A strange case of recognition of foreign ecclesiastical decisions in property matters

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A first instance court in Barbastro (Aragón) has ruled that a great number of valuable works of art presently on display at the museum of the Catholic diocese of Lleida (Catalonia) are the property of parishes of the diocese of Barbastro-Monzón and must be immediately returned. In its reasoning, the court has given a lot of weight to the fact that, in the decades long dispute between the two Spanish ecclesiastical entities, the diocese of Lleida had agreed to comply with a 2007 ruling of the Vatican's Supreme Tribunal of the Apostolic Signatura, the highest administrative court in the Catholic Church, whose decisions may only be overturned by the Pope himself. This case does not only rise the issue of the recognition of "foreign" ecclesiastical decisions or, alternatively, their relevance for state courts but also how indistinguishable is the science of private international law from the study of legal pluralism, i.e. the interaction of various legal systems over the same territory, subjects and subject-matters.

Since the middle ages, a small stripe of land in the Spanish region of Aragón (*La Franja de Aragón*) was under the religious jurisdiction of the bishop of Lleida. Article IX of the 1953 concordat between Spain and the Holy See already manifested the intention of both parties to the treaty to revise the existing territorial ecclesiastical constituencies to avoid dioceses which did not correspond to existing state provinces. In 1995, following a decision of the Spanish bishops' conference, the Holy See decided to transfer all the parishes in *La Franja* to the diocese of Barbastro. Further to this reassignment, the diocese of Barbastro requested that all the works of art which were on display at the diocesan museum of Lleida be returned to the parishes of *La Franja*, to which they

allegedly belonged.

At the beginning of the 20th century, those works of art had been taken to Lleida from the abovementioned parishes, partly due to their state of decay. The basic legal question here was whether the long deceased bishop of Lleida, who had brokered the deal, had *bought* those works of art a century ago or whether they were only *on deposit* at the Catalan diocesan museum.

The return of those pieces of art has been a matter of regional – or national – pride for more than twenty five years. For many, this basically ecclesiastical dispute over religious property must be put in the context of recent nationalist aspirations of the Catalan government because many inhabitants of *La Franja* speak Catalan and this territory is sometimes perceived to be part of Catalonia in much the same way as nationalists refer to other territories in Spain, France or Italy as *països catalans*. What began as a bitter dispute among bishops has ended as a much bitter dispute between neighbouring regions after their autonomous governments espoused the respective claims, including street demonstrations and endless litigation before Church tribunals and state courts, both civil and administrative. The court records by now have more than 30.000 pages.

The dispute should have ended in 2007 when the Supreme Tribunal of the Apostolic Signatura heard the last possible ecclesiastical appeal against previous rulings of lower canon law courts. The text of this decisions is, of course, in Latin. Thus, the Vatican court ordered the immediate return of the art pieces. Further to this decision and probably compelled by it, the two dioceses signed an agreement in 2008, where the Catalan diocese acknowledged that the legitimate owners of the works of art were the abovementioned parishes of Aragón. Soon afterwards, however, the Lleida bishop went back on his word, apparently when more than 300 letters from the beginning of the 20th century resurfaced, allegedly showing that amounts of money had been paid by the former bishop of Lleida to the parishes of *La Franja*, following the removal of the art pieces to the diocesan museum of Lleida. This

money was allegedly the price paid for them, so the Catalan diocese owned them.

The diocese of Barbastro nevertheless sought to have the 2007 Vatican decision recognised but, in 2010, a Spanish court ruled that the only ecclesiastical decisions which could be recognised and enforced in Spain under the new 1979 concordat were those concerning the nullity of marriages (pp. 6-8). The diocese of Barbastro and the Spanish prosecutor present at the proceedings understood that, nevertheless, the 2007 decision may be recognised under those Spanish domestic law provisions for the recognition of foreign court decisions in the absence of a treaty. The "country" of origin of the 2007 decision was, of course, the Holy See.

The Spanish court did refer to the Holy See as a subject of international law at the level of states. Furthermore, the Catholic Church's jurisdiction and autonomy within the Spanish territory and over Spanish Catholics was recognised by the Spanish state by means of an international treaty (i.e. the concordat). Part of this autonomy was – in the eyes of the court – the jurisdiction of ecclesiastical tribunals in religious property matters. Ecclesiastical tribunals had therefore jurisdiction to adjudicate in property disputes and to enforce the ensuing decisions internally. Such jurisdiction was acknowledged and respected by the Spanish state, which should not interfere with it and, therefore, an ecclesiastical entity could not request state courts to enforce ecclesiastical decisions because this would represent such an act of interference. Ecclesiastical entities may alternatively bring their property claims before Spanish state courts in the first place, which have in the past decided similar cases applying canon law but, if the dispute had been heard and decided by a Church tribunal, state courts had to remain aloof.

However, last week, the same court which in 2010 had refused to recognise the 2007 Vatican decision has now ruled in favour of the return of the works of art to the parishes of Aragón. The Barbastro court explains (p. 17) that the ecclesiastical rulings were not enough in themselves, as evidence of the property rights of the Aragonese parishes. However, such rulings may in fact be evidence of the testimony provided by the

parties to the dispute. Additionally, the settlement agreement made by the two dioceses, further to the Vatican ruling of 2007, should indeed be taken as an admission by the diocese of Lleida that the works of art belong in Aragón. Thus, indirectly, the Vatican decision was being respected.

This use made of a "foreign" ecclesiastical court ruling presents some similarities to the theory of vested rights and estoppel *per res iudicattam* in a common law context, whereby foreign court decisions may not be recognised as such but their content may be evidence of a new cause of action in new proceedings commenced in the country where recognition is sought. Even though the Spanish court in 2010 and 2019 was equally unwilling to recognise the effects of the ecclesiastical decision because it had been issued by an ecclesiastical tribunal whose autonomy and jurisdiction would be jeopardised if the Spanish court enforced its contents, the first instance court of Barbastro was now in a position to give a lot of weight at least to the declarations that the parties had made during the proceedings at the Vatican, as well as to the settlement agreement that the Vatican decision had brought about.

The Spanish court also made direct use of canon law as evidence of property rights when it found that, for the transfer of ecclesiastical property to have been valid, a special permit from the Holy See would have been needed, which was never sought nor obtained. That Spanish state courts apply canon law is relatively common in, for instance, employment cases – as a way of demonstrating that the relationship between a priest and a bishop is not of an employment nature – or in clergy sex abuse litigation – in order to demonstrate the degree of organizational or supervisory authority of bishops over priests and parishes.