

CONFISCATION FOR THE CHURCH IN JUSTINIANIC LAW

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Abstract in original language

In ancient Rome confiscation was imposed as a principal or an ancillary punishment in case of many crimes. First of all, the property of the executed or exiled traitors was seized. Confiscation was not ordered in every case for the state. In the Christian Roman Empire – especially in the age of Justinian – assets could be confiscated for the church, a monastery, or a charitable institution. For example, all property of the bishops having violated some legal provisions, the meeting places of the heretics, and the synagogas built illegally by the Jews were confiscated for the local Catholic church. The monasteries were often used as prisons by the orders of Justinian. The adulteresses and the persons having divorced without a legal reason were closed in monasteries for which their property partly or wholly was seized. Justinian tried to prevent the sale of the offices. If a superintendent of a poor house, a hospital or other charitable institution was proved to have bought his office, the money or other property given for the appointment was to be confiscated for the institution.

Key words in original language

Confiscation, Acquisition of ownership, Church, Monastery, Roman law, Justinian.

After the Constantinian change the ecclesiastical property continuously increased. The local churches obtained many financial privileges by the Christian emperors. The ecclesiastical property grew in the first place by pious donations and testamentary grants, but the local Catholic churches, the monasteries and the charitable institutions could acquire assets by seizure, too. This form of acquisition of ownership by the church became specially frequent during the reign of Justinian (A.D. 527–565).

The emperor issued numerous ecclesiastical constitutions.¹ Among others, he regulated the conditions of the election and consecration of bishops circumstantially. For example, he forbade family men to obtain the episcopal office. According to the Justinianic provisions, the bishop who had consecrated a person not being legally consecrable

¹ Cf. Pfannmüller, Gustav, *Die kirchliche Gesetzgebung Justinians hauptsächlich auf Grund der Novellen*. Berlin, 1902; Knecht, August, *System des Justinianischen Kirchenvermögensrechtes*. Stuttgart, 1905; Alivisatos, Hamilcar S., *Die kirchliche Gesetzgebung des Kaisers Justinian I.* Berlin, 1913.

was to be expelled from his office for a year, and all of his property was to be confiscated for the local church.²

Before the bishop consecration anyone could bring an accusation against the nominee stating that the said person was not legally consecrable. The accusation was to be investigated carefully. The bishop having consecrated an accused person without the required investigation was to be subjected the above mentioned punishment: he was to be ejected from his office for a year, and all of his property was to be seized for his church.³

Justinian dealt with simony very severely. If it was proven that somebody had bought his episcopal office, the money or other property given for the consecration was to be seized for the local church. If a laic person had received gold or other property for furnishing aid in connection with the consecration, he had to pay double that amount to the church.⁴

The sale of any kind of office was strictly forbidden by the emperor. The superintendents of the hospitals, poor houses, infirmaries and other charitable institutions who had given anybody anything for their appointment were to be deprived of their offices, and the objects of the illegal allotments were to be confiscated for the institutions. If a layman had received anything, or had been a mediator, he had to pay double that amount to the ecclesiastical institution.⁵

Justinian forbade the ecclesiastical persons from some activities. The emperor did not permit a bishop, steward, or clergyman of any rank, or a monk, either on his own account, or on account of the church or monastery, to become a receiver or collector of fiscal tribute or a lessee of taxes or of the possessions of another or a curator of a house or a procurator of a lawsuit or a surety in such cases. If a bishop had broken the law, all of his property was to be confiscated for the local church.⁶

The church canons forbade the presbyters, the deacons and the subdeacons to contract marriage after their ordination.⁷ This prohibition was incorporated into a law by Justinian. According to this imperial constitution, the children born in the unlawful marriages of

² Nov. 123,1. Cf. Pfanmüller, op. cit., 50; Alivisatos, op. cit., 54.

³ Nov. 123,2. Cf. Pfanmüller, op. cit., 51; Alivisatos, op. cit., 55.

⁴ Nov. 6,1; 123,2. Cf. Pfanmüller, op. cit., 46; Knecht, op. cit., 89; Alivisatos, op. cit., 55.

⁵ Nov. 123,16. Cf. Knecht, op. cit., 90.

⁶ Nov. 123,6. Cf. Pfanmüller, op. cit., 55; Knecht, op. cit., 90–91.

⁷ Cf. Can. Apost. 26.

these clerics were unworthy of succession to the property of their fathers, and they were not allowed to take gifts from them. All illegal grants made to them by their fathers were to be seized for the church they belonged to.⁸

The deaconesses were expected to lead an immaculate moral life. According to the 6th Novel of Justinian, the deaconesse who had dishonored her ordination, or left her holy order and contracted marriage, or chosen any dishonorable mode of life had to receive a capital punishment and her whole property was to be confiscated for her local church or her monastery.⁹

Later Justinian modified these provisions. In 546 the emperor gave the following orders: "a deaconess, moreover, shall not live with any man, in connection with whom a suspicion of a dishonorable life may arise. If she fails to comply herewith, the bishop under whom she is shall warn her to expel such man from her habitation. If she fails to do so, she shall be deprived of her ministry and her emoluments and shall be delivered to a monastery in which to spend the rest of her life. Her property, moreover, shall be divided among her and her children, if she has any, according to the number of persons, the portion received by the woman to go to the monastery to support her. If she has no children, her property shall be divided in equal portions between the monastery into which she is sent and the church in which she was previously appointed."¹⁰

Justinian did not permit laymen to conduct religious ceremonies without clerics.¹¹ If a laic person carried on or permitted others to carry on divine services in his house or his suburban villa or on his landed possessions without the local clergy, the house, villa or landed possessions could be claimed by the local church. If a procurator or a lessee did so or permitted to do so without the knowledge of the owner of the place, such owner remained unpunished, but the procurator or lessee was to be expelled from the province, and his property was to be seized for the church.¹²

⁸ C. 1,3,44. Cf. Knecht, op. cit., 87–88.

⁹ Nov. 6,6. Cf. Pfannmüller, op. cit., 72; Alivisatos, op. cit., 72.

¹⁰ Nov. 123,30. The English translation is Fred H. Blume's with a little amendment (I think in this text the word *ιερευς* means not priest but bishop). Cf. Pfannmüller, op. cit., 72–73; Knecht, op. cit., 87; Noethlichs, Karl Leo, *Das Kloster als „Strafanstalt“ im kirchlichen und weltlichen Recht der Spätantike*. Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung 80 (1994), 35; Krause, Jens-Uwe, *Gefängnisse im Römischen Reich*. Stuttgart, 1996, 58.

¹¹ The church canons also forbade the ceremonies of this kind. Cf. Conc. Gangr. (c. 362), can. 6.

¹² Nov. 131,8. Cf. Knecht, op. cit., 86.

Already in the first half of the 5th century many constitutions were issued which stated that the houses and the fields illegally used by heretics for religious purposes were to be confiscated for the local Catholic churches.¹³ Similar orders were given also by Justinian.¹⁴

If an orthodox person alienated or delivered a real estate on which there was a church building, either by emphyteusis, lease or for any other purpose, to a Jew, Samaritan, pagan, Montanist, Arian, or other heretic, the real estate was to be confiscated for the local church. If the owner knew that he had leased his real estate to a non orthodox person, the local Catholic church was able to claim also the income specified in the contract.¹⁵

Already the emperor Theodosius II forbade the Jews to build new synagogas.¹⁶ This prohibition was confirmed by Justinian. According to the emperor's 131st Novel, the ownership of the new Jewish synagoges illegally constructed could be claimed by the local Catholic churches.¹⁷ It is worthy of note that after the reconquest of North-Africa (A.D. 534) the local synagoges were to be transformed to Catholic churches by the order of Justinian.¹⁸

The Christian emperors changed the classical legal rules of divorce. First of all, they specified the just causes of unilateral divorce. These causes were different common crimes and various marital offences. Persons who repudiated their consorts without a legitimate reason had to suffer a punishment. The punishment of frivolous repudiation was often modified. According to the 117th Novel of Justinian, a wife who had repudiated her husband without a just cause had to return his prenuptial gifts, lost her dowry, and had to be sent to a monastery for life. When such a woman had children, two-thirds of her property was to be given to them, and the other third to the monastery she was sent to. When she was childless, but had parents, two-thirds of her property

¹³ CTh. 16,5,43.52.54.57.65. It was a new procedure, because earlier the meeting places of the heretics had been confiscated for the state (CTh. 16,5,3-4.8.12.21.30.33-34.36.40).

¹⁴ Nov. 42,3; 132. Cf. Knecht, *op. cit.*, 86.

¹⁵ Nov. 131,14. Cf. Pfannmüller, *op. cit.*, 30–31; Irscher, Johannes, *The Jews under the reign of Justinian*. *Eos* 78 (1990), 160; Rabello, Alfredo Mordechai, *The Samaritans in Justinian's Novellae*. Proceedings of the Fifth International Congress of the Société d'Etudes Samaritaines (Helsinki, 2000). Geuthner, 2005, 235.

¹⁶ CTh. 16,8,25.27. Cf. De Giovanni, Lucio, *Il libro XVI del Codice Teodosiano. Alle origini della codificazione in tema di rapporti chiesa-stato*. Napoli, 1985, 153–154.

¹⁷ Nov. 131,14. Cf. Irscher, *op. cit.*, 160.

¹⁸ Nov. 37. Cf. Irscher, *op. cit.*, 159.

was to be transferred to the monastery, and the other third to her parents. Where she had neither living children nor parents, all her property was to be given to the monastery.¹⁹

By his 127th Novel Justinian modified the penalty of the husband who repudiated his wife without a legitimate reason. He decreed that in such cases men, like women, were to be relegated to a monastery for life.²⁰ Although the Novel passed over the financial consequences of this relegation, we may be sure that the property of the husband was to be confiscated for the monastery as it happened in the cases of women.

In 542 Justinian prohibited divorce by consent except for the purpose of living a life of monastic chastity.²¹ In 556 the emperor ordained that if the consorts divorced by consent for any other reason, both of them were to be closed in a monastery for the remainder of their lives, and their property was to be divided in fixed portions between the monastery and their descendants or ascendants, or failing such blood relatives all their property was to be transferred to the monastery.²²

Adulteresses were punished in a similar way: they were to be confined in a monastery, and their property was to be shared between the monastery and their descendants or ascendants. If they had neither descendants nor ascendants, or they had only ascendants who aided them in their crime, all of their property was to be seized for the monastery.²³

Rape (*raptus*) was put among the most serious offences by the Christian emperors. Rape of a holy woman was considered as a specially grave crime, which was regulated by Justinian in the following manner: "If any one ravishes, or tempts, or corrupts a female ascetic or deaconess or nun or any other woman who leads a religious life or wears a religious garb, his property and the property of all participants of the crime shall be claimed for the venerable place in which such woman lived..., and the persons committing such offence and the participants of the crime shall be subjected to capital punishment; such woman shall be searched for everywhere, and together with her property shall be thrown into a monastery, in which

¹⁹ Nov. 117,13. Cf. Noethlichs, op. cit., 34; Reynolds, Philip Lyndon, *Marriage in the Western Church: the Christianization of marriage during the patristic and early medieval periods*. Leiden – New York, 1994, 59; Krause, op. cit., 57–58; Hillner, Julia, *Monastic Imprisonment in Justinian's Novels*. *Journal of Early Christian Studies* 15 (2007), 208.

²⁰ Nov. 127,4.

²¹ Nov. 117,10.

²² Nov. 134,11. Cf. Noethlichs, op. cit., 36.

²³ Nov. 134,10.12. Cf. Noethlichs, op. cit., 36; Reynolds, op. cit., 60.

she may be more safely guarded, lest she may again be found in such crime. If she is a deaconess and she had legitimate children, the legal portion (of the property) shall be given to the latter. If such property is not claimed by the venerable houses within a year after such crime is known, we direct that it shall be adjudged to the fisc...²⁴

Summing up, in Justinianic law the local churches, the monasteries, and the charitable institutions were able to acquire assets also by confiscation. This mode of punishment was usually imposed in the following cases: violation of the ecclesiastical disciplinary rules, breaking some prohibitions of the public worship, committing crimes against connubiality and sexual morality. Clerics and laics, Catholics and heretics, Christians and Jews alike could be penalized in this way. The object of the confiscation could be the whole or a fixed part of the offender's property, or a certain real property (a building or a plot of land), and finally, a sum of money or other movable property which had illegally been given.

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²⁴ Nov. 123,43. (trans. by F. H. Blume). In the text of the Novel the phrase "legal portion" means the forced share (*debita portio*).

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