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The Autonomy of Cults and the Unassignable Character of the Goods Legally Owned by the Cults

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Abstract: The fact that the private property is one of the fundamental landmarks of mankind cannot be denied, as any physical or juridical entity can coordinate its activities without considering its relation to the goods, neither can it function in the absence of the right to property. The juridical relationship between the goods and the way they became the property of the churches by getting into their heritage represents an issue more and more analyzed within the field of the right to property. Although, at first sight, the juridical condition that we mentioned should not raise any difficulty of interpretation and putting into practice, especially within the context where the institution of property also benefits of a new civil approach, the way go36ods become the property of the churches is contested within the context of existence of certain opposite provisions that derogate from the norms of the essential civil right. We shall analyses certain statutory and legal provisions that impact only the ecclesiastic field by putting them into relation to the constitutional principles and those of the civil right that regard the right to property. Moreover, the issue was also presented to the court as an exception of no constitutionality. By intending to identify the characteristics of the laws that we mentioned above, we shall analyses and correlate the situations generated by their interpretation, by also expressing a personal point of view regarding the necessity of the harmonization of the civil law with the canonical law.

Keywords: goods; different rights of property ownership; action to claim the right to property; heritage; Church

1. Introduction

In the ample process of reshaping the Roman law, we consider that rethinking things, and especially the entire juridical construction of the civil law, including the contribution and valorizing of the role of the jurisprudence and a new theory in order to reach a consensus regarding the applying of the legal provisions and, in this way, getting the maximum of efficiency.

Since ages, the human state was associated to the idea of property. Any entity, either a physical or a juridical entity, adopts the desire to get goods. Sciences such as philosophy, ethics, economy, sociology, politics, law etc. elaborated numerous theories that revolved around the idea of property. From the point of view of the sciences mentioned above, the majority of them build approaches to property as the relation between the individual and the goods that make the object of the right to property, and here we may recall the consumerist perspective, the utilitarian one that it confers to the individual, but also its denial (the Marxist perspective). (Ryan, 1998)

The content of the present subject does not engage any theoretical ideology meant to make us theorize property. So, the discourse remains within the juridical context of the concept of property and the exercising of the corresponding right, underlining the juridical relationship between goods and their

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getting into the church patrimony, in the context of existence of opposite provisions that deny the juridical civil norms, and this is the case for which the issue of right was brought into attention and in front of the court, as an exception from the constitutional character.

After the Edictus of Thessaloniki in 380 after Christ, Christianism became the official religion in the state, the church got its juridical entity, and it was included among the juridical entities of public right. In Romania, the accepted cults are juridical entities of public utility, according to Law no. 489/2006 regarding religious freedom and the general regime of the cults[1]. Different than this, the Patriarchy, the Metropolitan Church, the Archiepiscopal Church, the Episcopal Church, the vicarage, the Archpriest ship, the convent, and the parish are juridical entities of private and public utility[2].

The Church resembles all the other juridical entities legally established as the compulsory characteristics of any society are met, according to the provisions of Article 187 of the civil law[3]: a certain number of members, a hierarchy, an authority and "certain means by which the objective for which society (church, here) was built." (Iorgu, 2014, p. 32) In exchange, by its objective and its spiritual means, the Church is fundamentally different from the other juridical entities[4], by its organization and the way it relates to the laws that are to be exclusively applied in the ecclesiastic domain. Although it is organized as an entity with norms of common right (the civil law), and it takes part actively in the life of any community, the circulation of goods, the Church has sometimes its own rules, and relates strictly to norms that are different from those of the civil law. Of course, these laws of its own are acknowledged by the Romanian state and subject of protection, of admittance, and defense in court when cases are solved by justice.

Apart from the spiritual means, the Church also uses material means, having a distinct patrimony and it can get the right of property for its mobile and immobile goods, the material, and immaterial ones, as any juridical entity, according to the provisions of the common law, namely Article 557 of the Civil Law, but within the limits of the special norms of the Statute of the Romanian Orthodox Church.

2. Aspects regarding the Legitimation of the Right to Property in the Romanian Law

Both the aspect and the content of the regulations when applying and implicitly defending the right to property are well defined by the Romanian law, starting from the rigorous character of the constitutional provisions, and continuing with the regulations of the common law of the Civil Code, as well as any other special laws that count on the matter.

As the fundamental law in the state, The Romanian Constitution[5] does not contain only norms regarding the state organization, but also rules regarding the rights and freedoms of the citizens. If we relate to its principles and values, the ensuring of the right to property of the individual also emerges from the provisions of Article 44 of the Constitution, as it is a fundamental right of the human being, included in

[1] Law no. 489/2006 republished in the Official Journal no. 201 / 21 March 2014.
[2] The statute of the Romanian Orthodox Church, text aproved by the Holy Sinod of BOR by Decision no. 4768/2007 and admitted on the base of Law no. 489/2006 regarding religious freedom and the general regime of the cults, by GD no. 53 of 16 January 2008, published in the Official Journal, Part I, no. 50 of 22 January 2008.
[3] Art. 187 Civil law: "Any juridical entity has to have an organization of its own and its own patrimony that is dedicated to a certain legal and moral scope, according to the general interest."
[4] The new conception regarding the juridical entities of public right, the function and the acts deriving from public power or authority do no longer have an exclusive ans absolute character, as some juridical entities having no working scope are considered by law of public utility, because they are not endowed with prerogatives of public power. For details (Tarsia, 2012)
[5] The Romanian Constitution as it was modified and added up by the Law that revises the Constitution no. 429/2003, published in the Official Journal no. 767 of 31 October 2003, that was brought into regulation on the 29th of October 2003.

the constitutional corpus[1] within Title II, named "The fundamental rights, freedoms, and duties", Chapter II, "The fundamental rights and freedoms". "The private property is equally guaranteed and defended by law, no matter its titular", mentions the constitutional text.

This constitutional right is correlated to ample provisions of the civil law, and the theory and actuality of the right to private property are inherent to the human nature. Article 555 of the Civil law[2] defines private property as "the object that belongs to physical persons, juridical entities, the state or the administrative and territorial units regarding any goods, except those that belong exclusively to the public property, such goods that the titular is in the possession of, that he/she can use or dispose of, of its own power and in its own interest, but within the limits of the law". In exchange, according to Article 136 (2) of the Constitution and Article 858 of the Civil Law, the public property is the right to property that belongs to the state or any other administrative and territorial unit over the good that, by its nature or by the law, are of public use and interest, on the condition that they are purchased by one of the ways provisioned by the law.

From the provisions of this legal text the juridical content of the right to property can be clearly concluded under the aspect of cumulating the three juridical attributes or prerogatives: possession, use, and disposition, and these attributes can be exercised in an absolute, exclusive, and eternal way, with the respecting of the material and juridical limits[3]. Possession allows the owner to own the good and dispose materially of it, while use allows the owner to use it within the limits set by the law, and to gather the benefits. Disposition consists in the prerogative of the titular to decide the finality of the good, (Bîrsan, 2017, p. 46) and it can be exercised in two different ways, namely the material and the juridical disposition.

The material disposition allows the owner to do anything with its own good, even to destroy it, but within the limits of the law, meaning that it cannot affect the life, body integrity of any other goods belonging to others, in such a way that the guilty can be punished according to the civil law regarding delicts[4]. The juridical disposition is realized on the right to property itself, and not on the good, and it allows the owner to sell its good or separate it or even juridical disjoint it.

Private appropriation does not reduce to the two texts presented above. As having a certain influence on the present matter, we also remind the special laws by which the juridical entity of the Church functions. As the titular of its patrimony, BOR benefits from the diversified legal context regarding the protection of the cultural goods, mobile or immobile. It was said that "in its rich activity, its goods are a reality for BOR's life and that of the Romanian people and, as a consequence, the development of certain activities of protecting, conserving, and valorizing its goods are an important coordinate for the mission that the Church had in the contemporary society" (The work of Father Ieronim Sinaitul, *Bunurile de Patrimoniu ale Bisericii Ortodoxe Române. Legislația în vigoare în România și prevederi statutare/Heritage assets of the Romanian Orthodox Church. Legislation in force in Romania and statutory provisions,* 2016, pp. 72-100).

Actually, the life and mission of the Church are legitimated by Law no. 489/2006 regarding religious freedom and the general regime of the cults, the Statute of the Romanian Orthodox Church, as well as other church regulations. (The work of Father Ieronim Sinaitul, *Bunurile de Patrimoniu ale Bisericii*

[1] The Romanian Constitution generally disposes on the right to property and within art. 136 named "Property" of the title "Economy and public finances".
[2] The provisions of the Civil Law are applicable starting with the 1st of October 2011.
[3] Regarding the right to property, see (Stoica, 2013, p. 99).
[4] Regarding a detailed analyse of the functions and principles of the civil delicts and punishments, see (Costache, 2013, pp. 497-517)

Ortodoxe Române. Legislația în vigoare în România și prevederi statutare/Heritage assets of the Romanian Orthodox Church. Legislation in force in Romania and statutory provisions, 2016, pp. 97). The goods belonging to the church can be gathered within the rigorous context of the norms of the legal provisions, especially through juridical mechanisms of civil right, regarding the way of purchasing goods, as well as the way of alienating them.

Of importance to the purchasing and alienating the goods is the juridical regime that can be applied to goods, on which we shall discuss in the next section.

3. Church Goods – Typology and Juridical Regime

According to Article 169 of the Statute for the organization and functioning of the Romanian Orthodox Church, the totality of goods belonging to parishes, convents, sketes, archpriest ships, vicarages, episcopacies, archiepiscopacies, metropolitan churches, and patriarchies, the associations and foundations built by the Church, the funds designed to church scopes, as well as the fortunes of the foundational churches make up the church patrimony that belongs to BOR, and its regime is regulated by the present statute.

When classifying the goods of the church, both the norms of the civil law and the church norms are of interest, as they are very important when it comes to the alienation or the purchase of goods in the juridical active regime. As well as in the civil law, the matter of the object derived from the juridical relation, the church goods are subject to a large classification that stops to the under category of sacred and common goods that interest us for the present research.[1] In the present context, the goods of the church classify as it follows:

- sacred (those destined exclusively for the religious service and consecrated by the archbishop or the priest);
- holy;
- consecrated.

Also, the Statute for the organization and functioning of BOR establishes in Article 170 (1) the following classification that has as a criterion the destination of the church patrimony, as it follows:

- sacred goods and
- common goods.

We call sacred goods those goods that by blessing or consecration are destined to the cult of the divinity. On their turn, the sacred goods can be: the sacred goods directly and exclusively destined to the cult, such as the churches, the ornaments, and the church clothing, the ritual books, the cemeteries etc., then the sacred goods that are not directly and exclusively destined to the cult. Sacred goods from the second category are the parish house and the monastery, the inside of the Bishopric Center, the cells of the convents, the precious goods, meaning those having either an artistic, or a historical value, or being valuable for the material they are made of that are consecrated to the divine cult. The same classification is to be found in Article 25 of Law no. 489/2006.

[1] For a rigurous classification of the goods, see (Harosa, 2011).

The right to property on such goods belongs exclusively to the church and enjoys the juridical character of the right to public property of the common right, meaning on the basis of the two special laws are inalienable, intangible, indefeasible.

On the other hand, the common goods are subject to the support of the church: church schools, religious museums, cultural, philanthropically and economical institutions, agricultural terrains, pastures, vineyards, gardens, patrimony rights, claims, funds, valuable papers, the fortune in cash etc.

Compared to the first category, the common church goods can be alienated, they are determinable and prescriptible, according to the common right, the Civil Code, in such a way that their alienation and purchasing is free and unconditioned, but under the juridical regime of some special conditions of the statute, that are to be found at Article 170 (10) "The transfer of any kind of the use or property oh the immobile goods that belong to parishes, convents, archpriest ships, and other church institutions that are juridical entities inside the eparchy (by selling, buying, rental, exchange etc.), as well as the burden of duties of the affecting of the goods from line (6) and (7) by such burdens is approved by the Eparchy Council, and the alienation of immobile goods (buildings and terrains) of the Eparchy Center by the Metropolitan Synod".

Regarding the administration of goods, a prerogative of the use, in such a way that the landlord may decide to master his own property (the individual administration of the goods) or to request someone else's help (the indirect administration of the goods). The goods that are of use are also part of the church patrimony and are managed according to the documents of purchase that are according to the provisions of the present statute. As it follows, the administration of the church goods has a double administration. On the one hand, the Orthodox Church units (parishes, convents, episcopacies, and archiepiscopacies) and, on the other hand, BOR; and in the situation of misunderstanding, BOR will make the final decision[1].

4. The Relation between the Church Goods and the Ways of Defending the Right to Property. The Role of Jurisprudence

In order to regulate the statute of its goods, the church has to continue the evangelical teaching according to the provisions of the civil right regarding property and the administration of the goods.

Goods are unalienable in the sense that they mean the interdiction to alienate some goods, and their intangible means the impossibility of legal seizure by the creditors on the titulars of the right to property (a good is intangible if it cannot be legally seized). Another juridical character specific to the goods of the public sphere, as well as to those considered sacred is their being indefeasible. The right to property on these goods does not vanish by their not being used, and the action of claiming one of the goods of the above can be at any time exercised by the titular of the right. Such restrictions of the juridical circulation of goods are traditionally provisioned by the Constitution or by law and regard the goods having certain particularities (goods of the public domain, goods of the cultural patrimony, church adornments).

[1] Ierom. Iachint Cătălin Vardianu, *Administrarea bunurilor Bisericii Ortodoxe Române potrivit reglementărilor ecleziale şi legislaţiei de stat din secolul al XV-lea şi până în present/ Administration of the assets of the Romanian Orthodox Church according to the ecclesiastical regulations and state legislation from the fifteenth century to the present,* abstract of doctoral thesis, Arad, 2018:
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=2ahUKEwiWit6g_-3kAhWC0KYKHRCzDFQQFjAEegQIBBAC&url=http%3A%2F%2Fuav.ro%2Ffiles%2Fdoctorat%2F2018%2Fsustineri%2FVardeanu%2Frezumat%2520teza%2520-%2520Vardianu.pdf&usg=AOvVaw06UP__K-oqUfD7HNJ2QM3T.

The right to property and the right to possession are based on the natural law, as well as on the divine one, as it cannot be contested by any eternal authority, as the church is admitted its juridical entity. Although it functions within the state, the church is independent from the state, and its activity is regulated by the laws, and some of them were discussed above.

The state as a type of law specific to independent organizations and institutions represent the proof coming from any cult that its independence is admitted as the State of Law. The state ensures this independence of the cults on the basis of the legal regime created on the basis of the fundamental Law and the Law of the cults.

More and more often brought into discussion is the issue of goods and the church patrimony. The way of purchasing goods, as well as their administration was of interest to many specialists in both civil and religious law. Such provisions of the statute are open to interpretation when it regards the harmonization of the civil law with the religious law. As an institution of private right, but of public utility, the church is associated with its educative and philanthropic role, less that of the administrator of patrimony. The scope for using the church patrimony was imposed from the very beginning by establishing the principle of the inalienability of its goods. Within the norms of the church we find this principle; such norms provide very hard sanctions regarding the maintaining of the destination of the church goods and the forbidding of their alienation.

By taking over these principles, the actual norms of the church statutes these sacred goods, and they become sacred by consecration and benediction, and are exclusively destined to the cult; they are unalienable, intangible, and indefeasible. The statute also provisions that "the property on the sacred goods belongs exclusively to the church, and the surrender of use can be given for a maximum of three years, with the possibility of renewal". By analyzing the special statute of church patrimony, as well as the possibility of alienating it in different ways, we see that it has to get the approval of the eparchy Council before wards, according to a well-established procedure". (art.172 al.10, 11).

In article 193 of the Statute of BOR, it mentions that "The goods of the monks and nuns that were brought by them or donated to the church when they entered the convent, as well as those purchased during their life in convent are completely the property of the monastery they belong to and cannot be claimed afterwards", regulated against the provisions of article 563 NCC regarding the action of revendication (1) "the owner of some good has the right to claim it form its owner or any other person that possesses it without being entitled to. He has also the right to be refunded, if it were the case. (2) The right to action in claiming the good is indefeasible, except the cases where the law establishes otherwise".

The same article 193 is added to the provisions of law no. 489/2006 regarding religious freedom and the regime of the cults which in article 31 says that: 1) "The goods that make the object of any kind of purchase, contributions, donations, successions, as well as any goods that entered legally the patrimony of a certain cult cannot make the object of later claim". 2). The persons that leave a cult cannot have claims on its patrimony", but apparently in opposition to the rights guaranteed by the fundamental law in article 44, line 1[1] and article 136 line 5[2].

[1] Art. 44 (1) of the Constitution: The right to property, as well as the state claims, are guaranteed. The content and limits of thsese rights are established by law.

[2] Art. 136 (5) of the Conctitution: Private property is untouchable under the conditions of the organic law.

Such an issue was also noticed by the court as a no constitutional exception[1] regarding article 31 line1 of the Law of the cults.

Actually, the matter of right under analysis starts with the observation of an exception of no constitutionality of the provisions of article 31 of the Law of the cults, whose content was previously mentioned.

In fact, the family Vasile and Elena Iovu donated 10.000 MP to BOR by contract no. 102/1996 made in order to build Vasile the Great skete in Bodesti, Neamt. It comes under the regulation of the actual civil law regarding the right of possession of a land by some contract of donation, as well as the special law of the cults. The material norm of donation says that it cannot be taken back, according to the provisions of article 985 of the Civil Law. But it can be revoked for ingratitude or for not executing without motif the duties that the receiver had, in the given example not being the case, as the convent was built. The givers adhered to some religious cult not officially admitted by the law of the cults and they requested to be given back the land they donated and that the donation should be revoked, the whole building for the religious group to be able to use it. As they tried all the ways of appeal to the court decisions that rejected the request, they brought in front of the court an exception of no constitutionality that was brought into court and motivated.

We underline the data when the calling into court was made, the entire convent already having been built, the imposed duty being realized within the limits of the donated good. Moreover, according to the church norms, the church was already established and church services were already being made for Christians. As such, the land already had become the exclusive property of the convent on the basis of the right to property of the juridical entity established according to the law (the convent). In relation to the category of sacred goods, by applying the provisions on the matter, the property of such goods belongs exclusively to the church and enjoys the juridical characters of public property of the common right, meaning on the basis of the two special laws, are inalienable, intangible, and indefeasible.

Out the motivation of the court, we mention the fact that the legal provisions that were criticized do not come against the right to property, as the critic according to which such goods do not enter the juridical regime of the public property as they cannot be claimed afterwards. According to the unalienable character of the sacred goods that entered the church patrimony, the court noticed that by establishing the inalienable character of these goods is supported by the legal character regarding the way goods enter the patrimony of such cults. The invoked article 31 criticized as such establishes exactly the equilibrium and the stability of the juridical relations in such a way that the provisions of article 31 (1) of Law no. 489/2006 does not break neither the provisions of article 21 (2) of the Romanian Constitution, nor those of article 6, paragraph 1 and article 13 of the Convention for defending the human rights and its fundamental freedoms.

5. Conclusions

As it is a sacred good, the land that makes the object of the present analysis belongs exclusively to church patrimony and enjoys the juridical characters of the right to public property of the common law, meaning on the basis of the two special laws, is inalienable, intangible, and indefeasible. The text of law that e invoked and that was contested as being no constitutional provisions expressly the impossibility

[1] Decision no. 686/2010 regarding the rejecting of the exception of no constitutionality of the provisions of the article 17 (1), art. 20 (1), (2) and (4), art. 21, art. 31 (1) and art. 49 alin. (3) of Law no. 489/2006 regarding the religious freedom and the general regime of the cults. The decision was published in the Official Journal no. 429/2010, starting 25 June 2010.

to claim a good that legally entered the patrimony of some cult. Moreover, the legal act was signed by fulfilling all the formal and essential terms, and the present situation is not under provisions that can make the convention null in any way.

Therefore, by maintaining the exception of the possibility that the acts between living persons as they acted freely can be revoked they cannot but make stronger the difference between inalienability and the observation that the document is null in an absolute sense. Regarding the no constitutional character of the provisions that were criticized by relating to the provisions of the Civil law, in its jurisprudence, the Court statutes that the non-conformity between the actual laws on the same matter does not represent a matter of no constitutionality, but one of applying these at the same time.

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The Romanian Constitution.

The Romanian Civile Code.

Civil law. Main real rights.