IUSTITIA
Vol. 7, No. 2 (December 2016)
Pages: 181-200

THE EXTRAORDINARY ADMINISTRATION OF ECCLESIASTICAL GOODS IN CCEO: A MISSING UPDATE

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The previous Latin and Oriental legislation on temporal goods considered extraordinary administration a form of alienation. Such equivalence is absent from CIC c. 1277, which lacks directly corresponding canons in the Oriental Code. Thus, if the new Latin code surpassed the undue classification of extraordinary administration as alienation, the Oriental legislation seems to have remained unchanged. Such a lacuna must be understood within the more general context of the administration of ecclesiastical goods. The article shows that an oriental Bishop of a "minor Church," who has not synodal legislation to fill this gap, might place relevant acts of administration of goods without any further requirements for validity. At least in a practical-prudential way, it would be appropriate that the Oriental practice followed the Latin legislation or at least respected the principle identified in c. 1277.

1. Preamble

As it is known, the previous Latin and Oriental legislation on temporal goods considered extraordinary administration a form of alienation.[1]

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[1]"L'amministrazione si distingue propriamente anche dall'alienazione; infatti questa è regolata in modo diverso anche dagli atti di amministrazione straordinaria, è collocata sotto un titolo proprio, in modo che ora risulta chiaro che l'amministrazione è un atto che si esercita su beni già acquistati e che sono nell'ambito della propria disponibilità, esclusa l'alienazione:" V. De Paolis, *La vita consacrata nella Chiesa*, edizione rivista e ampliata a cura di V. Mosca, Venezia 2010, 413. "Acts of alienation have as their purpose to pass ownership (title) to another": J. A. Renken, *Penal law and financial malfeasance*, in *Studia canonica* 42 (2008) 13.

Such equivalence is absent from CIC c. 1277,[2] which lacks directly corresponding canons in the Oriental Code. Thus, if the new Latin code surpassed the undue classification of extraordinary administration as alienation, the Oriental legislation seems to have remained unchanged. CCEO has essentially preserved the prior law found in the 1954 m.p. *Postquam Apostolicis Litteris*, which was ultimately based on CIC 1917.

It is known that *Coetus* VI of the Commission for the Revision of the Oriental Code was inspired, in the division and adaptation of the matter concerning temporal goods, by the text of the Commission for the revision of the Latin Code.[3] The study group welcomed one consultative body's proposal for "a greater assimilation of canons to the Code of the Latin Church […]," which it at least partially incorporated into some particular canons.[4]

Such a lacuna must be understood within the more general context of the administration of ecclesiastical goods. This must occur not only in reference to the twofold typology of the acts of ordinary and extraordinary administration, but also in reference to the alienation and the relation that is established between the goods and the stable patrimony.

While acts of administration are closely connected to governance, not all acts of administration have the same significance. They are first distinguished as either ordinary or extraordinary acts. The category of ordinary acts is further divided into ordinary administration in general and administation considered to be of greater importance. These are considered in CIC cc. 1277 and 1281.[5] However, as already pointed out, it

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[2]"Episcopus dioecesanus quod attinet ad actus administrationis ponendos, qui, attento statu oeconomico dioecesis, sunt maioris momenti, consilium a rebus oeconomicis et collegium consultorum audire debet; eiusdem tamen consilii atque etiam collegii consultorum consensu eget, praeterquam in casibus iure universali vel tabulis fundationis specialiter expressis, ad ponendos actus extraordinariae administrationis. Conferentiae autem Episcoporum est definire quinam actus habendi sint extraordinariae administrationis."

[3]Cf. J. Rezáč, *De laicis deque consociationibus christifidelium ac de officiis ecclesiasticis et de jure Ecclesiae patrimoniali*, in *Nuntia* 5 (1977) 49.

[4]*Nuova revisione dello Schema canonum de normis generalibus et de bonis Ecclesiae temporalibus*, in *Nuntia* 18 (1984) 4.

[5]"§1. Firmis statutorum praescriptis, administratores invalide ponunt actus qui fines modumque ordinariae administrationis excedunt, nisi prius ab Ordinario facultatem scripto datam obtinuerint. §2. In statutis definiantur actus qui finem et modum ordinariae administrationis excedunt; si vero de hac re sileant statuta, competit Episcopo dioecesano, audito consilio a rebus oeconomicis, huiusmodi actus pro personis sibi subiectis determinare. §3. Nisi quando et quatenus in rem suam versum sit, persona iuridica non tenetur

has to be noted immediately that CCEO has only a partial parallel to c. 1277 in CCEO except in c. 263 §4[6], but only partially, that is, within the limits of the specification of the acts of more importance. While CIC c. 1281 has a parallel in CCEO c. 1024 §1,[7] with regard to the acts that exceed the limits and the modalities of ordinary administration.

Before considering the problems concerning administration, it may be useful to recall the general principles upon which the Church always associated the temporal goods and their administration aimed at many purposes for which they were established in the Church, making a clear reference to their sacred character and then to their principle of inalienability.

1. Peculiarity of Ecclesiastical Goods: Nature and Purpose

The Church claims the right to goods in relation to the ends she is called to achieve (CCEO c. 1007).[8] Such ends are traced back to divine worship, to works of apostolate and of charity and to adequate sustenance of the ministers.[9]

The canonical system wisely anticipates ecclesiastical institutions' reliance on temporal goods. From the start, the goods of the Church are considered participants in the spirituality of purpose. CCEO c. 1007 clearly identifies that purpose: "The Church in taking care of the spiritual

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respondere de actibus ab administratoribus invalide positis; de actibus autem ab administratoribus illegitime sed valide positis respondebit ipsa persona iuridica, salva eius actione seu recursu adversus administratores qui damna eidem intulerint."

[6]"Episcopus eparchialis in actibus maioris momenti rem oeconomicam respicientibus consilium a rebus oeconomicis audire ne praetermittat; huius autem membra tantum suffragium consultivum habent, nisi iure communi in casibus specialiter espressis vel ex documento fundationis eorum consensus exigitur."

[7]"Actus, qui fines et modum ordinariae administrationis excedunt, administrator bonorum ecclesiasticorum valide ponere non possunt nisi de consensu auctoritatis competentis scripto dato."

[8]"Ecclesia in procurando bono hominum spirituali bonis temporalibus eget et utitur, quantenus propria missio id postulat; quare ipsi ius nativum competit acquirendi, possidendi, administrandi atque alienandi ea bona temporalia, quae ad fines ei proprios paesertim ad cultum divinum, ad opera apostolatus et caritatis atque ad congruam ministrorum sustentationem necessaria sunt."

[9]The corresponding CIC c. 1254 §2, n. 9 speaks about the honest sustenance of the ministers and specifies that the works of charity are especially those towards the poor.

well-being of the people needs and utilizes temporal goods." Even the sources of the Church's temporal goods are spiritual or at least linked to spiritual matters. Most of these deal with the pious wills of the faithful. In accepting these pious wills, or donations for a supernatural religious motive, the Church herself is obliged to respect the purposes desired by the faithful. The spiritual dimension of ecclesiastical goods emerges particularly from offerings connected with the Eucharist; it is, in fact, the privileged place for offertory collections of the faithful, who in such a way wish to respond to the divine love, of which they felt to be the subject by participating in the sacrifice of the mass with the communion of their goods with the brethren, which is a response to divine agape. In the past, goods were offered by the faithful to atone for their sins in the penitential practice and so were considered *pretia peccatorum*. Moreover, since ecclesiastical goods were primarily collected and assigned to the poor, they were called *patrimonium pauperum*. Precisely for this spiritual import as well as for the achievement of the proper purposes, the Church considered with some doubt the alienation of goods that she intended to regulate in order to protect a temporal patrimony with spiritual purposes.[10]

2. In the Course of History

The proper legislation in matters of alienation of goods responds to different demands as regards the acts of extraordinary administration. When goods are alienated, they cease to be ecclesiastical and no longer

[10]This spiritual purpose precisely led to the doctrine of the CIC 1917 comments supporting the inalienability of ecclesiastical goods. See, by way of example, F.X.Wernz – P.Vidal, *Ius canonicum*, T. IV/II, *De rebus*, apud Aedes Universitatis Gregorianae, Romae 1935, 224: "De iure Ecclesiae alienandi bona sua dubitari nequit. Id enim ex pleno perfectoque dominio Ecclesiae in sua bona evidenter deducitur, et haud raro ad finem Ecclesiae promovendum alienatio potest esse necessaria vel saltem summopere utilis;" 189: "Ecclesia licet inde a primis temporibus incautae dilapidationi bonorum ecclesiasticorum resisteret, numquam eo progressa est, ut alienationem bonorum ecclesiasticorum simpliciter prohiberet, sed interveniente necessitate et forma legittima servata illam omnino permisit;" 224: "At Ecclesia quoniam est persona moralis, quae per se agere non valet, ad instar *pupilli* per Praelatos ecclesiasticos seu administratores de bonis suis disponit. Nemo ex illis, ne ipso quidem Romano Pontifice excepto, habet ius bona ecclesiastica *absque* proportionata causa *valide* alienandi. […] Nam ex iure divino nullus administrator bonorum alienorum sine iusta causa valide alienare potest. Cui iuri divino etiam Romanus Pontifex, utpote tantum administrator bonorum, non dominus bonorum ecclesiasticorum, vere est subiectus. Praeterea solemni iuramento promittit se bona ecclesiastica in favorem suorum consaguineorum non esse dilapidaturum."

serve the Church. For this reason, the need has arisen to prohibit the alienation of ecclesiastical goods. As already anticipated, the characteristics of *bona ecclesiastica* are sacredness and inalienability. In the early centuries, no particular norms regulated alienation of ecclesiastical goods; however, abuses led to the requirement of a grave cause for lawful alienation. To evaluate the gravity of the cause, the metropolitan or the bishops of the ecclesiastical province were required to intervene. The rules governing the matter became demanding, especially with the constitution *Ambitiosae* of Paul III in 1467, which imposed penalties on violators.

To restrain the greed of those who presume to usurp or to relegate the immovable goods or valuable movable goods to profane use, alienation and contracts are forbidden. Lease and goods *quae servando servari non possunt* are exceptions. Their alienation requires the permission of the Supreme Pontiff. An alienation made without reason and without the prescribed solemnities is declared invalid. This legislation was substantially welcomed in CIC 1917[11] and, with some significant innovations, in the corrent CIC.[12]

The legislation on alienation of ecclesiastical goods is significant, because it highlights the *momentum* and the *sensus* of the ecclesiastical goods. These goods must remain within the limits of their proper purposes, under the vigilance of a competent authority. However, the sacredness of these goods does not instrinsically entail inalienability. Alienation must be done prudently to avoid abuses and dangers. Nor should it be supported in an absolute way, such that the goods constitute a financial burden and cease to serve the purposes for which they exist. Finally, such principles must not be used as a pretext to accumulate goods.

The problem that was of interest to the pre-existing doctrine was the determination of *bona* "quae servando servari possunt," and this "means property which, by being cared for, is able to be preserved as 'imperishable.'"[13] The goods under prohibition are only ecclesiastical ones.[14] Casuistry occupied itself with this matter in a very popular manner.

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[11]F.X.Wernz – P.Vidal, *Ius canonicum*, T. IV/II, *De rebus*, 189-191.

[12]Cf. V. De Paolis, *I beni temporali della Chiesa*, Nuova edizione aggiornata e integrata a cura di A. Perlasca, EDB, Bologna 2011, 255-256.

[13]N.P. Cafardi, *Alienation of Church property*, in K.E. McKenna – L.A. Di Nardo – J.W. Pokusa, (ed.), *Church Finance Handbook*, published by Canon Law Society of America, Washington DC 1999, 248.

[14]F.X.Wernz – P.Vidal, *Ius canonicum*, T. IV/II, *De rebus*, 225-226: "Porro ex rebus ecclesiasticae liberae alienationi subductae sunt res immobiles, v. g.

The CIC gave a clarification, both by introducing the notion of stable patrimony and by distinguishing well the acts of extraordinary administration from those of alienation. While it seems that there is no such clear distinction in CCEO, given that c. 263 §4 is familiar with the more important acts of administration but not those of extraordinary administration; and, as indicated above, the more important acts of administration fall within the limits of ordinary administration.[15] "Among the acts of ordinary administration may be introduced the distinction of acts of more importance. It is definite in c. 1277. In fact, it is popular especially in the field of the law of the religious. This deals with the acts of ordinary administration, but that, 'given the economic situation' of a juridical person 'are of more importance' ('maioris momenti'). […] It has to be noted that that which can be of more importance for a juridical person may not be for another, since the distinction is based on the consideration of the economic situation of the same juridical person."[16]

While the current terminology denotes a major and distinct clarification in 1917 Code, where also the administration of more impotant acts was considered (c. 1520 §3),[17] it was not clear whether such category

praedia, res mobiles, quae servando servari possunt praesertim pretiosae, v. g. calices pretiosi, usufructus longi temporis, census sive reditus et pensiones annuae ex re immobili, v. g. ex predio provenientes, actiones rerum immobilium et mobilium pretiosarum, reliquiae sanctorum insignes, bibliotheca bene instructa. Quibus rebus iam ab antiquis canonistis enumeratis certe nostra aetate addendi sunt tituli, qui fundationem vel dotationem, beneficii vel instituti ecclesiastici constituunt, ideoque habent rationem capitalis; quos titulos non censetur alienare, qui in alios titulos saltem aeque tutos ac frugiferos illos commutat (can. 1533, §2)."

[15]"L'unico caso ove ricorre esplicitamente tale categoria è il can. 1277. Essa era presente già nel Codice precedente e […] era comune nella dottrina. Il canone, di per sé, non la qualifica esplicitamente come amministrazione ordinaria: la cosa è tuttavia implicita dal momento che lo stesso canone non la fa rientrare nella categoria di amministrazione straordinaria, alla quale anzi viene contrapposta. Nella suddetta categoria rientrano gli atti di amministrazione «qui, attento statu oeconomico dioecesis, sunt maioris momenti». Per porli, il Vescovo diocesano deve sentire il parere del consiglio per gli affari economici e del collegio dei consultori:" V. De Paolis, *I beni temporali della Chiesa*, 272, note 50.

[16]V. De Paolis, *La vita consacrata nella Chiesa*, 420; see also, Id., *I beni temporali della Chiesa*, 195.

[17]"Loci Ordinarius in administrativis actibus maioris momenti consilium administrationis audire ne praetermittat; huius tamen sodales votum habent

belonged to ordinary administration or to extraordinary administration.[18] From the synthesis of De Paolis it can be concluded that the doctrine of the old Code "had formulated a criterion *a posteriori*: they were acts of extraordinary administration those which required, for validity, the permission of the competent authority; whereas they were more important acts of administration though of ordinary administration, those that rather required opinion of the competent authority for lawfulnes."[19]

3. Administration and Alienation

The doctrine prior to the code included the acts of alienation among those of extraordinary administration; in fact, the acts of administration in general not having a precise regulation unlike the acts of alienation, it was virtually pausing to comment the canons of the acts of alienation when it was dealing with the acts of extraordinary administration. The post-Code doctrine also, somewhat still scarse, generally followed the same way, treating together the acts of extraordinary administration and those of alienation.[20]

3.1. The Current Code

The current CIC introduced intentionally[21] and explicitly in the preliminary canons on temporal goods of the Church the verb "to alienate" differentiated from "to administer." The same clarification is found also in CCEO c. 1007. Under this viewpoint, the doctrine noticed a difference between *to administer* and *to alienate,*[22] although sometimes there are positions still not fully in line with the new legislation.[23]

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tantum consultivum, nisi iure communi in casibus specialiter expressis vel ex tabulis fundationis eorum consensus exigatur."

[18]M. Conte A Coronata, *Institutiones iuris canonici*, Vol. II, *De rebus*, Marietti, Taurini-Romae 1962, 480: "Actus maioris momenti in quibus consilium audire debet Ordinarius loci sunt praevii tractatus ad alienationes facienda, ad vigiliantiam super administrationem singularum personarum moralium, oblationum, collectionum, ad revisionem redditionum rationum quas singulae personae singulis annis ad Ordinarium mittere debent."

[19]V. De Paolis, *I beni temporali della Chiesa*, 275. (English translation is mine).

[20]In such a line ranks also the *Istruzione in materia amministrativa* of CEI, September 1, 2005, nn. 60-66, in ECEI 7/2567-2577.

[21]The addition of the word «alienare» in c. 1254 §1 and c. 1255, was made, "quia alienatio non est actus administrationis:" *Communicationes* 12 (1980) 396.

[22]In such a line of thought see for example, for CIC, V. De Paolis, *I beni temporali della Chiesa*, 189, 196, 254; for CCEO, though less evident, I. Cozma, *I*

In fact, the CIC attributes importance to three of the four verbs with which the right of the Church to goods is highlighted in c. 1254 §1 and in c. 1255. The first three titles of book V of CIC treat respectively: *De acquisitione bonorum*, (cc. 1259-1272), *De administratione bonorum* (cc. 1273-1289), e *De contractibus ac praesertim de alienatione* (cc. 1290-1298). The same importance given is also to be noticed in Orientale Systematics in title XXIII which treats in Chapter I *De bonis temporali bus acquirendis* (cc. 1010-1021), in Chapter II *De bonis ecclesiasticis administrandis* (cc. 1022-1033) and in Chapter III *De contractibus, praesertim de alienationibus* (cc. 1034-1042).

It should be specially noted that the current Code, unlike the previous one, offers a twofold legislation, each complete and precise in its field, for acts of extraordinary administration and those of alienation respectively. The CIC never identified the acts of alienation as acts of extraordinary administration.

3.2. The Acts of Extraordinary Administration

The acts of extraordinary administration are those that "fines et modum ordinariae administrationis excedunt" (CIC c. 1281 §§1-2; CCEO c. 1024 §§1-2; and as for the extraordinary administration in religious institutes, cf. CIC c. 638 §1).[24] They must however be further specified in their proper laws or in their statutes or in any case by the competent authority (CIC c. 1277 and CCEO c. 263 §4). The norm given by the universal law for the acts of extraordinary administration in general is that they need the permission of legitimate authority for the validity of the administrative act itself. It falls on the universal law, particular, or statutory to determine the need for consent by councils or persons.

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beni temporali nei rapporti tra Ortodossi e Greco-cattolici in Romania, Pontificio Istituto Orientale, Roma 2012, 178-182.

[23]Some commentators of CIC/83, however, seem not to still distinguish clearly alienation from administration and so include alienation within the extraordinary administration. In this sense, L. Chiappetta, *Commento al Codice di Diritto Canonico*, Vol. II, Terza edizione a cura di F. Catozzella - A. Catta - C. Izzi - L. Sabbarese, EDB, Bologna 2011, 590, note 3; J.P. Schouppe, *Elementi di diritto patrimoniale canonico*, Giuffré Editore, Milano 1997, 134, note 14, consider alienation as a "subcategory of extraordinary administration." (English translation is mine).

[24]De Paolis translates the Latin expression of c. 1281 §1 "fines modumque" with "limits and measure." (English translation is mine). See, V. De Paolis, *I beni temporali della Chiesa*, 194; Id., *La vita consacrata nella Chiesa*, 418.

"The object of acts of extraordinary administration generally covers all goods and all economic and financial transactions related to them not falling under the regulation of alienation or acts equivalent to it. For acts of extraordinary administration, the canonical legislation never requires the permission of the Holy See."[25]

3.3. Acts of Alienation

Acts of alienation concern only those that have as their object goods legitimately assigned to the stable patrimony[26] of a public juridic person. These goods exceed a determined amount fixed by law[27] (cf. CIC c. 1291[28] and CCEO c. 1035 §1[29]).

For validity, the competent authority must permit the act of alienation. This authority includes, for the different possibilities represented in CIC c. 1292 §1,[30] the Holy See, the diocesan Bishop, with the consent of the

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[25]V. De Paolis, *I beni temporali della Chiesa*, 277. (English translation is mine).

[26]"Gli atti di alienazione relativi a beni non legittimamente ascritti al patrimonio stabile sono, invece, considerati come semplici atti di straordinaria amministrazione e sottostanno alla legislazione prevista al riguardo:" V. De Paolis, *I beni temporali della Chiesa*, 278, note 60.

[27]"Anche gli atti di alienazione relativi a beni legittimamente ascritti al patrimonio stabile, ma di valore inferiore alla somma minima stabilita a norma del diritto (can. 1292 §1 [can. 1036 §1 del CCEO]), possono essere considerati come atti di straordinaria amministrazione e sottoposti alla legislazione prevista al riguardo": *Ibidem*, note 61.

[28]"Ad valide alienanda bona, quae personae iuridicae publicae ex legitima assignatione patrimonium stabile constituunt et quorum valor summam iure definitam excedit, requiritur licentia auctoritatis ad normam iuris competentis."

[29]"Ad alienanda bona ecclesiastica, quae ex legitima assignatione patrimonium stabile personae iuridicae constituunt, requiritur: 1° iusta causa veluti urgens necessitas, evidens utilitas, pietas, caritas vel ratio pastoralis; 2° aestimatio rei alienandae a peritis scripto facta; 3° in casibus iure praescriptis consensus auctoritatis competentis scripto datus, sine quo alienatio invalida est."

[30]"Salvo praescripto can. 638 §3, cum valor bonorum, quorum alienatio proponitur, continetur intra summam minimam et summam maximam ab Episcoporum conferentia pro sua cuiusque regione definiendas, auctoritas competens, si agatur de personis iuridicis Episcopo dioecesano non subiectis, propriis determinatur statutis secus, auctoritas competens est Episcopus dioecesanus cum consensu consilii a rebus oeconomicis et collegii consultorum necnon eorum quorum interest. Eorundem quoque consensu eget ipse Episcopus dioecesanus ad bona dioecesis alienanda."

finance council and the college of consultors; likewise for the possibilities represented in c. 1036 §1.[31]

For the Eastern Churches in the eastern Mediterranean basin, special rules govern the alienation of ecclesiastical goods. These rules, given by Paul VI at the beginning of the seventies and renewed by John Paul II on July 6, 1995, aim to avoid the patrimonial impoverishment of the Church. The provisions prohibit the alienation of any property of Latin and Eastern juridic persons without the express authorization of the Apostolic See. Similarly prohibited is their entering into any contract "quo condicio patrimonialis personae iuridicae peior fieri potest." The prohibition applies to Egypt, Jordan, Greece, Iran, Iraq, Israel and the Palestinian National Authority territories, Lebanon, Syria and Turkey.[32]

In principle, the acquisition of goods does not require the special authorization of the Apostolic See. However, such is not the case when the buyer must borrow, mortgage, or sell patrimonial goods, or otherwise burden the juridic person to satisfy the seller. Because these acts endanger the patrimony condition of the juridic person, the buyer must meet the same formalities required for alienations (cf. CCEO c. 1042,[33] CIC c. 1295[34]). For the above-mentioned countries of the eastern Mediterranean basin, these formalities include the special approval of the Apostolic See.

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[31]"Si valor bonorum ecclesiasticorum, quorum alienatio proponitur, continetur intra summam minimam et summam maximam a Synodo Episcoporum Ecclesiae patriarchalis vel a Sede Apostolica statutam, requiritur consensus: 1° consilii a rebus oeconomicis et collegii consultorum eparchialium, si agatur de bonis eparchiae; 2° Episcopi eparchialis, qu in casu eget consensu consilii a rebus oeconomicis et collegii consultorum eparchialium, si agitur de bonis personae iuridicae eidem Episcopo eparchiali subiectae; 3° auctoritatis in typico vel statutis determinatae, si agitur de bonis personae iuridicae Episcopo eparchiali non subiectae."

[32]Cf. D. Salachas, K. Nitkiewicz, *Rapporti interecclesiali tra cattolici orientali e latini. Sussidio canonico-pastorale*, Roma 2007, 18.

[33]"Cann. 1035-1041 servari debent non solum in alienatione, sed etiam in quolibet negotio, quo condicio patrimonialis personae iuridicae peior fieri potest."

[34]"Requisita ad normam cann. 1291-1294, quibus etiam statuta personarum iuridicarum conformanda sunt, servari debent non solum in alienatione, sed etiam in quolibet negotio, quo condicio patrimonialis personae iuridicae peior fieri possit."

For religious,[35] CIC c. 638 §3[36] - which has no corresponding canon in CCEO – must be observed.

3.4. The Legislation on Aliention and Its Peculiarities

The different classification and regulation of acts of alienation finds its justification in the fact that they have their own history, which responds to a concern and a different logic from the acts of extraordinary administration. All this has its own reasons that respond to concrete historical questions and to a precise legal logic.[37]

The first steps of a canonical legislation on temporal goods were made to regulate properly the acts of alienation, as acts that touched the very meaning of ecclesiastical goods. In fact, the regulation started from the concept of *inalienability* of ecclesiastical goods, ecclesial patrimony, and therefore "sacred," no longer for profane use. In this way, the first legislation, which had the intention to prohibit the alienation of *bona ecclesiastica*, was particularly attentive to the acts of alienation of goods rather than to those of extraordinary administration.

From the principle of inalienability emerges then the concern and afterwards the tutelage that the patrimony of the Church not be reduced *ad nihilum*. The Bishops could incur similar danger if they could freely alienate the ecclesiastical goods. The legislation in this matter therefore considered not the ecclesiastical things in general but *res quae servando servari possunt* or the things that constitute the stable patrimony of a juridic person.[38] The Church's legislation on alienations was based more

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[35]Cf., among others, C. Begus, *I rapporti tra Ordinario del luogo e religiosi nell'ambito dei beni temporali*, in *Commentarium pro religiosis* 94 (2013) 23-39.

[36]"Ad validitatem alienationis et cuiuslibet negotii in quo condicio patrimonalis personae iuridicae peior fieri potest, requiritur licentia in scripto data Superioris competentis cum consensu sui consilii. Si tamen agatur de negotio quod summam a Sancta Sede pro cuiusque regione definitam superet, itemque de rebus ex voto Ecclesiae donatis aut de rebus pretiosis artis vel historiae causa, requiritur insuper ipsius Sanctae Sedis licentia."

[37]M. Cabreros De Anta, *La enajenación de bienes eclesiásticos*, in *El Patrimonio eclesiástico. Estudios de Tercera Semana de Derecho Canónico*, Consejo Superior de Investigaciones Científicas, Instituto "San Raimundo de Peñafort", Salamanca 1950, 156-163; V. De Paolis, *De bonis Ecclesiae temporalibus. Adnotationes in codicem: Liber V*, Romae 1986, 98-102; F.R. Aznar Gil, *La administraciòn de los bienes temporales de la Iglesia*, Universidad Pontificia de Salamanca, Salamanca 1993², 401-403.

[38]For the doctrine, see among others: F. Grazian, *Patrimonio stabile: istituto dimenticato?* in *Quaderni di diritto ecclesiale* 16 (2003) 282-296; D. Zalbidea González, *El patrimonio estable en el CIC de 1983 y sus antecedentes inmediatos*, in

on the distinction between stable patrimony and floating patrimony: the legislation on alienation had as its object the stable patrimony, which would have to guarantee the realization of its proper purposes to the public juridic persons.

Finally, it should be noted that both the 1917 and 1983 Latin codes provide a remedy for invalid alienations because of the omission of due canonical solemnities, but valid in the civil sector. In fact, CIC c. 1296[39] which has its source from CIC 1917 c. 1534[40] and its parallel in CCEO c. 1040,[41] provides for personal or real action to recover goods invalidly alienated, from a canonical viewpoint. Nothing, however, is provided for the acts of administration invalidly placed for the canonical order but valid for the civil order.

These aspects are not marginal and have to be carefully examined. Beyond the *cortex verborum* and the identification or non-identification with acts of extraordinary administration, the specific regulation that the ecclesiastical regulation offers for the acts of alienation must be understood. It is clear that, while wanting to understand the acts of alienation within those of extraordinary administration, not all acts of extraordinary administration can be alienated. However, acts of alienation are regulated differently than those of extraordinary administration. From this viewpoint, an authoritative doctrine clearly explained that, beyond the terminology, the specific nature of the extraordinary administration has to be safeguarded from that of

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Cuadernos doctorales 22 (2007-2008) 298-381; Id., *Patrimonio estable de la persona juridica*, in J. Otaduy – A. Viana – J. Sedano (ed.), *Diccionario General de Derecho Canonico*, Vol. V, Editorial Aranzadi, Pamplona 2012, 979-982.

[39]"Si quando bona ecclesiastica sine debitis quidem sollemnitatibus canonicis alienata fuerint, sed alienatio sit civiliter valida, auctoritatis competentis est decernere, omnibus mature perpensis, an et qualis actio, personalis scilicet vel realis, a quonam et contra quemnam instituenda sit ad Ecclesiae iura vindicanda."

[40]"§1. Ecclesiae competit actio personalis contra eum qui sine debitis sollemnitatibus bona ecclesiasstica alienaverit et contra eius erede; realis vero, si alienatio nulla fuerit, contra quemlibet possessorem, salvo iure emptoris contra male alientantem. §2. Contra invalidam rerum ecclesiasticarum alienationem agere possunt qui rem alienaverit, eius Superior, utriusque successor in officio, tandem quilibet clericus illi Ecclesiae adscriptus, quae damnum possa sit."

[41]"Si bona ecclesiastica contra praescripta iuris canonici alienata sunt, sed alienatio iure civili valida est, auctoritas superior illius, qui talem alienationem peregit, decernat omnibus mature perpensis, a net qualis actio, a quonam et contra quemnam proponendo sit ab Ecclesiae iura vindicanda."

alienation. De Paolis, for example, in this sense, expressed: "On our part there is no particular problem for refusing to attribute acts of extraordinary administration to those of alienation. The important issue is to save the specific nature of the two categories of acts and respect their own different regulations, without undue passages from one to another. In fact, we are convinced that we can hardly avoid confusion if the two categories of acts are not examined separately, as does the Code, in accordance with the proper regulation of each, designed specifically for different requirements to which they must respond."[42]

3.5. The Act by which the Patrimonial Condition *peior fieri potest*[43]

In this perspective we must examine the provisions of CIC c. 1295, which has its parallel in CCEO c. 1042. Particularly striking appears to be the classification of the object of the acts with which the patrimonial situation of the public juridic person[44] may worsen.

CIC c. 1295 has its direct source in CIC 1917 c. 1533. The differences are not many; *contractus* is replaced with *negotium*[45] and the specification concerning *alienatio proprie dicta*[46] is omitted.

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[42]V. De Paolis, *I beni temporali della Chiesa*, 279, note 64. (English translation is mine).

[43]Id., *Negozio giuridico "quo condicio patrimonialis personae giuridica peior fieri possit" (cf. can. 1295)*, in *Periodica* 83 (1994) 493-528, now also in *I beni temporali della Chiesa*, 272-294. On the contrary, M. Marchesi, *La Santa Sede e i beni ecclesiastici*, in Gruppo Italiano Docenti di Diritto Canonico (ed.), *I beni temporali della Chiesa*, Milano 1997, 125-128.

[44]That it considers only public juridic persons, is not a common opinion in doctrine. This seems evident to V. De Paolis, *I beni temporali della Chiesa*, 279-280, note 65. However, contrary arguements were advanced, for example, from F.R. Aznar Gil, *La administraciòn de los bienes temporales de la Iglesia*, 427-431.

[45]"La sostituzione del termine *contratto* con *negozio* è opportuna ed esprime ancor meglio la realtà, in quanto la situazione patrimoniale della persona giuridica può peggiorare non solo nei contratti, ma anche in altri negozi giuridici onerosi. A tale cambiamento, tuttavia, non va attribuito un grande peso, dal momento che proprio per quanto riguarda l'alienazione il termine *contratto* ha un significato molto ampio, come «duorum vel plurium in idem placitum consensus», oppure «duorum consensus atque conventio» (cf. G. Vromant, *De bonis Ecclesiae temporalibus*, [Editions De Scheut, Bruxelles 1953], 284). Pertanto anche nel precedente Codice la parola *contractus* poteva essere presa sostanzialmente nello stesso senso di *negotium*, in materia di cose temporali. Risulta dunque senza fondamento l'argomento dedotto dalla suddetta sostituzione per concludere che la normativa viene oggi applicata a tutti gli atti di amministrazione straordinaria: rimane il fatto che non si tratta di tutti i negozi, ma solo di quelli che possono rendere peggiore la situazione

The interpretation of such a canon is to be conducted in accordance with the canonical tradition from which it appears that the administrative act that can worsen the patrimonial situation of juridic person is not any act of extraordinary administration but an act that greatly resembles alienation; and it is precisely because of such strong resemblance that the solemnities of alienation are applied to it.[47]

In light of commentaries on both CIC 1917[48] and the current CIC,[49] it seems impossible to simply compare acts that endanger a juridic person's patrimony with acts of extraordinary administration. De Paolis rightly observes: "[…] many acts of extraordinary administration are not

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patrimoniale. Ed è precisamente questo che va provato": V. De Paolis, *I beni temporali della Chiesa*, 280, note 66.

[46]"Distinguere tuttavia una alienazione in senso proprio e un'altra in senso improprio può essere motivo di confusione. Il senso proprio delle parole infatti è quello secondo il quale deve essere inteso il testo legislativo (cf. CIC/17, can. 18; CIC/83, can. 17). Ora, il fatto che il testo legislativo equipari gli atti di trasferimento di un diritto su un bene a quelli di alienazione di per sé non giustifica la terminologia di «alienazione in senso proprio» e «alienazione in senso improprio»). La dottrina ha pertanto preferito parlare, più che di alienazione in senso proprio e in senso improprio, di alienazione in senso stretto e in senso largo. Anche questa terminologia, però, non è del tutto appropriata. Per questo, l'attuale Codice ha preferito omettere la qualifica "proprie dicta". È, invece, del tutto fuori luogo interpretare tale omissione nel senso che il legislatore nella nuova legislazione abbia voluto estendere il disposto del can. 1295 a tutti gli atti di straordinaria amministrazione, compresi quelli acquisitivi di beni, perfino a titolo gratuito": *Ibidem*, 280, note 67.

[47]Così V. De Paolis, *Negozio giuridico "quo condicio patrimonialis personae giuridica peior fieri possit" (cf. can. 1295)*, in *Periodica* 83 (1994) 506-528; now also in *I beni temporali della Chiesa*, 270-294.

[48]For example, for the pre-existing doctrine, apart from those already cited G. Vromant, *De bonis Ecclesiae temporalibus*, Paris 1953, 284; A. Vermeersch – I. Creusen, *Epitome Iuris Canonici*, Tom. II, apud Aedes Universitatis Gregorianae, Romae 1940[6], 594-599; e F.X.Wernz – P.Vidal, *Ius canonicum*, T. IV/II, *De rebus*, 222-234; one can also see M. Conte A. Coronata, *Compendium Iuris Canonici*, Vol. II, Domus Editorialis Marietti, Taurini-Romae 1942[2], 194-197; F.M. Cappello, *Summa Iuris Canonici*, Vol. II, apud Aedes Universitatis Gregorianae, Romae 1939[3], 685-693.

[49]For the current doctrine, besides the already mentioned V. De Paolis, *I beni temporali della Chiesa*, 254-266, 272-294, one can refer to F. Grazian, *La nozione di amministrazione e di alienazione nel Codice*, Editrice Pontificia Università Gregoriana, Roma 2002; Id., *Enajenación de bienes*, in J. Otaduy – A. Viana – J. Sedano (ed.), *Diccionario General de Derecho Canonico*, Vol. III, 593-600.

absolutely, either conceptually or in fact, acts potentially damaging to the patrimonial situation, in accordance with c. 1295."

4. The Stable Patrimony

Due permission is necessary to validly alienate goods which are both part of the stable patrimony and exceed the maximum limit established in law.

The concept of stable patrimony, partially new, either because already in the pre-existing doctrine,[50] or because already known, albeit with different terminology, in CIC 1917 c. 1530 §1, was introduced in the current CIC with difficulty.[51] In CCEO it seems that this concept has been introduced peacefully,[52] may be because it was already widely discussed during the revision of the Latin Code.

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[50]In doctrine, for instance, before even the CIC/83, one finds the following definition: "[…] quei beni che costituiscono quasi la base del sostentamento della persona, come un capitale dei cui redditi essa deve vivere, e, di conseguenza, sono rivestiti di una relativa immutabilità: sono in certo modo intangibili, non si possono consumare e si cerca di allontanare da essi ogni pericolo di perdita o diminuzione": A. Tabera – G. De Antoñana – G, Escudero, *Il diritto dei religiosi*, Commentarium pro Religiosis, Roma 1961, 191.

[51]"Nonnulla crisim fecerunt de locutione «patrimonium stabile», quae apta erat conditionibus rerum praeteritorum, sed nostris temporibus non idonea videtur, attenta mobilitate et fluiditate oeconomiae hodiernae. Consultores autem concordant circa necessitatem ponendi aliquem limitem (ut fit in c. 29), quod fieri nequit nisi sumendo notionem aliquam conventionalem per verba «patrimonium stabile» indicatam": *Communicationes* 12 (1980) 420. For the discussion concerning the old wording "res ecclesiasticae immobiles aut mobile, quae servando servari possunt" and the introduction of the wording "bona quae ad alicuius personae moralis ecclesiasticae patrimonium stabiliter et legitime pertinent", see *Communicationes* 37 (2005) 120-121.

[52]In c. 100 of *Nuova revisione dello Schema canonum de normis generalibus et de bonis Ecclesiae temporalibus* observations were not made, as is shown in *Nuntia* 18 (1984) 59. Instead there was a proposal from a consultative body to eliminate the adjective "stable" in c. 106 §1 (current c. 1035 §1), which considers some conditions for alienating legitimately goods allocated to the stable patrimony. The proposal was rejected (*Nuntia* 18 [1984] 61). "[…] the reason for it may be that «patrimonium» is a general term and therefore cannot be used to specify only those assets of juridical person which have a permanent or stable nature": V. Chittilappilly, *Temporal Goods and Their Alienation according to the Eastern Code with Special Reference to the Syro-Malabar Church*, Excerpta ex Dissertatione ad doctoratum, Pontificioum Institutum Orientale, Romae 1999, 30.

4.1. Novelty of the Formula and Its Significance

CIC 1917 c. 1530 §1 used the expression "res ecclesiasticae immobiles aut mobiles, quae servando servari possunt." The same expression was used also in c. 279 §1 of *Postquam Apostolicis Litteris*.[53] But in itself, it would still be an indefinite expression. This is why the code adds two additional specifications: the legitimate allocation and the quantity.

Both CIC c. 1291 and CCEO c. 1035 §1 use the term *stable patrimony* to specify goods whose valid alienation requires the permission of the competent authority. CIC c. 1285[54] and CCEO c. 1029[55] this term also to limit administrators' faculty to make pious or charitable donations from movable goods not belonging to the stable patrimony.

"It deals therefore with the goods which, by virtue of their nature or their function or purpose, not only cannot, but must not be alienated. These are generally the immovable goods; however, not always. In fact, there may be immovable goods, that in order to meet the purposes which they must achieve - for example, a donation made for the construction of a seminary; a property acquired only as a transitional investment to escape the danger of inflation etc. - must be sold."[56]

Whereas movable goods are generally those that "*servando servari non possunt,*" as they serve the life and development of the juridic person and can be invested in a stable and permanent manner. In this sense, the distinction between immovable goods and movable goods is not easily determined according to the old criteria, especially Roman law. And the formula for defining the inalienable goods, destined to guarantee the livelihood and the ends of a juridic person, must be updated. The introduction of the notion of "stable patrimony" highlights the inalienability of goods, not destined to serve a juridic person's ordinary life but to financially support the achievement of its proper ends.

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[53]Pius XII, Motu proprio *Postquam Apostolicis Litteris*, 9 februarii 1952, in AAS 44 (1952) 138.

[54]"Intra limites dumtaxat ordinariae administrationis fas est administratoribus de bonis mobilibus, quae ad patrimonium stabile non pertinent, donationes ad fines pietatis aut christianae caritatis facere."

[55]"Administrator bonorum ecclesiasticorum de bonis mobilibus, quae ad patrimonium stabile non pertinent, donationes praeterquam moderatas secundum legitimam consuetudinem ne faciat nisi iusta de causa pietatis aut caritatis."

[56]V. De Paolis, *I beni temporali della Chiesa*, 257-258. (English translation is mine).

Juridic persons are not explicitly obliged to have a stable patrimony. However, the law presumes that a juridic person has or should have one to ensure its survival and the achievement of its purposes (cf. CIC c. 1254; CCEO c. 1007). The obligation to have such a patrimony also implicitly derives from other canonical norms.[57]

4.2. Clarifications on Stable Patrimony

According to CIC c. 1291 and its parallel CCEO c. 1035 §1, a stable patrimony is constituted from legitimately allocated goods. However, not all of a juridic person's goods belong to stable patrimony through legitimate allocation, according to the dispositions of universal, particular, proper, or statutory law. Only in such a case they are rescued from free availability and become inalienable. In this sense, we can say that when we proceed in this way an act by which some goods are allocated to the stable patrimony, is an act of extraordinary administration (cf. CCEO c. 1024 §§1-2).

> If it is true that it is the act of legitimate allocation that assigns the goods to the stable patrimony, we cannot, however, forget to point out that: 1) each juridic person has a stable patrimony; 2) some goods are enrolled by their nature because the juridic person would definitely not have the means to their own ends without them; 3) such goods are therefore unavailable and their legitimate allocation to the stable patrimony is implied from other acts; 4) the extent of goods attributable should be proportionate to the nature, purpose, and requirements of the same juridic person; 5) it is not permissible not to make such allocation, just with the aim to elude the requirements of Canon Law on the alienation. These latter provisions, in fact, are designed to protect the same ecclesiastical goods and thus to guarantee the existence of the same juridic person.[58]

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[57]For instance, when it is stated that the competent ecclesiastical authority is not to confer juridic personality if the institution does not have the means that will make adequate provision for the attainment of the end (c. 114 §3 of CIC/83; c. 921 §3 of CCEO); or when a public association, legitimately erected, owns goods that do not exhaust their function in the ordinary expenses, as it must render account of the administration (c. 319 del CIC/83; c. 582 del CCEO); or, especially when the right to have goods is ricognized for every juridic person for the attainment of its purposes, as they are always *fines Ecclesiae* (cc. 1254-1256 of CIC/83; cc. 1007-1009 of CCEO).

[58]V. De Paolis, *I beni temporali della Chiesa*, 259. (English translation is mine).

4.3. The Doctrine of Authors[59]

From what has been said, one can see that stable patrimony consists of goods ordered to the survival of a juridic person and to the realization of its proper goals. These goods, which can come from both movable and immovable goods, are "destined to form the institution's permanent endowment, which, directly or indirectly, allows the institution itself to achieve its purposes."[60] They "constitute the minimum and secure economic base in order that the juridic person can be independent, and can take care of the purposes and services that are proper to her; but there are no absolute rules to define the notion of stability for a patrimony, since this stability is operative, not only of the nature and quantity of goods, but also of the economic requirements needed to achieve the purposes, as well as the stationary situation or in expansion of the entity in the exercise of its mission."[61]

These and other attempts at the definition, on one hand, only partially meet the need to precisely define the notion of stable patrimony. On the other hand, they show that surely there are goods that belong to the stable patrimony that have to be legitimately assigned. The difficulty here is also to understand how to proceed with drawing up a list which

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[59]It is useful to note that the doctrine of Authors "Latin" is generally richer in the field and this is why the reference is primarily to these authors. Commentators of the CCEO, however, do not dwell in detail on this issue (for example, R. Coppola, *Titolo XXIII. I beni temporali della Chiesa*, in P.V. Pinto [ed.], *Commento al Codice dei Canoni delle Chiese Orientali*, Libreria Editrice Vaticana, Città del Vaticano 2001, 863) or do not at all consider them (See, for example, G. Nedungatt, *Laity and Church Temporalities*, Dharmaram Publications, Bangalore 2000, 231-252; R. Metz, *Title 23. The Temporal Goods of the Church (cc. 1007-1054)*, in G. Nedungatt [ed.], *A Guide to the Eastern Code*, Pontificio Istituto Orientale, Rome 2002, 703-707); and, when they consider them, they relate the doctrine of the commentators of the Latin Code and refer to it (See, for instance, A. Rajeh, *I beni temporali nella Chiesa maronita in Libano. Visione storica e commento esegetico alla normativa vigente*, Theses ad doctoratum in Iure Canonico, Pontificia Università Lateranense, Roma 1999, 129-132; V. Chitttilappilly, *Temporal Goods and Their Alienation according to the Eastern Code with Special Reference to the Syro-Malabar Church*, 28-37; J. Abbass, *Alienating Ecclesiastical goods in the Eastern Catholic Churches*, in *Folia canonica* 5 [2002] 127).

[60]Cf. V. Rovera, *I beni temporali nella Chiesa*, in E. Cappellini (ed.), *La normativa del nuovo Codice*. Ed. Queriniana, Brescia 1983, 277.

[61]M. López Alarcón, *Libro V. I beni temporali della Chiesa*, in J.I. Arrieta (ed.), *Codice di Diritto Canonico e leggi complementari commentato*, Coletti a San Pietro, Roma 2004, 854. (English translation is mine).

for valid allocation includes certain goods in the stable patrimony of the juridic person.

5. The Acts of Extraordinary Administration and the Acts of More Importance

A first comparison between CIC c. 1277 and CCEO c. 263 §4 uncovers some differences worth dwelling on. CIC c. 1277, derived from CIC 1917 c. 1520 §3, requires consultation prior to acts of greater importance. The bishop must consult the diocesan finance council and the college of consultors before placing these acts that must be assessed in light of the diocese's economic condition. To place acts of extraordinary administration, he must seek and obtain the consent of the same authorities.

For the determination of the acts of extraordinary administration, the canon refers to the Bishops' Conference. The identification of more important acts of administration seems to be more challenging because such acts fall between the acts of ordinary administration. The more important acts of administration require not only technical and economic evaluation but also a prudential evaluation of the economic situation of the diocese, without forgetting the eventual consequences within the real pastroal circle.[62]

The codes, however, indicate the identifying characteristics of extraordinary administration when they treat the following: acts exceeding the limits and the modalities of ordinary administration (CIC c. 1281 §1; CCEO c. 1024 §1); within the limits of ordinary administration, pious or charitable donations of movable goods not belonging to the stable patrimony (CIC c. 1285; CCEO c. 1029); alienating goods from the stable patrimony in excess of the sum fixed by law (CIC c. 1291; CCEO c. 1035 §1); and business transactions that, although not alienation, can endanger the *condicio patrimonialis* of the juridic person (CIC c. 1295: CCEO c. 1042).

CCEO c. 263 §4 omits acts of extraordinary administration. It refers solely to acts of greater importance which, as repeatedly stated, are acts of ordinary administration.[63] For the acts of more importance, as it is in the Latin Code, the eparchial bishop must obtain the counsel of CAE.

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[62]Already during the revision it was observed that «non possunt lege generali determinari quinam sint actus maioris momenti. Sufficit quod dicitur in canone: "attento statu oeconomico dioecesis»: *Communicationes* 16 (1984) 33.

[63]This clarification has been expressly transposed, for example, from Metz, when presenting the various forms of administration, speaks of «acts of major

In this regard, it may be noted that the aforementioned omission, with the attendant consent envisaged only for patriarchal Churches and Major Archbishops, may create uncertainty and practical abuses. While it is true that not every act of alienation falls within extraordinary administration, however, in the "minor" churches it remains a lack, in that in CCEO c. 263 §4 there is no reference to acts of extraordinary administration. Minimum and maximum amounts established for alienation (CCEO cc. 1036-1037) must also be considered; however, these acts are neither administration nor extraordinary. In fact, the legislator regulates and systematizes alienation and administration differently. From this point of view, it seems that in the Oriental legislation, there is at least a lack if not a real and proper lacuna, that concerns the lack of acts of extraordinary administration and therefore the non-existence of any kind of "control" to the proceeding of the eparchial bishop who could act alone for the acts of extraordinary administration.

In fact, an oriental Bishop of a minor Church, who has not synodal legislation to fill this gap, might place relevant acts of administration of goods without any further requirements for validity. He should rather evaluate the acts of more importance according to the category of alienation in the broad sense, that is, as an act that could worsen the patrimonial condition of his own eparchy. One can no longer follow the provisions of CIC 1917 in this matter, which the current CIC c. 1277 has superseded with regard to extraordinary administration and the distinction between it and alienation. In this sense, at least in a practical-prudential way, it would be appropriate that the Oriental practice followed the Latin legislation or at least respected the principle identified in c. 1277.

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importance in ordinary administration»: R. Metz, *Title 23. The Temporal Goods of the Church (cc. 1007-1054)*, 699.