

The STABLE PATRIMONY

This paper summarises a broader legal reflection on the *stable patrimony* of a canonical public juridic person, which includes public associations of the faithful *in itinere* – that is to say, in the process of constitution as an Institute of Consecrated Life or a Society of Apostolic Life, Provinces or the equivalent parts of the Institute, and autonomous monasteries. Temporal goods belonging to public juridic persons in the Church are ecclesiastical goods and are governed by both universal law and proper law.

The *stable patrimony* of a canonical public juridic person comprises all the goods designated as such by the competent ecclesiastical authority and are subject to a particular juridical discipline.

The concept of *stable patrimony* introduced in the 1983 Code of Canon Law was one of the systematic and substantive innovations introduced regarding temporal goods.

However, it already existed in previous Canon law doctrine and has now been incorporated into current legislation. For even though the Pio-Benedictine Code did not mention ‘stable patrimony’ in so many words, Canon 1530, §1 used the expression “*Res ecclesiasticae immobiles aut mobiles, quae servoando servasi possunt*”.

Legal writers have sought to give legal substance to the new expression of *stable patrimony* firstly by the application of Canon 1530 of the former Code of Canon Law, seeing in it a parallel concept. Even though, as De Paolis has written, “*can. 1530, §1 uses a rather difficult expression for the purposes of translation, to specify the goods which are in themselves inalienable and therefore only inalienable using a particular procedure and, in particular with the permission of the competent authority*”, we must recognise that it is not an extrinsic parallel.

Bearing this in mind, we may say that immovable goods and any movable goods which can – and therefore must – be conserved, constitute a particularly protected category of assets by virtue of their nature, function or destination. In the same way, Perlasca also translates the expression in can. 1530 of the 1917 Code as “*permanent endowment of movable and immovable goods which constitute the economic fund necessary to subsist and to act*”.

This concept was introduced into the current code, as stated in *Communicationes*, not without some difficulty, since some Consultors felt that the expression ‘stable patrimony’ did not appropriately lend itself to the dynamics of the present-day economy. The report itself states that: “*Nonnulli crisim fecerunt de locutione “patrimonium stabile”, quae apta erat condicionibus rerum praeteritorum, sed nostris temporibus non idonea videtur, attenta mobilitate et fluiditate oeconomiae hodiernae. Consultores autem concordant circa necessitatem ponendi aliquem limitem (...), quod fieri nequit nisi sumendo notionem aliquam conventionalem per verba “patrimonium stabile” indicatam*”.

Considering the present state of the economy which recognises movable assets which can be invested in a permanent and stable manner, and considering that immovable assets are no longer as important as they used to be in the past, and bearing in mind that this distinction between movable and immovable assets is not easy to determine today solely on the basis of Roman law criteria, the wording used by Canon 1530 in the 1917 Code was replaced by *stable patrimony*.

Although the concept is used in the Code of Canon Law, the notion of *stable patrimony* is not expressly defined in the current Code which presupposes confirmation of the classical concept in Canon law literature of goods legitimately designated to the juridic

person as a permanent endowment for the pursuit of its institutional purposes and to guarantee its economic self-sufficiency.

But stable patrimony was also discussed in the legal literature before the 1983 Code as, for example, when Tabera defined it as follows: *“stable patrimony means the assets which constitute virtually the basis of the sustenance of the person, as capital on whose income it must live, and consequently assets endowed with comparative immutability: in a sense, they are intangible, and cannot be consumed and they are shielded against any threat of loss or diminution”*.

In more recent times, some writers have stood out, in my modest opinion, for having offered a certain description – but not a definition – which is useful for a better understanding of the notion of stable patrimony.

Rovera has described stable patrimony as *“the assets which (...) are used to create the permanent endowment of the entity which, directly or indirectly, enable the entity to achieve its purposes”*.

López Alarcón, commenting on can. 1285, has described the concept of stable patrimony in the following terms: *“stable patrimony must be understood to mean all the assets which constitute the minimum economic and secure basis for the juridic person to subsist autonomously and to pursue the ends and perform the services proper to it; there are not, however, any absolute rules for establishing the notion of the stability of a patrimony, since this is delimited not only in terms of the nature and the quantity of the assets, but also of the economic requirements needed to pursue its purposes, as well as the stationary and expanding economic state of the entity in the performance of its mission”*.

Likewise, Schouppe emphasises that *“the stable patrimony means assets which possess a certain immutability such that any act which may modify it would be considered an act of extraordinary administration. The whole rationale of these assets, legitimately designated as a permanent endowment, is to guarantee stable financial support to assure the entity of economic self-sufficiency and guarantee its survival, and to facilitate it the pursuit of its own ends”*.

On this same subject, Begus says that *“if anything may be inferred from the letter of the provisions of this canon it is that the adjective ‘stable’ makes it clear that it refers to assets which are not to be used for the ordinary administration of the juridic person. On the contrary, it refers to movable and immovable assets which are not only the minimum financial and economic basis for the autonomous subsistence of the ecclesiastical juridic person, but also enable it to pursue the purposes and provide the services which are proper to it”*.

There are 2 canons in the current Code of Canon Law – can. 1285 and can. 1291 – in which the expression *stable patrimony* occur.

This expression emerges, almost surreptitiously, in can. 1285 which states: *“Within the limits of ordinary administration only, administrators are permitted to make donations for purposes of piety or Christian charity from movable goods which do not belong to the stable patrimony”*. This canon, in book V of the Code, is addressed directly to the administrators of ecclesiastical goods, authorising them to make donations on the one hand but limited to acts of piety or Christian charity alone, and only referring to movable goods which do not belong to the *stable patrimony*.

This first canon does not define the criteria for identifying the stable patrimony and merely offers an indication of the assets belonging to the stable patrimony, by stating that these are goods which are not to be disposed of freely by the administrator, even as donations. This canon, however, introduces a qualification which is not present in the other canon referring to stable patrimony, namely can. 1291 – by stating that the assets comprising the stable patrimony may also include movable goods.

Canon 1291 refers explicitly to acts of alienation: *“The permission of the authority competent according to the norm of law is required for the valid alienation of goods which constitute by legitimate designation the stable patrimony of a public juridic person and whose value exceeds the sum defined by law”*.

Neither does Can. 1291 define stable patrimony, although the terminology is used to specify the type of goods whose alienation requires the permission of the competent authority for the act to be valid. This Canon presupposes the existence of the stable patrimony and is concerned to make it clear that this patrimony comprises the goods which must be designated as belonging to the stable patrimony by a specific juridic act. For it talks about constituting the stable patrimony *ex legitima assignatione*, which is an act under universal and/or proper law.

While there are no absolute indications as to the amount or the type of goods to be designated to the stable patrimony, the novelty introduced by the current Code is the fact that it requires an act of legal permission. It has been properly noted that *“in the case of canonical public juridic persons there must be written permission stating which goods must constitute that patrimony. It therefore refers to a full-fledged category of goods, which must be designated by the competent ecclesiastical authority. The fact that these goods belong to the stable patrimony is therefore dependent on a specific juridic act”*.

All the movable and immovable goods, rights, and active and passive relations of the juridic person, taken as a whole, constitute its patrimony. However, the notion of *stable patrimony* does not, however, mean the same thing as the patrimony of the juridic person, such that not all the assets and goods belonging to a juridic person are goods which belong to its stable patrimony, and they may not be presumed to belong to it.

Indeed, the opposite presumption is correct: not all the goods of a juridic person belong to the *stable patrimony*, because a specific juridic act is needed to prevent those goods from being freely disposed of, in order to designate them to the stable patrimony. Canonical public juridic persons therefore require an act of designation, establishing which goods must form part of that patrimony.

It follows from the foregoing, and from the provisions of Canon law, that the stable patrimony may be defined as that portion of the goods forming the overall patrimony of a public juridic person which, following their legitimate designation, constitute the minimum required for the economic subsistence of that person and for the pursuit of the purposes, taking account of its particular circumstances and precisely for these reasons enjoy special protection against alienation.

Can. 1291 also shows that for every canonical public juridical person the act establishing its erection, or some specific act issued subsequently, shall indicate all the goods making up the stable patrimony. In the latter case, when legitimate designation occurs after erection, since it would be an act of particular relevance and importance for the purposes of administering the entity, it should be considered to be an act of extraordinary administration and hence fall within the scope of can. 1281.

With regard to designating particular goods to the stable patrimony De Paolis has written: *“although the act of legitimate designation is the one which designates what belongs to the stable patrimony, we should not forget the following: 1) every juridic person has a stable patrimony and certain assets, by their nature, form part of the stable patrimony because without them the juridic person would be absolutely deprived of the means of pursuing its purposes; 2) the amount of these goods is commensurate to the nature, and the purposes and needs of the juridic person; 3) some goods cannot be disposed of by their very nature, to avoid the collapse of the juridic person and they are therefore part of the stable patrimony by their nature, and their legitimate designation is*

implicitly conferred by other authority; 4) it is not lawful to refrain from designating them for the sole purpose of avoiding the provisions of Canon law regarding alienation. For these laws guarantee the protection of those goods and hence guarantee ecclesiastical goods”.

This statement is certainly deserving of more detailed consideration which we propose to do in another paper, while we can now turn our attention to the statement to the effect that there are certain goods which, by their nature, belong to the stable patrimony. These are the goods which constitute a necessary means of enabling the juridic person to attain its proper institutional ends and purposes.

As one can easily understand, when speaking about the *stable patrimony*, it is not a matter of guaranteeing that, by providing a given number of goods, a public juridic person can guarantee its own subsistence, but rather of guaranteeing the relationship between that juridic person’s goods and its institutional purposes, that is to say, to guarantee the concrete possibility that the juridic person is able to pursue the ends and purposes for which it was instituted.

The public juridic person is entitled to goods because it has ecclesial purposes to attain and must therefore be guaranteed the necessary and sufficient means of pursuing them.

Although there is no explicit obligation for a stable patrimony, that obligation is implicit inferred from other canonical norms.

Can. 114, §3 addressing this point is absolutely clear: *“The competent authority of the Church is not to confer juridic personality except on those aggregates of persons or things which pursue a truly useful purpose and, all things considered, possess the means which are foreseen to be efficient to achieve their designated purpose.”* It is precisely because of this purpose which is of use to the Church that it must necessarily be pursued by guaranteeing adequate means to pursue it.

Since the Code merely provides for the existence of the stable patrimony and avoids any detailed prescriptions regarding it, one may lawfully wonder how the public juridic person can and must identify the amount and the typology of the goods to be designated as its stable patrimony.

We conclude from the foregoing, consistently with the main legal writers on the subject, that the goods to be designated as stable patrimony must be established on the basis of both their nature and the purposes which the juridic person proposes to pursue, and the needs of the juridic person.

Purely by way of example, we may consider the following as stable patrimony in general terms:

- The goods forming part of the entity’s founding endowment;
- Goods given to the entity if that is the express intention of the donor;
- Goods designated to the stable patrimony by the entity’s management organ;
- Movable goods donated *ex voto* to the juridic person.

It follows from this that *“the stable patrimony of a juridic person cannot be formed arbitrarily, but must comprise goods which, in some way, configure the entity itself, its institutional purposes, its current needs, the extension and type of activities it performs, and the number of persons belonging to it”.*

We can say that they are goods which, by their very nature or function, or their destination, are linked to the purposes for which the entity was established and must therefore be preserved.

There are some authors who believe that some historical-cultural factors should be also taken into account making it necessary to link a given juridic person not only to goods

which are immediately functional to its subsistence or the pursuit of its proper ends, but also goods which form part of its history and the events surrounding its constitution.

It has been appropriately stated that the legitimate designation of a good to the *stable patrimony* may give rise to juridic effects: “*where the designation to the stable patrimony is made in the act of erection of the juridic person, the ownership of goods may be designated to the new juridic person: in such cases it is necessary to comply strictly with the local provisions of civil law. The competent authority may, however, simply assign a particular good or an assemblage of goods formerly belonging to the juridic person. In both instances the goods in question acquire a particular stabilitas*”, which does not mean absolute inalienability.

In the Pio Benedictine Code, the term ‘inalienability’ was not used. Although in the older codifications and commentaries before the publication of the 1917 Code, the title *De bonis ecclesiasticis non alienandis* was found, in the 1917 Code of Canon Law alienation was included among contracts, indicating the cases in which alienation is possible.

Stable patrimony does not, however, mean a permanently capitalised patrimony because the law provides that it can be transformed and even alienated under certain conditions and with certain provisos. For even though the *patrimony* may not be immovable in the absolute sense of the term, it is *stable* because it has been stabilised, in the sense that it has been clearly identified and well protected, and hence to a certain extent, capitalised, even though that situation is not necessary absolute or irreversible. The law provides that if there are proportionate reasons for so doing, and if specific procedures are followed, goods forming part of the stable patrimony may be alienated.

One further point to bear in mind is whether it is obligatory to designate a given good or goods to the stable patrimony, for at the present time the legal writers are not in unanimous agreement.

De Paolis and Schouppe, for example, adopt two different positions. For De Paolis: “*there is no explicit obligation to have a stable patrimony. But implicitly it is an obligation deriving from other norms of Canon law. For example, can. 114 (...). Can. 319 takes it for granted that the public juridic person possesses goods whose function is not solely to cover the costs of ordinary daily life. But above all it is recognised that every juridic person has the right to own goods to achieve its proper ends, which are always ecclesial ends (canons 1254-1255)*” whereas Schouppe does not insist on the obligatory nature of designation.

By virtue of this obligation – even if implicit – some legal writers hold that the *stable patrimony* must be constituted for every public juridic person and that it is therefore necessary to make provision for this to be done where it has not yet been done.

It is useful to circumscribe and identify the stable patrimony to find out which of the goods of the public juridic person must be given special protection in order to make it easier for the administrator and the person responsible for oversight to know and understand which licenses they must request or grant.

“*The primary effect of attributing goods to the stable patrimony is not only formal but it makes it possible to identify which goods are to be preserved with particular care, and to have a clear idea of the size of the patrimony to be administered. It must be made quite clear that temporal goods do not form part of the stable patrimony because they are the object of attention, but they must become the object of attention precisely because they form part of the stable patrimony*”.

Since can. 1291 emphasises the importance of legitimate designation to enable a good to become part of the *stable patrimony*, it is appropriate for every canonical public juridic person to draw up a list of all the goods forming part of the *stable patrimony* and to make them public in the form of legal title deeds showing that they have been legally assigned under local civil law.

The principle that a good, or goods, implicitly belong to the stable patrimony by their very nature, as some legal writers have suggested, must not be the rule here, but at most, an exception.

The Code has used the *stable patrimony* as a means not only of guaranteeing the conservation of the means of subsistence of the canonical public juridic person, but also the effective pursuit of its institutional purposes.

Public Associations of the faithful *in itinere*, Institutes of Consecrated Life and Societies of Apostolic Life are required to implement these Canon law provisions, adjusted according to their concrete situations of every canonical public juridic person, establishing their stable patrimony in terms of their economic, financial and pastoral situation.

The legitimate designation of certain goods, both movable and immovable, to the *stable patrimony*, the effective legal protection of that patrimony, and the conditions under which they may be alienated, must be regulated according to their own rules and regulations issued by the Institute's competent internal authority, taking account of universal norms.

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