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Romanian Supreme Court Decision Obstructs Justice for Religious Property Restitution

The Romanian Supreme Court [Decision 21/2023](#) of November 13, 2023 has dealt the rule of law a significant blow and further dimmed prospects for religious denominations to get back properties illegally confiscated from them under communism.

The ruling (in the case of the Hungarian Reformed Church Transylvanian Diocese on behalf of the Bethlen Gábor College in Aiud/Nagyenyed) now requires religious denominations to provide nineteenth-century documents, in addition to title deeds, to “prove” prior ownership of buildings still not returned by the state.

Hunor Kelemen, President of the Democratic Alliance of Hungarians in Romania (RMDSZ), lambasted the decision at a January 11, 2024 press conference

“Where the right to property is not guaranteed, the state cannot be said to be a state governed by the rule of law.” He added that 34 years after the change of regime in Romania, churches should not be told that providing an extract from the land registry is not enough and should have to present 19th century documents as evidence. Anyone who asks for this either does not understand the phenomenon from a legal, political and social point of view, he said - and this certainly cannot be stated about the experienced members of the Supreme Court - or is malicious and wants to revert the restitution process in Romania from the 2000s to the early 1990s. **“This is unacceptable!”** - said the RMDSZ president, emphasizing that Romania has pledged to returning churches properties confiscated by the communist regime.

According to the decision promulgated on December 21 and binding for all Romanian courts, churches will have to prove “direct” ownership of their schools as the title deeds from the 19th century are in the institutions’ names. With this new case law, the Supreme Court claims it was trying to resolve the ambiguous legal situation regarding religious property restitution, but its decision has instead created significant obstacles to the process. This decision, unprecedented in Romanian jurisprudence since the 1989 fall of communism, was prompted by a court case involving the restitution of Bethlen Gábor College property in Aiud/Nagyenyed to the Hungarian Reformed Church, its rightful owner.

Kelemen, also a Member of the Romanian Parliament, said that a legislative solution to protect the security of private property must be found. **“If a single clause can turn the wheel of history, then no person, no institution or no church can be assured that their right to property will not be violated,”** the president pointed out.

Kelemen confirmed that the communists confiscated these properties being reclaimed by the churches *from the churches* and *not* from other entities; these properties belonged to the churches and the members of the Supreme Court are fully aware of this. He recalled that when the

restitution laws were passed in the Romanian Parliament, the publicly declared intention was unambiguous: to return confiscated properties to the entities from which they were taken. “Anything else is just pontification and malice,” said the RMDSZ president, concluding that **anyone who questions the right to property is working against the rule of law and Romania.**



COUNSEL FOR THE HUNGARIAN MINORITY CHURCH ELABORATES

Diocesan lawyer, János Székely, explains that the diocese has long been engaged in legal efforts to reclaim various assets, which were originally part of the Bethlen Gábor College’s property in the localities of Aiud/Nagyenyed and Ciombrud/Csombord. Despite successful restitution of certain college buildings and teachers’ quarters, the state denied several claims. Glaring inconsistencies abound such as one property listed in the exact same land registry being returned while another is denied.

“The essence of the ruling is that when the land registry indicates a denominational school rather than the Hungarian Reformed Church as the property’s owner, the Diocesan District’s ownership can only be substantiated in court through direct evidence showing the Diocese established the school.” Meanwhile, in numerous other court proceedings, the Hungarian Reformed Church *has* successfully demonstrated its legitimate ownership, even when it was the school’s name recorded in the land registry, notes Székely.

In the historical legal context, Hungarian Reformed Church schools were considered part of the church’s asset, and in the 19th century, they were officially registered under the school’s name merely for clarity of purpose, Székely expounds.

Significant is the fact that “one hundred and fifty years ago, the legal system of the time did not require that if the church founded a school, it had to have a charter and all the procedures we are used to today. That is why the new evidentiary procedure will make ongoing and future restitution very difficult,” he notes.

The Supreme Court decision is unusual in Romanian jurisprudence in several respects, Székely explains:

- The court **did not render a uniform interpretation of the law** rather gave the courts instructions on how to decide specific cases.
- Constitutional challenge to the decision can be expected which will argue that the **Supreme Court overstepped its constitutional powers** by not merely interpreting the law but dictating how courts should interpret specific evidentiary elements.
- The volume of litigants resorting to the European Court of Human Rights in Strasbourg is also expected to increase. Notably, the Hungarian Reformed Church **currently has 12-14 cases awaiting resolution at the European Court of Human Rights**, after having exhausted all legal avenues to obtain justice within Romania.

IN SUM, the Romanian Supreme Court's recent decision on church property restitution has ignited legal and procedural chaos. By imposing a requirement for religious denominations to provide nineteenth-century documents alongside title deeds to prove prior ownership, the ruling introduces even more challenges to successfully concluding religious property restitution that has been protracted for 34 years now. The decision not only seriously calls into question the inviolability of property rights - potentially across the board - in Romania, but also deviates from established principles of the rule of law. The unprecedented judicial overreach of this decision has led to calls for a constitutional challenge; an increased caseload at the European Court of Human Rights is anticipated. As religious denominations grapple with the intricate demands of providing historical evidence, the prospects for just property restitution in Romania grows ever more remote.

Sources:

Makkay, J., “The Supreme Court makes the restitution of the properties of the historic Hungarian churches more difficult with a court order.” January 11, 2024, [Kronika Online](#)

V. Ny. R., “Hunor Kelemen: After the Supreme Court’s decision, no one can feel that the right to property is inviolable.” January 11, 2024, [Maszol.ro](#)

The Hungarian Human Rights Foundation (HHRF) is a New York-based, independent, international non-profit which, since 1976, has advocated for the human rights of 2 million ethnic Hungarians who live as minorities in Croatia, Romania, Serbia, Slovakia, Slovenia and Ukraine.

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