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Abstract

**The canonical regime of the monastic vows in the Romanian Orthodox Church
and their interferences with civil legislation**

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SUMMARY

Keywords: monastic vow, poverty, chastity, obedience, canon law, civil law

Introduction and topic of research

Our research topic concerns the three monastic vows – poverty, chastity and obedience – in a canonical perspective, as they are present in the canon law of the Romanian Orthodox Church, and the way they interact with civil legislation and the rights and freedoms of the person. The chosen subject is a novel one, because our ecclesiastical historiography of recent decades has been concerned mainly with the missionary and spiritual side of monasticism, and less with its canonical dimension. As a field of research, we consider the canon law of the Romanian Orthodox Church since 1990 and up to the present, namely the Statute, Regulations, and Synodal decisions concerning monastic vows. We also observe how monastic vows are expressed in the canonical tradition of the Church (Canons of Ecumenical and Local Councils, and of Holy Fathers), in the Byzantine legislation and some older ecclesiastical legislations, as a historical basis for understanding how the old norms were received in the present ecclesiastical law. At the same time, we investigate the civil legislation of the state regarding religious cults and some cases of Romanian jurisprudence, to observe the interaction of canon law with civil law regarding monastic vows. The stake of our work is a better understanding of the canonical place of the monks in the Church, among its constituent states – “clergy, monks and laymen” (Article 1 of the Statute of the Church), but also in society, by observing how monks can exercise their civil rights as citizens, in a way that corresponds to the monastic discipline.

Chapter I. The shaping of the monastic vows in the canonical tradition of the Church and their reception in the current ecclesiastical law

In the first chapter we analyze the appearance and development of monasticism in the Church in the first centuries, and the canonical integration within the Church at the Fourth Council of Chalcedon (451), which placed the monks under the bishop’s authority. We note that monasticism has gradually become a distinctive order in the Church, being mentioned today

among its constituent states, according to Article 1 of the Statute of the Romanian Orthodox Church: “The Romanian Orthodox Church is the community of Orthodox Christians, clergy, monks and laymen...”. We also analyze the three monastic vows – poverty, chastity and obedience – in the canonical tradition of the Church, and the way they are received in the current ecclesiastical law. It is these vows that canonically define the place of monks within the Church, and how they specifically engage in the life of the Church, alongside clergy and laymen, in a collaboration that has been called by the canonists the “organic principle or the ecclesiastical constitutional principle”.

Chapter II. The current assumption of the monastic vows within the monastic steps

In the second chapter we observe the gradual assumption of the monastic vows within the orders existing in the liturgical tradition of our Church: the order of rasophoria, the order of the small schema and the order of the great schema. Even if the novitiate does not imply the actual taking of the monastic vows, it is a period of preparation for their assumption, and calls for an analysis of the canonical conditions preceding the tonsure: the age for entering the brotherhood, the duration of the canonical trial, the canonical age for the tonsure and the status of the rasophorus in relation to the monastic schema. Next, we analyze how the vote of poverty, chastity and obedience are assumed within the tonsure in the small and great schema. At the same time, we reflect on the sacramental dimension of this tonsure, which has made monasticism to be considered the “second Baptism” by the Church Fathers and to be integrated within the Mysteries of the Church, in association with the Mystery of Penance. Also in this chapter, we wonder about the necessity of dividing the monastic ritual into the “small schema” and the “great schema”, which involves the repetition of vows, a practice criticized by the Church Fathers. We also problematize how the monk ordained bishop can exercise his monastic vows and whether they are compatible with his position as shepherd of the Church, and can be integrated into his ministry and obedience to the Holy Synod and the canonical tradition of the Church.

Chapter III. The exercise of monastic vows in relation to the civil rights and freedoms of the person

In the third chapter, we analyze how the three monastic vows interact with the civil rights and freedoms, and the canonical or legal issues that these interactions may raise. Namely,

we observe the monk's vow of obedience in relation to the civil capacity and the person's right to dispose of herself, as well in relation to the freedom of expression, the freedom of movement and the free access to justice. Another perspective is the analysis of the vow of obedience in relation to certain prohibitions for monks to hold positions in associations or foundations without the bishop's blessing, or to assume civil, military, or political dignities, as most of them are incompatible with the monk's status as a man consecrated to God. In turn, the vow of poverty is examined in relation to the regime of monastic goods during life and after death, to certain maintenance obligations toward biological children or parents in need, as well as in relation to the copyright of monks on their own works. As for the vote of chastity, the main interest is to clarify the relationship between chastity and marriage, and whether the assumption of lifelong chastity for the monk means limiting the legal right to marry as a citizen. From analyzing the Romanian legislation and jurisprudence in this regard, we aim to understand whether the restriction of certain rights and freedoms of the monk, by way of submitting them to the blessing of the bishop, represents illegitimate interferences in the freedom of the person, or, on the contrary, whether they are lawful ways to control the discipline of cult, as an application of the principle of autonomy of cults from the State.

Chapter IV. The problem of cessation of monastic vows by their abandonment or by exclusion from monasticism

In the fourth and final chapter, we examine how monastic vows can be terminated, by their voluntary abandonment by the monk or by the disciplinary penalty of exclusion from monasticism, applied by the Bishop or the Consistory, as a court of ecclesiastical judgment. For a better understanding, we started our research by observing the sanctions imposed on the monks in the canons of the 1st millennium – the malediction, excommunication, and anathema –, to see whether there is the possibility that monks be removed from their rank or lose their order, thus returning among laymen. Then, analyzing the penalty of exclusion from monasticism in the current ecclesiastical law and its canonical nature, we reflect on the possibility of relieving the monk from his vows. In this perspective, the exclusion no longer plays an eminently punitive role, by which the monk is placed at the edge of the Church, as a *de facto* excommunication. Instead, the exclusion from monasticism takes on a restorative role, by which the monk incapable of keeping his vows is resettled in the place of layman in the Church and encouraged to resume his path of salvation by the grace of Baptism, from which the Church did not separate him. Finally, we look at a number of ways in which the monk can

abandon his monastic vows – the request for renunciation, residing in the world, concubinage or civil marriage, the committing of crimes, etc. – all of which being likely to attract the exclusion from monasticism. By this measure, the Church signals to society that the monk has become unworthy of his consecrated state, noting its revocation, thereby preserving the integrity of the monastic ethos within the Church and the world.

Conclusions. The monastic order as a consecrated state in the Church and its discipline in relation to canon law and civil law

The conclusions of our work come as results of the research directions concerning the monastic vows. Firstly, we note that the monks, by the vows of poverty, chastity and obedience, and by their distinct canonical status, represent a constituent state in the Church, among “clergy, monks and laymen” (Article 1 of the Statute of the Church). The monastic body, made up of 8,483 inhabitants of monasteries, is comparable to the clerical body, made up of 14,933 priests and deacons, and these two consecrated states share in the life of the Church by way of the organic or ecclesiastical constitutional principle. The nature of monastic consecration appears as a sacramental one, as the Fathers of the Church and the liturgical tradition testify, monasticism being assimilated to the “second Baptism” and to a state of marriage with Christ, elements that integrate it among the Mysteries of the Church.

As for the monastic mode of consecration, we note that its division into two rituals called the “little schema” and the “great schema” is criticized by the Fathers of the Church, who see in the schema the unity of Baptism. In this aspect, the Church may consider the liturgical unification of these rituals, aiming to restore the unity of the monastic state. Also, the inquiry of the bishops’s exercising of the monastic vows led us to the idea that the bishop is called to integrate them into his ministry, as ascetic callings, within the obedience to the Church and its canonical tradition.

From the perspective of exercising the monastic vows in relation to the civil rights and freedoms of the person, we note that limiting the exercise of certain rights for monks – freedom of movement, access to justice, the right of property, the right of inheritance, the right to marriage –, by way of submitting to the bishop’s blessing and to the canonical norms, represent legitimate forms of control of the discipline of cult. Monks are not, therefore, citizens with fewer rights in society, but citizens who have assumed, by virtue of religious freedom, a canonical status and a discipline of cult within the Church. This discipline they are called to observe for as long as they are part of the consecrated states of the Church.

Finally, addressing the issue of the abandonment of monastic vows and the exclusion from monasticism, we realize that monks, when no longer assuming their vows and consecrated state, can be deposed from their order by the Church and reintegrated among laymen. The ecclesiastical sanction of exclusion from monasticism has, therefore, no punitive character, but a restorative one, by which the monk is encouraged to resume the path of salvation as a layman, by the robe of Baptism. For the Church has, according to its *oikonomia*, all the means of salvation of her faithful, and the bishop is called to embody this *oikonomia*, as authority expressing the canonical conscience of the Church.