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Remarks on Church Property Restitution in Romania, With Special Focus on the Case of the Székely Mikó College[2]

ABSTRACT: *The Soviet-style dictatorship nationalized church property, primarily educational and social institutions, run by the historical churches of national minorities. After the collapse of this political regime, a quest for restitution began, which raised complex private law issues. Finally, legislation favorable for restitution was created. However, the application of the legislation unchanged in its relevant provisions has two distinct phases: the first one is favorable for restitution. The second phase started after the Romanian accession into the EU, and NATO was less favorable. The external pressure for restitution, based on the rule of law, diminished. The restitution of the national minority church property today is largely perceived as a process conflicting with Romanian national interest. These changes and the complex legal problems raised and misused even by courts are illustrated in the case of Székely Mikó College.*

KEYWORDS: nationalization, church property, denominational schools, restitution, contradictory jurisprudence, Romania, Székely Mikó College.

1. Basic premise: a general overview of property restitution in Romania

The Soviet-style dictatorship established in Romania after the Second World War was based on the Marxist-Leninist doctrine that exploitation could only be eliminated by abolishing bourgeois property and converting them to so-called community property, which was in fact state property. In principle, community property is "owned by all members of society." How can each asset be owned by the collective society? Common

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property exists because it is owned by specific persons (such as the undivided common ownership of traditional rural commonages, that is, communities whose members share an undivided piece of land, usually pasture and woodland). However, community property cannot exist, because in this case there is no actual person in the active role that allows the exercise of the right of ownership. The meaning of 'ownership' itself prevents non-owners from exercising this right. In the case of community property, no one is excluded; thus, it would be incorrect to label them as 'property.' It is, in fact, a paradoxical concept. Therefore, when civil property was abolished, the new owner was neither the community, nor the society, but the state.

According to the Manifesto of the Communist Party (1848), "*the theory of communists may be summed up in a single sentence: Abolition of private property.*" In pursuit of this aim, totalitarian states used a coercive system of instruments to eliminate private property and imposed severe restrictions. The result, however, was neither the loss of the class (bourgeois) character of property, nor the creation of an ideal, classless society. It engendered a system of total oppression, a Soviet-style dictatorship, where the state itself exploited the people.

Church property, and in this context, denominational schools in Transylvania[3] became targets of nationalization for several reasons:

a) Because they were a form of private property;
b) Because anticlericalism was a defining feature of the Soviet-style dictatorship;
c) Because the monopoly of education and upbringing (ideological indoctrination) was to be retained by the state.
d) Because the Soviet-style dictatorship, which took up, continued, and fulfilled the program of creating the Romanian nation-state in minority issues, thus eliminating the key players of the minority institutional system;[4] these denominational schools, in the overwhelming majority, belonged to the churches of national minorities.

In 1948, a hundred years after the Communist Manifesto was published, the great wave of nationalizations during the Soviet occupation abolished 531 Reformed (Calvinist), 468 Roman Catholic, 34 Unitarian, and 8 Evangelical Lutheran schools[5] and seized their assets used for educational purposes.[6] In many cases, as the schools were associated with other nationalized properties (e.g., teachers' living quarters, dormitories etc.), the number of properties nationalized in this context greatly exceeded the reported number of schools. Nationalization meant the simultaneous closure of the denominational

3 Transylvania is the easternmost historical region of Central Europe. Before 1918, was part of Hungary, and from 1918–1920 is part of the Romanian state. It had a multiethnic and multicultural character, but in the present beside the Romanian majority the Hungarians are the only large ethnic minority (1.215.479 persons).

4 On why and how the Romanian national program in Transylvania was fulfilled by the Soviet-style dictatorship, see Veress, 2018a, pp. 15–19.

5 This figure does not include schools nationalized from the Evangelical Church of Augustan Confession of Transylvanian Saxons.

6 Cf. Ballai (ed.), 2016, p. 8.

school and, in most cases, the creation of a new state school on the property. In many cases, the Hungarian language schools were replaced by Romanian-language schools, so nationalization was a tool of Romanian ethnic occupation orchestrated by the Soviet-type dictatorship.

After the regime change (December 1989), it was a hope, an expectation, and a legitimate political campaign to reverse the most serious excesses of the Soviet-style dictatorship, including violent nationalizations, in general, as well as the nationalization of church property. Several morally justifiable alternatives were conceivable: the reality, however, does not fall into any of the ideal types of these models. In general, the program of regime change was noble: reversing nationalization, achieving reprivatization, establishing the rule of law, and creating a market economy based on private property. However, reality has become much more prosaic.

a) The political elite that came to power after the regime change, interested only in a partial dismantling of the Soviet-style dictatorship, and with countless ties to the former regime, did not want real reprivatization. As a Romanian civil law professor summarized, "it is impossible that the disrespect shown to private property during the communist regime, as well as the ideological propaganda of the time, did not leave deep traces in the mentality of a large part of the population, especially those who had no property to recover and who sometimes saw their own more or less legitimate interests threatened by the restitution demanded by the owners."[7]

b) The reprivatization solutions were limited, partial, and gradual, and their ideological basis was the denial of the principle of *restitutio in integrum*. In fact, the initial steps of reprivatization instantly compromised the possibility of full restitution. For example, in the case of agricultural land, initial restitutions were made without considering the original locations, forever impeding the restoration of ownership on the original sites in many cases. This approach also destroyed the land registry system for agricultural land, which survived the Soviet-style dictatorship. Similarly, Law 112 of 1995 on the Regulation of the Legal Status of Nationalized Housing Estates[8] allowed tenants to purchase their rental housing under certain conditions, preventing restitution in kind at a later date. Thus, the content of the first reprivatization laws (Law 18 of 1991 and Law 112 of 1995) and the abuses committed during their application, while giving the impression of reparation, sabotaged the application and the expansion of the later 'generous' reprivatization laws.

c) Another characteristic is the delay in the adoption of legislation on property settlement and reparation compared to other "former socialist" states.[9] A list can be

7 Chelaru, 2001, p. 8.

8 Legea nr. 112/1995 pentru reglementarea situației juridice a unor imobile cu destinația de locuințe, trecute în proprietatea statului.

9 Undeniably, however, that there were also political, financial, and social problems in other 'former socialist' states in connection with the various reprivatization and reparation solutions. Similarly, there is no general model for reprivatization or reparations. However, the Romanian situation has its own specific features in this context as well, as will become clear in this article.

drawn up of the political promises and commitments—enshrined in law—that have either not been honored at all or have been disproportionately and unjustifiably delayed, or even only partially implemented.[10] Regarding the duration, the length of the property settlement process should be highlighted. After three decades, several procedures are still pending, and thousands of legal uncertainties exist, limiting the safety or realization of civil circulation.

d) The delay of the process and the uncertainties have led to an increasing complexity of the problem of reprivatization. Inadequate content and quality of legislation have led to an incredible amount of litigation.

Why is (was) reprivatization necessary? First, because nationalization was an abuse, a forcible dispossession of property, based on an erroneous, failed, and absurd ideology, contrary to human nature, which was carried out in the context of a Soviet-style dictatorship; it was a failed and inhuman social experiment. The nationalization of private property did not create a more just social order, but lead to the exploitation of people by the state.

Specifically, with regard to immovable church property, the historical Hungarian churches in Transylvania have traditionally, and especially after the change of sovereignty in 1918–1920, been key players in the survival and development of the Hungarian minorities in Transylvania as providers of education, as well as social and cultural services. Regardless of the interruptions, tradition and actual necessity both demands that these functions of the minorities' historical churches be carried out in a modern context as well, even with public funding, in the symbolically significant properties that served this purpose in the past. However, this is clearly the expectation of the Hungarian community: Romanian political attitudes are fundamentally different. As the external pressure[11] to implement restitution eased (ceased?), the momentum behind proper and fair church property settlements has faded. Many of these properties currently host Romanian institutions (for example, the building of the Cluj-Napoca[12]

10 Only a few examples. Law 58 of 1991 on the privatization of commercial companies (no longer in force) provided in its Article 77 that "a special law will regulate compensation for assets taken by the state by abuse." Similarly, Law 147 of 1992 on the Organisation and Functioning of the Constitutional Court provided in Article 26 (3) that "the damages suffered before the 1991 Constitution will be settled by law" (the version before the amendments introduced by Law 138 of 1997). According to Article 43 of Emergency Government Ordinance No. 88 of 1997 on the privatization of commercial companies, "within 60 days of the publication of this Emergency Government Ordinance (...) the situation of economic assets that became the property of the State through nationalisation laws or other legislation shall be regulated." Article 25 of Law 112 of 1995 provided that "special laws will regulate the legal status of immovable property acquired by the State before 22 December 1989 and not covered by this Law, regardless of its original purpose, including those demolished for reasons of public interest." Or, according to Article 26 of Law 213 of 1998, "within 6 months of the entry into force of this Law, the Government shall prepare a draft law regulating the restitution in kind or compensation for the property taken over by the State by abuse between 6 March 1945 and 22 December 1989."

11 Basically, joining NATO and the EU.

12 In Hungarian: Kolozsvár.

Reformed College is home to one of the best and most respected Romanian secondary schools in the city[13]), and restitution would mean a loss of Romanian space. Therefore, the Romanian interest dictates the preservation and protection of the nationalization measures of the Soviet-style dictatorship, which is the reason why the short-lived restitutionary momentum of church property has been broken. In general terms, there is also a demand for a partial reversal of reprivatization on the Romanian side (the only internationally justifiable instrument for this being the justice system, which in such cases—it can and it must be said—makes decisions guided by the Romanian national interest[14]).

2. Legal framework for the restitution of nationalized church property

Following the regime change, several specific pieces of legislation implementing property restitution were adopted. They are specific in that they are applicable to a specific group of natural or legal persons.[15]

Viewed in the context of constitutional law, the legal basis for the restitutions was provided by government ordinances—administrative acts that have the force of law in the Romanian legal system, but not the stability and legitimacy of a law. (A government ordinance is an executive order in substance, but a legislative one in its subject.[16]) A government ordinance cannot have the legitimacy of a law[17], because it is not adopted

13 The restitution of the property was rejected on the basis of the argumentation discussed later in relation to the Székely Mikó College.

14 Additionally, several lawsuits are pending against historical Hungarian families in Transylvania to reverse previous restitutions.

15 Examples of special restitution rules include:
– Emergency Government Ordinance No 21 of 1997 on the restitution of certain immovable property owned by the Jewish Community in Romania, Law 140 of 1997 approving this Ordinance, as well as Government Ordinance 111 of 1998 supplementing it;
– Emergency Government Ordinance No 13 of 1998 on the restitution of certain properties owned by communities of citizens belonging to national minorities;
– Government Ordinance No 112 of 1998 on the restitution of certain properties owned by communities (organizations, churches) of citizens belonging to national minorities;
– Emergency Government Ordinance No 83 of 1999 on the restitution of certain immovable property owned by communities of citizens belonging to national minorities in Romania;
– Government Resolution 2000/1334 supplementing the Annex to Government Emergency Ordinance No 83 of 1999;
– Emergency Government Ordinance No 94 of 2000 on the restitution of certain immovable property owned by churches in Romania;
– Emergency Government Ordinance No 101 of 2000 amending and supplementing the Annexes to Emergency Government Ordinance No 21 of 1997 and Emergency Government Ordinance No 83 of 1999.

16 Pactet, 1998, p. 560.

17 At least until it is adopted by Parliament. Ex-post parliamentary approval of an emergency government ordinance is mandatory; in the case of a (simple) government ordinance issued on the basis of prior parliamentary authorization, it depends on the law authorizing the Parliament whether it provides for the obligation of ex-post parliamentary approval or not.

by the supreme representative body, the legislature elected by universal, equal, direct, secret, and free suffrage.

Based on the Government Emergency Ordinance No. 13 of 1998 on the restitution of certain properties owned by citizens belonging to national minorities, the properties listed in the annex to the ordinance were (partially) restituted. The law benefited the German, Hungarian, Polish, Bulgarian, Serbian, Turkish, and Greek minorities. The situation was similar in the case of the Government Ordinance No. 112 of 1998 on the restitution of certain immovable property owned by citizens belonging to national minorities (organizations, churches etc.).

The Emergency Government Ordinance No. 83 of 1999 on the restitution of certain immovable properties owned by communities of citizens belonging to national minorities in Romania can be included within the same scope.

Another rule allowing for the restitution of a limited number of properties was the Emergency Government Ordinance 94 of 2000 on the restitution of certain properties owned by churches in Romania. According to its original text, a maximum of ten properties should be returned to each archdiocese. However, this emergency government ordinance was converted into a general restitution law of church property by the approval act, Law 501 of 2002. At present, this regulation still forms a specific legal basis for church property restitution.

At first reading, the legislation offers a balanced and fair solution to the problem. However, its application is problematic, moreover it is possible to identify a process in it that is relevant for legal sociological analysis: the way in which the law, without any modification to its text, has changed from a norm that achieves restitution to a rule that prevents restitution. Thus, it is a good example of the fact that the content of a law can change even without a formal amendment of the norm, and that this change without amendment is triggered by ideological, interpretative-political reasons.

According to this law, real estate[18] taken by the state, cooperatives, or any other legal entity from churches between March 6, 1945, and December 22, 1989, as a result of abuse, with or without legal basis, and becomes a state property, a legal entity under public law or another legal entity as defined by law (a company with a state/municipality majority shareholder[19]), shall be returned to the former owner.

18 This legislation, however, does not apply to church buildings, because the dominant Orthodox Church in Romania took over the church buildings of the Romanian religious minority in Transylvania, the Greek Catholic Church, dissolved in 1948 and re-established after the regime change; the Orthodox Church did not intend to return these buildings after the regime change. The political promise in the legislation was that the status of church buildings would be regulated by a separate law. Nevertheless, no such legislation has yet been adopted.

19 In such a case, the restitution must be decided by the organs of the company concerned and the state participation is reduced by the value of the restituted property (a reduction in share capital is carried out).

The law provides for a presumption of abuse for the takeover as a basis, even in the case of property donated to the state (although this presumption may be rebutted by the current owner of the property). Indeed, in most cases, the donations to the state were made under a specific duress, the donation agreement only formalized the abuse, providing a legal disguise to the measure dictated by the regime.

An application (request) for the restitution of church property had to be submitted to the Special Restitution Committee (*Comisia Specială de Retrocedare*) within the six-month time limit set by law (and the additional six-month time limit provided by Law 247 of 2005). The committee consisted of representatives from different ministries and government institutions. If the restituted property is necessary for the performance of an educational or health task in public interest, possession is currently only possible 10 years after the restitution decision is taken (the original text of the Ordinance provided for a 5-year deadline for possession). During this period, the church was entitled to a use charge set by the government decree. During this time, the state would have to find a new location for the institution operating on the property.

The committee takes a reasoned decision to accept (return in kind or refer to another committee for compensation) or rejects the request for restitution. If the property was disposed of after December 22, 1989, by the State in compliance with the law in force at the time, compensation is due to the former owner, the Church. (A significant part of the residential property nationalized from church property has been sold by the state to tenants—for example, in the case of teachers' quarters next to schools, under the provisions of Law 112 of 1995, mentioned above).[20]

The decisions can be challenged in administrative litigation proceedings (within 30 days of receipt), in the first instance before the court of appeals of the district in which the property to be restituted is located, and in the second instance before the High Court of Cassation and Justice. Cases that often raise complex civil law issues are resolved as administrative lawsuits by judges specializing in administrative matters. The consequence is that the parties have only one remedy available to them, compared to the two remedies normally available in civil actions. As with other restitution cases, the natural approach would be to treat such cases as civil actions. The limitation of remedies in church property restitution cases compared to other restitution cases also raises constitutional concerns.

20 Under Law 112 of 1995, restitution was only possible for the benefit of natural persons, churches were excluded from the scope of this legislation. However, only those former owners or their heirs who resided in the nationalized property were entitled to restitution or if the property remained unused (in practice, this is extremely rare, as these properties were rented out by the state). Tenants, on the other hand, could purchase these tenements at a discounted price, and the state even offered them a discount on instalments. This 'legal' purchase made subsequent restitution in kind impossible.

3. Case study: the case of the Székely Mikó Reformed College in Sfântu Gheorghe

■ *3.1. Context of the action*

The complexity of the problem, the difficulties of applying legal norms, and the ideological changes that made restitution impossible, is well illustrated by Székely Mikó College, founded in 1859 in Sfântu Gheorghe (in Hungarian: Sepsiszentgyörgy).[21]

By decision No. 684 of May 31, 2016, the Special Restitution Committee rejected the request of the Reformed Diocese of Transylvania for the restitution of the property of the Székely Mikó College in Sfântu Gheorghe. On a cursory examination, the justification is seemingly reasonable. The Committee established that the *former owner* could request restitution under relevant legislation. However, "the property was owned by Székely Mikó College (the school) when it was taken over by the Romanian state and not by the church." Consequently, the request was rejected "because the Reformed Diocese of Transylvania was not the owner of the property sought to be returned." This is based on the land registry extract, which has the following entry on the title deeds: "Ev. Ref. Székely Mikó Kollégium" [Evangelical Reformed Székely Mikó College]. This was registered on March 2, 1900, in land register number 71 of the city of Sfântu Gheorghe.

However, the problem is much more complex than the Committee's simplistic position: it requires a complex legal-historical analysis.

The legal basis for the restitution of Székely Mikó was provided by Emergency Government Ordinance no. 83 of 1999 (the annex to which included the property at the express disposition of the government, with the need for restitution being recognized at the highest level of state administration).

According to Article 1 of Emergency Government Ordinance No. 83 of 1999, the conditions for restitution were as follows:

a) Property is listed in the original or supplemented annex to the government emergency ordinance.
b) The property was owned by a community (organizations, churches) of citizens belonging to the national minority in Romania before nationalization.
c) The property belonged to the Romanian State after 1940.
d) The transfer of ownership was carried out by coercion, confiscation, nationalization, or fraudulent means.

21 The restitution struggle related to the college is earlier than the case described here, as the college was previously restituted, but the criminal case against the members of the restitution committee was based on documentary deficiencies in the restitution procedure by the Ploiești Court of Justice in 2014, which therefore convicted the members of the restitution committee and re-nationalized the college (at that time the composition of the restitution committee was different from the one analyzed above: it included representatives of the churches as members). The Reformed Diocese of Transylvania then requested the continuation of the restitution procedure. The case at hand is in fact an examination of subsequent events.

e) The return may be requested by the former owner or his legal successor.[22]

To make a lawful decision, the restitution committee should have examined whether these conditions were met.

The first condition is certainly met: the property is listed in the Annex to the Government Ordinance, as amended by Government Decree No. 1334 of 2000.

The third condition (I will return to the second condition later) is also met: the property was nationalized by Decree 176 of 1948[23], which formed the framework for the nationalization of denominational schools. The decree nationalized the "Reformed Secondary School for boys of the Reformed Church of Sfântu Gheorghe, with all its property, according to the inventory."[24]

According to the fourth condition, the way the state gained ownership is also relevant: in this case, nationalization took place, so this condition is also met.

Therefore, only the second and fifth conditions can be relevant.

According to the second condition, the property must have been owned by a minority organization or church before nationalization. The fifth condition is that the property must be returned to the former owner or his legal successor. It is also an undisputed fact that the title deed mentions: "Ev. Ref. Székely Mikó Kollégium" [Evangelical Reformed Székely Mikó College]. Under these circumstances, are the second and fifth conditions met, or is the position of the restitution committee correct and the Reformed Diocese of Transylvania not entitled to the restitution of the property? The courts in Romania (Brașov Court of Appeal, High Court of Cassation and Justice) ruled in favor of the restitution committee. The question arises: Are these court decisions correct?

To determine the subject of ownership, we need to answer important questions about the legal status of reformed schools. To provide a truly correct answer, we must not approach the issue with present concepts, but focus on the two points of reference: on the one hand, the registration of the property in 1900, and on the other, the legislation, existing practice, and interpretation of norms at the time of nationalization in 1948.

■ *3.2. The issue of land registration*

The exploration of the way in which land is registered requires a spatial and temporal examination of the legal norms that clarify the issue of land registration. This means, on the one hand, an analysis of *church law*, and on the other, an analysis of the relevant *Hungarian private law,* given that until 1918–1920, Sfântu Gheorghe was part of the Hungarian state.

22 Here, Emergency Government Ordinance No 83 of 1999 differs from the similar wording of Emergency Government Ordinance No 94 of 2000, because the latter only mentions the former owner, not the legal successor. The difference is not irrelevant: see section 3.5 of this paper.

23 Decretul nr. 176/1948 pentru trecerea în proprietatea Statului a bunurilor bisericilor, congregațiilor, comunităților sau particularilor, ce au servit pentru funcționarea și întreținerea instituțiilor de învățământ general, tehnic sau profesional.

24 "Liceul reformat băieți din Sf. Gheorghe, al Bisericii reformate, cu întreaga avere, conform inventarului jurnal."

The broader context of church law may be understood by referring to the work of Elek Dósa, one of the greatest Transylvanian jurists of the nineteenth century.[25] In his book titled *Az erdélyhoni evangelico-reformátusok egyházi jogtana* [The Ecclesiastical Jurisprudence of the Transylvanian Evangelical Reformed Church], he states thus:

> Church property is the property of the church, meaning that the congregations, clergymen and schools which possess it are only as such possessors and users of it, the universal church itself being the owner of it by reason of that fact that they are appointed for the attainment of not the separate goals of individuals or ecclesiastical bodies, but for the attainment of the ends of the universal Church in the respective congregation and school, and as such are subject to its disposal, i.e. that of the universal Church who has control over the ends of their appointment... This right of ownership and disposal of the Church is, however, limited by the inalienable purpose of the ecclesiastical property, which, according to chapter 28 of the Helvetic Confession, is to maintain science in the schools...[26]

This approach is a constant tenet of the reformed ecclesiastical law. According to Dósa,

> the universal Church itself is the owner of the ecclesiastical property, and the right of the respective congregations and schools to use it being limited, inasmuch as the ecclesiastical property in their possession can only be used for their intended purpose, it follows of its own accord that the Church is responsible for regulating the manner of handling this property...[27]

In other words, Dósa considered school assets to be the property of the church, over which the school itself had only the right to use, whereas both the church and the school were obliged to respect the educational purpose of the property.

The norms of ecclesiastical law lent concrete expressions to this approach. The norms adopted at the Extraordinary General Assembly of the Reformed Diocese of Transylvania held in Cluj-Napoca during 20-23 September 1885 stipulated the following:

> Art. 81 In the Transylvanian Diocese, the function of secondary and higher education is fulfilled by the colleges, which at present are the partial gymnasium of the Székely-Mikó College in Sfântu Gheorghe,[28] the

25 On Dósa see Veress, 2019, pp. 5–15.
26 Dósa, 1863, pp. 204–205.
27 Dósa, 1863, p. 205.
28 In Hungarian: Sepsiszentgyörgy.

> complete gymnasiums of the colleges in Zalău[29] and Odorheiu Secuiesc,[30] the Kún-college in Orăștie,[31] the colleges in Târgu-Mures[32] and Cluj-Napoca, and finally the complete gymnasium, the theological academy and the teacher training school of the Bethlen College in Aiud, with its training school.
> Article 82 The colleges, within the limits of national and ecclesiastical law, are autonomous ecclesiastical bodies that govern themselves, retaining patrimony and endowments for the purposes of teaching and education, and participate through their representatives in the legislative of the Diocese and of the universal Church.[33]

Several conclusions can be drawn from this text:

a) The church law specifically named Székely Mikó College as an institution of the Reformed Church;

b) Its legal status is defined as follows: an autonomous ecclesiastical body (i.e., belonging to the Church), whose character is also underlined by the fact that it participates in the legislation of the universal Church; it is therefore a body which is an integral part of the ecclesiastical organization system; otherwise, it cannot participate in ecclesiastical legislation.[34]

c) In material terms, it 'retains' a patrimony, but this means nothing more than that it uses ecclesiastical property,[35] that is, the material conditions for its operation are provided by the ecclesiastical property placed at its disposal, over which it has the right of use.

Notably, ecclesiastical law did not recognize schools as entities or legal personalities separate from the church: colleges were considered ecclesiastical bodies that could be used for educational purposes.

This legal status is confirmed by the Church Constitution of 1904, which states the following in its paragraph 3:

29 In Hungarian: Zilah.
30 In Hungarian: Székelyudvarhely.
31 In Hungarian: Szászváros.
32 In Hungarian: Marosvásárhely.
33 Az erdélyi Ev. Ref. Egyházkerület Kolozsvártt, 1885. szeptember 20-23. napjain tartott rendkívüli közgyűlésének jegyzőkönyve [The minutes of the Extraordinary General Assembly of the Reformed Diocese of Transylvania held in Kolozsvár on 20-23 September 1885], Stein János, Cluj-Napoca, 1885, 43.
34 It is rightly stated that "the school has always been part of the ecclesiastical structures, and in no way vice versa. The relationship between the church and its schools was undefined for a long period of time in terms of secular law, and thus external law, since the secular legal order has for centuries fully respected the internal autonomy of the church(es), together with its legal character." See Balogh, 2016, p. 46.
35 Corporeal detention (*detentio*) is less than possession (*possessio*). The possessor exercises the right in its own name, holding the thing as its own. The detentor, for example the tenant, can use the thing, but is not a possessor, only a detentor (*detentor*). This was also the position of the colleges with regard to church property: they were detentors, but not possessors.

> the elementary, secondary and high-schools of the Reformed Church in Hungary, as institutions which are essentially connected with the right of the free exercise of religion and are the means of the church's self-preservation, in compliance with the provisions of constitutionally established national laws, namely Article XXVI of law 1790/1 as fundamental law, shall belong to the body of the Church and are subject to the ecclesiastical authorities.[36]

Like other historical churches, the Reformed Church is a complex system of organizations composed of hierarchically interconnected institutions. The colleges were part of this internal ecclesiastical organization, as it follows from the relevant ecclesiastical law: they functioned as ecclesiastical bodies, without being entities separate from the church in our modern sense, that is, without having their own legal personality.

Beyond the ecclesiastical law, state law is at least as relevant. It may be noted that the land registration method referred to was not unusual in Transylvania in the late nineteenth and early twentieth centuries. In fact, this method of land registration was deliberate because it recorded the strict purpose of the property (its educational purpose), and it did so in a way that was enforceable even against the owning church, the real subject of the property right (see Elek Dósa's reference to chapter 28 of the Helvetic Confession). Such a land registry entry virtually simultaneously reflected the owner, the Reformed Church (through the abbreviation "Ev. Ref."), and the property's own purpose: Székely Mikó College, that is, the purpose of the property is the operation of the Székely Mikó College, to the exclusion of any other use. The following table illustrates this:

Owner	*Name*	*Purpose*
Ev. Ref.	Székely Mikó	Kollégium ['College']

This form of land registration is also confirmed by land registers in which, for a similar reason, the title deeds are marked "ev. ref. harangozói állás" ['Evangelical Reformed bell-ringer position'], "ev. ref. papi hivatal" ['Evangelical Reformed priest's office'], "ev. ref. egyháztanítói hivatal" ['Evangelical Reformed church teacher's office'], "ev. ref. kántori hivatal" ["Evangelical Reformed cantor's office"]. Another example from the contemporary land registers is where the title deed reads "S.Szentkirályi[37] református papi lak" ['S.Szentkirályi Reformed clergy house']. Even in this context, it is clear that the position of the bell ringer, the priest's office, the teacher's or cantor's office, or the priest's dwelling did not have a separate legal personality and marked not only the owner but also the specific purpose of the property.

36 Az 1904. év november havának 10. napján megnyílt budapesti országos református zsinat által alkotott I. törvénycikk az egyházalkotmányról és szervezetről, 3. §. [The First Law of 1904 on Church Constitution and Organisation, adopted by the Synod Council of the Reformed Church in Budapest on the 10th of November 1904, paragraph 3].

37 Sepsiszentkirályi.

The issue was (theoretically) settled by the Hungarian Ministry of Justice in 1911. At that time, the following decree was published in the *Igazságügyi Közlöny* ['Judicial Gazette'] in relation to the problem already identified at that time:

> although the registration of the properties in the name of the Reformed school and of the Reformed teachers' office is in accordance with the existing rules of land registry (Art. 35 of the Decree of the Minister of Justice of July 23, 1854, Art. 45 of the Transylvanian field ordinance), and if the registration expressly states the church to which the properties belong, not jeopardizing the property rights of the congregations concerned, according to the new rules of land registry (see art. 125 of the Instruction on the compilation of the land registry issued by Decree No. 19.665/1893 of the Ministry of Justice, annex to the Igazságügyi Közlöny, Vol. 7, 1893), the properties in question are to be recorded as the property of the respective Reformed congregation, with their specific purpose being indicated, and since this method of land registry has a proper basis in substantive law, the request for an adjustment of the land register entry so that the properties in question are transferred from the name of the Reformed school and the Reformed teachers' office to the name of the congregation cannot be considered unjustified.

It was also stated that

> the statement no 56.982 of the Minister of Religious Affairs and Public Education of the Hungarian Kingdom on 14 October 1907 declared that the change in the land register status of the Reformed Church's educational property does not require the approval of the government authorities; because the Reformed Universal Church, as self-government, is the only one entitled and competent to claim the ownership of the property for the purposes of its denominational schools in favour of the church as the undisputed owner of the school property, in order to correct the erroneous land register entry; and it is also beyond doubt that the Reformed Church, as self-government, has the sole right and authority to administer its school funds and endowments, and may, if it deems it in the best interests of the school, sell some properties and purchase others in their place.[38]

In other words, the land was recorded in a customary and acceptable manner, but could be adjusted at any time to benefit the Church as the true owner, in accordance with the law. The original method of registration recorded ownership in its own particular complexity: on the one hand, it indicated the affiliation, that is, the Reformed Church,

38 2207/1909 and 19407/1911 I.M. sz., Igazságügyi Közlöny [Judicial Gazette], 1911/6, 188–189. For more, see: Hegedűs (ed.), 1913, p. 73–74.

and on the other, it indicated the specific educational purpose of the property (the compulsory purpose of use).

These facts were confirmed by the case law of the courts of the time. In several cases, as mentioned above, a request was made for the land register to be corrected, and the land registry authority requested payment of a transfer fee. In this context, the Hungarian administrative court stated that

> "this claim, however, has no legitimate basis, because according to the fee schedule … only entries for transfer purposes are subject to … fees … In this case, there is no entry for transfer purposes, however, as the school and the church building belong to the church and that neither the school nor the church is a separate legal entity, the name of the owner is corrected—a procedure in accordance with circular no. 2207 of 1909 of the Hungarian Royal Minister of Justice and the circular no. 19497 of 1911 of the Ministry of Justice (Igazságügyi Közlöny [Judicial Gazette], 1911, no. 6)."

In a similar sense, the Hungarian Royal Administrative Court also stated "the school and the pastoral residences are also the property of the church and have been marked in the land register according to their purpose of use." Therefore, only the name of the owner is corrected, and there is no case for land registry entries for transfer purposes.[39]

The combined application of ecclesiastical law and civil law provides a clear picture: schools are internal ecclesiastical structures without legal personality, which do not own the church's educational property as such, but use and administer it under the authority of the church. The method of land registration, which also exists in the case of the Székely Mikó College, adequately expresses the property right of the Reformed Church and does not "put at risk" this property right. Indeed, in many cases, the Church did not take advantage of the possibility of adjustment offered by the decree of the Minister of Justice, because it did not feel that its property rights were threatened and insisted on the traditional method of land registration. It was felt appropriate for the church to give an indication that it considered itself bound to preserve the educational purpose of the property.

Therefore, it is clear that the Hungarian state, prior to the change of sovereignty, recognized the property rights of the Reformed Church, and that the colleges were entities without their own legal personality, which were part of the church organization and not separate entities.

39 1912. évi 25.365 sz. a. kelt ítélet. [Resolution no 25.365 of 1912.] Published by Protestáns Egyházi és Iskolai Lap [Protestant Church and School Journal], 1913/34, p. 537.

3.3. Romanian pre-nationalization law and nationalization

In the post-World War I settlement, Transylvania became part of the Romanian state. Therefore, it is particularly important to examine Romania's attitude toward the property and Székely Mikó College as an institution before nationalization.

The change of sovereignty was followed by legal continuity in many areas, beyond the international public law dividing line codified by the Treaty of Trianon. The process of legal unification that lasted several decades has commenced.[40] Székely Mikó College continued its activities and gained its new status under the Romanian Private Education Law of 1925.[41] Notably, this legal status did not differ from that prior to 1918–1920: the Reformed College *did not become a legal entity* that could own property in its own name, that is, we can speak of a continuity of legal status. The law on private education did not give the school its own legal personality other than that of the founding/maintaining legal entity. In this context, the previously discussed legislation continued to prevail. According to the law on private education, the education and training of students could take place in private schools outside state schools, organized by churches, communities, or private individuals or in the family. Article 3 states that "these schools may be founded only by Romanian citizens, either individually or as legal persons, in recognised cultural associations or religious communities."

The situation is further clarified by legislation on legal persons, Law 21 of 1924.[42] According to Article 5 (2) of this law, "an organization created by a legal person may not have a personality other than that of the legal person which created it, unless this is formally recognized under this law." Such formal recognition of the College's legal personality has never taken place. The college has never been registered as a legal entity, and there are no documents to prove its legal personality. Moreover, legal persons established prior to Act No. 21 of 1924 were required by this Act to re-register with the competent territorial court within six months of its promulgation. The Székely Mikó College was not registered under this rule either, precisely because it did not have a legal personality before.

In our case, the college belonged to the Reformed Church, or more precisely, to the Reformed Diocese of Transylvania, a church structure with legal personality.

In these circumstances, the college cannot be classified as a legal person and as an owner of property by referring back to the moment of land registration, which lacks any legal basis; it is merely a side effect of a registration anachronism unforeseeable at the time.

In the period between the two world wars, the Romanian state justified the legal status outlined above on numerous occasions. Based on the Private Education Act of 1925, on July 23, 1928, the Ministry of Education issued the operating license of Székely Mikó College (license number 81). This includes the following specification: "Liceul

40 On the process of legal unification see Veress, 2018b, pp. 458–469.
41 Legea asupra învățământului particular.
42 Legea nr. 21/1924 pentru persoanele juridice.

Coleg. Ref. Băieți Székely Mikó" [Székely Mikó Reformed Boy's College], as "property of the Reformed Diocese of Transylvania."

Likewise, the Székely Mikó College bulletin for the school year 1933-34, approved by the Brasov School Inspectorate by Decree No. 13.000/1935, states thus,

> the college, as an institution connected with religious freedom, operates under the authority of the Reformed Church, in accordance with the laws in force, and belongs entirely to the body of the Reformed Diocese of Transylvania and is subordinate to the ecclesiastical authorities.[43]

The question of legal personality also arose in court cases during this period. For example, in 1934, in a lawsuit concerning the repayment of a loan, it was established that the Székely Mikó College was not a legal entity and that only the Reformed Diocese of Transylvania could issue the power of attorney to represent it in the lawsuit.[44]

As per land register regulations, in the spirit of continuity, Law No. 2207 of 1909 and circular No 19497 of 1911 of the Ministry of Justice continued to be in force, that is, the norm recognizing the property rights of the Church and allowing for the correction of the registration continued to exist,[45] which also emphasizes the unchanged legal status of the college until its nationalization.

A transcript from the school year 1945-46 contains the following statement: "The building: the classrooms, living quarters and the canteen of the boys' gymnasium are housed in buildings owned by the Reformed Diocese of Transylvania."[46]

There are also documents from the preparatory phase of nationalization that clarify this status. On January 30, 1947, the Székely Mikó College informed the tax authorities in a transcript under number 622-1946/47 that "the Lyceum is the property of the Reformed Diocese of Transylvania, a legal entity under public law."[47] On November 18, 1947, the National Bank of Romania addressed the following question to the College in a transcript: "Please kindly inform us whether your College has its own legal personality or whether it is only a ministry of the Reformed Diocese, and as such is included in its budget. If the College is a legal person, please provide the registration number of

43 The original Romanian text: "Colegiul ca o instituțiune, ce stă în legătură cu libertatea religioasă, și ca mijlocul de susținere al bisericii reformate, în sensul legilor în vigoare, aparține cu totul absolut corpului Eparhiei Reformate din Ardeal și este supus autorităților bisericești."

44 See Transcripts 604-1933/34 and 632-1933/34 of the Reformed Székely Mikó College, and the power of attorney issued by the Reformed Diocese of Transylvania to Dr. Károly Keresztes, lawyer, on July 16, 1934.

45 Laday, 1924, appendix 32.

46 Transcript no 136-1945/46.

47 "Liceul este proprietatea Eparhiei Reformate din Ardeal care are personalitate juridică de drept public."

the legal person in the register of legal persons."[48] The reply from the college (under no 299-1947/48, on December 11, 1947): "Our College does not have its own legal personality, but is owned by the Reformed Diocese of Transylvania, which is a legal entity."

Decree 176 of 1948, which implemented nationalization, ordered the nationalization of the Reformed Lyceum *of the Reformed Church*, that is, the nationalization measure was taken against the Reformed Church. Obviously, the question arises as to whether the Reformed Church was legally suitable to be the passive (suffering) subject of nationalization, why is the Church not recognized as owner in the reverse process of nationalization, that is, restitution, based on the principle of symmetry? The Székely Mikó College, as an internal organ of the Reformed Church, no longer exists, precisely because it was abolished by nationalization, a measure of the Soviet-style dictatorship that denied the centuries-old right of the churches to maintain schools and completely monopolized educational activities.

According to Article 4 of the Emergency Government Ordinance No. 94 of 2000 (which, according to Article 8 of Emergency Government Ordinance No. 83 of 1999, as amended by Law No. 66 of 2004, is also applicable to the case at hand), in the absence of contrary evidence, the existence and, as the case may be, the extent of the right of ownership shall be presumed in accordance with the normative or public authority act that ordered or implemented the abusive seizure. In the present case, the only 'contrary evidence' is the land title deed, the exact contents of which have been presented above, and which is not suitable to rebut the Reformed Church's presumption of ownership, and in fact, the land title deed confirms that presumption.

■ *3.4. After the regime change*

Even after the regime change, the Romanian state, through Emergency Government Ordinance 83 of 1999 and Government Resolution 2000/1334, recognized that this property should be returned to the Reformed Diocese of Transylvania.

Moreover, the entire interpretation was supported by the previous case law. The High Court of Cassation and Justice stated the following in the case of the College of Aiud (decision 4684 of November 2, 2010):

> "Decree No. 176 of 1948 is the factual and legal basis which confirms that the Reformed Diocese of Transylvania is entitled to the restitution of the property, not as the legal successor of the former owner, but in its own name, i.e. as the former owner. The fact that the ecclesiastical schools, which were financially maintained and supervised in terms of educational activity by the various ecclesiastical structures, belonged to them, was correctly established and justified in the restitution decision

48 The original Romanian text: "Vă rugăm să binevoiți a ne comunica dacă Colegiul Dvs. are personalitate juridică de sine stătătoare sau este doar un serviciu al Eparhiei Reformate, integrat în bugetul acesteia. În cazul în când Colegiul are personalitate juridică, vă rugăm a ne comunica numărul din registrul persoanelor juridice sub care sunteți înscrișii."

> No. 391 of September 20, 2004, including references to ecclesiastical law, and is also confirmed by the documents in the case file. According to these documents, the Reformed religion is recognized as a historic religion, and the movable and immovable property, such as schools, housing for teaching and clerical staff, and the Bethlen Gábor College in Aiud, are the properties of the Reformed Church.
> In this respect, a relevant argument of the judge of the first instance, which the High Court accepts as lawful and supported by evidence, is the transcript of the Ministry of Culture and Religious Affairs No. 5447 on April 11, 2008, which informs the Reformed Diocese of Transylvania that the diocese, as a constituent part of the Reformed Church of Romania, is entitled to restitution by the State of the property belonging to the local constituent units of the Reformed religion."

The legal issues raised in this case are the same, but in 2010, the ideological shift—even at the level of the courts—that has since turned the attitude towards restitution from a supportive to a negative position, had not yet occurred.

In contrast, in the case of Székely Mikó College, both the Brasov Court of Appeal and the High Court of Cassation and Justice have ruled that Székely Mikó College was the owner of the property, and only the former owner was entitled to restitution, while the Reformed Diocese of Transylvania is not considered a former owner. Therefore, the restitution claim should be rejected.

This (erroneous) position, which has been turned into a definitive court decision, is based on a single isolated argument, the contents of the land register, as discussed in detail above. As a legal argument, Article 32 of Decree-Law 117 of 1938, which implemented the Transylvanian land register reform, was used, according to which if a right *in rem* is registered in the land register in a person's favor, it must be presumed that this right is in favor of that person. This argument is fundamentally flawed. Decree-Law 117 of 1938 did not enter into force until 1947 under the provisions of Law No. 241 of 1947. A land registration on March 2, 1900, cannot be judged on the basis of a norm that entered into force in 1947, five decades later. A land register entry cannot confer legal personality to an organization, and legal personality is a precondition for ownership.

■ *3.5. The fate of the property of the Székely Mikó College*

Under these circumstances, the restitution committee and the law courts applied the factual situation and the relevant legislation to deny the Reformed Diocese of Transylvania the right to restitution. Unfortunately, despite the courts' knowledge of the above argument and the documentary proof supporting it admitted as evidence, they

rejected the application for restitution of the Reformed Diocese of Transylvania without reasonable grounds.[49]

In addition to the question of misinterpretation of the law or disregard of the applicable legislation, the courts' classification of Székely Mikó College as a legal person is questionable; the issue of legal succession was not examined. The legal basis for restitution in this case was Emergency Government Ordinance No. 83 of 1999, which also allowed restitution in favor of the legal successor (in our case, the Reformed Diocese of Transylvania), and not emergency government ordinance No. 94 of 2000, which regulates the general restitution of church property, which did not open up any possibilities for restitution for the legal successor. Therefore, the case would have been legally resolved in favor of the Reformed Diocese of Transylvania, even if Székely Mikó College had been a separate legal entity.

It is also worth noting that the same legal problem arises in relation to the Roman Catholic Batthyaneum Library in Alba Iulia, which houses an incredibly rich historical collection, or the Roman Catholic Marianum Institute for Girls' Education in Cluj, another building of outstanding importance. The initial judgments in these two cases were unfavorable to the Roman Catholic Archdiocese.[50] In the second judgment for the case regarding the Battyaneum Library, the High Court of Cassation and Justice, at the time of the closing of the manuscript, ruled once more against the restitution of the library.[51]

4. Conclusions

This article is a short analysis of an extremely complex problem. Yet it illustrates one area of disillusionment: by refusing restitution of church property, it is not only the rights of the churches concerned that are violated. This phenomenon, which is unfortunately not an isolated one, as illustrated by the case of Székely Mikó College, is also an indicator of irregularities in the relations between the Romanian State and Hungarian minority. Unfortunately, a significant part of Transylvanian Hungarians experience this as a state restriction on the minority community's ability to organize itself and limit its opportunities for progress. The history and current state of the property settlement process and the legally doubtful refusal to restitute buildings of symbolic significance (such as the Székely Mikó College) have led to a trust deficit between the Hungarian minority and the Romanian state.

49 High Court of Cassation and Justice, administrative section, Decision no. 4087/2018.

50 See Decisions 153/2018 and 114/2018 of the administrative section of the Court of Appeal of Alba Iulia.

51 High Court of Cassation and Justice, administrative section, Decision no. 3093/2021.

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