶ ἔστιν ἕτερα κεφάλαια τὰ ὀφείλοντα ἐπὶ τῆς ὑμετέρας ἀγιοσύνης γυμνασθῆναι καὶ ἀποδειχθῆναι. καὶ κελεύσατε αὐτὸν παρῆναι· οὐδὲ γὰρ ἀνασκευάζομέν τι τῶν ἤδη πεπραγμένων: Some of the accusations have already been proved in the presence of your holiness and of the illustrious and glorious senate, but there are other accusations that need to be investigated and proved in the presence of your holiness. Order him to attend, for we will not reverse anything that has already been transacted.

¹⁷⁴) *Ibid.* § 34 p. 13.

¹⁷⁵) The bishop Rufinus replied to this by saying δύναται καὶ νῦν ἡ σὴ ὀσιότης παραγενομένη ἃ βούλεται, ἐξαίτησαι παρὰ τῆς ἁγίας συνόδου: Your sacredness can now come and request what you like from the holy council, *Ibid.* § 36 p. 13,38–39. According to Troianos (fn. 4) 75–76 with n. 35, this may be understood as a proof that a defendant could present his objections only when present at the hearing. Contrary, Steinwenter, Kirchlicher Rechtsgang (fn. 4) 66 states that objections con-

he from among the bishops who had been deposed at the first session was being summoned. Following their initial declaration that it was beyond their commission to reply to questions, the envoys refuted all Dioscorus' objections, explaining that Eusebius' petition included allegations solely against him, whilst for a canonical examination to take place, the presence of secular officials and other laymen was not necessary¹⁷⁶).

After the recitation of the reports and before the council decided to send a final third summons to Dioscorus, some Egyptian clerics and laymen were admitted to the assembly to present more petitions against Dioscorus. In what followed, four extensive individual petitions mentioning many more serious crimes that Dioscorus had allegedly committed against the petitioners and the people of Alexandria were read out and inserted in the minutes. The council could at that point announce its decision to summon Dioscorus a third time, adhering to ecclesiastical order, so that, if he did not appear after it, 'the canon could take its course'¹⁷⁷). Three bishops were appointed to execute the third summons by delivering the respective letter (τρίτη κλήσις), by which all the excuses Dioscorus had used to justify his failure to heed the first two summonses were dismissed as untruthful, while precise information on the names of those who had submitted petitions containing new accusations (κατηγορικοί λίβελλοί) in the meantime was included. Therefore, Dioscorus was summoned to appear before the council and defend himself about all the charges brought against him. Finally, it included a warning that non-compliance with the canonical third summons, said to be completely unimpeachable, would lead to the council imposing the penalty prescribed by the canons for those who showed disobedience and contempt of a synodal summons¹⁷⁸). The delegation departed as soon as a notary was added to their

cerning the jurisdiction or composition of the court could be presented in writing by an absent defendant to justify his absence from the trial. Troianos *l.c.* argues that this only applied to the request to exempt members of the court, as in the case of Athanasius of Perrhe.

¹⁷⁶) *Ibid.* § 36 p. 13–14.

¹⁷⁷) *Ibid.* § 66 p. 24 lin. 32–34 τρίτον κληθῆι ὁ θεοσεβέστατος ἐπίσκοπος Διόσκορος, ἐπειδὴ τοῦτο βούλεται ἡ τῆς ἐκκλησιαστικῆς εὐταξίας ἀκολουθία, ὅπως εἰ καὶ μετὰ ταύτην παραιτήσῃτο, ὁ κανὼν τὴν ἑαυτοῦ βαδίσῃ οὐδὸν: The most religious bishop Dioscorus shall be summoned a third time, because this is what adherence to ecclesiastical order dictates, so that, if even after this he refuses, the canon shall take its course.

¹⁷⁸) *Ibid.* § 70 p. 25 lin. 24–28 εἰδὼς ὡς εἰ μετὰ τὴν τρίτην ταύτην κανονικὴν κλήσιν πανταχοῦ τὸ ἀνύποπτον ἔχουσιν ὑπέρθοιο πρὸς τὴν ἀφίξιν, ἢ παροῦσα ἅγια καὶ μεγάλη οἰκουμένηκὴ σύνοδος ἐπ' ἐκεῖνον ἐπελεύσεται τὸν τρόπον ὅστις κατὰ

group, following a request by one of the episcopal envoys that a notary accompany them so as to read the council's message to Dioscorus¹⁷⁹). When interrogated upon their return, as was the case in the report process after the first and second summonses, one of the episcopal envoys recounted in brief that they had delivered the council's commands orally and by means of reading out the third written summons¹⁸⁰), leaving it to the notary to present a full report. The notary's minutes attest on the one hand the envoys' repeated attempts to persuade Dioscorus to appear and make his defence towards the allegations, since otherwise he would be subjected to the canonical penalty, and, on the other hand, demonstrate Dioscorus' reluctance to make any more comments¹⁸¹).

There began an exchange between the session's chairman and the members of the council on whether the penalty for contempt prescribed by the canons had to be imposed on Dioscorus¹⁸²). Nestorius' treatment by Cyril at the First Council of Ephesus was mentioned as a model for the measures that had to be taken, while a sharp distinction was drawn between the proper procedure followed in Dioscorus' trial and the non-orderly proceedings that resulted in Flavian's condemnation at Ephesus II. In the final verdicts containing the sentence of deposition and degradation, Dioscorus' contempt of the threefold summons is mentioned as one of the reasons for which he was condemned, but not the only one; as was normally the case, the plausibility and seriousness of the accusations for which he had been summoned were principally decisive¹⁸³).

Dioscorus' threefold summons at the Council of Chalcedon when compared with the previous cases appears more elaborated and systematised. That is, it is the first instance where the number and rank of the envoys (three bishops and one notary) remained the same for all three summonses. Moreover, the roles of the delegation's members were more clearly defined: only the bishops made proclamations and conversed with Dioscorus, while the notaries' role was restricted to taking down the minutes of the summons

τῶν ἀπειθούντων καὶ καταφρονούντων τῆς συνοδικῆς κλήσεως οἶδε κινεῖν τὴν ἐκ τῶν κανόνων ἔνθεσμον ἐπιτίμησιν.

¹⁷⁹) *Ibid.* § 72 p. 25.

¹⁸⁰) *Ibid.* § 76 p. 26 lin. 10–11 τὰ ἐνταλθέντα διὰ ῥημάτων ἀπηγγείλαμεν καὶ τὴν τρίτην κλήσιν ἐγγράφως ἀποσταλεῖσαν ἀναγνωσθῆναι πεποιήκαμεν.

¹⁸¹) *Ibid.* § 78 p. 26–27.

¹⁸²) *Ibid.* § 79–93 p. 27–28.

¹⁸³) On the verdict and the reasons for Dioscorus' condemnation see Price/Gadis (fn. 90) vol. II 31–35.

as well as reading the summons letters and reports before the council. The emphasis laid on the notaries' role in recording and presenting the detailed summons reports is demonstrated in the curtailment of the episcopal envoys' role in presenting their own reports, for each time only one of them made a brief announcement confirming the execution of their task, while the other two remained silent. It is precisely for this reason that the episcopal envoy in the third summons explicitly requested having a notary assisting them.

VII. The case of Anthimus at the Resident Synod of Constantinople 536

The account of Anthimus' threefold summons at the Resident Synod of 536 evidences a particularly elaborate procedure, whose documentation seems to have been of great importance. Anthimus, formerly the bishop of Trapezus, after the death of the bishop of Constantinople, Epiphanius, in June 535 was chosen by Justinian to replace him at the see of the imperial capital¹⁸⁴). Although Anthimus had participated in the religious conversations between Chalcedonians and non-Chalcedonians held in 532/533 on the Chalcedonian side, Chalcedonians questioned his orthodoxy and tried to communicate their concerns to the then bishop of Rome, Agapetus¹⁸⁵). When Agapetus arrived in Constantinople in March 536, he refused to acknowledge communion with Anthimus and through his intervention the latter was deposed (or forced

¹⁸⁴) On Anthimus see ACO III.5 and, e.g., Ernest Honigmann, *Patristic Studies*, Vatican City 1953, 185–193; Volker L. Menze, *Justinian and the Making of the Syrian Orthodox Church*, Oxford 2008, 196–208; Di Berardino, *Patrology* (fn. 159) 69–71, 97; on the Resident Synod of 536 see Fergus Millar, *Rome, Constantinople and the Near Eastern Church under Justinian: Two Synods of C.E. 536*, *JRS* 98 (2008) 62–82.

¹⁸⁵) In the *διδασκαλικόν* they presented at the Synod of 536, the monks from Constantinople and Eastern provinces mention they had asked Anthimus to make a profession of his orthodoxy, however he refused to comply, see ACO III.5 § 62 p. 134 lin. 28–39. They also mention that they communicated their requests in letters they had sent to Rome, ACO III.5 § 68 p. 141 lin. 30–31. Also, Ephrem of Antioch, who had questioned Anthimus' orthodoxy even before the latter's appointment to the see of Constantinople, communicated his concerns to Agapetus in Rome through the *doctor* Sergius, see Pseudo-Zachariah 9.19, ed. Geoffrey Greatrex/Robert R. Phenix/Cornelia B. Horn, *The Chronicle of Pseudo-Zachariah Rhetor: Church and War in Late Antiquity*, Liverpool 2011, 368–369; cf. Alois Grillmeier S.J., *Christ in Christian Tradition*, vol. II: *From the Council of Chalcedon (451) to Gregory the Great (590–604)*, Part 2: *The Church of Constantinople in the Sixth Century*, trans. John Cawte/Pauline Allen, London 1995, 349; Menze (fn. 184) 196–198.

to resign), while Menas was elected in his place¹⁸⁶). In a petition which the monks from Constantinople and the diocese of Oriens submitted to Agapetus after Anthimus' deposition, they brought accusations against Anthimus on account of his uncanonical translation from Trapezus to Constantinople¹⁸⁷) as well as his unorthodox beliefs, requesting that Agapetus appoint him a certain time within which he had to profess his orthodoxy in order to be allowed to return to his former see in Trapezus; if not, he was to be excommunicated¹⁸⁸). The need for Anthimus' case be given a formal conclusion (that is, a ratification of his deposition and his excommunication) was the key demand in a petition addressed to Agapetus by the bishops from the diocese of Oriens¹⁸⁹). After Agapetus' death on 22 April, the monks resorted to the emperor Justinian, pleading him to execute the Roman verdicts concerning Anthimus and the other heretics, as well as to ratify them with a law¹⁹⁰). It was in response to these requests that the emperor ordered the convening of the Resident Synod of Constantinople in 536. This was conducted in five sessions (2, 6, 10, 21 May and 4 June 536), of which the first four dealt with the case of Anthimus.

The first session of 2 May began with the presentation of the aforementioned

¹⁸⁶) For the divergent accounts of the events surrounding Anthimus' deposition see Hartmut Leppin, Justinian, Das christliche Experiment, Stuttgart 2011, 186–187.

¹⁸⁷) The canons forbidding a bishop's translation from one see to another are An-cyra c. 18, Antioch cc. 16, 21, Nicaea c. 15 and Chalcedon c. 5, cf. Joannou I.2 (fn. 9) 69, 117 and 121, Joannou I.1 36–37, ACO II.1.2 § 5 p. 159 respectively; on the issue of the translation from one see to another see Sebastian Scholz, Transmigration und Translation: Studien zum Bistumswechsel der Bischöfe von der Spätantike bis zum Hohen Mittelalter, Cologne 1992, 46–88.

¹⁸⁸) ACO III.5 § 68 p. 140 lin. 27–34.

¹⁸⁹) *Ibid.* § 69 p. 149 lin. 33–35 ἀξιούμεν δέ, ἀγιώτατοι, καὶ τῆι κατὰ Ἄνθιμον ἱερᾶι ὑμῶν ψήφωι πέρας ἐπιθεῖναι τέλεον καὶ τοῖς πατρικοῖς ὑμῶν κανόσιν ἀρμόδιον: We plead, most holy ones, that you add to your holy judgement against Anthimus a definitive conclusion and one that befits the canons of your fathers.

¹⁹⁰) *Ibid.* § 59 p. 133 lin. 6–13 μὴ παριδεῖν τὴν δικαίαν κρίσιν τοῦ εἰρημένου ἀγίου ἀνδρός, ἀλλὰ ταύτην ἐπεξελεῖν τὴν τε ἐκκλησίαν τοῦ θεοῦ καὶ πάντα τὸν κόσμον ἐλευθεροῦντας τῆς λύμης Ἀνθίμου τε καὶ τῶν εἰρημένων αἰρετικῶν. [...] τὰ οὖν παρ' ἐκείνου δικαίως καὶ κανονικῶς κεκριμένα πληροῦντες καὶ διὰ γενικῆς ὑμῶν νομοθεσίας ταῦτα κυροῦντες καὶ τοιαῦτα τοῦ λοιποῦ τολμᾶσθαι ἀπαγορεύοντες τὴν μὲν ἐκείνου μακαρίαν ψυχὴν θεραπεύετε: [We adjure your reverence] not to overlook the righteous judgement of the said holy man, but to execute it, liberating the church of God and the entire world from the outrage of Anthimus and of the said heretics. [...] Thus, if you bring into completion what he has lawfully and in accordance with the canons decreed, as well as ratify these with a general law forbidding such outrages to be perpetrated thereafter, you will heal his blessed soul.

petition addressed to Justinian, followed by a memorandum (διδασκαλικόν) composed by the monks for the synod, which comprised an overview of the Anthimus affair, including an enumeration of his misdeeds¹⁹¹). After the recitation and insertion into the text of the minutes of the aforesaid petitions sent to Agapetus, as well as the latter's synodical letter on Menas' appointment¹⁹²), the assembly's president Menas announced the synod's decision to grant Anthimus a chance of repentance by summoning him to the assembly. A delegation consisting of three bishops, two presbyters and *ecdici*, and two deacons and notaries was appointed to search (*ἀναζητῆσαι*) for Anthimus; if they found him, they were to inform him about the matters transacted at the synod and instruct him to appear (*προτρέψαι παραγενέσθαι*) before it within three days in order to defend himself about the charges brought against him¹⁹³).

The Synod's deliberations resumed on 6 May, that is, after the expiration of the appointed time (*προθεσμία ῥητή*) given for the search of Anthimus, as the chief notary Euphemius pointed out in his opening pronouncement¹⁹⁴). Following the quotation of the minutes of the previous session, the envoys appointed for the execution of the first summons were requested to report on their search for Anthimus. The first to speak was the bishop Bosporius who presented a detailed account of their wanderings; as he recounted, they had gone to all the places where they thought Anthimus could be present, yet they did not find him, neither did they manage to learn from the clerics and laymen they had met there where he was, since nobody knew his whereabouts¹⁹⁵). The testimonies of the bishop Acacius and *ecclesiecdicus* John were brief, merely confirming that they had gone on a failed search for Anthimus along with the said envoys, while the bishop Zacharias presented a slightly longer report, summarising the contents of the first bishop's testimony¹⁹⁶). Finally, the *ecclesiecdicus* Theoctistus as well as the notary Christodorus on behalf of the two notaries merely declared that they testified the same things¹⁹⁷). Interestingly, the notary Christodorus mentioned in addition that they had carried with them the minutes of the previous session in order to make them known

¹⁹¹) *Ibid.* § 62 p. 134–136. This document did not include an explicit request for the summoning of Anthimus; *cf.* also fn. 185.

¹⁹²) *Ibid.* § 71 p. 152–153.

¹⁹³) *Ibid.* § 72 p. 153–154.

¹⁹⁴) *Ibid.* § 74 p. 156.

¹⁹⁵) *Ibid.* § 80 p. 159.

¹⁹⁶) *Ibid.* § 81–83 p. 159–160.

¹⁹⁷) *Ibid.* § 84–85 p. 160.

to Anthimus¹⁹⁸). From this, it emerges that the delegation did not carry a separate letter of summons for Anthimus, but rather the minutes were to serve this purpose. Thereupon Menas commented that even though it appeared that Anthimus was not willing to appear to make his defence, the synod would again grant him the term of three days (προθεσμία ἐτέρων ἡμερῶν τριῶν) for his remorse. Within these three days, another group of envoys was to search (ἀναζητῆσαι) for Anthimus and if they found him, to admonish him not to miss the hearing within the appointed time so as to free himself from the charges (μέμψεις). The makeup of this delegation was the same as that of the first one, namely three bishops, two presbyters and *ecdici*, and two deacons and notaries¹⁹⁹).

The synod's third session which took place on 10 May opened with the chief notary's pronouncement that two deadlines (προθεσμία ῥηταί) had already been set for Anthimus' search and that the latter had also passed²⁰⁰). The importance laid on being on schedule is demonstrated by Menas' enquiry as to how many days had passed since the second session (6 May), to which the notaries replied that five days had passed²⁰¹). This interval between the second and the third session implies that the envoys were expected to start their search on the day after they had been assigned the task and to report to the Synod a day after the deadline of three days had expired. Apparently, the same applied to the interval between the first and the second session. The reports on the second search for Anthimus were similar to the previous ones. According to the account of bishop Peter, they likewise went to all the places where they thought they could find Anthimus (some in addition to the ones visited by the first delegation), making inquiries of the clerics there; some of the latter replied under oath that they had not seen him, but named more places where the emissaries could conduct their search. However, all of this was in vain, as they were not able to locate him anywhere²⁰²). The bishop Thalassius presented a similar but shorter report²⁰³), while the bishop Dominus merely confirmed the previous testimonies²⁰⁴). The most detailed account was presented by the *ecclesiasticus* Romanus, who transmitted in addition

¹⁹⁸) *Ibid.* § 85 p. 160,21–22 ἐπιφερόμεθα δὲ καὶ τὰ τῆι προτεραίαι πεπραγμένα, ἐφ' ᾧ ταῦτα δῆλα αὐτῶι καταστῆσαι.

¹⁹⁹) *Ibid.* § 86 p. 160–161.

²⁰⁰) *Ibid.* § 88 p. 163.

²⁰¹) *Ibid.* § 93–94 p. 166.

²⁰²) *Ibid.* § 96 p. 166.

²⁰³) *Ibid.* § 97 p. 167.

²⁰⁴) *Ibid.* § 98 p. 167.

– in direct speech – the words of the clerics, monks and laymen they had questioned²⁰⁵). The second *ecclicus* and the notaries pronounced in turn their affirmation of the previous testimonies²⁰⁶), with the notary Andrew referring to Romanus' report in particular, confirming that he had also heard the bystanders' statements which Romanus had transmitted in his report. Romanus' report seems to depend upon a more detailed written record, his own or one composed by the notaries, which is perhaps the reason it was singled out by the notary Andrew.

For Menas, it was evident after these reports that Anthimus' failure to appear to defend himself and profess his orthodoxy implied that all the charges were true. Nevertheless, the synod, aiming at 'the correction of erring souls'²⁰⁷), decided to grant him a third deadline (τρίτη προθεσμία) within which he had to appear and free himself from the charges; otherwise, the assembly would have to pronounce a sentence upon him in accordance with the canons and Agapetus' decrees. Therefore, a new delegation – of the same size and composition as the previous ones – was appointed to search for Anthimus, with instructions to inform him, if they found him, that he had to appear before the synod within the next ten days. In addition, in order for the people of Constantinople to have knowledge of the synod's decrees and in order to prevent any false claims of ignorance on the part of Anthimus, Menas commanded the public posting (προτεθήσεται) of an announcement (κήρυγμα²⁰⁸) which informed about the ongoing investigation (ζήτησις) on Anthimus' matter and at the same time urged him to appear, even with delay, before the synod²⁰⁹).

²⁰⁵) *Ibid.* § 99 p. 167–168.

²⁰⁶) *Ibid.* § 100–102 p. 168.

²⁰⁷) *Ibid.* § 103 p. 168 lin. 41 to p. 169 lin. 1 *πρὸς τὴν τῶν πλανωμένων ψυχῶν ἐπανόρθωσιν περιορῶντες.*

²⁰⁸) Notable here is the use of the un-technical word κήρυγμα to designate something which functioned as an edict in an analogous context in civil law. There is even a resemblance in the meaning of the two words, as they both denote 'something spoken out'. I owe this observation to Peter Riedlberger.

²⁰⁹) *Ibid.* § 103 p. 168–169, in particular the last part (p. 169 lin. 11–15) ὑπὲρ δὲ τοῦ πᾶσαν ἀγνοίας ἢ τό γε ἀληθέστερον προσποιήσεως αὐτῶι πρόφασιν ἀνελεῖν, γενέσθαι δὲ καὶ τὰ παρ' ἡμῶν ἐψηφισμένα παντὶ τῶι τῆς βασιλίδος ταύτης πόλεως πιστοτάτω λαῶι φανερά, καὶ κήρυγμα προτεθήσεται τὴν ἐπὶ Ἀνθίμωι γινομένην ζήτησιν παριστῶν καὶ πρὸς τὴν παρ' ἡμῖν αὐτὸν ὄψε γοῦν ἀφιξιν προτρεπόμενον: In order to deprive him of the chance to use as a pretext his complete ignorance, or, pretence [of not knowing], which is more accurate, our decrees shall be made manifest to the entire faithful people of this imperial city, and an announcement inform-

After the expiration of the time appointed, the synod convened for a fourth time on 21 May to conclude the case of Anthimus. As in the previous sessions, the proceedings started with the quotation of the minutes of the preceding meetings, followed by the presentation of the envoys' reports on their search for Anthimus. The three bishops of the delegation recounted that they had gone to all the places where Anthimus could possibly be, albeit to no avail; the interrogation of the clerics and laymen they met there did not bear fruit either, as everyone claimed – some of them under oath – that they had not seen Anthimus from the time he had left the patriarchal see, nor did they know where he was residing at the time²¹⁰). The two *ecdici* presented similar reports, nevertheless adding the information that the public announcement, here designated as πρόγραμμα²¹¹), had been posted up²¹²), with one of them further specifying that they had posted it seven days earlier²¹³). As soon as the notaries in the delegation confirmed the previous testimonies, another notary read out the πρόγραμμα²¹⁴). This was written in the form of an address to Anthimus from Menas and the Synod and commenced with a brief exposition of his offences: first his disregard of Agapetus' demand to present a profession of his orthodoxy in order to be allowed to return to his former see in Trapezus, and secondly his defiance of the synod's multiple summonses and the time granted for his repentance. His actions were not worthy of pardon, they asserted, but knowing that forbearance towards those who had erred often leads to their correction, they urged him to appear (προσκαλούμεθα παραγενέσθαι) before the assembly within six days; if he was orthodox he had to profess it, so as to prove that the guidance of merciful fathers and charitable judges could lead to correction. If, however, he ignored the summons (κλήσις) and did not show his repentance timely, judgement would have to be passed on him²¹⁵).

ing about the ongoing search for Anthimus and urging him to come to us, even with a delay, shall be posted.

²¹⁰) *Ibid.* § 111–113 p. 174–175.

²¹¹) Πρόγραμμα is a synonym for an edict, see Peter Riedlberger, *Prolegomena zu den spätantiken Konstitutionen: nebst einer Analyse der erbrechtlichen und verwandten Sanktionen gegen Heterodoxe*, Stuttgart 2020, 58 with n. 78 and 80; cf. Ulrich Wilcken, *Zu den Edikten*, ZRG RA 42 (1921) 124–158, esp. 130–133, on the use of the term from the Ptolemaic to the Roman period in Egypt.

²¹²) *Ibid.* § 114–115 p. 175–176.

²¹³) *Ibid.* § 115 p. 176 lin. 18–19.

²¹⁴) *Ibid.* § 116–118 p. 176.

²¹⁵) *Ibid.* § 119 p. 176–177.

The appointed time of six days mentioned in the πρόγραμμα instead of the ten days that Menas and the synod prescribed puzzled Menas who requested from the notaries to clarify this irregularity²¹⁶). The notaries explained that the synod's decree did dictate the term of ten days for the search of Anthimus and the posting of the πρόγραμμα, but it did not command the immediate posting of the notice. The course of events, according to their utterance was thus: in the first three days they searched for Anthimus and, since they did not find him, they posted up the πρόγραμμα for the remaining seven days; apparently, the πρόγραμμα bore the date on which it was posted²¹⁷). In other words, from 11 to 13 May (three days) the search for Anthimus was conducted, and from 14 to 20 May (seven days) the πρόγραμμα was posted publicly. However, the latter does not match the actual date inscribed on the πρόγραμμα, i.e. 15 May, which is, nevertheless, compatible with the period of six days granted to Anthimus (15–20 May). Regardless of these inconsistencies, Menas' intervention is indicative of the importance of recording the procedure in detail in order to demonstrate that the proper judicial procedure had been followed. That is, Menas' questions served the recording and inclusion in the minutes of an explanation which would remove any doubts about the correctness of the procedure.

Following the reports of the final summons, nothing more needed be done on Anthimus' case. The bishop of Ephesus, Hypatius, on behalf of the entire synod, as well as Menas in his capacity as the synod's president consecutively presented their verdicts on Anthimus' case²¹⁸). The bottom line in both of these verdicts was that because Anthimus had proved himself guilty of the charges (referring to his uncanonical 'seizure' of the see of Constantinople as well as his wrong doctrines) by ignoring the canonical summonses (κανονικαὶ κλήσεις) to appear and defend himself, he was to be punished with degradation, excommunication and banishment from Constantinople and Trapezus²¹⁹). It was thus clear that, as was the case in the previous instances of threefold summonses and trials *in absentia*, the contempt of the summonses was not presented as the reason for Anthimus' condemnation *per se*, but was rather interpreted as a sign of his unwillingness and/or in-

²¹⁶) *Ibid.* § 120 p. 177.

²¹⁷) *Ibid.* § 121 p. 177.

²¹⁸) Before Hypatius the delegates from the see of Rome presented their own verdict, where they merely stated that they followed Agapetus' decrees against Anthimus, *ibid.* § 124 p. 178.

²¹⁹) The verdicts are in *ibid.* § 126–127 p. 178–182; for the sentence in particular see § 126 p. 180 lin. 11–14; § 127 p. 181 lin. 10–14.

adequacy to free himself of the charges which justified his summoning and conviction. This notion is even more evident in Justinian's constitution of 6 August 536 by which he endorsed the Resident Synod's decrees, where no direct reference to the summonses is made, but rather a vague mention of the efforts which the synod and the emperor made for Anthimus' salvation by admonishing him to return to the right doctrines²²⁰).

Throughout the synod's proceedings there are subtle indications that the outcome was foreseeable, yet it was necessary for the synod to act as prescribed by the canons, or, at any rate, to demonstrate in the acts that an orderly procedure was followed. It is indicative that the time appointed for Anthimus' appearance to the synod in the chief notary's pronouncements at the opening of each session is presented as the time allocated to the envoys to conduct their search for Anthimus²²¹). This is in line with Menas' designation of the envoys' mission as a search (ἀναζήτησις) for Anthimus²²²), which implies that he and the synod anticipated from the beginning that finding and summoning Anthimus would not be an easy task, possibly because they knew or suspected that he was in hiding, reluctant to make an appearance²²³). A similar overtone may be traced in Menas' statements following the envoys' reports of their first two failed searches for Anthimus, by which he underlined that the emissaries' accounts made manifest Anthimus' unwillingness to show repentance, insinuating thus that Anthimus was aware of the synod's proceedings, despite not having received the first two summonses, neither in person nor by a public announcement, and purportedly evaded the procedure.

²²⁰) *Ibid.* §41 p. 120 lin. 21–25 ἅπαξ γὰρ ταῖς ἀλλοτρίαις τῆς ἀγιωτάτης ἐκκλησίας ἐννοίαις κατανδραποδισθεὶς καὶ τῶν ὀρθῶν ἡλλοτριωμένος δογμάτων εἰκότως ἐπανελθεῖν εἰς τὴν αὐτῶν οὐκ ἴσχυσεν ὀρθότητα, καὶ ταῦτα παρ' ἡμῶν καὶ προτραπεῖς καὶ ὀδηγηθεὶς πάσῃ χρησαμένων σπουδῆι πρὸς τὴν σωτηρίαν τὴν αὐτοῦ: For once he was enslaved by ideas foreign to the most holy church and alienated from the right doctrines, naturally he did not manage to return to their correctness, although he was urged and led thereto by us, who made every effort for his salvation. The constitution is preserved also as Justinian's Novel 42.

²²¹) *E.g. Ibid.* §74 p. 156 lin. 24–25 προθεσμίαν ῥητὴν ἐπὶ τῆι τοῦ αὐτοῦ εὐλαβεστάτου ἀνδρὸς ἀναζητήσῃ δεδώκατε.

²²²) *Ibid.* §78 p. 159 lin. 10; §95 p. 166 lin. 15–16; §110 p. 174 lin. 28.

²²³) According to John of Ephesus 48, ed. E.W. Brooks, *Lives of the Eastern Saints* vol. II (= *Patrologia Orientalis* 19), Paris 1924, p. 686 and Liberatus, *Breviarium* 22 (ACO II.5 §147 p. 136 lin. 11–12), Anthimus was staying under the protection of Empress Theodora in the palace; see also Grillmeier (fn. 185) 352; Menze (fn. 184) 199, 207.

VIII. Conclusions: The threefold summons procedure from Nestorius to Anthimus

From the preceding discussion it emerges that the threefold summons in ecclesiastical context, despite sharing many features with the respective procedure in civil law, was not a duplicate thereof. Moreover, it appears that the ecclesiastical threefold summons only later became formalised and its components consolidated.

The evolution of the process is manifest in the changes in the size and composition of the delegations charged with the execution of the summonses. The group of emissaries who summoned Nestorius and John at the council of Ephesus consisted of three or four bishops, accompanied by a notary only whenever they had to deliver a letter of summons. The three groups sent out to summon Dioscorus, on the other hand, were uniform in terms of their size and makeup, comprising three bishops and a notary who was present also when there was no summons letter. The same consistency characterised the size and makeup of the delegations in the case of Anthimus; these were, in addition, more comprehensive with regard to their composition, for they comprised clerics of higher rank, ecclesiastical notaries as well as church advocates²²⁴).

This exemplifies another prominent development, namely the standardisation of the presence of notaries in the delegations and the systematisation of their responsibilities, which reflects the increasing emphasis laid on the reporting on the summons. Already at the council of Ephesus, where the notaries' function was said to be simply the carrying of the summons letters, the difference in the way the reporting on the summonses was conducted whenever a notary was included in the delegation – that is, a single detailed report by only one of the episcopal envoys and mere confirmations by the others, as opposed to long individual reports by each envoy – evidences the notaries' role in taking down the minutes of the summons. The notaries' duties were more clearly defined in the summoning of Dioscorus at the council of Chalcedon, where they were explicitly charged with the reading out of the summons letters, the recording of the minutes of the summonses and the presentation of their own reports at the assembly, which were extremely thorough in comparison to the accounts of previous summonses. Overall, the highly orderly way in which the threefold summons procedure was conduct-

²²⁴) Eutyches' case is an exception in that the envoys sent to him were not bishops, since he was not a bishop himself, while no notary was present at any of the summonses.

ed in Dioscorus' case is in sharp contrast with the proceedings concerning Eutyches' case that were presented at the first session of the same council. Arguably, the complications which had occurred due to the negligent execution of Eutyches' summonses – i.e. their recording by the envoys – made the need for further precision in carrying out the procedure in the case of Dioscorus more compelling. The acts of the Resident Synod of 536 do not evince the same role for the notaries in the summoning of Anthimus. There, their duty was to carry the minutes of the synod's proceedings up to the moment the delegations were dispatched, while upon their return they did not present detailed testimonies on the summons, but merely confirmed the episcopal envoys' or the *ecdici*'s reports. As a rule, at the Synod of 536 there were more than one extensive reports on the execution of the summons, nonetheless no precise indication can be traced of whether each member took down his own notes or all based their reports on the notaries' notes.

The use of the minutes of synodal proceedings as a means by which to communicate his summoning to the defendant, as is attested in the case of Anthimus, is without parallel. As shown above, in the previous instances the first summons was delivered orally²²⁵), the second either orally or by a letter²²⁶), and the third one always by a letter, which invariably included a reference to the charges and the identity of the accuser, if there was one, as well as a warning that in case of contempt of the third summons, the penalties laid down by the canons would have to be imposed. The disclosure of the latter information was indispensable, since it was necessary for the synod to make sure that the accused was fully informed about the procedure and the consequences of his absence. In Anthimus' case the process was altogether different, for his whereabouts were unknown. At any rate, the intensive search for Anthimus as well as the interrogation of the people whom the envoys encountered in the places they visited are exceptional in comparison to the standard practice in civil law, where the publication of the summons of a defendant whose residence was unknown was regarded sufficient. The immense efforts made to find Anthimus and, more importantly, the painstaking recording

²²⁵) The first two summonses of Athanasius of Perrhe at Antioch were said to have been carried out through letters which Domnus addressed to him (as opposed to the 'synodical' letter of the third summons), but their nature and the way they were delivered is not known. The only reference to the use of a *παραναγνωστικόν* for the first summons is found in Palladius' account of John Chrysostom's summoning at the Synod of the Oak, *Dialogus* 8.148–149 (fn. 136) 170.

²²⁶) The second summons was conducted by means of letter in the cases of Nestorius, Eutyches, Dioscorus; *cf.* also fn. 225 for Athanasius' summoning at Antioch.

of the search in the acts may be interpreted in relation to the idea repeatedly articulated by Menas that it was necessary that the synod show forbearance and eagerness for the correction of Anthimus' 'erring soul'. Nevertheless, a public posting of the final summons had to take place eventually. The *πρόγραμμα* was referred to as the customary practice in Menas' verdict²²⁷), and indeed, its wording resonates Justinian's almost contemporary Novel 112.3 (541) mentioned in the introduction, especially the part on the necessity of a double communication of the summons through the herald's voice (*κηρύκων φωνῆς*, reminiscent of the *κήρυγμα* mentioned by Menas) and by the posting of edicts. The role of the *ecdici* in the posting of the *πρόγραμμα* as well as their steady presence in the summoning delegations in the case of Anthimus are further indications of the officialism of the procedure and at the same time reflect the increased duties which the imperial legislation ascribed to the ecclesiastical *ecdici* in the sixth century²²⁸). The systematisation of the threefold summons at the Resident Synod of 536 is further evidenced by the careful setting of specific deadlines for each summons, as well as by the scrupulous logging of the timeline of their execution²²⁹).

²²⁷) ACO III.5 § 127 p. 180 lin. 34 οὐδὲ τῶν εἰθισμένων ἀπειχόμεθα προγραμμάτων.

²²⁸) For instance, according to C. 1,3,41,26, the *ecdici* had to investigate along with the corresponding bishop, two protopresbyters and the head or exarch of the local church if the clerics were exercising their duties rightly. Other Justinianic laws referring to the ecclesiastical *ecdici*'s duties: C. 1,4,34,11; Nov. 74,4,2; Nov. 59,1–2; Nov. 133,4; on the *edicus* see fn. 94.

²²⁹) The appointment of a certain date for Eutyches' appearance in the third summons is an exception, as mentioned above. The vaguely articulated summonses in all the other cases presupposed that the defendant had to appear at the next session of the synod.