SUCCESSORAL CAPACITY PECULIARITIES OF THE ROMANIAN ECLESIASTICAL STAFF – A CASE OF ANOMALOUS INHERITANCE

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Abstract

The present study aims at radiographing the condition of the legal capacity to inherit, situated at the confluence of two domains, the legal and the theological one, with convergence points, but also with some distinct consequences. Thus, the basic benchmark of the study focuses on one of the fundamental conditions of the individual to be able to exploit mortis causa of their cujus patrimony, the ability to inherit. From this perspective, the authors have proposed to analyze the particular situation in which the person called to inherit under the law is a person of a special status, belonging to the ecclesiastical staff. Thus, special situations are identified, which derogate from the common law, with derogatory consequences from the normative character of the successor transfer. This is the case of monk succession, which is subjected, as we shall see, to special rules that generate, in the case of legal devolution, an anomalous succession in favor of the Diocese or the monastery, with the total exclusion of legal heirs.

Using the systemic method, the authors submitted to interpretation both the provisions of the Civil Code and some norms with a special character, which represent a reference point in the analyzed issue. In the absence of any doctrinal assessments as well as jurisprudential solutions, the present study may represent a starting point for the consecration of this anomalous succession case and the different consequences it identifies.

Keywords: *legal inheritance, successoral capacity, church, monk, special law.*

1. Introduction

The question of law to be analyzed derives from an attribute inherent in the human being, materialized and constitutional in that "the right to inheritance is guaranteed"[1]. The imperative of protecting this right also confers the legitimacy and the guarantee of the right to inheritance, thus constituting its intangibility.

The present approach has as a starting point a somewhat special hypothesis of the right to inheritance, that of the capacity to inherit of a category of individuals with a special status, that is, the ecclesiastical staff, a situation which at first sight should not deviate from the rules of common law, the Civil Code making no reference in this case.

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[1] Article 46 of the Romanian Constitution refers to both legal inheritance and testamentary legacy. The Constitution was amended and supplemented by the Law on the Revision of the Romanian Constitution no. 429/2003, published in the Official Journal no. 767 of 29 October 2003 and entered into force on 29 October 2003.

The hypothesis is intended, of course, to interpret the provisions of the Civil Code and some special norms, being subject to provisions of the Functioning and Organization Statute of the Romanian Orthodox Church[2] (Statute of the Romanian Orthodox Church), Part IV, letter D "Provisions on the succession rights of hierarchs and monks", art. 192-194. Is the latter a normative act that implies an atypical character of the well-known principles of the devolution of the inheritance? In particular, did the Statute referred to have and play the role of a special law that removes the applicability of civil provisions in the matter?

In order to answer these questions, a minimum of rigour obliges us to state both the laws that become applicable and, above all, the text that states the special effects, even the ones that are derogating from the legal legacy of the monks, to which we also join a brief presentation of the categories of ecclesiastical staff, which are the subject of this discussion.

Although at first sight an analysis of succession capacity in the context of current civil regulation[3] may seem an easy subject, however, all human activity, regardless of the field, is based on the synthetic concept of civilian capacity, and its exercise according to the legal milestones and boundaries gives the individual the general and abstract ability to have civil rights and obligations through the conclusion of legal acts, an aptitude that has a great influence in the legal life of a person.

Man is the cause and purpose of the law, both of civil and divine law. Claiming a privileged place within the civil law, the succession field reflects, in essence, the completion of a person's life course, as a "legal response to the natural occurrence of death."[4]

"Inheritance", according to jurisconsult Julian, is nothing more than the acquisition of the whole right that the deceased had."[5] In other words, the succession right comes to legitimize the posterity of the deceased person, the accumulated patrimonial values, because the legal norms regard primarily the family of the missing person. On the other hand, the civil life of the person, the earthly life of the individual, is not indifferent to the Church, for the laws established by canons have as sole purpose the "salvation of the faithful"[6]. If in legal terms the death of a dead person implies the cessation of the civilian capacity of the deceased, from a religious point of view, death is only "the separation of the

[2] Text approved by the Holy Synod of the Romanian Orthodox Church by Decision no. 4768/2007 and recognized under Law no. 489/2006 on religious freedom and the general regime of denominations, through Romanian Government Decision no. 53 of 16 January 2008, published in the Official Journal of Romania Part I, no. 50 of 22 January 2008.

[3] The general regulation of the matter of inheritance is ensured by the Civil Code, in Book IV, entitled "On Inheritance and Liberties", art. 953-1163 and is concerned with legal relations that produce their effects at the end of a person's life. Prior to October 1, 2011, there were also other normative acts affecting legacy (for example, Act no. 319/1944 on a surviving spouse inheritance rights). We appreciate that the unitary regulation of the matter is beneficial in a single normative act.

[4] Jozsef Kocsis, Paul Vasilescu, *Civil Law*, Hamangiu Publishing House, Bucharest 2016, p. 1. The authors justify the role of establishing the set of legal rules not in the sense of "patrimonizing death", but in order to provide legal solutions for the fate of the heritage temporarily left without a holder, establishing by their content the destination of the asset and or the successor passive.

[5] *Hereditas nihil est quam successio in universum ius quod defunctus habuit.*

[6] Ioan N. Floca, *Orthodox Canon Law. Church Law and Administration*, Volume I, IBMBOR Publishing House, Bucharest, 1990, p. 43. Starting from the classification of canonical norms as prospective, pastoral, pedagogical and teleological, the author surprises the teleological type with a well-defined purpose: the believers' salvation.

soul from the body", the soul being immaterial and eternal.

According to art. 953 Civil Code, "the inheritance is the transmission of the assets of a deceased individual to one or more persons in existence"[7]. From the interpretation of this text in conjunction with the provisions on property, according to art. 557 par. (1) C. civ., "The right to property can be acquired, under the law, by convention, by legal or testamentary inheritance (...)" it follows that inheritance is a way of acquiring mortis causa property through which *de cujus*, the deceased person, passes his or her heritage to one or more persons in existence[8].

Analyzing the definition given by art. 953 Civil Code, we can state that legacy is the transmission of the de cuius patrimony to one or more natural or legal persons, as acquirers[9]. The patrimony of a natural person - all of the patrimonial rights and obligations - is the permanent companion of the person throughout their life. The patrimony (the patrimonial asset and liability) does not disappear with the individual's termination of life, it is a factual reality in search of a legal subject to be attributed to[10]. Therefore, there can be no patrimony without a subject of right. Inheritance law provides the legal solution to transferring the patrimony of an individual at their time of death.

On the other hand, among the means of "patrimony acquirement," the Church can be the recipient of both inter-vivos and mortis causa liberties. In terms of patrimony, as a form of acquiring church heritage, canonists considered both the testamentary heritage, the most common type and the *ab intestat* one. According to how the Church was or was not recognized at different historical moments, there is much evidence proving the faithful believers desire to write legal documents to churches, monasteries[11]. In addition to these wills, the *ab instestat* form of inheritance is also mentioned, without a testament. This succession took place when someone, capable of having some heritage, dies without a testamentary heir, and the beneficiaries were governed by law. If there were no legal heirs, "the fortune was attributed to the Church, and especially to the monasteries, to serve the salvation of souls"[12].

Thus, in view of the above, the Church, as a legal person, may be the beneficiary of ties, by way of the testamentary inheritance. Throughout the paper, there will be identified atypical situations that have been missed by the legislator in drafting the Civil Code, situations that allow us to appreciate that the Church, through its dioceses and monasteries, may have a "legal" successor capacity, under its own regulations, and not under those of ordinary law. Obviously, we will talk about the situation of an anomalous heritage. In this context, we will refer to the inheritance of ecclesiastical staff and other normative forms of legitimacy in the field. Thus, by distinguishing the succession rights of this category, provisions will be

[7] Art. 1 of the Law no. 71/2011 for the implementation of the Civil Code: "Inheritances opened before the entry into force of the Civil Code are subject to the law in force at the date of the inheritance".

[8] Francis Deak, Romeo Popescu, *Successor Law*, vol. I, Universul Juridic Publishing House, Bucharest, 2013, p. 19.

[9] Veronica Stoica, Laurentiu Dragu, *Legal Heritage*, Universul Juridic Publishing House, Bucharest, 2012, p. 14; Gabriela Lupșan, *Civil Law. Succesoral Law*, Danubius Publishing House, Galati, 2012, pp. 14-15.

[10] D. C. Florescu, T*he Right of Inheritance in the New Civil Code*, Universul Juridic Publishing House, Bucharest, 2012, p. 7.

[11] For details, dates, the role and status of the Church at various historical stages, see I. Floca, *op. cit*., pp. 466-469; Arghiropol Ioan, *What is meant by church wealth*, Bucharest, 1937; Iorgu Ivan, *The Church Goods in the First Six Centuries*, Bucharest, 1937. Along with the simple bonds, universal or private, there were also the pious purposeful links, a real source of wealth.

[12] *Ibidem.*

interpreted in the functioning and organization Statute of the Romanian Orthodox Church[13].

2. Considerations about ecclesiastical staff

In accordance with the canon law, we will highlight and analyze the relevant canonical-legal aspects of the domestic law regarding the ability of ecclesiastical staff to inherit by comparative reporting to Orthodox canonical norms, seen as "legal rules of Christian society[14]."

A. Laity (or layman) is a broad category recognized by the Church, which includes the totality of Christian believers, members of the Church, who do not have priestly status or the status of inferior servants of the Church[15]. From a confessional point of view, in order to have this secular quality as a member of the Church, the person in question must have received the Sacrament of the Holy Baptism. In other words, the layman is similar to the civilian law.

As a mere difference, within the civil law, the person acquires civilian capacity to use and implicitly to inherit, from the very birth or by exception, before birth, during the conception stage (provided that he is born alive[16]), while within canonical law, by receiving baptism, the individual acquires legal capacity of canon law, thus becoming a subject of rights and obligations from a canonical point of view. That difference, on the other hand, does not imply any dependency between the two areas. Thus, although he did not receive the mystery of baptism, the secular can inherit. Even the non-baptized, who do not belong to any ritual church, will not be religiously prevented from exercising their subjective right to inherit.

Thus, the layman - a majority of the ecclesiastical staff and a subject of the canon law, acquires legal succession capacity by applying the rules of civil law without any religious impediment.

B. The Clerics are all the priests established by ordination. Ordination[17] means "stretching out the hand," and ordination is the service through which the Sacrament or ministry of the priesthood is given or transmitted. By ordination, the consecration of the candidates for the steps of the higher clergy is done, namely the consecration to the deacon, the priest and the bishop or the bishop. Therefore, by clergy we understand the bishop, the priest and the deacon.

The Bishop represents the first and highest step of the clergy in the Orthodox Church. The bishop is that person chosen and sanctified through the sacrament of the priesthood, anointed in the upper episcopate by at least two bishops, to whom a diocese is usually given for pastoral care[18].

[13] Part IV of the BOR Statute, letter D "Provisions on the succession rights of hierarchs and monks", art. 192-194

[14] Constantin Dron, *Current Value of Canons*, Doxologia Publishing House, Iaşi, 2016, p. 117.

[15] The inferior servants of the Church are those persons who have received the ordination, consisting of a prayer which grants one of the steps of the lower clergy: the singer or reader and the hypo deacon that is, a lower step than the deacon and who do not represent sacramental function within the church.

[16] According to Article 36 of the Civil Code, "the rights of the child are recognized from the conception stage, but only if the infant is born alive".

[17] Ordination (< gr. *heirotonia* "the power of the hand") female noun (in the Christian ritual) The mystery of the priesthood in which, through the prayer of invoking the Holy Spirit, by blessing and sacramental laying of hands by the bishop (or two or three bishops) on the head of the sacerdotal ministers, they are consecrated into one of the three steps: deacon, priest, bishop.

[18] *Explanatory Dictionary of Romanian Language*, 2nd edition, Univers Enciclopedic Publishing House, Bucharest, 1996, p. 842.

According to art. 130 of the Organization and Functioning Status of the Romanian Orthodox Church, "It is considered to be eligible for the service, the worthiness and responsibility of the Archbishop and the eparhial bishop any hierarchical member of the Holy Synod, starting from the vacant diocese, as well as any archimandrite or priest widow by death, fulfilling canonical conditions, who has a PhD or is a graduate in Theology and has distinguished himself through pure life, theological culture, ecclesiastical dignity, missionary zeal, and household abilities. The list of eligible hierarchs is drawn in descending order, starting with the vacant eparchy. "

It is important to note in the field of succession that the bishop can not be married.

The Priest - The Romanian explanatory dictionary defines the priest as "a person who officiates the religious cult, being, in this posture, a mediator between man and divinity and representing his fellows in the sphere of the sacred without disturbing it."

Article 123 of the BOR Statute stipulates that "ministers and deacons are recruited from doctors, Masters graduates and graduates of theological faculties, specialized in Pastoral Theology, who have held the priestly capacity examination." Among the main attributions of this category we can mention the following: it is the delegate of the chariarch in the parish, charged with the spiritual pastoral care of the faithful believers, and within the administrative activity he is the head of the parish administration, being the president of all the existing fora in the parish, Parochial Assembly, Council and Committee.

In their turn, the category of priests knows a subclassification, the priestly priests, the celibate priests and the monks priests, the last two categories being subject to distinct rules of inheritance and the capacity of inheritance. If the priest is ordained as an unmarried clergy (celib), he will no longer be able to marry after he has joined the clergy.

The deacon is the third hierarchical rank of divine institution, and serves as a helping hand to the bishop and priest in the sacramental and administrative life.

C. Monks are another category of ecclesiastical staff. Monks can be either clergy, or laymen. The monks form the third state of the church together with the clergy and laity. In short, a layman can embrace the monastic state, not necessarily haing to be a cleric[19]. These, through the monastic votes deposited at the entrance to monasticism - the vote of poverty, the vote of virginity, the vote of obedience, give up the worldly things. In ancient times the entrance to the monastic rank was similar to a civil death and a spiritual rebirth, which is one of the reasons why the monks were obliged to give up any present or future property prior to the deposition of monastic votes by donation[20] or by will.

3. Legitimate legacy of ecclesiastical staff as a case of anomalous inheritance

As I have previously argued, if laymen and the priests of myrrh, who are categories of ecclesiastical staff, are subject to civil law on the capacity to inherit, a special category is the monastic rank.

[19] Liviu-Marius Harosa, *Canonic Law*, Universul Juridic Publishing House, Bucharest, 2013, pp. 93-94.

[20] For details on the donation contract and the causes of its revocation, see Mirela Costache, *Civil Law. Contracts. Course notes*, Zigotto Publishing House, Galati, 2013, pp. 66-80.

It is interesting to analyze the interference of the norm with civil law by which the monk renounces the goods he has and to the future goods in favor of others. According to private law, it is forbidden to renounce the personal assets[21].

We can not capitalize the subjective right of the monk's legal inheritance, without briefly specifying the rules of welcoming to the monastic life. Among these conditions, with incidence in the current analysis, we observe the provision in art. Article 16 (g) of the Regulations on the Organization of Monastic Life and the Administrative and Disciplinary Functioning of the Monasteries[22]: "The person wishing to enter the monastic life is obliged to give proof of the military service and the declaration that he renounces his property by donating it to his relatives or monastery[23]." Moreover, according to art. 41 of the same regulations, "it is not permitted for the abbot and for any monk to possess personal goods such as: cars, houses, apartments, studios, plots etc. This state contradicts the rules of authentic monastic life and monastic votes. "

The way in which the Church acquires property over temporal goods[24], through inheritance, is that of the succession of goods belonging to monks and hierarchs, the main source being the provisions of the Regulations and the BOR Statute cited above[25].

The Chapter in the Statute with implication in the matter is inappropriately entitled "Provisions concerning the inheritance of hierarchs and monks". By proceeding to a minimum reading and interpretation of these provisions, no rules are identified regarding the succession capacity of the hierarchs, on the contrary, rules are laid down claiming the succession to their possessions, the specific vocation coming to the eparchies[26]. Thus, the title misleads us as to the deception of the spirit of the established norm.

Regarding the unitary character of the successor transmission that ensures succession equality to those who fulfill the legal conditions to inherit, established by the Civil Code[27], the incidence in the matter and other rules for the award of the patrimony are what

[21] The patrimony is not transmissible through acts among the living.

[22] The Regulation for the organization of monastic life and the administrative and disciplinary functioning of the monasteries drawn up by the Holy Synod is an integral part of the BOR Statute, approved by the Holy Synod of the Romanian Orthodox Church by Decision no. 4768/2007 and recognized under Law no. 489/2006 on religious freedom and the general regime of denominations, through Romanian Government Decision no. 53 of 16 January 2008, published in the Official Journal of Romania Part I, no. 50 of 22 January 2008.

[23] The one who wishes to join the monastic life is obliged to submit to the Chiliarch of the place a written request, accompanied by the following documents: a) the birth certificate; b) the baptism certificate; c) the graduation documents (if the applicant is a minor, they should be a graduate of the Secondary School, should have at least the consent of the parent or guardian; d) the criminal record; e) civil status certificate, which states that they do not have any of the family obligations stipulated by the Civil Code; f) the parish priest's recommendation; g) the military service document and statement that he renounces his property by donating his property and assets to his relatives or to the monastery; h) the medical record regarding the state of physical and mental health.

[24] By temporal good, in a narrow sense, only the thing that offers economic utility and can be approached is meant. For details on the classification of goods, see Liviu-Marius Harosa, *op. cit.*, pp. 108-138.

[25] These norms are based on the provisions of the Apostolic Canon 40, the Canon 24 of the Fourth Synod of Antioch and the canons 22 and 32 of the Local Council in Carthage.

[26] Articles 192-194 of the Statute. Art. 192: "The dioceses have a vocation on all the successions of their hierarchs." Art. 193: "The goods the monks and monasteries brought with them or donated to the monastery when they joined monasticism, as well as those acquired in any way during their life within the monastery remain entirely the property of the monasteries they belong to and can not be subject to any subsequent claims." Article 194: "For the retired or withdrawn hierarchs, the Holy Synod will regulate their rights in accordance with statutory and church regulations".

[27] Veronica Stoica, Laurentiu Dragu, *op. cit.*, p. 21.

the doctrine calls anomalous succession[28]. The competition of the Civil Code texts with those of the BOR Statute imprints an anomalous character in the case of the succession law of the Diocese to the hierarchs / monks' property, but with some reservations regarding their priority application.

As in the case of the civil law and regarding the texts of the Orthodox church law concerning the succession to the hierarchs and monks property, there is a conflict of laws, the reference moment being the year 2008, in which the new Statute entered into force, the old one being abrogated. In this case, according to the principle of non-retroactivity of the law, the devolution of property will be governed by the law in force at the date of its opening. We can therefore talk about:

a) successions to the assets of hierarchs and monks opened under the old statute, prior to January 22, 2008;
b) successions to the hierarchs and monks' assets after January 22, 2008.

In either case, the statute texts do not refer to the rules of inheritance devolution established by the civil norms, nor vice versa. Neither the provisions of the old Code or the Civil Code in force qualify the Statute as a special law. Neither the civil doctrine we have reported will identify as an anomalous succession in our case. We are in the position of finding a "legal fracture" in this case. Moreover, another particularity created by this type of succession refers to the fact that it creates succession rights to a legal person, other than the State or the administrative-territorial unit, in the sphere of legal inheritance, which is the Diocese. This is the result of the autonomous interpretation of art. 192 of the Statute: "The dioceses have a vocation upon all the property of their hierarchs." In the present case, it is a legal legacy, as it is known that the legal heir is recognized as a universal heir.

Thus, we believe that by assigning and recognizing unequivocally the status text of a vocation to all the succession wealth, a successor capacity of the Diocese is created in the legal legacy.

A) The successions to the goods of the hierarchs and monks opened under the old statute, prior to January 22, 2008

The situation of the anomalous heritage has as concrete reflection the provisions of the Statute of the Romanian Orthodox Church of 1948[29]: "The possession of the monks and monasteries brought with them in the monasteries, as well as that acquired in any way during monasticism, remains entirely to monastery of which it holds". As it can be seen, the Monastery, a canonical legal person of public law, has an exclusive vocation to the legal succession of monks and nuns. According to this vocation and the attributed succession capacity, the monastery had the highest inheritance, by excluding both the classes of legal heirs and the categories of heirs reserved by the civil law, the inheritance reserve covering the entire succession. As a consequence, the will attributed by the monk to a person other than the institution to which he belongs does not have legal effects. Can we appreciate that the monastery even became a legal heir with a special status? As an exception, retired hierarchs or returnees at the Monastery, although monks, could test within the available limits of share provided by art. 194 and art. 197 of the BOR Statute of 1948.

B) successions to hierarchs and monks' assets after January 22, 2008

[28] Regarding the typology and specificity of anomalous succession, see also Dan Chirică, *Treaty of Civil Law, Succesions and Liberties*, C.H. Beck Publishing House, Bucharest, 2014, p. 8.

[29] Statute for the Organization and Functioning of the Romanian Orthodox Church in 1948, in force since February 17, 1949, issuing by the Great National Assembly, published in the Official Bulletin of February 23, 1949.

Art. 192 of the current BOR Statute does not bring substantial changes in the content of the legal norm, stating that "the Dioceses have a vocation on all the succession property of their hierarchs." The same exclusive vocation attributed to the Eparchy and the same quality of the "quasi-legal heir". The civilian capacity to inherit is therefore returned to the dioceses. At the same time, art. 193 of the new Statute provides that "Goods monks and nuns brought with them or donated to the monastery entry into monasticism and those acquired in any way while living within the monastery remain totally to the monastery they belong to and may not be subject to subsequent claims."

In this regulation as well we can talk about an anomalous succession of the eparchy, namely of the monastery, over "all" the hierarchs, monks and nuns. At a first glance, it appears that the Eparchy's vocation is on all the goods of the hierarchs[30], but we consider that art. 193 circumscribes the succession only to the goods brought with or donated to the Monastery at the entrance to monasticism, as well as those acquired in any way during monastic life (ie, all goods).

Special attention should be given to the latter article, which provides "the property which the monks and nuns brought with them or donated to the monastery at the entry into monasticism and those acquired in any way while living in the monastery remain totally monastery belonging and they may not be subject to subsequent claims."

The same prohibition is also enshrined in the Law on Cults 489/2006[31], by art. 31 paragraph 1: "the goods which are subject to contributions of any kind - contributions, donations, successions - as well as any other property lawfully entered into the patrimony of a cult, can not be the subject of subsequent claims."

Again, we must negativelly note the major inaccuracy of the text and the legal terms used, as well as the incompatibility with the principles of the civil law, as well as of the constitutional ones[32], in the sense that the text of the fundamental law defends and guarantees the right to property, implying here the possibility of claiming the goods from the hands of any person who unfairly holds them. Thus, if a literal interpretation is given to Art. 193, it would appear that third parties would no longer be able to use the claim, irrespective of the way in which their property became the possession of the monk and later of the monastery.

Neither the provisions of the Civil Code on Inheritance make any mention or refer to any special law governing certain situations, such as the present one, of the inheritance of monks and hierarchs. A legal fracture between the special provisions contained in the canonical rules and the statutes of religious cults and the rules of the civil law is not perpetuated, although the Canonical Codes of the Catholic Churches and the United Church with Rome[33] are part of the domestic law, based on the provisions of the Law of Cults, and the Statute of the Romanian Orthodox Church is new.

In Art. 5 par. 4 the Law of Cults states that "in their activity, religious cults, associations and groups have the obligation to observe the Constitution and the laws of the country and not to prejudice public security, public order, health and morals, as well as human rights and fundamental freedoms."

[30] According to art. 192 of the BOR Statute.

[31] Law no. 489/2006 on religious freedom and the general regime of denominations, published in the Official Journal no. 201 of 21 March 2014.

[32] Art. 44 para. 2 of the Constitution: "Private property is guaranteed and protected equally by law, regardless of the holder".

[33] Regarding the types of norms established by the canonical codes of the Catholic Church and the Orthodox Church, see Liviu-Marius Harosa, *op. cit*., pp. 96-97.

However, the revised Constitution in 2003 states that the State defends and guarantees the right to property, thereby implicitly defending the right to property through the action for revocation. Even if there were no legal norms concerning the special succession of monks and hierarchs and the succession capacity of the Church (through its canons), a reference to canonical norms, an integral part of the Romanian legal system, would have been necessary.

In the silence of the Code, we consider that, given the quality of a hierarch or a monk and the origin of the goods, the eparchies and the monasteries are the beneficiaries of an anomalous succession by virtue of which they have a vocation to the entire mass of the deceased, consisting of the goods brought with it or donated at the entry into monasticism, as well as those acquired in any way during the life of the monastery (as provided for monks, article 193 of the BOR Statute). Consequence that is in the field of the civil law: indirect exertion. We can also discuss here a legal exertion, both in the legal succession and the testamentary succession.

According to the rules of interpretation, the special law applies as a matter of priority. The general derogatory specialty is a legal principle which implies that the special rule is the one which derogates from the general rule and that the special rule is a strict interpretation of the case. Moreover, a general rule can not remove a special rule from application. Thus, the High Court of Cassation and Justice of Romania[34] ruled that the concurrence between the special law and the general law is solved in favor of the special law, even if this is not expressly provided for in the special law , and if there are inconsistencies between the special law and the European Convention on Human Rights, the latter has priority[35].

The conflict between the previous special law and the subsequent general law is solved by the concurrent application of the principles according to which the special rule applies with priority to the general rule - the general special exception - and a special rule can only be changed or abrogated by a special rule, a subsequent general rule.[36]

Therefore, we assume that in the competition between the two, the civil provisions do not apply in the matter of the anomalous succession we are discussing. Thus, strictly related to the goods brought into monachism by the Hierarch or monks donated to the monastery, to the Church (by its legal persons under public law) or to the Pastoral Diocese, or to possessions acquired in any way during the monastic life, and to which the hierarch or monk arranged during his life in favor of other persons, at the time of the opening of the succession, no heir reservist can have a vocation to succession.

4. Conclusions

As we have argued, the open legacies of the Hierarchs, monks, and monks are subject to special rules which, in the case of legal devolution, create an anomalous succession in favor of the Diocese or the monastery, with the complete exclusion of the legal heirs. The general rules established by the Civil Code do not apply, and doctrinal points of view do not yet exist.

Thus, the succession vocation of the legal heirs disappears in the situation where de cujus embraced one of the indicated

[34] High Court of Cassation and Justice, Decision no. 33/2008, published in the Official Journal of Romania, Part I, no. 108 of 23 February 2009.

[35] High Court of Cassation and Justice, Decision no. 27 of 14.11.2011, File no. 28/2011, published in the Official Journal no. 120 of February 17, 2012, http://www.legex.ro/Decision-27-2011-118553.aspx.

[36] High Court of Cassation and Justice, Decision no. 13/2012, File no. 14/2012, accessed online at http://www.lege-online.ro/lr-DECISION-13%20-2013-(146010).html.

forms of monasticism. Even when legal documents or wills are established in favor of the legal heirs, they can not be executed for the same reasons. By its rules, the BOR Statute here plays the role of a special law, in the sense of inadmissibility of the rules of common law established in the case of the successor inheritance of a natural person. .

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