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CANONICAL RROVISIONS REGARDING THE ADMINISTRATION RIGHT OF THE CHURCH PROPERTIES

Abstract: From its beginning as historical existance, the Church – asked to follow our Lord Jesus Christ, who being rich has become poor so that we humans become rich in His poverty (II Cor 8, 9) – has justified its appel to temporary goods only to the extent that they were absolutely necessary for the life of the communion, especially to help the poor (Matthew 6, 19-21; 19, 23-24; Mark 4, 19; 10, 23-25; Luke 6, 24; 12, 16-21; 12, 33; 16, 19-31; 18, 24-25; I Timothy 6, 7-19; Revelation 18, 9-19). Thus, ever since its beginning the Church has confirmed its right to own goods and has entrusted to the ecclesial authority the right to manage them in order to maintain the Christian communities and to help those in need. In order to emphasize the quasi – exclusive purpose of administering the Church's assets the priest Julianus Pomerius defined them as „*vota fidelium, pretia peccatorum et* patrimonia *pauperum*" (Julianus Pomerius, *De vita contemplativa*, II, cap. 9 (PL 59, col. 454), and Saint Ambrozie of Mediolan mentioned that „*aurum Ecclesia habet non ut servet, sed ut eroget, ut subveniat in necessitatibus*" (Ambrosius Mediolanensis, *De officiis ministrorum*, II, cap. 28 (PL 16, col. 140).

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Across the history, the way of exercising the right of administering the Church's assets has evolved in accordance with the development of the Christian communities and with the legal regime they could have in the states in which they were organized and worked. For a good understandig of the right of administering the Church's assets and the way of apply this right we need to briefly present its historical evolution followed by an analyze of its canonical provisions[1].

[1] Y. Congar, «Les biens temporels de l'Eglise d'après sa tradition théologique et canonique», G.

1. Right of administration of the Church assets

In the first three centuries the right of administration of the Churche's assests fluctuated in relation to the way the imperial authorities have reported themselves to the new Christian communities. As long as the Roman authority did not set any restrictions to Christians, the Church had the opportunuty to choose the way of administration of its goods[1]. After the persecutions have begun, the Church had to hide its corporate existance nad did not have the possibility to administrate its own legal goods. In this time of persecutions from the Roman authorities, the Church could not exercise its property right over its goods and implicitly the right of administration of them since Christianity was declared *religio illicita* in the empire and the Christian communities were considered to be *collegia illicita*[2].

In the beginning of the IV century by *the Edict of Sardinia* in the year 311, emperor Galeriu returned to the Christians from the empire the common goods from the persecution time of Diocletian[3]. After the Edict in the year 313, the Church experienced a new reality where the imperial authority was very generous to the Christians and regognized their legal right to own goods and to legally administrate them[4]. In this period of time the forms of acquisition of Church's goods multiply along with the way of adminstration of them, mostly taken from the Roman right in force in the era[5]. By the promulgation of the *Edict of Thessalonica* in the year 380, emperor Teodosie the Great decided that Christianity became the only religion legally recognized and that the Church's clerks were the only ones who could administrate the Church's properties[6].

Cottier (ed.), *Eglise et pauvreté*, Paris, 1965, p. 235.

[1] Cf. M. Roberti, «Le associazioni funerarie cristiane e la proprietà ecclesiastica nei primi tre secoli», *Studi dedicati alla memoria di Pier Paolo Zanzucchi*, Milano, 1927, pp. 89-113.

[2] G. Bovini, *La proprietà ecclesiastica e la condizione giuridica della Chiesa in età precostantiniana*, Milano, 1949.

[3] A. Baraznò (ed.), *Il cristianesimo nelle leggi di Roma imperiale*, Milano, 1996, p. 149.

[4] For details concerning on this change of status of the Church in the Roman empire, see: A. Cardinale- A. Verdelli, *Il cristianesimo da culto proibito a religione dell'impero romano. La nascita del potere della Chiesa nel IV secolo d. C., Roma*, 2010.

[5] Cf. A. Bucci, *La vicenda giuridica dei beni ecclesiastici della Chiesa*, Cerro del Volturno, 2012, pp. 33-44.

[6] D. Boicu, «Teodosie cel Mare și Edictul de la Tesalonic (28 februarie 380). Circumstanțe, comentariu, receptare», *Revista Teologică* 94 (2012), nr. 2, pp. 186-207. See also: G.L. Falchi, «Legislazione e politica ecclesiastica nell'Impero romano dal 380 d.C. al Codice Teodosiano»,

Therefore, starting with the IV century the Church establishes rules of acquisition and administration of Church's properties materialized both in *canons* of synods or holy parents and in some *imperial laws*. The general principle of these canonical and juridical regulation was that the Church had the right to administrate its own properties or the goods the State entrusted to it to administrate and that the administrators (the bishop, priest, deacon and the *oeconomos*) of the Church's goods could assimilate from the Church income only the necessary amount to maintain themselves and the places of worship and the surplus income left after ensuring the administration of the Church had to be reserved for social activities (educational, medical, philanthropic). In order to avoid any abuse in the administration of Church's goods, the bishop received also the right to supervise and to control the administration of all churchly goods from his diocese together with the *oeconomos* of the diocese while the synod of bishops the right to supervise and to control over the administration of the churchly properties of an autocephalous Church[1].

Starting with the IXth century, the administration right of churchly goods has developed within the Byzantine Empire where the patriarchs of Constantinople based on the churchly tradition and the custom of Law, legitimated the patriarchal stauropegial rights, namely, the right of the Ecumenical Patriarch to have and administer stauropegials, meaning monasteries exempted from the authority of the bishop of the diocese they belonged and which were under direct authority of the patriarch[2]. Later this patriarchal right has experienced succesive extensions, thus, at the end of the Xth century the patriarchs of Constantinople granted the administration right of some monasteries or monastic social centers event to laymen called „*charisticari*"[3].

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in *Atti della Accademia Pontaniana* VI (1986), pp. 179-212.

[1] I. Ivan, *Bunurile bisericești în primele șase secole. Situația lor juridică și canonică*, Bucharest, 2014, pp. 220-260.

[2] Cf. E. Bîrdaș, «Stavropighia în dreptul bisericesc», *Glasul Bisericii* 14 (1955), pp. 168-198; S.W. Becket, «The Stauropegial Monastery», *Orientalia Christiana Periodica* 66 (2000), pp. 147-167.

[3] Cf. A. Varnalidis, *Ὁ θεσμὸς τῆς χαριστικῆς (δωρεᾶς) τῶν μοναστηριῶν εἰς τοὺς Βυζαντινούς*, Tesalonic, 1985; H. Ahrweiler, «Charisticariat et autres formes d'attribution de fondations pieuses au X^{e} et XI^{e} siècles», in *Recueil des travaux de l'Institut d'études byzantines* 10 (1967), pp. 1-27; J. Darrouzès, «Dossier sur le charisticariat», in P. Wirth (ed.), *Polychronion. Festschrift für Franz Dölger zum 75. Geburtstag*, Heidelberg 1966, pp. 150-165; M. Païzi – Apostolopoulou, «Du charisticariat et des droits patriarcaux à l'exarchie patriarcale. Survivances et transformations des institutions byzantines», *Ἐπετηρὶς τοῦ Κέντρου τῆς Ἱστοριας τοῦ Ἑλληνικοῦ Δικαίου* 37 (2003), pp. 113-120.

Four century later, this right has extended so much that the Patriarch of Constantinople had under his authority not only monasteries but also goods, villages and even patriarchal castles situated outside its diocese in the entire Byzantine Empire[1]. Summarizing, we can say that in this period of time the Ecumenical Patriarchate through a sustained centralization activity of the churchly administration from the East and by imposing its authority to other bishop positions in difficulty, has managed to become the quasi – unique centre of the Eastern Church and the Ecumenical Patriarchate the exclusive image of the Church authority[2].

After the Ottoman conquest on May 29th 1453, the authority of the Patriarchate of Constantinople reached the highest point since the Ecumenical Patriarchate became in the Ottoman Empire *millet bashi*[3] or *etnarhos*[4], meaning the absolute chief – from a civil and implicitly religious point of view – of

[1] Cf. V. Parlato, «La politica di accentramento effettuata dal Patriarcato di Costantinopoli e conseguente lesione dell'autonomia degli altri patriarcati orientali nel IX secolo», in *Kanon* 5 (1981), pp. 79-84.

[2] Even though the Orthodox Church was defined as a communion of autocephalous or autonomous Orthodox Churches, at that time most of the autocephalous Orthodox Churches were subject to the authority of the Church of Constantinople. The autocephalous churches that remained, more or less, outside the authority of the Church of Constantinople were the Patriarchate of Ohrid (autocephalus since 927) and the Patriarchy of Pec (autocephalus since 1219). Cf. H. Gelzer, *Der Patriarchat von Achrida: Geschichte und Urkunden*, Leipzig 1902; V. Laurent, «L'archevêque de Peč et le titre de patriarche après l'Union de 1375», *Balcanica* 7 (1944), pp. 303-310; S. Anuichi, «Raporturile dintre Patriarhia Sîrbă de Ypek și Patriarhia Greco-Bulgară din Ohrida în secolele XIV-XVIII», *Studii Teologice* 12 (1960), nr. 9-10, pp. 570-581.

[3] The term *millet* (Turkish form of Arab *milla*) means *religion*, *religious community* or *nation* and designates a legally protected religious minority in the Ottoman Empire (cf. M.O.H. Ursinus, «Millet», în C.E. Bosworth – E. Van Donzel – W.P. Heinrichs – C. Pellat, *Encyclopedie de l'Islam*, vol. VII, Leiden-New York, 1993, pp. 60-64).

[4] The term ethnarch – ἐθνάρχης is the Greek translation of the Turkish expression *millet bashi* (έθνος – millet – nation, and άρχων – bashi – chief, head). The first to take on this responsibility in the Ottoman Empire was Ghenadie Scolarius, who on January 6, 1454, was named the Patriarch of Constantinople and therefore the ethnarch of Rum Millet by Sultan Mehmed II. For details, see: R. Clogg, «Greek Millet in the Ottoman Empire», in B. Braude – B. Lewis (ed.), *Christians and Jews in the Ottoman Empire. The functioning of a Plural Society*, New York-London, 1982, pp. 185-207; S. Runciman «Rum Milleti: the Orthodox Communities under the Ottoman Sultans», în J.J. Yiannias (ed.), *The Byzantine Tradition after the fall of Constantinople*, Charlottesville, 1991, pp. 1-15; I. Rămureanu, «Ghenadie al II-lea Scholarios, primul patriarh ecumenic sub turci», in *Ortodoxia* 8 (1956), nr. 1, pp. 72-109.

all Christians from the Ottoman Empire[1]. Actually, the *millet* was the practical application of a control system through the religion of the non Muslim population conquered whose leaders were directly named, controlled and distributed by the Ottoman power. This legal system allowed those religious minorities to administrate its own problems in accordance with specific laws and customs under the authority of the religious leader. Thus the religious leader had the status of civil servant of the civil administration and was the only official representative in the eyes of the Ottoman power who recognize him as *millet bashi* (*etnarh*), meaning „the chief" of the *millet (the nation)*. For this period of time, the right of the Patriarchal Synod and the bishops in the Empire to administrate the Church's properties was not acknowledged anymore, the hole responsibility being focused exclusively in the person of the Ecumenical Patriarchate as Senior Civil Servant of the Ottoman Empire, the only responsible for managing all orthodox Christian communities in the Empire[2].

During this long period of Ottoman conquest (1453-1923)[3], the Ecumenical Patriarchate has continued its action on administrative centralization of Orthodoxy, suppressing the autocephalous of the Orthodox Churches that were under the authority of the Ottoman Empire[4] and thus decreasing or even cancelling their right to administrate their own goods. From the testimonies of the time, it appears that in the Ottoman Empire the non Greek orthodox communities felt more suppressed: politically by the Turkish peo-

[1] For details on the privileges of the patriarch of Constantinople as a millet bashi, see: C.G. Papadopoulos, *Les privilèges du Patriarcat œcuménique dans l'Empire ottoman*, Paris 1924; J. Meyendorff, «From the Middle Ages to Modern Times: Development of the Orthodox Church Structures», *Orthodoxes Forum* 7 (1993), pp. 13-16.

[2] Cf. F. Van Den Steen De Jehay, *De la situation légale des sujets ottomans non-musulmans*, Bruxelles 1906, pp. 146-172. Voir aussi S. Stefanov, «Millet system in the Ottoman Empire – example for oppression or for tolerance ?», *Bulgarian Historical Review – Revue bulgare d'Histoire* 25 (1997), pp. 138-142.

[3] For a brief historical presentation of the Orthodox Church during this period, see: J. Meyendorff, «From the Middle Ages to Modern Times», pp. 5-22. See also: S. Runciman, *The Great Church in Captivity. A Study of the Patriarchate of Constantinople from the Eve of the Turkish Conquest to the Greek Wars of Independence,* Cambridge, 1968.

[4] The Autocephaly of the Patriarchate of Peć (Serbian Orthodox Church) was abolished on September 11, 1766, and that of the Archdiocese of Ohrid (Bulgarian Orthodox Church) on January 16, 1767. The two Churches were fully incorporated into the Patriarchate of Constantinople. Cf. J. Darrouzès, *Notitiae episcopatuum ecclesiae Constantinopolitanae. Texte critique, introduction et notes*, Paris 1981, pp. 197-198, 419-421.

ple and churchly by the Phanariot Greeks from Constantinople[1]. Thus, many times the Ecumenical Patriarchate taking advantage of his administrative position of *etnarh* in the Ottoman Empire nominated bishops and Greek priests for the orthodox Christian communities of another ethnicity or he took under his authority or the authority of some diocese or Greek monastic centres churches and monasteries or their goods (the so-called „*dependent churches* or *monasteries*)[2].

After the disappearance of the Ottoman Empire (1922), the administration right of churchly goods has seen a new stage when every Orthodox Autocephalous Church adapted to the legal system of the State where it was organized and functioned. Thus, the Autocephalous Churches have adopted their own rules (status of organization and operation and subsequent regulations) that said of the fundamental canonical principles regarding the administration of churchly goods in correlation with the specific civil legislation in force in that State. This practice has been transmitted in the contemporary period where the right to administrate the churchly goods fluctuates depending in the political pattern adopted by the States, being directly touched by the evolution of the political and legal systems, even reaching the case where in some States in certain periods of extreme political leadership (especially in communism), the Church is being totally deprived of its possessions and implicitly of the right to administer them. More specifically, according to specialists, nowadays the relationship between the State and the Church can be legally classified into three types of systems: close collaboration, neutrality and total separation[3].

2. ***Canonical provisions regarding the administration right of churchly properties***

In the first four centuries the Christian communities were formed

[1] Cf. J. Dalègre, *Grecs et Ottomans.1453-1923. De la chute de Constantinople à la disparition de l'Empire ottoman*, Paris, 2002; V. Roudometof, «From Rum Millet to Greek Nation: Enlightenment, Secularisation and National Identity in Ottoman Balkan Society», in *Journal of Modern Greek Studies* 16 (1998), pp. 11-48; D.G. Apostolopoulos, «Vivre sous deux ordre juridiques: l'expérience des chrétiens de l'Empire ottoman», *Ἐπετηρὶς τοῦ Κέντρου τῆς Ἱστοριας τοῦ Ἑλληνικοῦ Δικαίου* 37 (2003), pp. 133-140.

[2] M. Popescu-Spineni, *Procesul mănăstirilor închinate. Contribuție la istoria socială românească*, Bucharest, 1934, pp. 11-35. See also: I. Brezoianu, *Mănăstirile închinate și călugării străini*, Bucharest, 1861.

[3] S. Berlingò, «La condizione delle Chiese in Europa», *Il Diritto ecclesiastico* 112 (2002), p. 1318.

around bishops and the administration right of the community goods belonged exclusively to the bishop who pastored the community. Followers of the neo-testamentary writings[1], the bishops focused their activity mainly on the preaching of the Gospel and on the liturgical ministry, empowering to the deacons their right to administrate the Church's goods[2].

From the beginning of the IV century the notions of „Church's goods" (*res Ecclesiae*) or „churchly good" (*res* or *bona ecclesiastica*)[3] appear from a legal and canonical point of view and the Christian communities develop and organize in parishes and monasteries with own moral personality which were pastored by priests who had the advantage of having and administrating own goods (parochial or monastical), the bishop holding in these cases a preventive role in the administration of these goods[4]

In order to regulate the status of its goods, the Church had to follow both the evangelical teaching and the provisions of the Roman law on property and administration that were in force at that time. Due to this double obligation, new *pastoral rules* were established (*canons*) through which the Church regulated the status of its goods and the way they were administrated[5].

In defining pastoral rules related to the administration of its goods, The

[1] Cf. F.Ap. 6, 1-6. For details, see also: C. Preda, *Credința și viața Bisericii primare. O analiză a Faptelor Apostolilor*, Bucharest, 2002; I. Mircea, «Organizarea Bisericii și viața primilor creștini după Faptele Apostolilor», *Studii Teologice* 7 (1955), nr. 1-2, pp. 64-92.

[2] Cf. A. Perlasca, *Il concetto di bene ecclesiastico*, Roma, 1997, pp. 15-34; I. Cozma, «Patrimoniul bisericesc în perioada apostolică și până la Constantin cel Mare», în *Altarul Reîntregirii* 2013, pp. 103-120.

[3] A. Bucci, « Le radici storiche della formazione giuridica del concetto di bene ecclesiastico», *Appolinaris* 77 (2004), pp. 357-414.

[4] Cf. P. Fourneret, *Les biens d'Eglise après les édits de pacifications: ressources dont l'Eglise disposa pour reconstituer son patrimoine*, Paris, 1902; J.M. Piñero Carrión, «El transito del regimen centralizado al regimen beneficial, desde el punto de vista economico», *Ius Canonicum* 2 (1962), pp. 481-497. See also: V. Bo, *Storia della parrocchia. I secoli delle origini (sec. IV-V)*, Roma, 1988.

[5] Regarding the mutual influence between Roman law and pastoral rules of the Church, see: M. Troplong, *De l'influence du Christianisme sur le droit civil des romains*, Paris, 1943; A. Alivizatos, «Les rapports de la législation ecclésiastique de Justinien avec les canons de l'Eglise», in *Atti del Congresso Internazionale di Diritto Romano (Bologna e Roma XVII-XXVII aprile MCMXXXIII)*, vol. II, Pavia, 1935, pp. 79-87; O. Bucci, «La genesi della struttura del diritto della Chiesa Latina e del diritto delle Chiese Cristiane Orientali in rapporto allo svolgimento storico del diritto romano e del diritto bizantino», in *Apollinaris* 65 (1992), pp. 93-135; L. De Giovanni, *Chiesa e Stato nel codice Teodosiano. Alle origini della codificazione nei rapporti Chiesa-Stato*, Napoli, 2001.

Church assimilated the valid legal principles adapting them to their own specific needs. Thus, following the prescriptions of the Roman Law, the Church has stated that the administration right of its goods derive directly from its property right over its goods. Since the premise of birth, existence and exercising the administration right of goods is itself the property right, it results that the administration right represents a real main right derived from the property right. Consequently, the administration right of goods is a real main right and not a dismemberment of the property right because has an existence in itself and its holders exercise it in its own name in the legal relations with other subjects of law. For this reason, the responsibility of the acts or facts of the holder of the administration right in civil law is a personal, individual responsibility[1]. Also, the Roman Law in case of assimilating by itself a right of a person brings the help of the judiciary authority within the reach of those entitled and stops them from doing their own justice[2].

Deriving from the property right, the administration right can be established and assigned only by the owner of the property right. Therefore, between the owners of the two rights there are subordination relations created by individual administrative documents which is actually the basis of the right of administration. For this reason, the owner of the property right may, in some cases, withdraw or revoke the right of administration to the person who entrusted it. In such a situation, the person whose right of administration was withdrawn or revoked may contest this measure if he considers it to be unjustified.

All these principles of Roman Law regarding the right of administration of goods have been taken over in the practice of the Church and adapted accordingly to the ecclesial needs. Regarding the owner of the property right of the Church's goods, the Orthodox canonical doctrine has always state that the Church organized canonically in local communities legally recognized has the right of property over its own goods and that the right of administration of the Church's goods belongs to the Church authority[3]. Therefore, the subject of property of Church's goods is always a morally recognized person,

[1] L. Capogrossi Colognesi, *Proprietà e diritti reali. Usi e tutela della proprietà fondiaria nel diritto romano*, Roma, 1999.

[2] D. Trăilă, *Acțiuni civile în materie succesorală*, Bucharest, 2015, p. 3.

[3] I. Ivan, *Bunurile bisericești în primele șase secole*, pp. 141-171, 220-260; I.N. Floca, *Drept canonic ortodox. Legislație și administrație bisericească*, vol. I, Bucharest, 1990, pp. 469-489.

not a natural person[1].

The nature and the way of establishing the Church's authority as well as the way of transmitting it differs essentially from the nature of the profane or civil authority, from its way of being established and transmitted and even in terms of precise functions it performs. Thus, the churchly authority is not a purely human authority established only by the human will – the way the civil authority is established – but it is essentially a divine authority, meaning that its main point, the power factor on which it is based and developed is not derived from the human will or established by these, but it is an element with which Jesus Christ Himself endowed His Church (Matei 10.40; Luca 10, 16; Ioan 13, 20; Rom. 1, 16; I Cor. 1, 24; 3, 9; 15, 10; II Cor. 2, 17; 5, 20; 6, 1; 10, 8; 13, 10). According to Orthodox ecclesiology, *the authority* within the Church is represented by bishop at the eparchy level[2], by the Metropolitan Synod at the level of the Metropolitan Church[3], by the *Patriarchal Synod* at the level of the Patriarchy[4], and by the Ecumenical *Synod* at the level of the Church around the world[5]. In the parishes and monasteries from a diocese the bishop can entrust canonical the right of exercising the church authority to some priests from the diocese in case[6]. Hence, the right to administrate the Church's goods belongs *to the bishop or to the Synod of bishops* according to canon law and in the diocese this right can be entrusted by the bishop to a priest to be exercised in a parish or a monastery.

In accordance with the apostolic canons 34, 38 and 41, within his diocese, the bishop is responsible for the administration of eparchial goods and has the duty to present to the synod of bishops their situation. By canons 24 and 25 of the Synod of Antioch (341) it was specified the duty of the bishop to make the distinction between personal goods and the goods of the community he pastors, meaning the goods of the Church and to manage these goods transparently, informing the clergy within his diocese and the prohibition to entrust to his relatives or his friends the administration of the Church's

[1] I. Cozma, «Persoanele private titulare ale dreptului de proprietate ecleziastică în legislația canonică și civilă a primului mileniu», *Altarul Reîntregirii* 2008, nr. 3, pp. 269-284.

[2] Cf. can. 38, 39 și 41 ap., 8 IV ecum., 31 trulan, 24 și 25 Antiohia.

[3] Cf. can. 34, 37 ap., 5 I ecum., 19 IV ecum., 8 trulan, 6 VII ecum., 9 și 20 Antiohia, 33 și 95 Cartagina, 40 Laodiceea.

[4] Cf. can. 34, 37 ap., 9 Antiohia, 95 Cartagina.

[5] Cf. can. 8 III ecum., 1 IV ecum., 1 trulan, 1 VII ecum.

[6] Cf. 39, 42, 58 ap., 4 și 8 IV ecum., 17 VII ecum., 80 Cartagina, 1 I-II Constantinopol. See also: I. N. Floca, *Drept canonic ortodox*, vol. I, pp. 483-489.

goods; otherwise, the bishop must be sent to the Synod trial. Also, through canon 33 of the Synod of Carthage (419) it was reiterated the clergy's ban on alienating the Church's goods and the duty of the bishop as administrator of the Church's goods to inventory and enroll them in a registry.

More, in the IV centurya new responsability in Church appears for the administration of churchly goods, namely the responsability of the oeconomos who was elected between the clerics of the diocese or between the members of the parish or of the monastery and worked along those who had the rightto administer the churchly goods.

Thus, the canons 7 and 8 of the Synod of Gangra talk about the person charged with the administration of the churchly goods without using the term oeconomos and without mentioning if the person is a clergyman or a layman. Canon 10 of Saint Theophilus of Alexandria specifies that in a diocese the oeconomos must be designated by the decision of all clergymen in the diocese and the consent of the Chiriarh and that the goods of the Church must be administrated „with usefulness".

Canon 26 of the IV Ecumenical Synod imposed the compulsoriness for each bishop to designate an *oeconomos* from his clergymen who under his guidance would adminstrate the Church's goods. When the bishop position was vacant, canon 25 of the IV Ecumenical Synod mentions that the right of administration of Church's goods belongs to the *oeconomos* who can only do current activities of administration. For the case when the bishop is accused of mismanagement of the goods of the Church, canons 25 of the Synod of Antioch, 52 of the Synod of Carthage and 11 of the VII Ecumenical Synod foresee that the proto-hierarch (πρῶτος – *primus*) of the Church to call upon that bishop in front of the Synod to respond to accusation and to designate an *oeconomos* for the diocese of the accused bishop.

For clergymen, the canons, following the provisions of the New Testament[7] mentions that they have the right to ensure a decent living from the

[7] For the maintenance of Church servants, the following are specified in the New Testament: „*Make well those who are ill, give life to the dead, make lepers clean, send evil spirits out of men; freely it has been given to you, freely give.Take no gold or silver or copper in your pockets. Take no bag for your journey and do not take two coats or shoes or a stick: for the workman has a right to his food.*" (Matthew 10,8-10) „*Who ever goes to war without looking to someone to be responsible for his payment? who puts in vines and does not take the fruit of them? or who takes care of sheep without drinking of their milk?*" (I Cor. 9, 7). „*Do you not realise that the ministers in the Temple get their food from the Temple, and those who serve at the altar can claim their share from the altar? In the same way, the Lord gave the instruction that those who preach the*

proceeds of Church's goods management and that the rest of the income must be dedicated to the maintenance of places of worship and to the social activities of the Church. Commenting on the call of Apostle Paul as those who serve at the alter to live from the income of the Church, Saint Jerome underlines the duty of decency for the life of clergy saying that „*permittitur tibi, o sacerdos, ut vivas de altari, non ut luxurieris*"[1].

Thus, the apostolic canon 41 foresees that the bishop takes care of the income distribution to maintain the clergy and to help the Christians in need. The apostolic canon 59 sets the duty of the bishops, priests and deacons to help the clergy in need establishing that otherwise the guilty clergy to be punished by being stopped from ministry service and in the case of relapse, to be defrocked[2] „as one who has murdered his brother". In case the bishop has relatives in need, the apostolic canon 38 forbids favoring them and sets that they shall be helped the same as other christians in need[3].

Clergymen have the right to have and to administrate also personal goods that must be separated from the goods of the Church (can. 24 Synod of Antioch, can. 32 Synod of Carthage) and that must be written in will (can. 81 Synod of Carthage). Still, by canons 22 and 81 of the Synod of Carthage the clergymen (bishops, priests and deacon) were forbidden to leave their personal goods as inheritance to the heterodox even if they were relatives informing that in case of non – compliance they would be excommunicated. So the act of leaving the clergymen's personal goods as inheritance to heterodox is therefore regarded as apostasy. Canon 32 of the Synod of Carthage decided

gospel should get their living from the gospel." (I Cor. 9, 13-14).

[1] Hieronymus, *Commentariorum in Michaeam Prophetam*, I, cap. III, n. 472 (PL 25, col. 1184).

[2] According to the Orthodox canonical doctrine, deposition (καθαίρεσις) represents the total and final exclusion of a clergyman from the clergy. Thus, the deposited cleric irrevocably loses the right to commit any sacramental act, as well as the right to learn and to lead in the Church (cf. Can. 27 of the Council of Carthage, canon 8 of St. Nicholas of Constantinople, can 21 of the Trulan Synod). In addition, the Apostolic Canon 28 states that „if any bishop or elder or deacon rightly despised, for the guilty (obvious) guilt he would dare to touch upon the service entrusted to him for some time, to be definitively excluded from the Church „. For details on deposition, see: S. Cândea, *Pedeapsa depunerii din cler*, Sibiu, 1934; G. D. Katziapostolou [Γ. Δ. Χατζηαποστὸλου], *Ἡ καθαίρεσις τῶν κληρικῶν*, Atena, 1965; N. Dură, «Precizări privind unele noțiuni ale dreptului canonic (depunere, caterisire, excomunicare, afurisire şi anatema) în lumina învățăturii ortodoxe. Studiu canonic», în *Ortodoxia* 39 (1987), pp. 84-135, 105-143; I. N. Floca, «Caterisirea în dreptul canonic ortodox», *Studii Teologice* 39 (1987), 83-90 [republicat *Revista Teologică* 86 (2004), pp. 123-133].

[3] For details, see: G. Soare, *Biserica şi asistența socială în primele șase secole*, Bucharest, 1949.

that those clergymen who did not have personal belongings on their promotion day and who during their ministry service acquired properties on their name shall be considered „as if they assimilated God's belongings if they did not return the goods to the Church when they were scolded.

As to the goods of the Church, the holy canons forbid to those who manage them to alienate them, saying that „only in case of great need" the Church's goods can be alienated and only with the approval of the Bishop Synod[1]. Also, the holy canons accuse those who dare to assimilate the goods of the Church, saying that they must be punished by being restrained to take the Eucharist if they are laymen or by being defrocked if they are clergy and to return the Church's goods they have assimilated[2].

Therefore, in accordance with the holy canons in the Church the administration right of the Church's goods belongs to the churchly authority, meaning to *the Bishop and to the Synod of Bishops*. These bodies of authority exercise their churchly authority to manage the goods of the Church directly or indirectly according to the responsibilities received. Thus, The Synod of Bishops has both the role to prevent and control the management of Church's assets and the role of court for the bishops accused of mismanagement while the bishops are from their designation (official appointment) responsible for a transparent management of the goods of the Church within the diocese always together with a *oeconomos* elected from the clergy of that diocese.

The fact that the bishop has the canonical obligation to manage the goods of the Church transparently, by informing the diocese clergy he pastors with an *oeconomous* does not represent a decrease of his authority but a practical manifestation of ecclesial communion at an eparchial level and a real form of exercising the responsibility of the entire clergy within the diocese with regard to the right of administration of the goods of the Church.

Since the IV century together with the development of the Church organization, the *parishes and monasteries* are recognized as independent moral person and the *priests* become directly responsible of the management of the goods of the parish or monastery and by similarity with the bishops they must exercise this right together with an oeconomos elected from the laymen or the clergymen within the monastery[3].

[1] Can. 26 şi 33 of the Synod of Carthage.

[2] Can. 72 and 73 apostolic, 11 of St. Theophilus of Alexandria, 10 of the First and Second Synod of Constantinople.

[3] N. Milaş, *Dreptul bisericesc oriental*, Bucharest, 1915, p. 331, nota 2.

Later, with the development of church organization, mainly the social activities and institutions, the churchly authority has entrusted the management of the goods of some churchly institutions even to some laymen. So, the effective right to administer the goods of the Church is exercised by *the bishop, the priests* and *the oeconomos.*

The Bishop – *the administrator of the goods of the Church*

The Church has always said that the bishop has the full competence over the goods of his diocese and has the obligation to manage them according to the necessity of the Church. The Apostle Paul portraits the one who wants to become a bishop, describing his as being „a good administrator of his home", „not loving the silver" and „non-acquiring bad earning" (I Tim. 3, 3-4).

Regarding the administration of the goods of the Church, the apostolic canon 38 establishes that:

The bishop shall take care of all the churchly goods and manage them as if God Himself would watch over him; but he shall not assimilate them for himself or for his close relatives; and if the relatives are poor he shall give them as to the other people in need but he shall not sell what belonged to the Church because of the relatives (under the excuse of helping them).[1]

Moreover, the canons foresee that without the agreement of the bishop or of the person uncharged of administration, no administration action of churchly goods is allowed[2], and the apostolic canon 41 foresees that only the priests and deacons can collaborate with the bishop in order to manage these goods. More exactly, the canon 26 of the Ecumenical Synod IV has formulated the requirement that:

Every Church that has a bishop shall have an *oeconomos* too from its own clergy (of the diocese) to manage the churchly ones according to the bishop so that Church's administration shall not be without witnesses and thus for this reason its belongings to be vanished and the priesthood to be crushed (stigmatized) with defamation. And if the bishop shall not do that, he shall be under the holy canons.[3]

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[1] Cf. also to the 15 and 16apostolic canons, 16 of the First Ecumenical Council, 20 of the Ecumenical Synod, 17 and 18 of the Trulan Synod, 3 of the Synod of Antioch, 13 of the Synod of Sardis, 54, 80 and 94 of the Council of Carthage.

[2] Cf. apostolic canons 38, 39, 40 and 41, 7 and 8 of the Synod of Gangra, 24 and 25 of the Synod of Antioch, 26 IV Ecumenical, 12 VII Ecumenical, 2 St. Cyril of Alexandria.

[3] G. A. Ralli – M. Potli [Γ. Α. Ραλλη – Μ. Ποτλη], *Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων*, Athens, 1852, t. II, pp. 276-277; P. Ioannou, *Discipline générale antique*, Grottaferrata-Roma,

So it is clear that every bishop shall administrate the goods of his diocese by an oeconomos designated from his clergy. When the bishop does not follow this, canon 11 of the Ecumenical Synod VII gives to the Metropolitan the right to suspend the administration right from the accused bishop, to bring him in front of the Synod of bishops to answer the accusations and to designate an oeconomos for that diocese. Based on this canonical prescription, the Orthodox canonical doctrine gave this right to each of the leaders of a local Church (Archbishop, Metropolitan, Patriarch or Catholicos).

In other words, the Orthodox Church acknowledges for each leader of each local Church the right to interfere when a bishop does not comply with its obligations of administrating goods due to abuse or carelessness. This right which belongs exclusively to the leader of the local Church was called „the right of devolution"[1], even if this expression is not found in the body of the holy canons[2]. Moreover, it must be underlined the fact that within the Orthodox Church the right of devolution is considerate necessary and auxiliary to *synodality*[3]. In practice, this right of devolution consists in the fact that when a bishop is accused of financial fraud, the leader of that Church can call that bishop in front of the Synod to respond to accusations. Also, the leader of the Church must designate an oeconomos for the diocese of the accused bishop[4].

1962, t. I-1, pp. 89-90.

[1] The word „devolution" means - from a legal point of view - the passage of a right, a good or an ensemble of assets constituting a patrimony to one or more patrimony. Thus, in law, there is talk of the „devolution of succession". In the Orthodox Church, this word is understood especially in an extensive sense, because Orthodox canonists use it only to indicate the outcome of a transfer of skills. In fact, they claim that the „right of devolution" is the right of brotherly supervision and guidance *ex officio* exercised by the head of a local church when one of the bishops of this Church, through negligence or abuse, fails to observe his obligations to the holy canons. In addition, it is stated that this right can only be applied to administrative problems.

[2] The Orthodox canonists admit that „the right of devolution", even if it has been applied since ancient times in the Church, is not the Church's own, but has been borrowed from Roman law. For details, see: C. Pîrvu, «Dreptul de devoluțiune», in *Studii Teologice* 6 (1954), pp. 386-398; V. Șesan, «Dreptul de devoluțiune al Patriarhilor și Mitropoliților (în baza canonului 11 al sinodului 7 ecumenic)», in *Candela* 47 (1936), pp. 71-85.

[3] C. Pîrvu, «Dreptul de devoluțiune», p. 388. By synodality (συνοδικοτης), a word derived from the Greek word σύνοδος (composed of the combined preposition σύν – together and ἡ ὁδός – way, road), Orthodox theology understands any ecclesiastical leadership following the synodal model, „the authentic form of church leadership desired by Christ and implemented since the apostolic era „ (N. Dură, *Le régime de la synodalité*, p. 266).

[4] G. I. Soare, «Sistemul mitropolitan», pp. 114-115.

However, the right to trial that accused bishop belongs always to the Synod of his Church[1].

a. *The Priest – administrator of the goods of the Church*

Starting with the century IV, the priest has received the right to administrate the goods of the acknowledged Christian communities as independent moral person, namely the parish and the monastery. Therefore, the priest who has the responsibility to administer a parish has received the title of parish priest and the priest who had the responsibility of administering a monastery has received the title of *archimandrite* (ἀρχιμανδρίτης).

By analogy with the canonical provisions on the bishop's right to administer the goods of the diocese the rules regarding the right of the parish priest and of the archimandrite were established in order to administrate the parish or the monastery goods. Thus, these must make a difference between their personal belongings and the goods of the community, having the obligation to draw up an inventory for the goods of the community. The archimandrites or the parish priests receive the right to manage the goods of the parish or of the monastery from the moment of their designation and they exercise this right transparently, under the watch of the bishop by notifying the community and together with an oeconomos elected from the community. The bishop's supervisory activity over the way of administration of the goods of the parish or over the monastic community does not reduce the right of the parish priest right or the archimandrite right to administrate the goods of the community, but a practical manifestation of the hierarchical communion of the Church and also a practical way of exercising the clerical responsibilities within the Church.

However, it must be said that this canonical responsibility of the bishop to oversee how the goods of the parishes or monasteries in a diocese are handled does not reduce or cancel the right of the parish priest or of the archimandrite to administrate the goods of the community since they benefit of this right as a derivate of the right of property of the perishes or monasteries as distinct legal entities. In this regard, in his doctoral thesis, professor Iorgu Ivan (1899-2001) said: „the control and supervision of the bishop exercise on parishes, monasteries and on religious establishments within the eparchy shall not be seen as a right of administration of the bishop over the goods of these institutions. Since, the Bishops Synod exercises a right of control over

[1] Cf. the 74th Apostolic Canon and 14 of the Synod of Antioch.

the bishop to see closely how the asset of the diocese is administrated – being able to sanction the bishop for mismanagement – without interpreting this control as a right of administration of the Synod over the assets of the diocese, so the control and supervision of the bishop over the asset of the parish and of the religious establishments within the eparchy must not be understood as a right the bishop of administration over the property assets of these institutions. The administration right being tightly bound to property right it is understood that lacking the right to administrate, the right to ownership is also missing."[1]

This report between the bishop and the priest as administrators of Church's goods lead to establishing the tradition of collecting contributions from monastic and parish communities to the bishop. The Church did not agree with this at the beginning, condemning it even as a simony. Later, this practice has become generalized, being sanctioned even by the imperial law by *Novela 123.3* of Emperor Justinian when efforts are made to ensure fair contributions from the bishop to the leader of the Synod and from the clergymen to their Diocesan Bishop. Although there are no canonical provisions regarding these material contributions, the churchly tradition has preserved this custom justifying it as a real way of helping the ecclesial communities.

In case a parish priest or an abbot is accused of mismanagement of community goods they must respond in front of their bishop who according to the gravity of the accusation may directly sanction them or following the proposal of the Eparchial Consistory. If the sanctioned clergyman considers the punishment to be incorrect, he can challenge it by calling the Bishops Synod.

b. *Oeconomos – administrator of the goods of the Church*

As written above, in order to exercise the administration right *the bishop and the priest* must be helped by an *oeconomos* designated from the clergymen within the diocese or from the Christian community. Historically speaking the churchly oeconomos appears at the beginning of the century IV, more exactly after the year 313 and in the century V it was already a generalized practice.

Following the examples of the Apostles who think they cannot neglect the preaching of The Word of God to serve at the tables, they have requested the Christians to elect seven people „with a good name, full of Holy Spirit

[1] I. Ivan, *Bunurile bisericești în primele șase secole*, pp. 232-233.

and wisdom" who they have put in this ministry by putting their hands (Acts VI, 1-6), and the bishops witnessing the growth of the Church's assets and the acquisition and administration way and the difficulty of fulfilling the spiritual duties and the administration of Church's goods by themselves, started to elect people from their clergy who would be responsible of the administration of the ecclesiastical heritage. These people were called oeconomos and their number and responsibilities differ according to the goods of the Church. The oeconomos from dioceses is mentioned for the first time by Theophilus of Alexandria in canon 10 saying that an *oeconomos* shall be designated by the bishop with the consent of all the clergymen in the diocese so that the income from the administration of the goods of the Church to be use according to the needs.

Canon 2 of the Ecumenical Synod IV blame the unfair promotion in the responsibility of *oeconomos* of a diocese and canon 26 of the same Synod requires the presence of the oeconomos in each diocese, mentioning clearly his responsibility of administrating all the Church's movable and immovable assets. Although generally the *oiconomoi* were elected from the clergy of the diocese, sometimes the designation of some laymen as *oeconomos* was required since some of them, especially those with specialized studies would know better the practical issues and would better serve the interests of the Church (can 87, Synod of Carthage). Moreover, it was mentioned from the beginning that the bishop cannot designate an oeconomos from his relatives or from his residential people (can. 25, Antioch). These restrictions of the bishop must be seen as a pastoral care of the Church to protect the hierarchy and to avoid some problematic aspects.

The oeconomos of a churchly administrative unit, clergyman or layman must always depend canonically to his bishop and administrate the Church's goods under the supervision of the bishop (can.26, Ecumenical Synod IV) and if due to negligence or dishonesty the oeconomos causes damage to the Church, Novella 123 of the Emperor Justinian says that he answers with his own goods, as follows:

Oeconomos autem et xenodochos et nosocomos et ptochotrophos et aliorum venerabilium locorum gubernatores et alios omnes clericos iubemus pro creditis sibi gubernationibus apud proprium episcopum cui subiacent conveniri et rationem suae gubernationis facere, et exigi quod ex ipsis debentes ostendantur, illi venerabili reddendum domui, ex cuius ordinatione

debitum apparuerit[1].

After the parishes and the monasteries appeared, by analogy, the institution of *oeconomos* has become mandatory for those too. Thus, it has appeared in parishes the obligation for the parish priest to elect from the members of his community an *oeconomos* who would administrate the goods of the parish. Probably to distinguish them from the oiconomoi in the diocese those from the parishes have later been identified with the word *administrator* (επίτροπος – administrator)[2]. The obligation of the abbot to elect an *oeconomos* from the people of the monastery has been imposed in monasteries too.

Conclusions

From the analysis of the holy canons mentioned with regard to the administration of churchly goods and of the nomocanonical provisions it results the following fundamental principles in exercising the right of administration for the goods of the Church:

- The Church has both, *the right to own property* and the *right to administrate its own property* and *the goods that are put to its use<*
- *The right to administrate the goods of the Church* is a right derived from the right of property of the Church;
- The Church uses its body of authority (the bishop and the bishop's synod) to administrate its own goods and the ones that have been given to it to use;
- *The Bishops Synod* has the role of control and prevent within the administration of the Church's goods and in case of mismanagement it has the role of court for the accused bishop;
- *The head or proto-hierarch of the Bishops Synod* has the role of supervising the proper management of the goods of the Church and in case of mismanagement it has the right to designate an oeconomos in that diocese and to call that bishop t ogive explanations to the Bishops Synod;
- In the diocese *the bishop* is the only person responsible of the goods of the Church he has to manage „*as if God would watch over him*";
- The bishop must manage transparently the goods of his diocese and always with the help of an oeconomos elected from the clergy of his diocese;
- With the bishop entrustment, the parish priests and the abbot have

[1] Justinianus, *Novella 123*, cap. 23.

[2] E. Roussous, *Λεξιλόγιον ἐκκλησιαστικοῦ δικαίου τρίγλωσσον. Βυζαντινὸν δίκαιον,* Ἀθῆναι, 1948, p. 205.

the right to administrate the goods of the parishes or of the monasteries, always with the help of an oeconomos elected from the community;

▪ With the bishop entrustment, some laymen have the right to administrate as oeconomos the goods of some churchly institutions (associations and foundations) that function with the Church blessing.

▪ In case the administrators of the Church's goods would cause damage, due to lack of attention or bad will, they are canonical-disciplinary and administrative-ecclesiastical liable towards the churchly authority (the bishop or the synod of bishops) and is legally liable to civil and criminal courts, based on the legislation in force.

All these principles must be applied in the Church always by corroboration and not separately, of course taking into account the other fundamental canonical principles for the organization and functioning of the Church.