

# The Mandate Contract in Ecclesiastical Legislation

Mihai-Iulian NECULA <sup>1</sup>

<sup>1</sup>Priest, PhD in Juridical Sciences, Member of the Higher Consistory of the Romanian Patriarchate, Associate Professor at the Faculty of Economics and Business Administration, “Alexandru Ioan Cuza” University of Iasi, insolvency practitioner); [mi.necula@gmail.com](mailto:mi.necula@gmail.com)

**Abstract:** *Since ecclesiastical rules occasionally call for specific modifications and interpretations, the effort to examine a variety of the mandate contract—specifically, the religious mandate—is all the more beneficial. According to this viewpoint, the current work seeks to serve as a reference for comprehension and assistance in the event that legislation pertaining to religious laws regarding the Church's mandate is passed. Naturally, a thorough understanding of this juridico-religious institution of the religious mandate necessitates familiarity with civil law, ecclesiastical legislation, Roman law, and the Bible. So, in the situation of the religious mandate contract, who is working and for whom?*

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## Introduction

Since ancient times, the mandate contract has been a reality of society, driven by the necessity for some individuals, having a privileged social status, to be substituted by others in the performance of certain activities. The mandate contract can be concluded for many social activities, except for those for which substitution is not possible and those *intuitu personae*, in the sense that the contract holder cannot be replaced in performing the activity by their mandatary.

We can state that, depending on the field of activity for which the mandate contract is concluded, there are several varieties of it, one of which is the religious mandate contract.

## Representation and/or mandate

Legal doctrine has over time crystallized two forms of agency: with representation and without representation. The religious mandate is a mandate with representation. In this sense, "representation consists in the performance by a person, called the representative, in the name and on behalf of another person, called the represented person, of a legal act whose effects are directly produced in the person and property of the latter" (Cosma, 1969, 76). *Representation*, therefore, implies that the representative is an interface of the represented person, to the point of confusion.

On the other hand, "the two concepts - *representation* and *mandate* - cannot be identical, because there is representation without mandate as well as mandate without representation (...) Thus, legal and judicial representation (...) constitute cases of representation without mandate" (Banciu, 1995, 9). In other words, *representation* and *mandate* are two legal institutions which may be inseparable or exist independently. In this respect it has been rightly stated that: "acts of a strictly personal nature cannot be concluded by a representative. Such acts are found in family law, for example: marriage, betrothal, recognition by a parent of a child out of wedlock, and in the law of succession - wills. Such acts require the manifestation of the personal will of the person marrying, bequeathing, recognizing or making a will" (Banciu, 1995, 13). In the religious field, the rites of the Orthodox Christian Church prohibit those who wish to partake of the grace of the Holy Sacraments from sending someone else to do so and require the physical presence of the person wishing to do so for the performance of any of the Holy Sacraments (Baptism, Anointing, Confession, Holy Communion, Holy Mass, Holy Communion and Ordination) (Molitfelnic, 2019). A substitution of the

holder of the right in this situation is tantamount to the conclusion of a null act or, as the case may be, an act without any Divine grace effects.

In relation to the source of the mandate, "representation is of three kinds: legal, conventional, and judicial" (Banciu, 1995, 14). Analyzing the religious principles and rules, it can be said that, in addition to the three forms of mandate mentioned above, there is a fourth form, namely the *religious mandate*, as will be seen from the following. This type of *representation*, which has a certain specificity, has come to be recognized in the course of time by legal norms, and has therefore become legal representation, as is the case today, for example, when we consider the legal regime of the Orthodox priest provided for by Article 50(6) of the Statute for the Organization and Functioning of the Romanian Orthodox Church (2020)

### **Historical aspects of the mandate**

In Roman antiquity, the mandate consisted of a promise by the agent (mandator) to do something for the principal (Mandant – in Romanian language), free of charge. In this sense, the agent's commitment was determined either by family ties, respect, the advantages offered by the principal, or due to the hierarchical position in society that the servant or client had in relation to the principal, who was their employer (Jakotă, 2002, 395-396). It was therefore of the essence of the mandate that there should be a personal relationship between the principal and the agent, involving mutual knowledge and affection, which guaranteed that the mandate would be carried out within the limits imagined and desired by the principal.

As far as the law of the Jewish people is concerned, it should be noted that Jewish society at the time of Moses (13<sup>th</sup> century BC) was not organized as a state, with no political governing bodies, and that religious rules were also legal rules. On the religious level, in the Mosaic faith, when we speak of empowerment, the agent is chosen, formed and sent by the divinity to proclaim the will of the Principal who is God himself. In order to fulfil the mandate, he received from Yahweh, Moses is specially prepared by divine pedagogy. Thus, Moses informs his fellow countrymen that "the God of their fathers has sent him to them" (Ex 3.13 ff.). Although Moses would like not to accept the mandate (Jn 4.13 ff.), the Principal (God) convinces him and assures him that he will support him in carrying out the mission he has entrusted to him. Moses is not only a messenger or a spokesman, but he realizes a genuine representation in the sense that "he cannot be considered a mere passive instrument of the Representative, (...) in the legal act which he concludes in the name and on behalf of the Representative, he expresses his own will, having a freedom of initiative in the way he carries out his mandate, being restricted

only by the limits of the mandate and the nature of the representation"(Banciu, 1995, 39). Another important aspect is that in the religious mandate, third parties become themselves mandators when they ask the mandator to intercede, to ask for divine help for them. In other words, the trustee has two principals: on the one hand, God and, on the other hand, the person who asks him to pray to God for him. The prophets of the Old Testament were given the mission (mandate) to proclaim God's will to the people, as is clear from the relationship that the divinity establishes with the prophet Jeremiah: "But the Lord said to me, 'You shall not say, 'I am not a prophet, but the Lord said to me, "Do not say, 'I am a prophet, but I am a prophet: I am yet young; for to as many as I send you, you shall go to them all, and whatever I command you, you shall say. Do not be afraid of them, for I am with you to deliver you,' says the Lord. And the Lord stretched out his hand, and touched my mouth, and said to me, 'Behold, I have put my words in your mouth. Behold, I have set you this day over peoples and kingdoms, to pluck up and to cast down, to destroy and to break down, to build and to plant." (Jeremiah 1:7-10). In this situation the agent is doing nothing more than very faithfully presenting the will of the Principal as a result of being under divine inspiration. In this sense, "inspiration is a supernatural influence that manifests itself upon the person receiving a revelation, enabling him or her to receive and transmit God's revelations without error. It manifests itself in three stages. At the time of revelation, the man receiving the revelation is wholly under the influence of the Holy Spirit (Ezekiel 8:3; 37:1). At the time of transmission, this man is guided by the Holy Spirit so as to communicate the revealed truth verbally or in writing (2 Peter 1:21). At the time of illumination, believers are guided by the Holy Spirit in the interpretation of the sacred writings (Hebrews 6:4-5)." We are of the opinion that the involvement of the Mandatory is self-evident and absolutely necessary for the fulfilment of the Mandate.

The Principal is not very accepting of refusals. Thus, Jonah's refusal of the Mandate generates sanctions, the only way out is to accept and fulfil the Mandate. (Jonah ch. 1-4) In general, the religious mandate is not limited in time, it is given indefinitely (Isaiah 6. 8-13).

### **Mandate in Christianity**

The whole history of Christianity stands under the sign of the mandate. God, the Father sent (mandated) His Son into the world: "and whoever sees me sees him who sent me", (John 12.45) and the Son called them, formed them, gave them divine power and sent his apostles and disciples into the world: "as the Father has sent me, I am sending you"(John 20.21). The exercise of the Christian mandate is not accomplished on one's

own but with divine help as is evident from the assertion: "Go ye therefore and teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all things whatsoever I have commanded you: and lo, I am with you always, even unto the end of the age" (Matthew 28. 19-20).

The Apostles in turn sent disciples into the world on the principle of apostolic succession. The concept of "apostolic succession" implies "the continuation of the apostolic ministry in view of the succession of the apostles after death [by others], while ordination is the only means of transmitting the authority of the apostles to certain co-workers who have passed through the fire of trials, in order to ensure not only the allocation of competences in space but also the uninterrupted continuity of the episcopal function over time. However, while the development of the apostolic ministry in space was assured from the very beginning by the ordination by the apostles of local clergy (bishops, priests and deacons), as the apostolic testimonies (writings) prove, the consolidation of the uninterrupted functioning of the episcopate in time, that is, the confrontation with the question of the succession of the apostles after their death, was not a pressing need in the apostolic period" (Feidás, (n.d). Therefore, apostolic succession and ordination were the two forms by which the mandate given by Jesus Christ to the Apostles and his disciples was and is fulfilled.

From the canonical point of view, it can be seen that the question of apostolic succession has been regulated from the very beginning, being the way in which the mandate of the founder of the Christian Church Jesus Christ was transmitted:

"Apostolic CANON 1 (HIROTHONY OF THE EPISCOP.)

The bishop is to be ordained by two or three bishops.

(4 sin. I ec; 3 sin. VII ec; 19, 23 Antioch; 12 Laod; 6 Sard; 1 C-pol, year 394; 13, 49, 50 Carthage).

Apostolic CAN 2 (HIROTONIA OF PRIEST AND DEACON)

The priest is to be ordained by a bishop, as also the deacon and other clerics.

(26, 70 apostolic; 19 sin. I ec; 33 Trui; 11 sin. Vil ec; 6 Gang; 24, 26, 30 Laod; 51, 89 Basil the Great)"

The ordination is in fact a special mandate of grace and mission. The word *mission* is to be understood in the light of its etymological meaning, that is to say, it comes from the Latin *mittere*, with the meaning of sending or commissioning. Ordination is achieved by the *laying on of hands*. The Holy Apostles ordained deacons (Acts Rev. VI, 6), bishops and priests (I Tim. IV, 14) and it was by the laying on of hands that they also imputed the gift of the Holy Spirit to the newly baptized (Acts Rev. 8, 17, 9, 17, 19, 6).

## **The religious mandate in the Romanian Orthodox Church**

The fact that every Orthodox clergyman begins his sermon with the words: "In the name of the Father and of the Son and of the Holy Spirit" shows that the activity of proclaiming Christian values is not exercised in his own name, but because of the mandate received through ordination from Jesus Christ himself. This formulation also takes account of the fact that "St. John Chrysostom says that Christ does all things in the Liturgy only that he lends the voice and the hand of the priest" (Cuvinte Duhovnicești, April 5, 2022). The priest, himself, recognizes at Mass, when he blesses the people gathered in the Holy Place, that the blessing he gives is not his own, but God's: "The blessing of the Lord be upon all with his grace, and with his love of man..." (Liturghierul, 2012). These aspects clearly show that the cleric in his activity is a mandatary of God. Just as the bishops are mandataries of Jesus Christ being successors in grace of the Holy Apostles, article 49 of the Statute for the organization and functioning of the Romanian Orthodox Church specifies that "the parish priest as delegate of the Bishop" (Statute for the organization and functioning of the Romanian Orthodox Church, 2022)) exercises the statutory duties. This delegation is not only of an administrative but also of a charismatic nature, since a priest who is not ordained cannot be a priest. Delegation is a commission, a professional mission to act on one's behalf. This statutory provision also arose from the fact that the Romanian Orthodox Church had set up two priests' trade unions, which have since ceased to exist, and because of an ECHR judgement (ECHR, 2013). While, until the appearance of these unions, Romanian Orthodox priests were employed based on a labor contract, subsequently, with the advent of Article 49 and other regulations, the professional relations of priests are based on a mission and ministry decision, which goes beyond labor legislation and is in fact a mandate of the diocesan bishop for the priests within his canonical jurisdiction. Therefore, Romanian Orthodox priests do not have an employment contract but carry out their work on the basis of a mission and service decision, which sets out their duties, issued by the local Bishop, which is nothing other than a mandate with special representation from the local bishop. Thus, cf. 123 par. 7 of the Statutes of the B.O.R. "The relationship between the clerical personnel and the diocesan Centre is one of service and mission freely assumed, according to the solemn public solemn confession (declaration) spoken and signed by each candidate before ordination as a priest. At the beginning of pastoral activity in the unit to which they have been appointed, the Church personnel receive a decision from the Hierarchy regulating their rights and duties." In other words, the exercise of clerical activity by priests is carried out on the basis of a special mandate.

## Conclusions

The mandate contract cannot be used to solve all social problems. Some of them, whether of a civil or religious nature, can only be resolved in the personal presence of the person concerned.

The religious mandate of the Orthodox Christian Church is essential to the perpetuation of the message of its Founder Jesus Christ, and the disappearance of the mandate expressed through apostolic succession and ordination is equivalent to the disappearance of the Church.

Faithful to the scriptural and patristic tradition, the Romanian Orthodox Church has implemented in the Church's laws the basic principles regarding the religious mandate so as to continue the sanctifying, teaching and administrative work, that is, the mission entrusted by mandate by Jesus Christ.

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