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Ryszard PANKIEWICZ
Academy of Zamość, Poland*

Acquisition and Loss of the Right of Patronage according to the 1917 Code of Canon Law

• **Abstract** •

The present article is a brief analysis of the acquisition and loss of the right of patronage as described in the provisions of the 1917 Code of Canon Law. The author brings to the readers' attention the specific nature of the institution of patronage, which was not only ecclesiastical, due to the fact that it was regulated by canon law, but also civil, since the right of patronage to a large extent concerned lay believers and was also regulated by secular law. As founders of churches and benefices, patrons, or church protectors, along with those who acquired the right of patronage later on, occupied an important position in the system of church financing in the period described, even though the ecclesiastical legislators had intended to remove this institution from the legal order altogether. For this reason, it is important to explain how the members of the Catholic Church could acquire this right or be deprived of it.

Keywords: Right of patronage, Privilege of presentation to an ecclesiastical office, Financing of churches and religious associations.

Introduction

It is important to note that the 1917 Code of Canon Law, the first document of this kind in the history of the Catholic Church, on the one hand regulated the acquisition and loss of the right of patronage enjoyed by lay and clerical founders of churches and benefices, and, on the other hand, prohibited the emergence of this right in the future, thus aiming to remove the institution of patronage from the legal order altogether. According to canon law, the right of patronage could

* ORCID ID: 0000-0003-2574-0550; address: Pereca 2, 22-400 Zamość, Poland; e-mail: ryszard.pankiewicz@akademiazamojska.edu.pl

be acquired either directly, by being granted a papal privilege, or indirectly, by way of inheritance, donation, contract, exchange, or prescription. The acquisition of patronage was linked to the existence, or lack thereof, of a person's capacity to receive this right. Those incapable of acquiring it were the unbaptised (pagans and Jews), heretics, apostates, the excommunicated, and schismatics belonging to associations condemned by the Church (Grabowski, 1948, p. 485).

Papal privileges

The 1917 Code of Canon Law[1] imposed an absolute prohibition on the creation of new patronages in the future.[2] At the same time, as an expression of gratitude to founders of churches and benefices, it allowed ordinaries to undertake to say prayers and services for them (*spiritualia suffragia*), either for a certain period or forever, depending on the generosity of the founder. The code also approved of foundations on the condition that the first beneficiary would be the founder, if he was a clergyman, or a clergyman presented by the founder (Bączkowicz, Baron, Stawinoga 1957, p. 384; Grabowski, 1948, p. 485).

Canon law left in place any privileges and obligations that had arisen prior to the codification.[3] This was confirmed by c. 1451 § 1 of the CCL/17.[4] To give an example of a particular law, according to the statute of the 67th Sandomierz Diocesan Synod of 1923, all parishes in the Sandomierz diocese were *liberae collationis*. It was the bishop alone, without the involvement of the patrons, that appointed the pastors in the diocese under his authority.[5] In the parish of Ruda Kościelna,

[1] *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, 1–593 (hereinafter: CCL/17). For an English translation, see *The 1917 or Pio-Benedictine Code of Canon Law* available at https://cdn.restorethe54.com/media/pdf/1917-code-of-canon-law-english.pdf

[2] CCL/17, c. 1450 § 1: Nullum patronatus ius ullo titulo constitui in posterum valide potest. § 2. Loci autem Ordinarius potest: 1° Fidelibus qui ex toto vel ex parte ecclesias exstruxerint vel beneficia fundaverint, spiritualia suffragia, eorum liberalitati proportionata, concedere vel ad tempus vel etiam in perpetuum; 2° Fundationem beneficii admittere ea adiecta conditione, ut beneficium prima vice conferatur clerico fundatori vel alii clerico a fundatore designato (Pasternak, 1970, p. 194).

[3] "The existing patrons are not abolished, but the Code seeks to remove them gradually. The Ordinary is therefore to induce patrons to renounce their patronages or at least their right of presentation, for which they may receive the suffrages mentioned above. If a patron agrees to this, the benefice becomes subject to free conferral (*liberae collationis*). Should one or another of several patrons renounce their right, their place is taken by the bishop" (Bączkowicz, Baron, Stawinoga, 1957, p. 385).

[4] "Curent locorum Ordinarii ut patroni, loco iuris patronatus quo fruuntur aut saltem loco iuris praesentandi, spiritualia suffragia etiam perpetua pro se suisve acceptant".

[5] See Stat. 67. (ad c. 455). Omnes parochiae in dioecesi Sandomiriensi sunt liberae collationis. In: *Prima Synodus Dioecesana Sandomirensis: sub excellentissimo ac reverendissimo Domino Domino*

for instance, the last presentation for a parish priest made by a patron took place before 1860 (Bastrzykowski, 1947, p. 37).

With regard to patrons' renunciation of their right of patronage, which involved their goodwill, the CCL/17 stated that, in the absence of such a renunciation, patrons were obliged to exercise their right in compliance with canon law (c. 1451 § 2).[6]

Canon law, which prohibited the appointment of new patrons, condemned the right of patronage to a slow extinction. The only exception on the basis of which it was possible to acquire patronage directly (*modi derivati*) was the papal privilege. S. Pasternak argues that, according to c. 1471 of the CCL/17, an indult of presentation for a vacant ecclesiastical office or benefice granted by the Holy See cannot be equated with the acquisition of the right of patronage. It is only possible to regard such a permission as a privilege of making a presentation strictly according to the words of the indult (Pasternak, 1970, p. 193). In this way, the code consistently deprived the laity of the influence over the filling of vacant ecclesiastical posts and, consequently, of exercising authority in the Church. The immediate effect, however, was supposed to be a complete elimination of the institution of patronage from social life.

Hereditary rights

The transfer of the right of patronage from one person to another by inheritance was regulated in c. 1453 (§ 1 and 2),[7] which specified the formal requirements necessary for such transfer to be legally valid and enumerated the persons to whom the right could not be transferred. These were non-believers, public apostates, heretics, schismatics, and persons belonging to secret sects not tolerated by the Church (Grabowski, 1948, p. 483, 485).

The code also introduced the principle of the written consent of the local bishop for a transfer of the right of patronage to occur (c. 1453 § 2) and specified the limitations that resulted from the provisions of the foundation act. If the act

Mariano Ryx Episcopo Sandomiriensi Sandomiriae in Ecclesia Cathedrali Nativitatis B. M. V. A. D. MCMXXIII diebus 3, 4 et 5 julii celebrate. Diecezja Sandomierska: Sandomierz, 1923, p. 68.

[6] CCL/17, c. 1451 § 2: "Si patroni id noluerint, eorum ius patronatus canonibus qui sequuntur, regatur".

[7] CCL/17, c. 1453 § 1: "Ius patronatus personale transmitti valide nequit ad infideles, publice apostatas, haereticos, schismaticos, adscriptos societatibus secretis ab Ecclesia damnatis, nec ad quoslibet excommunicatos post sententiam declaratoriam vel condemnatoriam. § 2. Ut ad alios ius patronatus personale transmitti valide possit, requiritur consensus Ordinarii in scriptis datus, salvis legibus fundationis itemque praescripto can. 1470 § 1, 4°".

limited the right of patronage to a particular clan, family, or line, it was only such persons that could inherit this right. If no heirs were mentioned in the foundation act, the right could pass to anyone with the capacity to acquire it (Rittner, 1912, p. 240).

According to canon law, real patronage and the things attached to it could not be passed to persons who were deprived of the right of personal patronage, i.e. non-believers, public apostates from the faith, heretics, schismatics, members of secret organisations condemned by the Church, and the excommunicated (Pasternak, 1970, p. 195). In such cases, the real right of patronage was suspended (c. 1453 § 3).[8]

The right of patronage was inherited by testamentary or statutory means. According to E. Rittner, the non-testamentary right was regulated by national laws.[9] If there were several heirs, they acquired the right of patronage jointly and severally (*in solidum*), regardless of the size of their respective shares. In addition, patronage could also be granted in a bequest or *fideicomissum*.[10]

Donations

The right of patronage was also transferred by means of donation (*donatio*). The acquisition of real patronage in such a way without the consent of the local ordinary was only possible in situations when a lay patron donated the right of patronage to a clergyman, an ecclesiastical institute, or the Church and a co-patron (Rittner,

[8] CCL/17, c. 1453 § 3: "Si res, cui ius patronatus reale cohaeret, ad aliquam personam de qua in §1 transeat, ius patronatus suspensum manet."

[9] E. Rittner describes the controversy concerning the absence of testamentary and non-testamentary heirs: "The disputed issue is whether in the absence of testamentary and non-testamentary heirs *libera collatio* arises, or whether the public treasury, by taking the *bona vacantia*, also acquires the right of patronage. Bearing in mind that, unless the foundation act states otherwise, patronage passes to each heir and that, acquiring the *bona vacantia*, the public treasury is considered an heir, there is no reason to deny the public treasury the right of patronage in this case. The confiscation of property is another thing: as patronage does not count towards property rights, confiscation does not apply to it at all; therefore, personal patronage remains untouched in this case" (Rittner, 1912, p. 240).

[10] A type of bequest whereby the heir undertakes to carry out the testator's will. "*Fideicomissum* was primarily associated with the testator's trust that their heirs will do whatever was asked of them. This trust was based on the Roman *fides*, which in law meant a public commitment, a guarantee, or a vow, as well as good faith, loyalty and fidelity to the word given. It was the attribution of the execution of a bequest to the honesty of the one to whom the testator made the request – *fidei committere* – that the name *fideicommissum* and the words *fideicommitto* and *fideicommissariuss* originated from. Therefore, in the Polish language the word *fideicommissum* is sometimes also translated as 'trust' or 'fiduciary bequest'" (Longchamps de Bérier, 2006, pp.8–9).

1912, p. 240). It should be added that a donation of a patronage by a lay person to a clergyman involved its transformation into an ecclesiastical patronage.[11] At the same time, however, similarly to the inherited right of patronage, the donated right of patronage could be suspended, pursuant to the provision expressed in c. 1453 § 3.

As in the case of hereditary patronage, in a situation in which the real right of patronage could only be exercised by the members of the donor's family, donating this right to someone else was declared null and void. As a consequence, personal patronage could not be transferred to another person since, besides the person's capacity to be granted the right of patronage by way of donation, canon law required the consent of the local ordinary.

Contracts

The 1917 Code of Canon Law approved of a purchase-sale (*emptio*, *venditio*) of real patronage only, as opposed to personal patronage. For example, in a situation in which the right of patronage belonged to the first-born son of a family (personal patronage), he could not sell this right under the threat of simony.[12] This approach was dictated by a proper understanding of the right of patronage, which, to a large extent, was a spiritual right (*antecedenter spirituali annexum*) and, as such, was not subject to sale. Besides, as a spiritual right, personal patronage could not be given a price (Rittner, 1912, p. 240).[13] As for material possessions, if their price was raised, for instance, because of the patronage rights attached to them, the seller was guilty of simony, too (Rittner, 1912, p. 240), and, consequently, lost their right of patronage (c. 1470 § 1, 6).

[11] *Prawo patronatu* 99.

[12] "Trade in spiritual goods. The name originates from an event described in the Acts of the Apostles (8:9–24), when Simon, called a sorcerer, wanted to buy from the apostles the power to dispense the Holy Spirit. The first of the Commandments of the Decalogue condemns anyone seeking to acquire spiritual goods by means of trade and claiming to be their owner or master. The practice of simony, which has always been condemned by the Church (above all, the practice of selling indulgences), usually occurred when bishops' religious authority was accompanied by their secular estates and privileges" (Witczyk, 2001, p. 691).

[13] CCL/17, c. 1470 § 1: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: Si patronus ius partronatus simoniace in alium transferre attentaverit; si lapsus fuerit in apostasiam, haeresim aut schisma; si bona ac iura ecclesiae vel beneficii iniuste usurpaverit aut detineat; si rectorem vel alium clericum ecclesiae servitio addictum aut beneficiarium per se vel per alios occiderit vel mutilaverit".

Exchanges

The 1917 Pio-Benedictine Code regulated the exchange (*permutatio*) of things attached to real patronage. Such exchange was also possible for things that were free from the right of patronage. According to canon law, when performing this type of action, there was no need to obtain the consent of the local ordinary, provided the exchange was not simoniacal.

As in the case of contracts, the exchange of personal patronage was distinguished from that of family patronage. While the exchange of personal patronage for another patronage or thing, fully or partially spiritual (*res spiritulis vel spirituali annexa*), with the exception of temporal goods, could take place freely and without the consent of the local ordinary,[14] for the exchange of family patronage to be valid two conditions had to be met. First, the exchange could only be made with another family member, provided there was a relevant clause in the foundation deed. Second, such an exchange obligatorily required the consent of the ordinary. (c. 1453 § 2; c. 1470 § 1, 4°).[15]

Prescriptions

The 1917 Code of Canon Law also regulated the acquisition of the right of patronage by the long-term exercise of the right of prescription (*praescriptio*).[16] This right concerned patronages to which a given thing was attached, i.e. real patronages. It should be emphasized, however, that the acquisition of a thing by way of prescription was not synonymous with the acquisition of the right of patronage. For such an acquisition to occur, the right of prescription had to have been exercised for a certain time. In addition, the new patron's prerogatives were the same as those of

[14] *Prawo patronatu* 99–100.

[15] CCL/17, c. 1453 § 2: "Ut ad alios ius patronatus personale transmitti valide possit, requiritur consensus Ordinarii in scriptis datus, salvis legibus fundationis itemque praescripto can. 1470 § 1, 4°." CCL/17, c. 1470 § 1, 4°: "Si res, cui ius patronatus inhaeret, pereat, aut exstinguatur familia, gens, linea cui secundum tabulas fundationis reservatur; quo in altero casu nec ius patronatus hereditarium evadit, nec Ordinarius valide permittere poterit donationem iuris patronatus alii fieri."

[16] "The most widespread opinion is that for clerical patronage to be prescribed, 40 years are always required, whereas for secular patronage this period is 30 years. In addition, *bona fides continua* is needed in every case. According to Austrian law, secular patronage can be prescribed after 30 years, and clerical patronage after 40 years, on the condition that during this period the opportunity to exercise patronage rights has arisen at least three times and that this opportunity was, in fact, taken advantage of. In any case, the effect of the prescription is that only those particular patronage rights are acquired which the person has actually exercised according to the general legal principle of *tantum est praescriptum*, *quantum possessum*" (Rittner, 1912, pp. 240–241).

their predecessor.[17] Similarly to other ways of transferring the right of patronage, patronage acquired by way of prescription could concern several persons. In such a situation, they jointly and severally acquired the patronage, becoming co-patrons. Since the time that had to elapse for the right of prescription to be exercised was specified in the civil law of the respective countries (c. 1508),[18] there was a close correspondence between canon law and secular law.

The Church ruled out prescription in the case of personal patronage, introducing the written consent of the local ordinary for such an acquisition to be valid, as was the case for exchange of patronage (c. 1453 § 2). Patronage could also be transferred to the state, which acquired it by way of confiscation.[19] In addition, there were several other legal circumstances under which the right of patronage could be exercised.[20]

Conclusion

The ways of acquiring and losing the right of patronage in the light of the 1917 Code of Canon Law discussed in this article lead to the main conclusion that the Church hierarchs consistently sought to expunge this institution from canon law, which was expected to result in its removal from secular law, too. This is confirmed by the fact that the only codified means of acquiring the right of patronage directly was the papal privilege. On the other hand, the variety of ways in which the right of patronage could be acquired indirectly as specified in the CCL/17, in-

[17] *Prawo patronatu* 101–103.

[18] CCL/17, c. 1508: "Praescriptionem, tanquam acquirendi et se liberandi modum, prout est in legislatione civili respectivae nationis, Ecclesia pro bonis ecclesiasticis recipit, salvo praescripto canonum qui sequuntur".

[19] "[T]he secularisation of churches, monasteries or ecclesiastical establishments to which patronage was attached does not constitute a legal basis for the recognition of patronage rights. However, the Church tolerates this or even explicitly recognises it. Patronage *in rem* also passes along with the property to a feudatory, emphyteutic lessee, fideicommissary, and, in general, to those to whom a long-term usufruct (*dominium utile*) is transferred." (Bączkowicz, Baron, Stawinoga, 1957, p. 387).

[20] "It is not only the transfer of ownership but also other legal and private relations concerning the land in question that may have an effect on the patronage right attached to it, so that such right, while remaining *quo ad jus* with the former patron, is transferred to another person, who in this way exercises the patronage right: 1) in the case of so-called divided property, the one to whom the *dominium utile* serves, i.e. a fief, a perpetual tenant, or a superficiary; 2) a usufructuary (*usufructuarius*); 3) a husband representing his wife, who owns the land in question as part of her dowry – unless otherwise stipulated by an express agreement in all the three cases; 4) a court sequestrator in charge of the disputed land. By contrast, the right of patronage cannot be transferred either to a pledgee, even though in possession of the land pledged to them, or a tenant, unless the owner has expressly transferred the exercise of the patronage to them" (Rittner, 1912, pp. 241–242).

cluding the reference to civil law regulations, clearly shows that the institution of church protector, which had been shaped over many centuries, was not only firmly rooted in the tradition of the nation but also in secular law. It should also be noted, the discussion of which is beyond the scope of this article, that the right of patronage was regulated in domestic law, too. As for the period of the Second Polish Republic, the provisions concerning patronage were the subject of the Concordat between the Holy See and the Republic of Poland signed in Rome on 10 February 1925 and ratified in accordance with the Act of 23 April 1925 (Journal of Laws of 1925 No. 47, item 324).[21] Those provisions were also contained in several normative acts of the sates that had occupied Poland, and they had been in force in the recovered territory until the establishment of national law.[22] This confirms the thesis that if the outbreak of the Second World War and the subsequent changes in property relations in post-war Poland had not taken place, the right of patronage would still be an institution functioning in canon and secular law.

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[21] Journal of Laws No.72, item 501.

[22] Act of 17 March, 1932 on Contributions to the Catholic Church), *Journal of Law* 1932.35. 358.

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