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Canonical and administrative issues relating to the Parish in the Romanian Orthodox Episcopate of America

Introduction

Orthodoxy in the United States is well-defined yet complex, encompassing a mosaic of eparchies (metropolitanates, archdioceses and dioceses), representing seven Orthodox canonical jurisdictions: Ecumenical Patriarchate (Greek Orthodox Archdiocese of America, Ukrainian Orthodox Church of the USA, Albanian Orthodox Church of America, American Carpatho-Russian Orthodox Diocese of the USA), Patriarchate of Antioch (Antiochian Orthodox Christian Archdiocese of North America), Patriarchate of Moscow (Russian Orthodox Church in the USA, Russian Orthodox Church Outside Russia – ROCOR), Patriarchate of Serbia (Serbian Orthodox Church in North and South America), Patriarchate of Romania (Romanian Orthodox Metropolia of the Americas), Patriarchate of Bulgaria (Bulgarian Eastern Orthodox Diocese of the USA, Canada and Australia), Patriarchate of Georgia (Georgian Orthodox Church), Orthodox Church in America¹. All these Churches are members of the Assembly of Canonical Orthodox Bishops of the United States of America². However, besides these canonical jurisdictions there exist other entities that call themselves ‘Orthodox’, but are not recognized canonically because they are not in communion with any canonical Orthodox Churches worldwide³.

¹ The Orthodox Church in America has 12 dioceses in the United States, as follows: Diocese of Alaska, Albanian Archdiocese, Bulgarian Diocese, Diocese of Eastern Pennsylvania, Diocese of Midwest, Diocese of New England, Diocese of New York and New Jersey, Diocese of South, Romanian Episcopate of America, Archdiocese of Washington D.C., Diocese of West, Archdiocese of Western Pennsylvania. <https://oca.org/dioceses> (accessed 08/11/2018).

² *Canonical Jurisdictions*: <http://www.assemblyofbishops.org/about/canonical-jurisdictions> (accessed 08/11/2018).

³ A brilliant article on the concept of “canonicity” in North America is still that written by Alexander SCHMEMANN in 1965: “Problems of Orthodoxy in

These multinational jurisdictions of the American Orthodoxy create a particular situation within the Orthodox Church without precedent, being characterized by two tendencies: the affirmation of an American Orthodox Church, and the preservation of specific national-ethnic Orthodox traditions. The latter is quite widespread at parochial level not only in the United States but all over the so called 'Orthodox Diaspora'. This best exemplified especially by liturgical celebrations held exclusively in the language of the national group which makes up that parish and frequents church events. Such tendency often transforms the church into an "enclave" available only to those who use the same language, and share the same cultural and national traditions (i.e. Russians for Russians, Romanian for Romanians, Greeks for Greeks, Georgians for Georgians, Bulgarians for Bulgarians etc.). In such instance, according to Alexander Schmemmann, the Church becomes an "instrument of nationalism"⁴, losing its missionary aim⁵.

From a pastoral and canonical perspective, the organization of the American Orthodox parish is no different from other Orthodox parishes throughout the world; but from of an administrative point of view, the organization of the parish in the United States is very much unique⁶. Specifically, an American Orthodox parish is not different in purpose, which according to Thomas Hopko, it should serve as "an apostolic community with a missionary purpose"⁷, but it could differ in its legal and administrative structure. The differences lie in that the legal organization and administration of the parishes follow the laws of the United States given every state has its own laws on this matter; moreover,

America. 1. The Canonical Problem", în *St. Vladimir's Seminary Quarterly*, 8 (1964), pp. 67-85.

⁴ *Ibidem*, p. 77.

⁵ Orthodoxy cannot be reduced by or confounded with nationality. The Pan-Orthodox Synod of Constantinople in 1872 declared *Ethnophyletism* to be an ecclesiological heresy, reaffirming that all Christians in one area were to be part of the same Church, regardless of ethnic background. The 2016 Council of Crete reaffirmed the condemnation of ethnic nationalism, tackling a particular instance of imperial/civilization nationalism (ex. Russian World, Greek World). Cf. Cyril HOVORUN, "Ethnophyletism, Phyletism, and Pan-Orthodox Council", în *The Wheel*, 12 (2017), pp. 63-64; Ernesto OBREGON, *Is Orthodox Ethnically Exclusive?* <http://myocn.net/orthodoxy-ethnically-exclusive> (accessed 08/12/ 2018).

⁶ Cf. Nicholas FERENCZ, *American Orthodoxy and Parish Congregationalism*, Holy Cross Orthodox Press, Brookline (Massachusetts), 2015, p. VII.

⁷ Thomas HOPKO, *The Orthodox Parish in North America*, study presented to Thirteen All-American Council of the Orthodox Church in America, Orlando, FL., July 21-26, 2002 (St. Vladimir's Seminary Library, Crestwood, NY), p. 7.

there is a diversity in the present Orthodox jurisdictions. Every jurisdiction has its own constitution and guidelines with uniform rules that apply to the organization and administration of the parish.

Furthermore, in many American Orthodox eparchies, the parishes are not territorially organized, which refers to the lack of an accurate delimitation of territory. The parishes are personal rather than territorial: the members and the faithful attend the parish according to the personal preference rather than territorial residency⁸. For example a parish has members not only in the same city, or in the immediate neighboring cities, but even in nearby states. This is what Nicholas Ferencz refers to as “supra-parish”⁹ such situations existing predominantly in ethnic parishes. The ethnic dioceses have jurisdiction over a large territory, the whole country and even the entire continent. One such example is the Romanian Orthodox Episcopate of America which has jurisdiction over the United States of America and Canada. An important and fundamental element of the legal functioning of an Orthodox parish in the United States is its juridical personality which in turn is important because it allows for ownership, buying and selling of goods necessary for the parish’ spiritual and material purposes.

This article includes some reflections on canonical and administrative issues related to the definition of the parish and its material

⁸ The organization of a parish based on ethnic affiliation, and not on territorial delimitation, does not correspond to the original meaning of the word “parish”, a derivative of the Greek noun *paroikia* meaning “those living near or beside”. During the first few centuries, the term *paroikia* (Lat. *Paroecia*) was used with the meaning of the local Christian community headed by a bishop. The first historical reference to the term comes from the letter of St. Gregory of Nyssa to Flavian (*PG* 46, col. 1001), which establishes a distinction between the terms “parish” and “church”, the latter being interchangeable with the term “diocese”. Epiphanius of Salamis uses the term “parish” to refer to a small area inhabited by Christians (*PG* 41, col. 677). From the 4th century to the 13th, the words *paroikia* and *diocesis* had an interchangeable usage either in East and West. In Orient, however, along with ‘*paroikia*’, the term “*enoria*” was also used, and so from the 5th century onward, expressions such as “presbíteros enorítes” (presbyter of enoria) and “proestòs tes enorías” appear. Cf. James A. CORIDEN, *The Parish in Catholic Tradition: History, Theology and Canon Law*, Paulist Press, New York – Mahwah (New Jersey), 1997, p. 19; Makarios TILLYRIDES, *Adventures in the Unseen: The Silent Witness*, I, Rollinsford (New Hampshire), 2004, p. 403; Nicolae POPOVICI, *Manual de Drept Bisericesc Ortodox Oriental cu privire specială la Dreptul Particular al Bisericii Ortodoxe Române*, I, Arad, 1925, pp. 218-219; M. MARIO, *Origine storica e giuridica delle parrocchie urbane*, Pavia, 1926, pp. 18-27.

⁹ N. FERENCZ, *American Orthodoxy and Parish Congregationalism...*, p. VII.

administration as defined by the Constitution and By-Laws of the Romanian Orthodox Episcopate of America. It points out issues regarding the relationship between the two poles of authority in the parish, the spiritual and the material, and it also presents cases where the missionary purpose of the parish is subordinated by cultural and nationalistic goals. This research demands the use of the historical-critical and canonical method, based primarily on Church sources, literary and documentary sources, as well as interviews.

1. The Romanian Orthodox Episcopate: brief overview

Held on April 25-28, 1929 at St. George Church in Detroit, the Congress of Romanian Orthodox Parishes founded the Romanian Orthodox Episcopate of America (ROEA). Its headquarters was later established in 1938 at 2535 Grey Tower Road, Jackson, Michigan, a place called *Vatra Românească*¹⁰. The legal authority of the Romanian Orthodox Episcopate of America derives by virtue of its registration as a non-profit corporation by the Michigan Corporation and Securities Commission of the State of Michigan, on December 2, 1945, and as amended on July 15, 1953 and November 30, 1954¹¹.

From its inception until 1951, the Romanian diocese was an autonomous missionary episcopate directly under the jurisdiction of the Holy Synod of the Romanian Patriarchate. The Congress of Episcopate met in Chicago on July 1-4, 1951, to declare “the complete autonomy of the Episcopate, not only in its administrative but also in its canonical (spiritual) affairs, and free from all orders and decrees from the Communist-controlled Church in Romania”¹². On March 31, 1960, the Romanian Episcopate was accepted under the canonical and spiritual

¹⁰ Regarding the history of the foundation and development of the Romanian Orthodox Episcopate see the following: Gerald BOBANGO, *The Romanian Orthodox Episcopate of America: The First Half Century, 1929-1979*, Jackson (Michigan), Romanian-American Heritage Center, 1979; Gabriel-Viorel GÂRDAN, *Episcopia Ortodoxă Română din America – parte a ortodoxiei americane*, Presa Universitară Clujeană, Cluj-Napoca, 2007; Remus GRAMA, *Bishop Policarp Morușca, first Bishop of Romanian in America: An Exile in His Own Country*, Editura EIKON, Cluj-Napoca, 2005.

¹¹ Cf. Art. III (a), *Constitution and By-Laws of the Romanian Orthodox Episcopate*: <https://roea.org/files/Const-By-Laws-ENGLISH.pdf> (last seen July 10, 2018); from now ROEA By-Laws.

¹² G. V. GÂRDAN, *Episcopia Ortodoxă Română din America – parte a ortodoxiei americane...*, pp. 262-264; “The 20th Anniversary of the Autocephalous Orthodox Church in America: A Brief History of the Romanian Orthodox Episcopate within the O.C.A.”, in *Calendarul Solia*, 1990, p. 81.

jurisdiction of the Russian Orthodox Greek Catholic Church of North America Metropolia. The origins of this jurisdiction date back to 1794 when the Church of Russia established the Alaskan mission, which eventually was expanded across the United States and Canada, becoming a diocese. In 1924, this diocese was recognized as an autonomous Metropolitanate, and on April 10, 1970, the Patriarch and the Holy Synod of the Church of Russia granted it the autocephaly, and since October, 1970 has been known as “The Orthodox Church in America” (OCA)¹³.

In spite of being an eparchy of The Orthodox Church in America, the *Constitution and By-Laws of ROEA*¹⁴ establishes that

administratively, the Episcopate is and shall remain self-governing, having the right to legislate through the Episcopate Congress, and to administer and conduct its religious, cultural, educational and charitable affairs through its officers, duly elected by the Episcopate Congress¹⁵.

¹³ The Orthodox Church in America is an autocephalous Orthodox Church in full communion with Orthodox Churches worldwide. It is composed of Orthodox Christians of various national backgrounds and traditions (Russian, Ruthenian, Ukrainian, Romanian, Bulgarian, Albanian etc.) and a considerable number of converted people. Cf. *The Statute of the Orthodox Church in America: Preamble*, <https://oca.org/cdn/files/PDF/official/2018-0724-oca-statute-final.pdf> (last seen September 4, 2018). Regarding the history of this Church see the followings: Mark STOKOE, Leonid KISHKOVSKY, *Orthodox Christians in North America 1794-1994*, Orthodox Christian Publication Center, 1995; George C. MICHALOPOULOS, Helen HAM, *The American Orthodox Church: A History of Its Beginnings*, Regina Orthodox Press, Salisbury (Massachusetts), 2003; John H. ERICKSON, *Orthodox Christians in America: A Short History*, Oxford University Press, New York, 2008.

¹⁴ The first Constitution and By-laws of the ROEA were adopted in October 30, 1932 by the Congress of the Romanian Orthodox Episcopate of America held in Cleveland, Ohio. In 1936 a new Constitution was adopted by the Church Congress held September 5-7, 1936 in Youngstown, Ohio. On March 28, 1947 the special Church Congress meeting in Detroit decided to abrogate the 1936 Constitution and re-enact the (?) first Constitution and By-Laws from 1932. In conformity with this resolution, the Church Congress convened on July 4, 1947 at *Vatra Românească* and adopted the revised Constitution and By-laws. This Constitution and By-Laws were subsequently revised, amended and updated by the Church Congress held in Canton, Ohio, on July 3-5, 1953, at *Vatra Românească* on June 30 – July 3, 1967, June 30 – July 2, 1978, July 1993, and Southfield, Michigan in July 1994. Cf. *Constitution and By-Laws of the Romanian Orthodox Episcopate of America: Preamble*, 1994 (adopted by The Romanian Orthodox Episcopate National Church Congress on July 2, 1994), pp. IV-V.

¹⁵ Art. III (c) *ROEA Constitution*.

Canadian Orthodox Ladies Auxiliaries (ARCOLA)²².

2. Bishop, Priest and Parish

According to the *Constitution and By-Laws of ROEA*, the parish is regulated by Article IX, Sections 1 to 49 and is defined as a

local community of the Church under the jurisdiction of the Romanian Orthodox Episcopate of America, having an appointed Priest who as Spiritual Leader cooperatively administers the Parish with the Parish Council which has been duly elected by its Parish Assembly (Art. IX, Sect. 1).

This definition of the parish reveals the missionary aspect of Romanian Orthodox parishes, even though structurally ethnic, it does not speak of communities based on ethnic background, language and national affiliation. It points out the position and responsibilities of the parish priest, and also envisions the involvement of the parish members in the life of the community. The nature of cooperation of the parish priest in the administration process of the parish is reflected by his role as defined in Sections 18 through 22: Spiritual Leader, Head of the Parish Office, Chairman of the Parish Assembly, President of the Parish. Despite the prerogative as president of parish, the priest does not head the Parish Council, but only the Parish Assembly; the meetings of the Parish Council are chaired by a lay president elected from among the council members.

The prerogatives of the parish priest reflect the attempt of the Romanian Episcopate to envision the parish structure in accordance with the Orthodox canonical tradition and to limit the parish congregationalism structure of Orthodoxy in the United States. Congregationalism refers to a protestant organizational system in which the authority of the church fully resides within the lay congregation of each parish community²³. This system, which obviously is not in accordance with Orthodox tradition, has been widely present among the American Orthodox parishes and continues to have a negative impact on the organization and administration of many parishes. One of the reasons for such structure was the way in which parishes were originally established; i.e. not at the

²² See *Directory*: <https://roea.org/auxiliaryorganizations1.html> (accessed 08/11/2018).

²³ The following element defined the congregationalism system: former list of members; local governing body (board or council) elected by the members and which is composed by lay members; committees/ministries composed of lay members; the selection of the clergy by the local organization; most of its operating funds are raised from its own local members. Cf. Helen Rose EBAUGH, Janet SALTZMAN CHAFETZ, "Structural Adaptation in Immigration Congregation", in *Sociology of Religion*, 61 (2000), p. 137.

initiative of the Church authority but at the initiative of the lay people²⁴. This system helped shape a specific parish model where the major authority is vested in the lay community, limiting to a minimum the role of Church authority, especially that of the diocesan bishop and of the parish priest.

However, in spite of the attempt to avoid the congregationalism system, the definition of the parish presents some deficiencies and raises a number of questions regarding the nature of collaboration between bishop and his parishes, the role of the parish council and the assembly, as well the role of the parish priest in the parish administrative activity.

The main deficiency is the absence of any references to the local bishop, under whose authority a parish is canonically established and operates. The mere mention of “a local community of the Church under the jurisdiction of the Romanian Episcopate” is quite insufficient to express the ecclesiological character of the parish. Thus, the parish is not a simple isolated and autonomous organization, rather it is mainly an ‘Eucharistic community’, whose existence and organization cannot be framed outside the diocese and apart from its local bishop, who represents the authority of the Church, and in fact to whom all parishes belong²⁵. As Patrick Viscuso states,

in the traditional doctrine of the Orthodox Church, the authority of the church resides in the local bishop, who is the head of the Eucharistic community of clergy and laity, and who is in communion with all other local bishops²⁶.

The authority of the bishop resides over ecclesiastical matters in his diocese, which include not only liturgical or theological matters, but also the goods of the Church, its material well-being and property²⁷.

Nicodim Milach emphasizes the close connection between the bishop and his parishes, stating that the bishop is “the father and leader”

²⁴ Cf. Nicolae LĂPUȘTE, *Misiune și mărturie creștină ortodoxă contemporană în Canada*, Editura Renașterea, Cluj-Napoca, 2018, p. 315.

²⁵ The concept of parish as a ‘Local Eucharistic Community’ is due to the Ecclesiology regarding the authority in the Church, known as ‘Eucharistic ecclesiology’, sometimes also called ‘Local Ecclesiology’. Cf. N. FERENCZ, *American Orthodoxy and Parish Congregationalism...*, pp. 18-21; Nicholas AFANASSIEFF, “The Church Which Presides in Love”, în *The Primacy of Peter in the Orthodox Church*, pp. 57-110.

²⁶ Patrick VISCUSO, “Introduction to the Paperback Edition”, în N. FERENCZ, *American Orthodoxy and Parish Congregationalism...*, p. XXII.

²⁷ Cf. Peter L’HUIILLIER, *The Church of the Ancient Councils: The Disciplinary Work of the First Four Ecumenical Councils*, St. Vladimir’s Seminary Press, Crestwood (New York), 1996, p. 264.

over all matters in his Church, and he is given the responsibility of all spiritual problems: “to him was attributed also the whole economical administration of the Church”²⁸. The bishop, pursuant the ancient norms, has responsibility over material and spiritual goods of his local church as a right of his office²⁹. The first norms concerning the bishop’s responsibility for the administration of the Church’s goods are found in the Apostolic Constitutions, wherein the bishop is cautioned to carry out his mission with moderation and justice, “as having that God for the examiner of his accounts who has committed the disposition to him” (II, 25.2-4)³⁰. Canon 38 of the Apostles points out a similar idea: “the Bishop has the care of all ecclesiastical matters and let him manage them, on the understanding that God is overseeing and supervising”; Canon 41 sets out the principle that the bishop is the one who “has authority over the property of the Church”, emphasizing the reason for that authority: “For if the precious souls of human beings ought to be entrusted to him, there is little need of any special injunction concerning money; so that everything may be entrusted to be governed in accordance with his authority”³¹. The role of the bishop is clearly highlighted by the canons of the local synods of the first centuries: Canon 15 of Ancyra (314), Canons 7 and 8 of Gangra (340), Canons 24 and 25 of Antioch (341), Canons 22, 23, 33 and 81 of Carthage (419). However, pursuant the holy canons, the bishop is not the direct administrator of the ecclesiastical goods of the parishes in his diocese: he only supervises and controls their administration³².

The relationship between the bishop and the parish priest is implied by the expression “having an appointed priest”, which means that the function and the authority of a priest as (Spiritual) leader within the parish derives directly from his diocesan bishop, who appoints him to preside over the local Eucharistic assembly and to lead the parish. In this case, as many canonists and theologians emphasize, the parish priest acts

²⁸ Nicodim MILAȘ, *Canoanele Bisericii Ortodoxe*, vol. I.1, Tipografia Diocezană, Arad, 1930, p. 246.

²⁹ Cf. Dimitrios SALACHAS, *Il Diritto canonico delle Chiese orientali nel primo millennio*, Edizioni Dehoniane, Roma-Bologna, 1997, p. 416.

³⁰ *Constitutions of the Holy Apostles, or The Apostolic Constitutions*, edited, with notes, by James DONALDSON, D.D., A Codex Spiritualis Publication, p. 34.

³¹ NICODEMUS, AGAPIUS, *The Rudder (Pedalion)*, transl. by D. CUMMINGS, Orthodox Christian Educational Society, Chicago, 1957, pp. 57, 62.

³² Ioan COZMA, „Il ruolo del vescovo nell’amministrazione dei beni ecclesiastici nei sacri canones”, în *Wer ist die Kirche? Cine este Biserica? Omagiu Monseniorului Dr. Albert Rauch*, Editura Reîntregirea, Alba Iulia, 2008, p. 490.

by the virtue of the delegation received from the bishop at the time of his appointment³³.

Despite of the absence of the word “bishop”, the parish’s definition indirectly reflects the connection between the diocesan bishop and his parish, and in fact the “presence” of the diocesan bishop in every parish through his presbyters. The degree of the manifested relationship between the diocesan bishop and his parishes and the limitation of the parish congregationalism in the ROEA are briefly summarized in the second part of the definition through the expression “[the Parish priest] as Spiritual Leader cooperatively administers the Parish with the Parish Council which has been duly elected by its Parish Assembly”.

The definition evidently stresses out the fundamental role of the presbyter in the activity of the administration of the parish, pursuant of the canonical principle of cooperation of the two poles of the administration’s authority (clerical and lay/secular). However, the words “as Spiritual Leader” seem to maintain a certain dichotomy between the two poles of authority in the parish, not only spiritual and material, but also diocesan and local, recalling the parish congregationalism. This means that the authority of the parish priest and implicitly of the bishop is only over spiritual things. Unfortunately, this interpretation is very popular among the Romanian faithful all over the United States, which through Parish Councils and Parish Assemblies attempt to limit or eliminate altogether the role of the priest in the parish and the diocesan authority. Furthermore, as it has been emphasized above, the parish could not be separated from the diocese to whom it belongs, nor can it be separated from its diocesan bishop. This syllogism is also perfectly valid apropos the material authority of the bishop in his diocese, where the bishop could not administer the diocese alone, ignoring his clergy and faithful, namely the presbyters and the parishes. Therefore, in regard to the role of priests in administering Church goods, in the holy canons there is a clear distinction between the diocesan and the parochial administration.

At a diocesan level, the role of presbyters is first revealed by the Apostolic Canon 41, which recommends that the bishop includes priests and deacons in the administration act, and also by Canon 25 of the local synod of Antioch (341), which mentions, among other things, that in administering the ecclesiastical goods, the bishop must take into

³³ Cf. Panteleimon RODOPOULOS, *An Overview of Orthodox Canon Law*, Rollisford (New Hampshire), Orthodox Research Institute, 2007, p. 155; Lewis J. PATSAVOS, *A Noble Task: Entry into the Clergy in the First Five Centuries*, transl. by Norman RUSSELL, Holy Cross Orthodox Press, Brookline (Massachusetts), 2007, pp. 7-8.

consideration the opinion of priests and deacons. This principle has been completed by Canon 26 of the ecumenical council of Chalcedon (451), and Canon 11 of the ecumenical council of Nicea II (787), both of which establish the function of *economos* (or treasurer). According to these norms, each bishop must have a treasurer as his diocesan sees, chosen from his own clergy (presbyters or deacons) and charged with the responsibility of administering ecclesiastical goods³⁴. Therefore, the holy canons established the presbyters as collaborators of the bishop in the administration of the Church goods. In fact, the ancient rules mention the Presbyter Council, which acquired a permanent character beside the diocesan administration. It first appeared in the 4th century, and since the 7th century has been present in all the Eastern Byzantine Churches³⁵. As the authors of *Pedalion* (a canonical collection of the 1800s) noted, the involvement of the presbyters in diocesan administration was kept into consideration since the very first centuries

in order for the bishop to keep himself above every suspicion, and accusation that allegedly he consumed it all himself and that he also does a bad job managing it; because he must be well provided for, not only in the eyes of God, but also in the eyes of men, just as the author of Proverbs was the first to say, and the Apostle Paul said later; and because he must refrain from offending anyone, and must be irreproachable in everything (Prov. 3, 4; Rom. 12, 17; I Cor. 10, 32; I Tim. 3, 2)³⁶.

³⁴ See the full text of these canons (English translation) in NICODEMUS, AGAPIUS, *The Rudder (Pedalion)*..., pp. 62, 270, 468, 548-549. The importance of the *economos* is well highlighted also by the 25th Canon of the ecumenical council of Chalcedon, which obliged the treasurer to preserve the ecclesiastical goods intact in case of a bishop's seat vacancy and to account for the diocese's administration to the new bishop. Valuable information about the treasurer's position in Church in the 4th up to the 6th century is to be found in the civil legislation: Honorius and Arcadius' Constitution of 398 (*Cod. Theod.* IX, 45.3); Theodosius II and Valentinian's Constitution of 434 (*Cod. Theod.* V, 3.1); Justinian's Novellae 120 (Novella CXX, 5) and 123 (Nov. CXXIII, 23) of 544 and 546. See Th. MOMMSEN (ed.), *Theodosiani Libri XVI, Cum constitutionibus Sirmondianis*, I.2, Berolini, apud WEIDMANNOS, 1905, pp. 220, 519; R. SCHOELL, G. KROLL (eds.), *Corpus Iuris Civilis, III, Novellae*, Berolini, 1895, pp. 581-582, 612-613; and also Arrigo D. MANFREDINI, "Debitori pubblici e private in 'ecclesias confugientes' da Teodosio a Giustiniano", in *Rivista di Diritto Romano*, 2 (2002), p. 309.

³⁵ Cf. Nicodim MILAȘ, *Dreptul Bisericesc Oriental*, Tipografia Gutenberg, București, 1915, p. 318; Iorgu D. Ivan, *Bunurile bisericești în primele 6 secole. Situația lor canonică și juridică*, București, 1937, p. 141.

³⁶ NICODEMUS, AGAPIUS, *The Rudder (Pedalion)*..., pp. 62-63.

At a parochial level, the presbyters may be directly involved in the act of administering the assets, especially since the 6th century when the parochial administration had acquired a local character.³⁷ The main consequence of such organization is the fragmentation of the juridical personality of the Church, and the emergence of two categories of Church properties: the goods of the Church *in genere*, and the goods of the single administrative units of the Church – as dioceses, parishes, monasteries – *in specie*. Thus, parishes received the right to administrate their own properties, being supervised and controlled by the diocesan bishop³⁸. Among the rights and obligations of the parish priest are the right to govern and the obligation to administer the ecclesiastical goods of the parish according to existent canonical norms. The parish priest cannot act as owner, ignoring the bishop's authority; as the Apostolic Canon 39 establishes, both the priests and the deacons could not act without the bishop's consent:

Let Presbyters and Deacons do nothing without the consent of the Bishop. For he is the one entrusted with the Lord's people, and it is from him that an account will be demanded with respect to their souls³⁹.

It is worthwhile to mention that a bishop's consent does not mean that he has an actual right over the property of respective parishes. On the contrary, the parishes have juridical personality with a well-established status in regard to their property. Thus, the intervention of the bishop at the parish level does not diminish or annul this juridical personality. In the ancient canonical legislation, the interference of the bishop did not have an exclusive and patronal character. Canon 35 of the ecumenical council of Trullan (692) establishes this principle that the Church's authority (metropolitan, bishop) cannot arbitrarily dispose of a vacant unit's patrimony⁴⁰.

Therefore, the words "as Spiritual Leader" from the ROEA definition of the parish does not diminish the role of the priest in the material administration of his parish. On the contrary, the concept is designed to remind of the interdependence between the spiritual and material goods in the parish. The responsibility of the parish priest in the parish administration is also supported by Section 6 of Article IX of the ROEA

³⁷ See Ioan COZMA, „Il ruolo dei presbiteri e dei diaconi nell'amministrazione dei beni ecclesiastici nei sacri canones”, în *Altarul Reintregirii*, 3 (2007), pp. 95-116.

³⁸ Cf. Constantin DRON, *Canoanele – text și interpretare*, Tipografia Cărților Bisericești, București, 1932, p. 124.

³⁹ NICODEMUS, AGAPIUS, *The Rudder (Pedalion)*..., p. 59.

⁴⁰ *Ibidem*, p. 332.

By-Laws, which prescribes that “the assets [patrimony] of the Parish shall be administrated by the Parish Council in concert with the Parish Priest in accordance with the Episcopate By-Laws and the laws of the State, Province, or Territory in which the parish is located”. This concludes Section 1 (the definition of the parish) and clarifies that the material administration of the parish is exercised by the Parish Council, not by a single person and in a collegial (or synodal) form. This pattern does not exclude the parish priest or the clergy appointed by the bishop from the material administration of the parish. In fact sections 1 and 6 implicitly underline the full responsibility of the clergy and the laity (Parish Council and Parish Assembly) in the Church, both playing a spiritual and material role in the Parish.

3. Diocese and Parish: rights, limits, issues

The relationship between diocese and parishes is particularly reflected by the ROEA By-Laws. In the United States of America, Romanian parishes are recognized as corporations, and the Church as a corporation thus falling under the authority of the Federal Government with a tax exempt status⁴¹.

According to Article IX, Section 4 (b), every parish must have incorporated into the Corporate Charter or Articles the Episcopate Constitution and By-Laws, and in the event of a conflict between the Articles or By-Laws of a Parish and the Episcopate’s Constitution and By-Laws, the latter shall prevail.

Hence, Romanian parishes are not simply independent and autonomous non-profit organizations, but they are in close relationship with the diocese and the diocesan bishop. As a corporation, each parish “shall own and control its personal and real property” (Art. IX, Section 4, b). This stipulation in fact supports the canonical principle that the owner of all parish assets is the parish itself, canonically and legally organized as a juridical entity. The patrimonial authority of the parish is expressed through the Parish Assembly, which is composed of voting

⁴¹ Cf. Bruce R. HOPKINS, *The Law of Tax-Exempt Organizations*, 10^{ed.}, John Wiley and Sons, Hoboken (New Jersey), 2011, pp. 3-5, 811-816. See also W. Colee DURHAM, Jr., “Legal Status of Religious Organizations: A Comparative overview”, in *The Review of Faith and International Affairs*, 8/2 (2010), pp. 3-14; and the three articles of Carl ZOLLMAN regarding Religious Corporations in the United States of America: “Classes of American Religious Corporations”, in *Michigan Law Review*, 13/7 (1915), pp. 566-583; “Powers of American Corporations”, in *Michigan Law Review*, 13/8 (1915), pp. 646-666; “Nature of American Religious Corporations”, in *Michigan Law Review*, 14/1 (1915), pp. 34-47.

members pursuant the Article IX, Sections 13, 14, 15 and 25. Though, according to Section 11, subject to the parish property title could even be one single faithful in the event of heresy, schism or defection from the Episcopate. In the case that a single member remains loyal to the Episcopate he “shall retain title to the Parish property of every kind, nature and description”. The juridical situation of the parish assets is conditioned by the religious stability and loyalty of the faithful to their parishes and especially to their diocese⁴².

However, the right to property of the parish is not absolute and independent, it is rather substantially limited and conditioned. This is very obvious in the case of the acquisition, sale, leasing or mortgaging of church properties, because the right of disposal is reduced in its substance in the sense that no parish can decide by itself. In order for such patrimonial act to be validated it is absolutely necessary to have the approval of the superior authorities, as it is prescribed by Section 12:

The acquisition, sale, leasing, mortgaging or otherwise encumbering of church properties shall be decided by the Parish Assembly in strict accordance with the following procedure:

- (a) All decisions shall require a two-thirds (2/3) vote by roll call of those present and eligible to vote;
- (b) Decisions of the Parish Assembly held in accordance with this section shall not be final but shall only take effect upon the approval and ratification of the Episcopate Council.

Consequently, in the Romanian Orthodox Episcopate of America, the parishes cannot fully exercise their right to property over their assets, because the right of disposition of the parish is restricted. The right to property authorizes its titular to own, use and dispose of its goods, but if the last one is missing, the right to own property is affected in that the titular continues to have access to those goods but loses the right to freely dispose of them. On the other hand, the approval and ratification of the Episcopate Council, even *ad validitatem*, does not imply that the Episcopate Council has the right of disposition exclusively and independently over all parish properties. The Episcopate Council in fact cannot interfere in the administration process of a parish, except when there is canonical disorder within the parish and the Church's discipline is transgressed, in which case the Church's authority has to take corrective measures; or in the case of complete dissolution of a Parish. In

⁴² Cf. Ioan COZMA, *I beni temporalı nei rapport tra ortodossi e greco-cattolici in Romania*, (Kanonika 18), Pontificio Istituto Orientale, Roma, 2012, p. 267; see also IDEM, „Problema apartenenței locașurilor de cult în cazul trecerilor religioase în teoria și practica Bisericii Ortodoxe Române”, in *Altarul Reîntregirii*, 1 (2009), pp. 168-170.

the event of dissolution, according to Article IX, Section 10 (a) of the ROEA By-Laws,

the title to all of its properties, real and personal, including documents, official records of baptism, chrismation, marriage, burial and the like, religious objects, vestments, work of art, and any other articles used in conjunction with and for the purposes of the Parish shall immediately vest in and pass to the patrimony of the Episcopate.

The status of corporation of the parish, which implies an active role of the laity in its administration, often creates a misconstrued idea as many parishioners perceive the parish as a secular business. These parishioners fail to understand that a parish does not aim to own and administer material goods. The purpose of a parish is not to accumulate or capitalize properties, funds and assets, but primarily to spread the Gospel and to sanctify the people of God. Since inception the Church has perceived material goods as temporal (earthly) means to fulfil its mission in the world. To accomplish its mission, the Church uses temporal goods with a triple finality: cultic, which refers to the preaching of Gospel and the liturgical celebrations (worship); social-philanthropic (charitable) - a means to help the poor and the needy; and the maintenance of the clergy and the preservation of all its properties⁴³. All these finalities are accurately expressed by Article IX, Sections 3 and 4, of the ROEA By-Laws, as follow:

Article IX, Section 3: The main purposes of a Parish are: a) To maintain, strengthen and propagate the Orthodox Christian faith; b) To build and maintain buildings where due Orthodox worship is offered and to provide the facilities, staff and funding necessary of the religious education, cultural and charitable needs of its members; c) To practice Christian charity as demanded by Holy Scripture and Tradition and to seek out and provide charitable assistance to those in need; d) To promote a more active and effective influence of the Church and her teachings among her faithful and society at large.

Section 4: (a) [...] In administering this property, the parishioners, parish priest and the officer elected by them must administer according to the religious nature, purposes and goals of the Parish and act as trustees of God's property, not man's. The Parish serves God and cares for God's work in the world, as does the whole Church, and all decisions concerning Parish administration must be inspired by that care and by the spiritual needs of the Church.

All parish activities – spiritual and material – should not be separated, and they must be convergent with the missionary purpose of

⁴³ P. RODOPOULOS, *An Overview of Orthodox Canon Law...*, p. 179.

the Orthodox Church in the United States of America and everywhere else in the world. As Thomas Hopko states,

If a parish has no awareness and consciousness of being ‘sent’ by God to speak His words, to do His work, and to accomplish His will in this world, then it is not an Orthodox Christian parish. At best it is a bunch of decent people carrying on a bundle of benign activities for their own benefit⁴⁴.

It would not be fair to pass over in silence that such cases are still present in the ROEA and, in certain situations, being dealt with difficulty by the Episcopate authority. The danger of such misconception, if not corrected, gravely affects both the spiritual and material structure of the parish that would then assimilate to a cultural and ethnic club while its purpose as a place of worship would be utterly neglected. A worst case scenario is the Parish Assembly manifesting its full authority over the property and material goods of the parish, totally excluding the Church authority (episcopate authority and parish priest) as in the congregationalism system.

Such is the case of the Romanian Orthodox Parish of the “St. John the Baptist” in Glendale, Arizona. In February 2018 it lost control of its entire property in favor of a board of trustees – *The Arizona Romanian Orthodox Corporation*, legally created and registered on November 19, 2014, in the state of Arizona to hold and administer the assets of that parish. The majority of the members of this board are also members “in good standing” of St. John Parish and some are members of the Parish Council. The transfer of the patrimonial rights of the parish to the trustees was done with the consent of the Parish Assembly during one of its regular meetings, totally disregarding the ROEA Constitution and By-Laws and the directive of the diocesan archbishop. Article VI (b) of the ROEA Constitution specifically states that “Church properties of any kind, nature and description cannot be sold, alienated, or mortgaged without the written permission of the Episcopate Council”; and Article IX, Section 25 (e) stipulates that “If the proposed agenda [of the Parish Assembly] is to include the buying, selling, leasing, mortgaging or otherwise encumbering of church property, the assembly notice shall expressly state so”. Moreover, the parish must pay a rent of \$3,200 to the trustees for using the church and all premises⁴⁵. Despite of the disapproval of the Episcopate Council at its meeting held March 17, 2018, and the explicit directive of the archbishop to annul the decision made by the General Assembly, nothing has been changed to present.

⁴⁴ Th. HOPKO, *The Orthodox Parish in North America...*, p. 7.

⁴⁵ Interview of Very Rev. Fr. Adrian GRIGORAȘ, parish priest of the “St. John the Baptist” Romanian Orthodox Church in Glendale, Arizona (09/07/2018).

The Arizona case is not unique in the recent history of the Romanian diocese, being preceded by two significant cases: “St. Nicholas” Romanian Orthodox Church in Troy, Michigan, and “Holy Ascension” Romanian Orthodox Monastery in Clinton, Michigan.

The St. Nicholas Parish Assembly meeting of January 8, 2017 was convened by at the initiative of the Parish Council and its former parish priest (suspended from all priestly functions) with no respect of the procedure prescribed in the ROEA By-Laws, resulting in the decision to separate from the Episcopate. A group of Parish Assembly members protested against the decision taken, underlining the illegality of such action, disregarding the ROEA By-Laws, Article 11 (see above). The Episcopate Council condemned as illegal the Assembly Parish meeting and its decision, taking the case to civil court in order to restore the canonical order and regain control of the parish property⁴⁶.

A second case is that of the Ascension Monastery, which, without the approval of the Episcopate Council, in April 2015 changed its name from the original “The Holy Ascension” Romanian Orthodox Monastery to “The Holy Ascension” Romanian Orthodox Christian Monastery and created a board of trustees comprised of monks and lay people. Eventually, on July, 2017, the monastery separated from the Episcopate. The Episcopate claimed its right over the monastery’s property but the Michigan Court found that ROEA has no legal cognizable interest in the property owned by the Holy Ascension Romanian Orthodox Christian Monastery⁴⁷. Thus, the potential loss of the property is not due to the inaction of the Episcopate but mainly to the absence of explicit norms in the ROEA Constitution and By-Laws regarding monastery assets. Currently, the case is before the Michigan Court of Appeals⁴⁸.

In conclusion, the canonical and administrative issues in the Romanian Orthodox Episcopate are due not only to the absence of explicit norms or the evasiveness of the ROEA Constitution and By-Laws, but largely to a misunderstanding of the canonical and ecclesiastical law, and nonetheless to the absence of an active regular participation in the sacramental life of the Church of many laypeople. In many cases, when the spiritual and missionary purpose of the parish is subordinate to

⁴⁶ See *The Episcopate Report of the Spiritual Consistory concerning Priest Gheorghe Cârstea*, St. Nicholas, Troy, Michigan, https://roea.org/files/News/Resume_Spiritual_Consistory_Rev_Gheorghe_Carstea.pdf (accessed 09/11/2018).

⁴⁷ *Dalton & Tomich, Plc help s Local Church leave s Denomination and keep its property*, <https://www.daltontomich.com/local-church-successfully-leaves-a-denomination-and-keeps-its-property/> (accessed 09/11/2018).

⁴⁸ Interview of Rev. Fr. Dan HOARSTE, Vicar of Canada, ROEA (09/14/2018).

social, cultural or even nationalistic affairs, the Church as a space is transformed from a sacred space into a simple house of prayer, while the parish is transformed from a Local Church (Body of Christ) to a simple congregation or community. The presbyter from the father, the very guide of the flock of God is turned into an employee with scheduled working hours, benefits, paid vacation, being extremely appreciated by the community for his involvement in cultural activities, thus tarnishing his mission and vocation as a celebrant of the Mysteries of God.