



Post-Communist Restitution of the Nationalized Reformed and Roman Catholic Church Property in Romania

Emőd VERESS

Professor of Law – Director of the Institute of Law
Sapientia Hungarian University of Transylvania
E-mail: emod.veress@sapientia.ro

Abstract. In the course of this study, we will analyse the process of nationalization and post-communist restitution of church property in Romania, with a special focus on the immovable property items which once belonged to the Reformed Church and the Roman Catholic Church. We show that nationalization of such assets took place in several waves and quickly resulted in the dispossession of these churches of the means of their educational and charitable activities. We also show that this nationalization was underpinned by a patchwork of legal norms and was carried out with utmost prejudice by the Soviet-type state apparatus. After the regime change of 1989, the Romanian legislative, owing to foreign pressure, half-heartedly endorsed the restitution of some nationalized church properties by several successive norms through a primarily administrative procedure. We demonstrate the shortcomings of this procedure on two examples of church schools, where restitution failed, and in one case even resulted in renationalization. We conclude that the restitution of church property, as devised by the Romanian legislative, is a deeply flawed solution to an ongoing problem.

Keywords: nationalization, communist regime, property restitution, church property, Romania

Overview

The commandment ‘Thou shalt not steal’ seems to be principally a rule of criminal law: anyone who takes any belonging of another person in order to illegally appropriate it commits theft. However, the criminal law approach is only one component of the biblical commandment. Indeed, the entire system of private property protection can be deduced from this one commandment. Even

more than that: it may be construed to cover the protection of such values as language or culture.

John Calvin interprets the ‘Thou shalt not steal’ commandment in the following manner:

The end of this precept is, that, as injustice is an abomination to God, every man may possess what belongs to him. The sum of it, then, is, that we are forbidden to covet the property of others, and are therefore enjoined faithfully to use our endeavours to preserve to every man what justly belongs to him. For we ought to consider, that what a man possesses has fallen to his lot, not by a fortuitous contingency, but by the distribution of the supreme Lord of all; and that therefore no man can be deprived of his possessions by criminal methods, without an injury being done to the Divine dispenser of them.¹

The question of communist nationalizations can also be interpreted in this context: in reality, the communists never desired that the redistribution of appropriated goods should benefit the people, instead they created a comprehensive system of state ownership used to maintain the dictatorship in order to preserve the power of the ruling oligarchy, the *nomenklatura*. Unfortunately, during attempts at the reparation of the abuses carried out by the communist dictatorships, these measures of nationalization were not disentangled correctly and in accordance with the values of the Ten Commandments.

The Soviet-type dictatorial regime illegally confiscated over 2,100 properties from the four traditional Hungarian-speaking churches in Romania (Roman Catholic, Reformed, Unitarian, and Lutheran). To date, only less than half of these church properties have been successfully reacquired – some only on paper – by decisions of the Government’s Special Restitution Committee.

After the regime change in 1989, successive Romanian governments have impeded the country’s full democratization by delaying and obstructing the restitution process with impunity. In doing so, the state was able to retain abusively confiscated properties as long as possible. By now, most of the buildings need extensive renovation. In the worst cases, they are dilapidated and uninhabitable.

The problems which occurred during the painfully slow restitution process of church properties, which were confiscated (‘nationalized’) by the Soviet-type regime at the stroke of a pen, justify a thorough analysis of the current status of church property restitution – focusing on its shortcomings; some of these have been common to all churches in Romania, while some others have been specific only to the Hungarian-speaking minority churches of Transylvania.

1 Calvin 1909. 367.

The Soviet-type dictatorship effectively outlawed denominational schools. Movable and immovable possessions used for educational purposes were simply confiscated by the state. Totalitarian law provided that any person opposing 'nationalization' could be sentenced to between 5 and 10 years of forced labour and could have his/her private property confiscated.

For the Hungarian minority churches in Transylvania, the consequences were devastating. More than 1,000 Hungarian-speaking denominational schools were confiscated by law; in the interwar period, 531 schools were operated by the Reformed Church, 468 by the Roman Catholic Church, 34 by the Unitarian Church, and 8 by the Evangelical Lutheran Church. These schools formed the basis of preservation of the minority language and culture.

In their complex structures, the churches owned different types of properties: schools, hospitals, orphanages, retirement homes, housing for the elderly, etc. It is very important to emphasize that churches used to perform a wide range of social activities, not only in the life of a national minority but in their whole communal environment. Via these charitable and educational activities, churches were often complementing the deficiencies of state structures or counterbalancing the negative effects of particular state policies directed against minority groups.

'Nationalization' was fast, simple, and effective: it was implemented overnight. On the contrary, property restitution is acrimonious and progresses at a snail's pace. Despite various legal instruments on property restitution and countless deadlines for implementation, the political will to enforce them has remained absent or severely limited. The slow pace of reform in the justice system directly affects religious freedom in Romania. Most notably, (1) refusals to enforce final judicial verdicts establishing property rights of churches; (2) the refusal to implement or enforce the law or government decisions referring to the restitution of properties; (3) misinterpretation of facts and legal provisions; (4) acceptance of legality of unlawful sales contracts concluded by the state before the start of the restitution process; and (5) even interpretation in bad faith of legal provisions.

In response to pressure from the European Commission, the Government passed an Emergency Ordinance no 94/2000, approved and modified later by the Parliament through Law no 501/2002, which constitutes the legal basis for the restitution of properties illegally seized from religious denominations under the communism in the period between 1945 and 1989. The legal solution came more than a decade after the end of Communism. This law was followed by other laws and decrees, all flawed and ineffectual. The current state of restitution is characterized by the interaction between legislation, the staggered evolution of this legislation (fragmented evolution), the limited efficiency of public administration, the general problems of the rule of law, the unpredictability of application of normative acts, and the contradictory jurisprudence of the courts. Another factor in the slowdown of the process is that Romania has already reached its main external policy goals

(i.e. NATO membership in 2004, EU membership in 2007), and the burden to prove its commitment to church property restitution has seriously weakened.

The central and actual problem of restitution refers to the cases in which a certain educational, cultural, or scientific institution of the Church figured in the land register as the owner of a certain building. The restitution committees reject claims motivating that the Church is not entitled to restitution because not the Church but a different legal person was the owner. This approach is totally wrong and disregards the complex internal structure of churches, which are constructed as very elaborate organizations with each element of their structure organically belonging to the body of the given church, as stated very clearly also by ecclesiastical law. Also, this approach does not take into consideration the fact that the organization which figured in the land register as the original owner has ceased to exist precisely due to the nationalization measure being taken. This approach of the restitution committee and of some courts needs urgent revision, and the correct and definitive legal solution must be identified at once.

Nationalization

The Romanian state after 1945 performed nationalization in several waves: health and social institutions, agricultural land, private properties, private companies, cultural/social institutions, and last but not least educational establishments. The nationalization of church properties was an important, early station in the establishment of the communist regime because the churches operated numerous educational, social, cultural, and missionary institutions.

The adoption of a new constitution (Official Gazette, Part I, no 87, 23 April 1948) at the beginning of 1948 was an important legal step that shaped the Soviet-type organization of the state. Among other provisions, Article 6 of the Constitution states that forests are owned by the state as public property. Article 22 states that the State provides for everyone the right to education, and according to the Article 27 a church or religious denomination cannot maintain general education facilities. Prior to the Constitution, the Land Reform of 1945 (Official Gazette, Part I, no 68, 23 March 1945) set the stage for the nationalization of agricultural land. Later on, a whole variety of additional legislation completed this process.

On the 3rd of August 1948, two decrees were issued by the legislature, which completely supplanted churches from educational activities, deprived them of any kind of property, and through these means a Soviet-type school structure was created, establishing an education system fully controlled (financially and ideologically) by the State.

‘Educational Reform’ Decree no 175 (Official Gazette, Part I, no 177, 3 August 1948), which was in fact an administrative regulation signed into law, in its first

phrase declares that a uniform public education structure is to be created and organized exclusively by the State.

According to this Decree, all schools operated by churches or private bodies became public schools. According to the Decree (Article 37), all persons resisting the implementation of these measures could be convicted to 5 to 10 years of forced labour and the confiscation of their property. For the entire Romanian educational system, the 'educational reform' opened a new era. For Hungarian-language education, however, the disbanding of all the elementary and secondary schools, which until then – in several cases, for three or four centuries – were operated by the historical Hungarian churches, brought forth a severely acute and dire situation. Altogether 531 schools operated by the Reformed Church, 468 schools of the Roman Catholic Church, 34 schools of the Unitarian Church, and 8 schools maintained by the Evangelical Lutheran Church were nationalized.

Together with the real estate, the State nationalized the associated movable assets as well, including furniture, libraries, equipment, scientific collections, and so forth.

Decree no 176 (Official Gazette, Part I, no 177, 3 August 1948), which is also a Council of Ministers regulation with legislative enactment, based on Decree no 175, provides for the nationalization of all religious schools along with all their assets. Within the meaning of the first paragraph of this law:

For the good organization and operation of state-owned public education, as well as for the democratization and expansion of education, all movable and immovable assets which belong to the churches or any kind of congregations, religious communities, private associations, or if they were held by private physical and legal entities or they served the nationalized educational institutions according to Article 35 of the Public Education Act, are transferred into state property under the care of the Ministry of Education.

Any property serving the operation of schools, boarding schools, student homes, or canteens fell under the scope of this law. According this regulation, all those bodies which organized and operated private schools were disbanded.

These laws effectively proscribed all the church and private schools. The movable and immovable assets used for purposes of education were simply confiscated by the State. The nationalized schools and their detailed related lists of properties are to be found in the Annex of Law no 176. The list reveals a ruinous assault on the Hungarian historical churches in Romania. Based on the ethnic partition of the nationalized schools and the confiscation of the belonging assets, it is obvious that the Hungarian minority churches in Transylvania, Romania, were dramatically impaired. From the 1,611 religious schools which were nationalized by law, as we have stated before, 531 schools were operated by

the Reformed Church, 468 schools by the Roman Catholic Church, 34 schools by the Unitarian Church, and 8 schools by the Evangelical Lutheran Church.

Privately run health and social services were nationalized in 1948 by Decree No 302 (Official Gazette, Part I, no 256, 3 November 1948).

The communist state's repressive policy towards the churches has become more overt in 1948. The above mentioned and other legislative measures created new legal foundations for the rapport between the Romanian communist state and the churches. The legal framework ensured the closing down of all church-operated educational, social, and cultural activities and nationalized every church property which served these objectives. As for denominations, the General Law on Churches (Official Gazette, Part I, no 178, 4 August 1948), among other things, imposed that in order to operate lawfully all religious denominations should forward their operational and organizational by-laws, which had to be adopted by the Grand National Assembly, being previously approved by the Ministry of Culture. Article 23 stipulated that the Ministry of Cults has the power to overrule any kind of decisions regarding administration of the church on cultural, educational, and charitable dispositions, provisions, or instructions if those endanger state security and public order. All the pastoral letters, circulars should be sent to the same Ministry for censorship. Article 30 stated the strict financial monitoring of congregations. The budget of the Church districts and dioceses required a previous ratification by the Ministry of Cults. Article 40 stipulated that all the churches may keep contacts with the same denominations abroad only with the approval of the Ministry of Cults and through the mediation of the Ministry of Foreign Affairs. Article 41 barred foreign church structures from exercising any kind of jurisdiction over the churches in Romania.

Historically, the operation of the schools and charitable institutions was made possible by the buildings possessed by the churches. The maintenance of these establishments was funded by the income of agricultural lands and forests also owned by churches. With the expropriation, the social and educational service of the Church was practically left without any material basis.

Legal Background of the Restitution Process

The overthrow of the Soviet-type regime, based on the dominance of state property in all areas of social existence, a new chapter was opened in the history of the churches. The new Constitution adopted in 1991 [Article 29, para (3)] declared the freedom of religion, the organizational autonomy of the churches ('All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law.'), and also the support of the state for religious denominations, including the facilitation of religious assistance in the army,

hospitals, prisons, homes for the elderly, and orphanages. In general, proper legal settings were implemented to facilitate the functioning of churches.

One essential matter remained open: if the acts of nationalization of the communist regime are considered abusive and illegal, how to proceed regarding these acts of expropriation? The restitution process included all private owners from whom properties were confiscated by the communist state: agricultural lands, privately owned forests, buildings, industrial property, and so forth. The tactic of the first governments after the regime change targeted a very limited restitution, gradually expanding, especially after 1996 (when a political coalition less rooted in the Communist past won the election), regulated as a labyrinthine, complicated, and contradictory process.

The churches in their complex organization were owners of different sorts of properties: kindergartens, schools, orphanages, hospitals, retirement centres, and homes for the elderly. It is very important to state again that the churches performed a wide range of social services not only in the life of a national minority but in their environment as well. These activities were often filling the gaps caused by inefficient state policy in the field of social welfare, at the same time also correcting the failures of this strategy or counterbalancing other state policies with negative effects concerning a minority group. Therefore, restitution of this property is seen as crucial, a special question.

All the shortcomings raised by the State in order to hinder the restitution process are rightfully perceived as a further deliberate limitation of these church activities.

The first step of church property restitution, based on Emergency Ordinance No 83/1999 regarding the restitution of property that belonged to communities of national minorities in Romania, was the return of immovable property. Emergency ordinances in the Romanian constitutional order are normative acts adopted by the Government (the Cabinet of the Prime Minister), having the force of law, conditioned to an exceptional situation that justifies this intervention and to *post facto* parliamentary approval. The real estates, consisting of constructions and adjoining land or free urban land were contained in the Annex as an integral part of the Emergency Ordinance. The Ordinance empowered the Government to supplement the Annex if necessary, through Government decisions.

This Emergency Ordinance established its own scope as the restitution of real estate which belonged to the communities (organizations, religious groups) of national minorities in Romania, which were nationalized after 1940 by the Romanian State by means of coercion, confiscation, nationalization, or deceptive manoeuvres, to be returned to their rightful owners or their heirs.

A Special Restitution Committee was established with 3 members [a representative of the Ministry of Justice, a representative of the Department for the Protection of National Minorities, and a representative of the concerned minority organization (depending on the real estate)].

Another normative act of limited restitution was *Emergency Ordinance No 94/2000 regarding the restitution of property that belonged to religious cults in Romania*. This ordinance, in its initial form, limited the maximum amount of real estate that may be restituted to each religious centre/diocesan centre to no more than ten. A new, seven-member committee was established, formed only by the representatives of state authorities, the representative of the Church having a guest status.

One of the most important general restitution norms, *Law no 10/2001 on the legal regime of some buildings taken abusively between the 6th of March 1945 and the 22nd of December 1989* stated that the legal regime of properties that belonged to religious or national minority communities, nationalized by the state or other legal entities, will be covered by special norms. Until such a restitution can take place, regulations prohibited the alienation (i.e. sale, donation, etc.) of the real estate in question or any change of destination, in some cases this interdiction being already too late.

The general regime of church property restitution was finally created by Law no 501/2002 approving Government Emergency Ordinance no 94/2000 regarding the restitution of properties that belonged to religious cults in Romania. This Law approved but also modified the Ordinance, creating the general legal framework for church property restitution.

The Restitution Committee took a new shape, working in the presence of 5 out of the 7 representatives of the state authorities. A new deadline of 6 months for submitting restitution request was opened, with the express statement that documents proving the required rights may be submitted within a reasonable time determined by the committee. (A further six-month deadline was granted by the provisions of Law no 247/2005).

Decisions of the Committee may be challenged before the administrative court within 30 days, calculated from the communication of the decision. The judgment of the administrative court is subject to appeals according to Law no 554/2004. Practically, the Committee being a central authority of the state, the first instance jurisdiction belongs to the Court of Appeals, and the High Court of Cassation and Justice of Romania passes the final verdict.

In cases when the restituted property was previously destined for activities of public interest, e.g. in education or healthcare, financed or co-financed from the national or the local budget, the new owner is required to maintain this public interest purpose for up to 5 years from the date of issuance of the restitution decision. During this period, the new owner will be the beneficiary of rents in the amount established by Government decision. Law no 165/2013 subsequently extended this term from 5 to 10 years.

Acts of sale of property covered by the Ordinance are null and void if they have been concluded in violation of the imperative legal provisions in force at the time of alienation.

According to this Law, in the case of restitution of an immovable property item, also movable property items are restituted if the movables were taken with the immovable and exist at the time of the request for restitution submitted by the concerned church.

For proof of ownership rights, the applicant may submit written evidence, certified testimonies, experts' opinions as well as any document which, combined, attest the authenticity of possession at the date of the abusive nationalization. In the absence of opposing evidence, the existence and, where appropriate, the extent of ownership is presumed to be the one resulting from nationalization documents, and also the person/entity determined in the nationalization documents is considered as the owner of such property. If the immovable property subject to this Ordinance was legally alienated after 22 December 1989, churches can opt for indemnification.

The fragmentation of the restitution process was caused by several factors. At first, there was no intention to restitute church properties. In the next stage, only a limited restitution was tolerable for the State and for the governing political parties. Just the latest phase provides for a general restitution.

External and internal factors played a crucial role in the evolution of the restitution process. External factors significantly determined the start and development of church property restitution. Romania has received a great deal of international criticism with regard to the restitution of church properties.

The United States of America followed the Romanian restitution process, and it has urged restitution according to the *restitutio in integrum* principle in all possible international forums. In 2002, during a debate in the US Congress preceding NATO enlargement, congressman Tom Lantos, senior member of the Committee on International Relations, as well as representatives Tancredo and Robert Matsui criticized Romania over the slowness of the restitution process of unlawfully confiscated properties.

In a resolution, unanimously adopted more than ten years ago (in 2005), the House of Representatives of the United States has urged Romanian authorities to complete the restitution of church properties as soon as possible.

In order to speed up the restitution processes, dozens of representatives of the US Congress requested Secretary of State John Kerry to intervene in the matter. In their reply, the US foreign policy structures regarded the issue of restitution as crucial, signalling that they are paying close attention to the development of this issue and find it important that the legislation on property restitution be strictly abided by.

In June 2015, at the meeting of the Budget Committee of the State Department, Marcy Kaptur, democratic congresswoman of the State of Ohio, expressed her concern regarding the way the Romanian government deals with the issue of restitution: 'It is our responsibility to stand on the side of human rights and religious freedom, most especially in countries still dealing with the dark

legacy of communism.’ Congressman Andy Harris, republican representative of Maryland, stated that: ‘The State Department has to take all possible steps to advance church property restitution.’ It is for the first time that the Congress of the United States considers a community issue from Romania as their own interest by making it part of the budget of the State Department.

Court decisions ruled in several cases on the question of the rule of law in Romania, all the more given that Romania has stated on several occasions in front of international organizations that church properties confiscated by the communist regime would be restituted to their original owners. This opinion is shared also by the Conference of European Churches and the United Protestant Church of Belgium. According to these, faith in public authority and a reliable legal environment are the pillars of a State under the rule of law. Consequently, by ignoring the existing legislation, the rule of law in Romania is infringed.

According to the European Commission, the regulation of provisions regarding restitution is an attribute falling under the competence of Member States, wherefore neither the European Union nor the European Commission are competent to act in this respect. However, respecting human rights, compliance with the law and law enforcement is one of the EU’s fundamental values. As soon as these rights are considered as violated during the restitution processes, the European Union becomes competent as well.

Regarding internal factors, for example, Law no 501/2002 approving Government Emergency Ordinance No 94/2000 regarding the restitution of property that belonged to religious cults in Romania was adopted mainly due to the fact that the governing Social Democratic Party had a minority government, and for its stability the parliamentary backing of the Democratic Alliance of Hungarians in Romania was needed. For this support, the two political organizations agreed to finally create the general church property restitution law.

Current Problems

The trend of restitutions which concern schools and other institutions operated by different churches and nationalized by the Soviet-type dictatorship has turned negative in recent times. The Romanian state, after nationalizing church property by tyrannical means and abolishing church institutions, now in several cases denies the return of these nationalized properties. There are some examples of the absurdity of the situation.

The buildings of the Reformed College in Cluj-Napoca (in Hungarian: Kolozsvár, in German: Klausenburg), founded in 1545, were restituted by the state in principle by means of Government Emergency Ordinance No 83/1999. In the single land register, however, there were two buildings recorded, the ‘Old College’, with an entrance

from a certain street, and the 'New College', the entrance of which opens from another, parallel street. The Emergency Ordinance provided the single land register number but only contained the postal address of the 'Old College', exactly as it was at the moment of the communist nationalization. The state school in possession of the 'New College' building filed a lawsuit, and the court set aside the land register as a real, legal, and accurate mean of identification, unlawfully used only the postal address to identify the property, and found that only the 'Old College' building was ordered to be restituted by the state with the referenced Emergency Government.

A subsequent law, a revised version of Government Emergency Ordinance No 94/2000, allowed the Transylvanian Reformed Church District to request the restitution of the 'New College' building in a new and separate procedure. However, the Restitution Committee stated that since the Reformed College has been entered in the land register as owner, the Transylvanian Reformed Church District is not entitled to the restitution of the property because it was not the former owner before the nationalization. I will return immediately to the legal grounds of this problem since this fictitious and artificial argument is at present the main reason for the refusal of restitution.

The Székely Mikó Reformed College in Sfântu Gheorghe (in Hungarian: Sepsiszentgyörgy), founded in 1858, was also returned to the Transylvanian Reformed District by Government Emergency Ordinance No 83/1999, but in this case a criminal court found that the restitution committee did not act lawfully and practically renationalized the by then completely renovated school building. The restitution procedure was resumed by the Church District, but the Restitution Committee rejected the request with the argument that I have already mentioned in the previous case: in the land register the Calvinist Székely Mikó College is recorded, wherefore the Church District is not entitled to claim back the property because it was not the previous owner of that property.

This argument, however, is completely unfounded. The essence of the argument is that the owner, according to the land register, was a school with legal personality and not the Transylvanian Reformed Church District, so the Church District is not entitled to restitution.

This artificial argument disregards the provisions of church law, the law in force at the moment of registration, and the law in force at the time of nationalization. The argument serves only the purpose of halting the restitution process and reversing the restitution that has already been achieved.

The Ecclesiastical Law of the Reformed Church defines these schools as parts of the organizational system of the Church, as autonomous structures belonging to the body of the Church. The Reformed Church Law therefore does not recognize schools as separate legal entities or as legal persons.

The law in force at the time of the land registration (the law of the Austro-Hungarian Monarchy in Transylvania) never gave legal personality to these schools.

Indeed, in 1911, a resolution published in the Official Gazette of the Judiciary stated that registration of the school into the land register does not call into question the ownership right of the Church, giving an official interpretation of this situation. This method of registration was otherwise generally used. In all cases, it mentioned that it is a Reformed school: the reference to the Church indicates the owner, and the word 'school' officially fixed the purpose of the property.

Following the annexation of Transylvania to Romania (1918–1920), church schools could continue to operate. The legal basis was granted by the Law on Private Education adopted in 1925, which did not, however, give the schools any legal personality other than that of the founder or of the maintainer. So, these schools were not separated from the church body even according to Romanian law. We also have to note that the land registry law has not changed, previous rules have been applied after World War I, and so the 1911 resolution of the Ministry of Justice solving the issue was in force in this era as well.

This was the situation at the moment of nationalization, and so nationalization has been carried out against the Reformed Church. The Church, as an owner, was able to suffer the nationalization, but it is not suitable for restitution.

From this schematic overview, it is apparent that the arguments used against the Transylvanian Reformed Church District to deny restitution are of an artificial character, without regard to the historical examination of the law. Modern perception of legal personality is projected into the past in order to stop the restitution process and refuse legitimate demands. It is interesting that this strong negative attitude exists mainly towards the Reformed and Roman Catholic Churches. The fate of the Roman Catholic Batthyaneum Library and the ongoing litigation revolves around the same problem. The building, which houses this magnificent library and scientific collection, has been registered into the land register as a Roman Catholic Astronomical Observer and Library. Therefore, according to the Restitution Committee, the Roman Catholic Church has never owned this property, and thus cannot claim it back.

These interpretations are also contrary to the rule of law and the right to freedom of religion. The state deviates from its own restitution laws in a discriminatory manner, diverting the scope of this legislation from its original aims and refusing to meet legitimate restitution requirements.

It is evident that the biblical commandment cited as an introduction is in fact a legal norm: those words would allow several infringements to be solved correctly if the court were to use the Bible as a code of law for the above mentioned legal disputes. Because many other laws, government ordinances, government decrees, administrative acts, and court decisions in practice and in fact only serve to avoid the simplest, most important, general-purpose norm: 'Thou shalt not steal.'

References

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