

SUBJECT: Protection of the Properties of Legal Entities under Public Law of the Church of Crete

The provisions of article 23 of Law 1539/1938 establish, for the first time, criminal offences for unauthorized occupation of public property, failure to surrender such property, as well as the execution of transfer acts thereon. That is, they formalize the objective nature of specific acts as unlawful-criminal acts punishable as misdemeanors. Consequently, no issue of retroactive effect arises regarding the provision of paragraph 3 of article 19 of Law 4301/2014 (A' 223), given that there would be a risk of characterizing completed occupations and transfers of property as criminal offences, a fact that would confer impermissible and unacceptable retroactive effect on a criminal provision and would classify as criminal offences acts that are not currently classified as such, resulting in a grave legal defect, violating the fundamental principle of criminal law requiring that every crime and penalty be provided for by law (*nullum crimen nulla poena sine lege*) and, consequently, its unconstitutionality. The principle that every crime and punishment must be provided for by law in advance constitutes a fundamental principle governing the entire Western legal system and a cornerstone of human rights.

Furthermore, the request of the Holy Eparchial Synod of the Church of Crete for the explicit legislative provision of retroactive effect to article 4 of Law 1539/1938, by adding the phrase "from the date of its entry into force," and the deviation from the similar provision applicable to the Church of Greece, despite the absence of any practical or legal consequence- since, based on the combination of existing legal provisions, the courts already accept very strict conditions for establishing adverse possession of ecclesiastical and monastic properties, including temporal conditions that date back to times far earlier than the enactment of Law 1539/1938 itself – it would merely create legal confusion and attempts to interpret this unjustified distinction, which, rather than clarifying the legal framework, could lead to opposite results.

It should be noted that, quite recently, the State reserved the right to apply these provisions to the real property of IKA-ETAM as well (article 26, paragraph 13 of Law 4075/2012), without, of course, granting retroactive effect or attempting to interpret these provisions differently from how they have been applied by the courts for decades.

Hence, the wording chosen by the legislature fully conforms to the aforementioned principles while, at the same time, in no way does it call into question the validity and framework of the other existing- more general or more specific- provisions concerning the protection of all types of monastic and, in general, ecclesiastical properties.

Consequently, any alleged "misinterpretation" of the provision in question is excluded, because it is clear that, for the legislature, paragraph 3 of article 19 of Law 4301/2014, insofar as it concerns the analogous application of article 4 of legislative decree 1539/1938, has a confirmatory and interpretive character and applies in parallel and complementarily with the provisions that have always been in force regarding the protection of all types of monastic and, in general, ecclesiastical properties, thereby fully protecting the properties of the public law legal entities of the Church of Crete.