The Managerial Activity of the Central Executive Organisms of the Romanian Orthodox Church

Nicolae V. Dură
Catălina Mititelu
“Ovidius” University of Constanta, Romania
nicolaedidimos@yahoo.com
ovidustomis@yahoo.co.uk

Abstract

In our paper we intended to offer to the readers the possibility to be acquainted with the managerial activity of the central executive organisms of the Romanian Orthodox Church, which has not only its own specificity, but also a long history. Indeed, the historical and juridical testimonies attested that the ecclesiastical management activity has two millennium of history, hence the importance of the knowledge of the process of its development, with its own typical particularities.

Pursuant to our aim to help our readers to be acquainted both with the specific managerial activity of the central executive organisms of the Romanian Orthodox Church, as well as with its juridical and canonical doctrine about the administration of the goods (res), we offered to them a real scientific contribution by an interdisciplinary approach (juridical, historical and theological).

Key words: ecclesiastical management, religious Cults, administration of goods, international and national legislation

1. Introduction

According to certain prestigious jurists of our days, Religion is neither „a matter of doctrine or grammar” (Durham, 2006, p. 34), nor one of the philosophy of Religions, but rather one of legal nature, since it has its legal basis in its religious - moral norms (Dură, 2003, p. 15-24), which proved to have the force of jus cogens, and in the old Religious Law, which for the Romans was represented by Jus papirianum, drawn up before the year 509 BC, when the Roman Republic came into being. Hence the need not to ignore or conceal the fact that the jurisprudence of the European Court also makes express reference to the right to freedom of Religion (Mititelu, 2022, p. 168).

The fact that the activities of the central and executive bodies of the Romanian Orthodox Church are regulated by legal norms, is confirmed both by the norms of the state’s legislation (according to the Constitution of Romania, Art. 29, para. 3 and 5 and Law no. 489/2006 republished (the Law of Cults), Art. 26, para. 1), and by those of its canonical legislation, on the basis of which the statutory and regulatory provisions were made also regarding the managerial activity of its bodies (central and local).

Since throughout the pages of this research - with an interdisciplinary content - we have also presented the results of the hermeneutic analysis which we have carried out of the legal, canonical and statutory text regarding the managerial activity of the central executive bodies of the Romanian Orthodox Church (R.O.C.), we need to point out - starting from the text of these Preliminaries - that the right of the Church to exercise a managerial activity stems from its status of autonomy, which had been granted to the Religious Cults since the Antiquity, and continues to be granted to them nowadays, including in Romania’s case.

This right of the religious Cults to autonomy was stipulated both in jus divinum and in jus naturale, as well as in jus papirianum, i.e., Roman religious law (6th century BC), whose principle provisions expressed in the provisions of jus romanum (Old and New (Byzantine) are also reaffirmed
by international law (according to Art. 18 of the *Universal Declaration of Human Rights*), including European law (according to Art. 9 of the *European Convention on Human Rights*) from our days.

The Church's right to exercise its managerial activity - through its central and local bodies - stems from its own autonomy, recognized by the State. Therefore, the right of autonomy of the religious Cults - from which stems their legal right to own and administer their own church patrimony - should not be related to and conditioned by the sovereignty of the state, the type of relations between the Religious Cults and the State (Dură and Mititelu, 2014, p. 923) or the way in which the right to freedom of Religion (Dură and Mititelu, 2014a, p. 813) is expressed and respected by the State, but from the legal status of the autonomy of the two basic institutions of human society, the State and the Church (Religious Cults), as it is expressed and recognized through their legislation (the Constitution, the Law of Cults, the Statutes and Regulations of the Cults) (Dură, 2007, p. 22).

We needed to provide these brief clarifications in order to help readers better understand the guiding idea of the authors' conceptual thinking in terms of tackling such a topic, whose interdisciplinary content (legal, theological, historical, sociological, etc.) offers to those interested not only a documented, primary source material, but also the possibility of familiarizing themselves with a field which is, perhaps, less known to them.

2. Theoretical background

In the Romanian-language literature, this paper has a pioneering character, since this topic has not been tackled and presented so far, even though about the managerial activity of the Romanian Orthodox Church the authors of the present work have made some tangential references in various previously published works, which are mentioned in the bibliography of the present work.

3. Research methodology

From the text of the work, the reader will see that we have used several research methods, including the method of hermeneutic interpretation of the text provided by the legal sources, the analytical method, the historical method, the comparative method, the expository method, etc. All these research methods have been of real use not only in researching the sources and literature, but also in the process of formulating and revealing contributions in our research fields (legal, canonical, ecclesiological, etc.). Thanks to these research methods we have been able to offer the reader the possibility to understand and evaluate more easily the way in which the central bodies of the Romanian Orthodox Church exercise their managerial activity.

4. Findings

From the careful research of the legislative and statutory text it emerged that the management of the movable and immovable property of the Romanian Orthodox Church has both an ecclesiological and a juridical nature, hence the need to make express references both to the text of *jus papirianum*, *jus civile romanum*, the Romanian Constitution and the Romanian Civil Code, and to the Statute and Regulations of the Romanian Orthodox Church.

A second findings that the informed reader can draw from the text of our work is that the Church is a distinct statutory legal institution (cf. Law 489/2006, art. 2, para. 2). The *sui-generis* character of this divine-human institution obliged us to examine and assess not only its legislation, but also state legislation, which goes up from *jus civile romanum* to Romanian civil law.

Another finding resulting from the examination of the sources and specialized legislation in the fields researched (law, ecclesiology, history, etc.) lies in the fact that *res sacrae* (sacred goods), provided for by Roman law, are expressly mentioned both in the canonical legislation of the Orthodox Church and its the statutory and regulatory legislation, as well as in the Law on Cults of 2006.

From the text of the literature, we have found that it is absolutely necessary to make some notional clarifications so that the reader can better understand some notions of administrative law, economic law and canon law. To this regard we have made also some notional and legal doctrine clarifications regarding the managerial activity of the central executive bodies of the Romanian Orthodox Church.
The English word *management* - also appropriated into the vocabulary of the Romanian language - refers to two realities, namely: *the activity, the art of leading* and „the science of organizing and managing a profitable institution by developing systems, programs, methods, techniques, etc.”, which are meant to *increase competitiveness* (Noul Dicționar Universal, 2009, p. 867).

Managerial activity therefore implies an act of *management, administration, supervision* of an economic-financial activity, which requires a *sustained ability* (Noul Dicționar Universal, 2009, p. 867) to increase this competitiveness, hence the word *manager, meaning director, leader, administrator, supervisor* (Noul Dicționar Universal, 2009, p. 867).

This terminological reality is also found in the case of the central executive bodies of the Romanian Orthodox Church, which have both an individual and a collective management, and whose duties also include managerial, patrimonial, and economic-financial activity.

Regarding the administration of goods, the reader will be able to note that the Romanian Orthodox Church reaffirmed - in its legislation - the principle provisions stated in Roman law, i.e., *jus bonorum* (the right of goods), according to which they were classified into *res sacrae* (sacred goods), *res religiosae* (religious goods) and *res sanctae* (holy goods), hence the need to return *ad fontes* (to the sources), i.e., to Roman patrimonial law (Dură, 2016, p. 67).

The first testimonies about the roman patrimonial law - a branch of civil law - stem from *The Law of the Twelve Tables* and from the *Jus papirianum*, whose texts had a pronounced religious character, given the fact that their authors reaffirmed the principle provisions stipulated in the *jus divinum*, based on which *goods (res)* were classified by the Roman law into three categories: sacred, religious, and holy goods.

We have to take also into consideration the fact that the modernity of European Law stems from the reconstruction of medieval law from disparate elements of Roman law, that is in fact the „source of the modern legal system” (Villey, 2023, p. 4).

In *Jus romanum* - that includes also *Jus romanum Novum* (New Roman law), known as Byzantine law, - the goods are classified into public goods and private goods. Both classifications - made by the *Old Roman law* and the *New Roman law* - were also affirmed in the canon Law of the Eastern Church from the first millennium, hence the adoption of these classifications of goods into the Statutes of the local orthodox Churches, including in the Statute for the organization and functioning of the Romanian Orthodox Church.

The legal regime of Church's autonomy (Mititelu, 2016, p. 276) - pursuant to which any local Church can autonomously exercise also its managerial activity - has its origins in *jus papirianum*, i.e. in the Old Roman law, whose principle provisions were adopted not only by Byzantine law and Canon law, but also by the international and national legislation.

The fact that, at national level, these principle provisions of the Old Roman religious law have also been adopted nowadays is confirmed by the Constitution of Romania, according to which all *religions shall be free and organized in accordance with their own statutes, under the terms laid down by law* (Art. 29, para. 3), and that these, i.e. the Religious Cults, are *autonomous from the State and shall enjoy support from it* (Art. 29, para. 5), that is from the Romanian State.

From this status of autonomy of Religious Cults towards the State results in fact the right to *freedom of religion* (Mititelu, 2020, p. 453), that is expressly affirmed by the Romanian constitutional law, which also makes reference about the *freedom of religious beliefs*, a freedom which cannot be limited in *any form whatever* (Art. 29, para. 1, Constitution of Romania), and, therefore, in this case neither freedom of expression (Brașoveanu, 2012, p. 139).

The Romanian legislator expressed itself along the same lines through Law no. 489/2006, republished, according to which Religious Cults are entitled to have their own legislation, i.e., Statutes and Regulations, to implement the provisions of their canonical norms (the case of the Romanian Orthodox Church, the Roman Catholic Church and the Greek Catholic Church), and to administer their own patrimony (movable and immovable property).

Indeed, according to the provisions of Law 489/2006, religious Cults have *distinct legal entity status* (cf. Art. 5, para. 2) and are recognized as *public-utility legal entities* (Art. 8, para. 1), and, as such, *they shall be organized and shall operate under the Constitution and under this Law, autonomously, according to their own Statutes, or canonic Codes* (Art. 8, para. 1).
The statement according to which the Religious Cults can draw up their own legislation and exercise managerial activity over their patrimony only based on a so-called „authorization” (Chiș, 2014, p. 64-105) from the State, therefore, has no historical and legal basis. Moreover, not only the religious law – stipulated in *jus papirianum* based on the principles stated by *jus divinum* and *jus naturale* (Villey, 2023, p. 69-70) -, but also the New Roman law (the Byzantine law) and the international and national law have expressly stated the principle of external autonomy as the basis for the relations between the State and the Church, hence the natural finding that they, i.e., the Religious Cults, are fully entitled to affirm their autonomy from the State also in relation to exercising their managerial activity.

Obviously, the jurists who promote the statement according to which the „concept of autonomy of Religious Cults” (Toader and Safta, 2015, p. 145) was also born as a result of the „separation between the State and the Church” (Chiș, 2014, p. 39) must not ignore or hide the fact that, in reality, such a separation cannot exist, and that it manifests only through a separation of the fields, i.e., the telluric field and the religious one.

The same Romanian jurists, of these days, who prove to have no knowledge both of *jus papirianum*, and of the jurisprudence of the famous Roman jurisconsults, - whose names were mentioned in *Lex citationem* of the year 426 as an authority in terms of ruling of any court decision, - as well as in relation to Byzantine and international law (according to the two *International Covenants* promulgated in New York in the year 1966) (Dură and Mititelu, 2013, p. 130), recognize the fact that, „in its jurisprudence, the European Court of Human Rights ruled that the autonomous existence of religious communities is indispensable in a democratic society and that it represents an essential issue in the protection of religious freedom guaranteed by the provisions of Art. 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms” (Toader and Safta, 2015, p. 145-146).

In fact, the autonomous existence of the religious communities is imposed also by the European and international protection on human rights (Brașoveanu, 2012a, p. 136; Brașoveanu, 2015, p. 27), among which the rights to religion are the main one.

In the Romanian-language specialized literature, the statement according to which „the separation of the State from the Church ... is the model adopted by the Romanian State” (Chiș, 2014, p. 39) is disseminated although the constitutional text does not make any reference to such a reality, on the contrary, in Romania Religious Cults shall be autonomous from the State and shall enjoy support from it (Art. 29, para. 5, Constitution of Romania).

The 2006 Law on Religious Cults stipulates that the State is neutral towards any religious persuasion or atheistic ideology (Art. 9, para. 1), however, it is not a matter of neutrality from the State towards religious denominations, but rather neutrality towards any religious belief and atheistic ideology.

Regarding the Central Executive Bodies of the Romanian Orthodox Church, we noticed that, according to the provisions of the current Statute for the organization and functioning of the Romanian Orthodox Church (Statute R.O.C.) - which „continues the previous Statute” (Statute R.O.C., 2008, p. 9) – the Romanian Orthodox Church is administrated autonomously through her own representative bodies, made up of clergy and lay, in accordance with the Holy Canons, the provisions of the current Statute, and other provisions of the competent ecclesiastical authority (Art. 3, para. 2).

The same Statute provides that, for the organization and functioning of the Romanian Orthodox Church, three types or categories of bodies exist at the central level, namely: a) central deliberative bodies; b) central executive bodies; c) central administrative bodies, and that, within the category of central executive bodies, there are three organs, namely: 1. The Patriarch; 2. The National Church Council; 3. The Permanence of the National Church Council.

Pursuant to the provisions outlined in the Statute of the Romanian Orthodox Church, the goods belonging to the parishes, sketes, monasteries deaneries, vicarages, dioceses, archdioceses, metropolitan sees and to the patriarchy make up the church patrimony which belongs to the Romanian Orthodox Church (Art. 172, para. 1, Statute R.O.C.).
The same Statute states that the ecclesiastical patrimony includes sacred goods and common goods (Art. 173, para. 1). Regarding the sacred goods, they are defined as those that, through consecration or blessing, are intended for divine worship (Art. 173, para. 3), and they are inalienable, immune from seizure, and imprescriptible (Art. 173, para. 2).

Regarding the common goods, the Statute of the Romanian Orthodox Church states that they are those intended for the maintenance of the churches, its clergy, cultural works, charitable activities, social and medical assistance, as well as for fulfilling other purposes of the Church (Art. 173, para. 5).

The fact that the managerial activity of the deliberative and executive bodies of the Church must be carried out according to the statutory and regulatory provisions is, obviously, another peremptory testimony that Religious Cults in Romania also enjoy the status of autonomy regarding their forms of organization and functioning.

The Romanian Patriarchate manages, controls and administers its profitable and patrimonial activity autonomously (Art. 3, para. 2, Statute R.O.C.), based on and in accordance with the principle provisions stipulated in the holy canons of the Orthodox Church. In addition, since the sum of the canonical principles (Stan, 2012, p. 5-23) stipulated in this legislation defines and expresses its canonical doctrine, we can say that, by observing and implementing these statutory provisions, the Romanian Orthodox Church proved to be within of the area of its canonicity also in relation to the managerial activity of its deliberative and executive (central and local) bodies.

With regard to the Patriarch and his managerial duties, we underline the fact that, in the Church, the judicial-canonical institution of the Patriarch appeared in the era of the Fourth Ecumenical Council (Chalcedon, 451), and from then until nowadays he is the Primate of any Orthodox, autocephalous Church, organized in the form of a Patriarchate (Dură, 2011, p. 21-51), hence the obligation of the hierarchs to „mention his name, as it is decided and ordained in the divine liturgical service ...” (can. 15, I-II Council of Constantinople) (Floca, 1991, p. 292), i.e., at the Liturgy of the Holy Eucharist (Dură, 1979, p. 791).

Therefore, according to the provisions of the holy canons, the Patriarch is both the president of the Holy Synod of the Romanian Orthodox Church, as of the central deliberative and executive church bodies.

In the Regulation concerning the duties of the Patriarch and the functioning of the central deliberative, administrative and executive bodies of the Romanian Orthodox Patriarchate - voted by the National Church Assembly in the meeting of February 26, 1950 and approved by the Minister of Cults by Decision no. 28,133 of August 18, 1950 - it was stated regarding the National Church Council that it is the supreme administrative body for the affairs of the entire Orthodox Church within the Romanian Patriarchate and, at the same time, the executive body of the Holy Synod and the National Church Assembly (Art. 111).

Among these duties, the National Church Council drafts the annual report concerning the general budgetary account and the financial balance sheet of the Patriarchal Administration, and decides upon the way of administering the real estate and movable goods of the Patriarchal Administration (cf. Art. 30, para. 1-11, Statute R.O.C.).

The enumeration of these duties of the National Church Council points out to the fact that this supreme administrative body of R.O.C. draws up the general budget, the budget execution account, and the financial-accounting balance sheet of the central church institutions, which also takes into account the accounting regulations regarding the financial-accounting activity of the Cult institutions (Mititelu, 2011, p. 815-820).

The Permanence of the National Church Council, which operates between the meetings of the Church National Council as central executive body (Art. 31, para. 1, Statute R.O.C.), is composed of the Patriarch, as president, of the Assistant Bishops to the Patriarch, Patriarchal Administrative Vicar, patriarchal counsellors and of the church general inspector, as members, and takes valid decrees through the consensus of all the members present (Art. 31, para. 2).

During the period between the meetings of the National Church Council, the Permanence of the National Church Council exercises the duties of the National Church Council (cf. Art. 32, Statute R.O.C.), that is, this one does not prepare the general budget of the central ecclesiastical institutions with a missionary purpose.
In addition to these responsibilities, according to stipulations of the Statute for the organization and functioning of R.O.C., the Permanence of the National Church Council examines economical-financial issue within the debates of the central deliberative and executive bodies and makes statutory proposals and analyses and submits proposals to the Church National Council concerning the administration of the real estate and movable goods of the central church institutions and of the central church foundations (cf. Art. 32 Statute).

As one can notice, as a central executive body, the Permanence of the National Church Council - made up of hierarchs and clerics of the Romanian Patriarchate - fulfills the duties of the National Church Council between the meetings of the National Church Council (Art. 31, para. 1, Statute R.O.C.), including the managerial activity of the Romanian Orthodox Church, apart from drawing up the general budget of the central church institutions with a missionary purpose.

In view of a better managerial activity, the Church borrowed from the (Roman-Byzantine) (Mititelu, 2014, p. 33) state legislation a general principle of Roman Law, namely the principle of devolution, which is a right of supervision and control of the higher administrative-territorial authority when the lower bodies do not fulfill their legal duties (due to ignorance, negligence, abuse, etc.).

Over the centuries, the principle of devolution - which was also stipulated by Emperor Justinian in one of his Novels, namely in Novel 123, ch. 1, published in the year 546 - represented one of the basic tools in church administration.

According to canon 11 of the Seventh Ecumenical Council, if the bishops do not want to appoint a manager (oeconomus) in their Churches, this must be done by their Metropolitans.

At the level of the Orthodox Church, the principle of devolution was and continues to be considered both „a permanent guarantor and guardian of canonicity”, i.e. of the legality in the life of the Church, and an „auxiliary of synodality” (Pîrvu, 1954, p. 397).

Following the model of the Imperial Court, the Patriarch of Constantinople organized the dignitaries and officials of his Court into pentads. The first dignity of this Court was „ὁ μέγας οἰκονόμος” (the great oeconomus) (Walter, 1840, p. 214), whose first duty was to manage the assets of the Church.

The Patriarch of Constantinople can exercise this right of hierarchical devolution - a right inherent to any hierarchically organized administration - only in his jurisdictional area, i.e., in the geographical area of his Patriarchate. He cannot, therefore, intervene in the jurisdictional area of the other administrative-territorial ecclesiastical institutions, of the same kind, of the Ecumenical Orthodox Church, i.e. in the other Patriarchates of the Orthodox Church, since they have an equal canonical status, i.e., they are also organized in the form of Patriarchates (Dură, 2005, p. 414-432), or in those that have the status of autocephaly (Dură, 2010, 113), even if they only have a metropolitan or archiepiscopal type of organization.

Moreover, the jurisdictional prerogatives granted to the Patriarchal See of Constantinople by canon 28 of the IV Ecumenical Council (Chalcedon, 451) also do not entitle him to exercise jurisdiction over the other patriarchal Churches (Larchet, 2012, p. 105-106), but only in the geographical ecclesiastical area of his Patriarchate.

In terms of the canonical position which the Patriarchal See of Constantinople has in the hierarchical order of the Patriarchal Sees in Christian oecumenicity based on canon 28 of the IV Ecumenical Council (Chalcedon 451) - a Council which had an important role in „consolidating the organization of the Church and the collaboration between the Christian Church and the Byzantine State” (Stan, 2012a, p. 5) - this one was due only to the fact that, in illo tempore, Constantinople was the capital of the Eastern Roman Empire, and not to any superior gracious state that defined the position of the hierarchical steps or the jurisdictional relations between them.

Apart from the oeconomus, i.e. the manager of church goods, in the Eastern Orthodox Church there was also another type of administrator of church goods, called paramonar, who had „... in his care especially the social assistance units of the Church, such as the xenodochies, the hospitals etc.” (Floca, 1991, p. 87). These old social care institutions - established and organized by the Church - were managed through this administrator, whether a cleric or a layman.
5. Conclusions

From our paper concerning the managerial activity of the central executive bodies of the Romanian Orthodox Church, the reader can find out that the Church of the Romanian nation (Art. 5, para. 2, Statute R.O.C.), that it is a National Church, with an apostolic antiquity, has had a special contribution to the life and culture of the Romanian people (Art. 5, para. 2, Statute R.O.C.), and, in our days, it carries out a fruitful managerial activity in accordance with the canonical norms of the Eastern Orthodox Church and with its statutory and regulatory provisions.

From the text of our research, one can also note the fact that, based on the rules of Roman Law, sacred goods (res sacrae) belong to the Divine Law (divini Juris) and, as such, they are not the property of anyone, as it is stated also in the legislation and canonical doctrine of the Orthodox Church, and expressly underlined in the text of the Statute regarding the organization and functioning of the Romanian Orthodox Church.

Those who want to know also others aspects of the managerial activity of the Church, - whether they are jurists, economists, sociologists, etc. - must also take into account the fact that a familiarization, even if it is only of an introductory nature, with the ecclesiological field, Roman Law (Old and New) and Canon Law is inherent, because ignoring or not knowing their content does not allow them to understand not only the organizational and administrative structure, but also the managerial activity of the Church's bodies, and, consequently, even less so, the legal status of its autonomy, without which one cannot gain knowledge and a holistic view of the managerial activity of the central executive organisms of the Romanian Orthodox Church.

6. References

- Dură, N. V., 2011. Instituția juridico-canonică a Patriarhatului și implicațiile ei ecleziologice. De la sistemul de conducere de tip diarhic la cel pentarhic, și apoi la cel tetrarhic [The juridical-canonical institution of the Patriarchate and its ecclesiological implications. From the diarchic to the pentarchic and then to the tetrarchic system of government]. Revista de Teologie Sfântul Apostol Andrei, XV (1), pp. 21-51.
• Statutul pentru organizarea și funcționarea Bisericii Ortodoxe Române [Statute for the organization and functioning of the Romanian Orthodox Church], 2020, [online]. Available at: https://patriarhia.ro/images/documente/Statutul%20pentru%20organizarea%20si%20funcționarea%20Bisericii%20Ortodoxe%20Romane.pdf [Accessed 21 June 2023].