

THE LEGAL STATUS OF CHURCH PEWS IN CERTAIN CIVIL LAW JURISDICTIONS

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Abstract. Objects of common use in various houses of worship, one of which is a place in a church (church pew), suggest that parishioners have the right to use them, often for quite a long period of time. However, do parishioners have property rights to a place in a church? How can disputes about the inheritance of a place in a church be resolved? In what area of legal regulation does this issue lie? The historical judicial practice of different countries around the world is quite rich in such examples, with the oldest surviving in collections dating back to the 16th century. Moreover, courts have come to quite varied conclusions about the legal status of a place in a church, property rights to it (if any, and whether recognised by law or custom), issues of its inheritance, the right of the church leadership to seize a place in a church from the previous owner and transfer it to other parishioners, and other disputes. It should be noted that in the historical judicial practice of the Republic of Lithuania – namely in judgment of the Supreme Tribunal of the Republic of Lithuania No. 107 (1927) – the issue of the possession and inheritance of a place in a synagogue was also raised. The historical jurisprudence of various countries shows a very rich range of sources of law being applied in such disputes – from customary and proprietary to civil and ecclesiastical law. The authors primarily use the historical-legal method within this article, including the method of interpreting legal norms relating to legal status and proprietary or inheritance rights regarding church pews.

Keywords: church pew, ecclesiastical law, law of custom, proprietary rights, church customs.

Introduction

Among the objects of common use in houses of worship, the most famous that stands out is the pew – or, simply speaking, a place in a church. Based on the definitions of J.-N. Guyot (1784, p. 121) and P.-A. Merlin de Douai (1825, p. 423), the pew is the place where everyone has the right to sit down to listen to a church service. This implies many different interrogations relating to the legal status of a place in a church: Do parishioners have property rights (or other rights) to pews? Who manages and who provides the use of church pews to parishioners? Is it possible to bequeath a church pew to one's heirs? There may be many similar issues, and history has preserved a number of legal cases of disputes concerning a place in a church in which the norms from various branches of law were applied by the courts. This article will attempt to answer these questions.

In legal and historical science, questions concerning legal status, property rights, inheritance, and other complicated legal issues regarding a place in a church (church pews) have been covered relatively infrequently. Nevertheless, legal literature from France – where disputes over places in churches were well known both during and after the *Ancien Régime* era, i.e., in the 19th and 20th centuries – left a rather interesting legacy. For example, we may cite the repertoire of the jurisprudence of the French lawyer, legal adviser, prosecutor and politician

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Comte Philippe-Antoine Merlin de Douai (1754–1838) and its 1825 reprint, which considered the legal status of a place in a church taking into account various sources of law – from customs to ancient court cases (Merlin de Douai, 1825, pp. 423–424). Authors from the *Ancien Régime* era are also relevant – for example, the repertoire of the jurisprudence of French lawyer, attorney and magistrate Joseph-Nicolas Guyot (1784, pp. 121–124). Moreover, various questions regarding legal status and rights to a place in a church can be found, for example, in the collections of the French lawyer and prosecutor Jean-Baptiste Denisart (1711–1765), known for publishing collections of French judicial practice, who also devoted a section of his encyclopaedia to issues of places in churches (reprint of 1784; Denisart, 1784, pp. 159–181). Disputes over questions of places in churches also occurred in the collections of other authors – for example, the French ecclesiastical lawyer Pierre Lemerre (1771, pp. 655–656). One of the oldest sources in history which relates to legal regulation concerning a place in a church is a collection of judicial practice of the Parliament of Paris³ by the lawyers Ivlien Brodeau and Georges Louët (1665), who mentioned the judgment of the Chamber of Inquiries⁴ of the Parliament of Paris in 1574 (which is discussed in the article below). A number of even more ancient legal cases dating back to the 1560s (Louët & Brodeau, 1665, pp. 398–399) consider this issue, and it is also notable that Joseph-Nicolas Guyot mentioned a 1570 judgment of the Parliament of Paris in his treatise (Guyot, 1784, p. 123). In the English-language literature, we should outline the work of American lawyer W. S. Schley in 1880 on property rights to places in churches, market stalls, and also plots for burial in a cemetery, where the author gives an example of the legal positions of the courts of England and the United States of America concerning property rights to a church pew (Schley, 1880). German lawyer Karl Meidinger (1891, pp. 1–76) highlighted the legal status and legal regulation of the use of church pews in Old German Catholic and Protestant church law in his doctoral thesis, which was defended at the University of Göttingen. Jurisprudence plays a great role in understanding the peculiarities of legal relations (including disputed ones – that is, where the dispute was resolved in court) on issues of the right to a place in a church. For example, the judgments of the Court of Cassation of France of 1836, 1838, 1855, 1879 and 1906 are very significant for French law in the context of defining legal status and the right to a place in a church, embracing different legal disputes (Cour de Cassation (France), 1836, p. 1144/399; 1838, p. 348; 1855, pp. 269–271; 1879, pp. 465–466; 1906, pp. 21–22). In a historical context, the practice of French parliaments in the *Ancien Régime* era is also concordant. Judicial practice is very important in such cases, since any dispute in court reflects a real-life situation in which the disputed legal relations arose. Accordingly, after having analysed the court judgment, we can thus comprehend exactly how the norms of law (customary, civil, or other branches of law) were applied in relation to the right to a place in a church in certain situations. Undoubtedly, an important source for this article is judgment of the Supreme Tribunal of the Republic of Lithuania No. 107 of 31 January 1927 which demonstrates the existence of judicial practice concerning the right to a place in a house of worship in the Republic of Lithuania (in the context of that case – a place in a synagogue; Vyriausiasis Tribunolas, Sprendimas Nr. 107, 1927, pp. 35–37). The jurisprudence of the German states of the 19th century shows the tangible influence of Roman law: disputes over the restoration of the possession of a church pew or the withdrawal of its use from the defendants, which occurred in the practice of the German states of the 19th century, demonstrate a widespread use of the legal institutes of Roman law, as well as different sources of ecclesiastical law (Tribunal zu Celle, 1862, pp. 44–48). It should be noted that all of the legal cases which are cited and discussed in this article were sought out and commented upon by the authors of this article exclusively *themselves*. For a comparative analysis of the legal status of a church pew in civil law jurisdictions, the authors selected the following states: the Republic of Lithuania, France, Belgium, the Netherlands, and two historical jurisdictions – German states of the 19th century, as well as Austria-Hungary (1867–1918). The legal systems of all of the aforementioned jurisdictions derive from

³ The *Parliament* (in French: *Parlement*) was a court of appeal in France during the *Ancien Régime* era. In the 18th century, there were 13 parliaments in France. Historically, the Parliament of Paris was the first established parliament; other parliaments were created in its image. In many ways, the jurisprudence of the French parliaments has survived to the present day, owing to case law collections, case reference books and legal encyclopedias created by the French lawyers of that time. The judgments of the Parliament of Paris are known through a number of case collections devoted to its practice, as well as many legal reference books and encyclopedias. The French parliaments, resolving disputes, were guided both by customs (which were one of the main sources of law in France during the *Ancien Régime* era) and by the laws, ordinances and regulations that existed at that time. Judicial practice also played a significant role as a source of law. Nevertheless, the judgments of the French parliaments in cases with similar circumstances could sometimes differ significantly.

⁴ The *Chamber of Inquiries* (in French: *Chambre des Enquêtes*) was a chamber in the parliaments of France during the *Ancien Régime* era, which was responsible for conducting investigations entrusted to it by the Grand Chamber of Parliament (in French: *Grande Chambre*).

Roman law, and the estimation of the legal status of a church pew is conducted according to the legal institutes which originated from Roman law.

The purpose of this article is to describe and interpret the legal status of a place in a church (church pew) in civil law jurisdictions on the basis of legal doctrine, civil and other branches of law, legal acts and codes as well as jurisprudence. To achieve the aim of this article, the authors set the following tasks:

1) to highlight the legal position of the Supreme Tribunal of the Republic of Lithuania in judgment No. 107 (1927) in a dispute over the inheritance of a place in a church, and the significance of the application of customs in the legal system of the Republic of Lithuania in the 1918–1940 period;

2) to consider notable court judgments in different civil law countries, which will enable the estimation of the nature of disputes over church pews, the inheritance of a place in a church, its acquisition, etc.

It is also significant to assess the sources of law which are applied by the courts when considering disputes relating to church pews, to find similar and different legal positions of courts in disputes regarding church pews, and to consider various court judgments regarding disputes relating to seats in churches in the countries of Europe.

1. Judgment of the Supreme Tribunal of the Republic of Lithuania No. 107 (1927)

Customs were applied quite widely in the Republic of Lithuania during the 1918–1940 period, having taken a rather firm place in the system of sources of Lithuanian law in the 1920s, and had found their application mainly in inheritance disputes, as well as some other branches of law which will be discussed in this chapter. The Supreme Tribunal of the Republic of Lithuania, reviewing cases in cassational order, had repeatedly considered the application of customs in various civil disputes in its practice. It should be noted that custom, as a source of law, was applied where the law allowed it, and quite clear rules were established regarding the application of custom:

1) Neither the litigants nor the court hearing the case on the claim of one of the parties had a duty to be guided by custom. At the same time, at the request of one of the parties to the dispute, the court was obliged to be guided by custom (Vyriausiasis Tribunolas, 1926, pp. 105–107), and only those who could themselves claim inheritance could impugn someone's inheritance rights according to custom (Vyriausiasis Tribunolas, 1925, pp. 192–193). It is also significant to note that only those people in whose living environment it was used could use the custom. As follows from the practice of the Chief Tribunal of the Republic of Lithuania, local customs were applied mainly by citizens who came from rural areas. Thus, citizens who had previously belonged to the nobility in pre-war times could not apply a custom which was used by the inhabitants of the countryside (Vyriausiasis Tribunolas, 1930, p. 4).

2) If a custom has not been applied in one case, this does not mean that this custom is no longer valid and cannot be used in the arguments of one of the parties in a similar case where one of the parties to the dispute would refer to the existence of a custom. Accordingly, this custom may well be applied in other similar cases where one of the parties would refer to it (Vyriausiasis Tribunolas, Sprendimas Nr. 743, 1927, pp. 219–220).

3) It was necessary for the litigants to prove the existence of the custom to which they referred when the custom was unknown to the court that considered the case. In practice, it was possible to prove the existence of such a custom by calling witnesses, as well as, for example, the decisions of village gatherings (Vyriausiasis Tribunolas, Sprendimas Nr. 453, 1927, p. 121; Vyriausiasis Tribunolas, Sprendimas Nr. 609, 1927, pp. 173–175) and the affidavits of the county council (Vyriausiasis Tribunolas, 1931, p. 145). If a local custom was known to the court, for example, from judicial practice, the court was not obliged to require proof of the existence of this custom (Vyriausiasis Tribunolas, 1928, p. 32–33).

Based on the practice of the Supreme Tribunal of the Republic of Lithuania, we may conclude that the largest part of the court cases that considered the application of a custom were inheritance cases (for example, according to the authors' research, the practice of the Supreme Tribunal of the Republic of Lithuania featured more than 20 inheritance cases where the application of a local custom was considered). It becomes clear from the practice of the Supreme Tribunal of the Republic of Lithuania that customs also retained their effect in the sphere of trade.

In private labour relations in the field of trade, the use of customs was allowed: for example, the parties to the dispute had to follow what they had agreed to earlier – regardless of whether the contract contained provisions about what the parties had stipulated before; moreover, even the mere existence of an employment contract in such a situation was not mandatory (Vyriausiasis Tribunolas, Sprendimas Nr. 341, 1927, pp. 103–104). The law of 2 December 1921 abolished the special order of inheritance among the inhabitants of rural areas; however, these citizens did not lose the inheritance rights that they had acquired on the basis of local customs until that moment (to be precise, the law entered into force on April 20, 1922) (Civilinių įstatymų pakeitimas ir papildymas, 1922). For example, in its judgment No. 444 (1927), the Supreme Tribunal of the Republic of Lithuania set aside the judgment of the district court because of its refusal to apply a local custom in an inheritance case where the plaintiffs' father had died in 1921 – that is, when a special order of inheritance among the inhabitants of the countryside was still in force at that time (Vyriausiasis Tribunolas, Sprendimas Nr. 444, 1927, pp. 119–120). Later, in judgment No. 52 (1928), the Supreme Tribunal of the Republic of Lithuania indicated that there was no procedural period during which citizens litigating in inheritance disputes could invoke local customs (Vyriausiasis Tribunolas, 1928, pp. 32–33).

Judgment of the Supreme Tribunal of the Republic of Lithuania No. 107 (1927) shows that customs, in addition to the hereditary and commercial sphere, also operated in the religious sphere of public legal relations. Thus, as mentioned earlier, the majority of court cases in the cassation practice of the Main Tribunal of the Republic of Lithuania in 1918–1940, in terms of the application of a local custom, were hereditary cases. Some of the most notable hereditary cases in the cassation practice of the Supreme Tribunal of the Republic of Lithuania were recently discussed by the authors of this article (Machovenko and Lytvynenko, 2023, pp. 8–20). The subject of the dispute in this case was a place (pew) in a synagogue. It should be noted that there were no ecclesiastical courts in Lithuania; hence, all disputes relating to places of worship were resolved by courts of general jurisdiction. The jurisdiction (subject matter) of the case which was heard in courts of general jurisdiction was not disputed by any of the parties of the case. It is also notable that the Supreme Tribunal also referred to religious customs in case No. 581 (1929), where the Court decided that the Christian marriage customs of believers representing the denominations of Old Believers and others should be respected, and hence they could not be compelled to marry in the presence of representatives of the clergy, whom they did not recognise owing to the peculiarities of their faith (Vyriausiasis Tribunolas, 1929, pp. 167–169)

The facts of case No. 107 (1927) were the following. The plaintiff demanded that a place in a synagogue, which was located in the town of Rokiškis, was withdrawn from the defendant, and that this place was transferred to her for use. The Justice of the Peace of Rokiškis, in his judgment of 14 November 1923, dismissed the claim of the plaintiff; however, the Kaunas District Court, in its judgment of 4 February 1925, ruled to quash the judgment of the Justice of the Peace of Rokiškis, considering that the plaintiff had inherited a place in the Jewish synagogue from her father, and the acquisition of the pew by the defendant without the plaintiff's knowledge was not legitimate. In his appeal in cassation, the defendant stated that: 1) the right to use a place in a synagogue is movable property, which cannot be inherited from the possession of another person; 2) the Kaunas District Court, incorrectly, did not allow the defendant to refer to the Jewish customs that govern this type of legal relationship in the synagogue; and 3) the lawsuit (if it had been already filed against him) should have been filed not only against him (that is, the defendant), but also against another congregant of the synagogue from whom the defendant had previously bought the disputed place. Thus, the defendant demanded that the judgment of the district court should be quashed and the case be sent for retrial. The Supreme Tribunal of the Republic of Lithuania established that the house of the synagogue constituted the property of the members of a religious organization, and the places assigned to the members of the organization did not give property rights to any part of that property. The right to use a pew at a synagogue does not create a proprietary right, but is of an *easement* nature – that is, a right to use someone else's property in a certain way, or a *sui generis* easement right to use someone else's property. The Supreme Tribunal also added that by the *jus ad rem* principle, immovable property belonging to another person may be reclaimed from a person who has illegitimately taken possession of it.

At the same time, specific easement for a place in a Jewish synagogue, which was the subject of dispute in this case, concerns the sphere of relations of a religious community, and the legal relations in this sphere did not lie in the sphere of state or public relations that may relate to the state, or to every citizen of a state, where property can be transferred from one citizen to another in the general legal sense of inheritance law. Instead, they were within the framework of the norms of the Jewish religious community. This easement, the court notes, is not one that

every citizen may use, but is available only among the Jewish religious community, and is regulated by the norms that are adopted in it. The Supreme Tribunal of the Republic of Lithuania explained that civil law in the general sense (that is, civil law that governs inheritance relations) could not be applied in this dispute; that is, the inheritance of such an easement must be determined by the norms that operate in the everyday life of the Jewish religious community. Thus, the court noted, the district court should have considered the customs in force in the Jewish religious community that regulated these legal relations, and thus the district court incorrectly expanded the scope of civil law in the field of social communication, which, by its nature, is very special. As regards the defendant's arguments that if a lawsuit had already been filed then one should have been filed not only against the defendant, but also against the person from whom he bought the place in the Jewish synagogue, the Supreme Tribunal of the Republic of Lithuania noted that this the argument was expressed by the defendant only in the appeal in cassation (authors' note: which apparently belonged to the factual part of the case, whereas the Supreme Tribunal could quash and remand cases only upon the fact that the lower courts had incorrectly applied the norms of either material law or the law of procedure). Since the case was sent for reconsideration to the district court, the defendant could justly express this argument there. Therefore, the Supreme Tribunal of the Republic of Lithuania ruled to quash the judgment of the Kaunas District Court and referred the case to the Panevezys Regional Court for reconsideration (Vyriausiasis Tribunolas, Sprendimas Nr. 107, 1927, pp. 35–37).

2. The legal status of a church pew in the law of France: doctrine and jurisprudence

French law and legal doctrine are quite rich in cases concerning the legal status of a pew, as well as various disputes regarding pews. In addition, French legal encyclopaedias and collections of judicial practice from different centuries have preserved many court judgments, thanks to which we may learn a lot about the nature of legal relations concerning church pews, as well as what sources of law were used at different times in such disputes.

According to the works of J. B. Denisart (1784), J.-N. Guyot (1784) and P.-A. Merlin de Douai (1825), there were many disputes over places in churches during the *Ancien Régime* era – from the right to inherit a place in a church to its assignment and withdrawal from the use of parishioners, for different reasons. From the works of F. A. Merlin de Douai (1825), it becomes known that this area was regulated both by customary law (that is, by established customs) and by judicial precedents, as well as by certain legal acts. One of the most important customs used in this area was that churchwardens (Fr. *Marguilliers*) handled the distribution of church pews for the use of parishioners (Merlin de Douai, 1825, pp. 423–424). Church elders, in fact, owned the pews: this was so not only according to custom – which, incidentally, is repeatedly mentioned in judicial practice (see below in this chapter) – but also in accordance with Art. VIII of the Declaration of the King of France Louis XV of 15 January 1731, upon which monks, canons, regulars of the abbeys and priories and other beneficiaries were allowed to continue to sing in the canonical office and in the choir, as well as to own pews and graves in churches, if they peacefully and from time immemorial belong to them (Declaration du Roy Louis XV, 1731, pp. 395–401). According to Guyot (1784), there was another custom regarding the placement of parishioners in churches: if the church was under patronage, only the patron of the church had the right to use a permanent church pew; judges could also use various special rights to places in churches, as well as seniors, who could also have their own pews (Guyot, 1784, pp. 121–122). However, this custom did not survive the French Revolution, as described in the commentary on the judgment of the Court of Cassation of France in 1855 (Cour de Cassation (France), 1855, p. 269–271). According to the Decree of the National Assembly of 13 April 1791, Art. XVIII, all honorary rights associated with the powers of the judge-lords and the patrons were abolished, and it was decided, *inter alia*, to remove all patron and seigneur-owned pews from the choirs of public churches (Décret de l'Assemblée Nationale, 1791, p. 9). Abbé Michel André (1803–1878) in his 1853 work on canon law mentions that, earlier, the patrons of churches and judges of the high courts had a number of honorary rights in churches – over the pew, incense, as well as holy water and bread. In 1791, all of these privileges were completely abolished (André, 1853, p. 489). It should be noted that this Decree did not cancel the rights to a place in a church for those citizens who had not received them via the title of their ancestors, who belonged to certain categories of nobility in the era of *Ancien Régime* and acquired this right by virtue of privileges (Cour d'Appel de Caen, 1901, pp. 211–212).

The legal status of church pews, perhaps for the first time in French law, was determined by the judgment of the Parliament of Paris of 22 May 1574, where the court stated that pews could not be rented indefinitely, and that the right to use them was personal and ended with the death of the person to whom it was given. The right to

dispose of the pews belonged to the elders of the church and its leadership (it should be noted that in the *Ancien Régime* era, the legal entity of the church was called *Fabrique*, i.e., *enterprise*, which later passed into the Decree of 30 December 1809; this name was used until the beginning of the 20th century), and the only case in which the right to use a church pew could be inherited was if the parishioner was a descendant of the founder or patron of the church (Parlement de Paris, 1574, p. 399). In the judgment of the Parliament of Paris of 23 February 1606, a husband and wife, parishioners of the Church of Saint-Jacques-la-Boucherie, sued the churchwardens for their right to continue to own the church pew which they had rented to the deceased mother of one of the plaintiffs (precisely who was not specified). The court allowed the couple to continue to own the pew. The commentary to the case states the following: “And in truth, it would be shameful to put pews and places in the church into commerce, and make them go [in trade] in pair with purely worldly and profane things.” (Parlement de Paris, 1606, p. 398). This sentence indicates that pews were considered as *res extra commercium* in French law in the *Ancien Régime* era.

In the French law of the *Ancien Régime* era, the right to use a pew, according to judicial practice, directly depended on the fact that the person who used it lived in the district where the church was located, of which they were a parishioner, and the absence of a parishioner at the place of residence could lead to the termination of this right. Such a case, which was decided by the Parliament of Paris on 29 January 1641, is indicated by P.-A. Merlin, Merlin de Douai (1825, pp. 423–424); references to this case can also be found in the works of other well-known authors: in the work of the French archdeacon and vicar general of the municipality of Noyon, Pierre Gohard (1765, p. 819); and in the encyclopaedia of the French lawyer José-Nicolas Guyot (1784, pp. 121–122). This judgment was published in the *Journal of the Principal Audiences of the Parliament of Paris* by Michel du Chemin (Parlement de Paris, 1641). The circumstances of the case were as follows. The leadership and churchwardens of the church in the city of Senlis gave a pew for use to a man (the father of the defendant), his wife and his family. After the death of his wife, the man, his daughter (the defendant) and her daughter left for the city of Compiègne because of a plague which was raging in the town of Senlis. The family was out of the town for 9 years, during which time the church leadership gave the church pew used by the defendant’s family to another parishioner, who paid 6 livres for the right to use the pew. Nine years later, the daughter returned to the city, and wanted to take her usual place in the church, which had previously belonged to the family, but the parishioner did not want to return the place in the church to her, which he had acquired after her departure from the town. By the decision of the bailiffs of the town of Senlis, the parishioner should have undertaken to return the woman’s place in the church, with which he did not agree, and he filed an appeal to the Parliament of Paris, arguing that the churchwardens of the church could dispose of the pews as they found it necessary and distribute them to those parishioners for use as they found it proper, and that the defendant had been out of town for a long time. The defendant countered the parishioner’s arguments by claiming that she left the town of Senlis because of the plague. The Parliament of Paris decided in favour of the defendant (Parlement de Paris, 1641, p. 96).

As was mentioned earlier, the laws of 1789–1791 abolished a number of privileges for representatives of the nobility (although not all were aristocrats in principle, but feudal lords, seniors and patrons), and this also affected, among other things, the honours that they had in churches, including their places. In the 19th century, as French jurisprudence shows, the descendants of the nobility of the *Ancien Régime* era had disputes with the leaders of churches over their ownership of pews (and sometimes other property) on the basis that their ancestors, being representatives of the nobility, had privileges in those churches during the *Ancien Régime* era. In some cases, the lawsuits were won by representatives of the church, whilst sometimes the parishioners prevailed in action. To illustrate the situation in real terms, let us observe several important French court judgments adjudicated in the 19th and early 20th centuries in disputes over the ownership of church pews. French jurists Rodolphe Rousseau (1849–1922) and Laisney, in their *Dictionary of the Theory and Practice of Procedural Law* (1879), note that 19th-century French jurisprudence showed that churches and chapels were objects out of commerce (*res extra commercium*), and could neither be subject to prescription nor become the object of a possessory claim, as long as they retained their purpose (i.e., to be a house of worship) (Rousseau & Laisney, 1879, p. 285). In fact, the Court of Cassation of France came to this conclusion in its judgment of 1 December 1823 (Cour de Cassation (France), 1823, p. 161–164). What can be said about the objects that are inside the church, and which are used by parishioners who come to the church to pray and listen to the church service? This chapter of the article considers these issues.

The judgment of the Court of Civil Cases of Colmar on 12 May 1834 and of the Court of Cassation of France on 8 March 1836, which confirmed this judgment, are significant both because they determined the status of church pews, as church property, and because they concerned places in a Jewish synagogue, which entailed certain features of their use. The circumstances of the case were rather unusual, and concerned the issue of the legitimacy of taxing a synagogue for receiving payments for renting pews to its congregants. In 1738, a Jewish patron donated a synagogue to the Jewish community in the town Ribeauville. The increase in the Jewish population in the city of Ribeauville, accordingly, led to the fact that there was not enough space in the synagogue for all the congregants, and therefore, the Jewish community decided to reconstruct the synagogue. Long before this case, the members of the community had argued about how the reconstruction should be carried out, and the dispute was heard before the Court of Colmar, by the judgment of which in 1821 it was decided that places in the reconstructed house of worship would be transferred to the property in accordance with the rules of the community management. The reconstruction of the synagogue was successfully completed, and, 10 years later, according to the act of 4 March 1831, the communities moved to the distribution of seats in the synagogue for a certain amount of money, depending on the number, position and convenience of the seats. So, places were taxed at 80, 100, 200 and 300 francs. It is important to note that this act also provided that a member of the Jewish community could not transfer this place to any other person who did not practice Judaism. At the time of registration of the act, tax was collected from the sale, as from the sale of real estate. The notary who registered the act of 4 March 1831 argued that this civil law transaction could not be considered a sale of immovable property (seats in the synagogue), but a distribution of the right to use movable property. With this, he applied to the Court of Civil Cases of Colmar, which decided the case in his favour. The court of Colmar determined that the Jewish community in the city of Ribeauville had taken possession of the synagogue for worship, without the possibility of changing the purpose of the building. Taking into account the conditions under which the synagogue was transferred into the possession of the Jewish community of Ribeauville, it should be concluded that all members of the Jewish community of this city had an inseparable right to these places in the synagogue. In addition, this right was given only to members of this Jewish community, and could not be transferred to anyone else. Accordingly, this right was a permanent right of use in favour of the Jewish community of Ribeauville: it was inalienable and could not be transferred – in the understanding that no member of the Jewish community could sell or give away this right for free to another person who was not a member of this community. The Court also noted that all members of the Jewish community of Ribeauville were entitled to seats in the synagogue, which was indivisible, and held seats in it not from 1831, when certain proportions of the distribution of seats in the synagogue were established as a result of the act, but from much earlier – from 1738, when the synagogue was donated to the Jewish community of the city of Ribeauville. Thus, the contract contained in the act of 4 March 1831 *does not* effect a sale (in the property context of this word), and the act of 4 March 1831 can be considered a way of using common law. Therefore, the right remained the same as it was before, since the Jewish community of Ribeauville continued to own (at the time of the proceedings) the building of the synagogue the same way that they had before, and the building itself retained its original purpose. The Court also took into account another concordant point: not all members of the community could, due to lack of financial resources, afford the payment for places in the synagogue, but at the same time, they also retained the right to have a seat in the synagogue, which remained *joint property*. Simply put, seats in the synagogue did not belong exclusively to anyone in the Jewish community, and everyone had the same rights there. The court also pointed out that if the seats in the synagogue were given for different payments and the money received from the giving away of the seats in the synagogue were to be used for the reconstruction of the structure of the synagogue, as well as for its decoration, then this was also *not a sale*, because the rights of the parishioners of the synagogue *had not ceased to be equal*. For these reasons, the Court of Civil Cases of Colmar ruled in favour of the plaintiff. The Administration of the Tax Service impugned this judgment, and the main task of the appeal in cassation was to prove that the civil deed (i.e., the act of 4 March 1831) was a *sale*. The representative of the Administration argued that the Jewish community was a moral person (apparently, by analogy with the legal concepts of an individual and a legal entity) whose interests differed from the people who made it up, and it should be considered, in this case, a corporation in the manner of a church enterprise, as it was a religious congregation recognised by law. Moreover, when a community sells its property to one of its inhabitants, this should be understood not as a bargain, but as a sale. In this case, the representative of the plaintiff asked (in the cassation judgment, the Administration was indicated as the plaintiff) whether this should not be the case with the act (meaning the act of 4 March 1831) by which a religious corporation alienated property in favour of one of its members? From this statement it followed, in his opinion, that if the Jewish community, being the owner of the synagogue, considered it necessary to alienate any property and give its members the exclusive right to use it (in addition, independently of the building of the synagogue itself), then this

should be considered a sale, since the subject of the dispute was not divided in equal parts between all Jewish residents of the city of Ribeauville, but belonged to the Jewish community. In addition, the plaintiff's counsel argued that the seats in the church were real estate. They had to be legally considered as such, since they were part of the property of the synagogue itself, and they should be considered immovable property, since they were attached to other immovable property (i.e., the synagogue itself). The Court of Cassation of France, however, did not agree with these arguments, considering that the Court of Civil Cases of Colmar in its judgment correctly determined that the act of 4 March 1831 did not contain a sale, but only distributed the use of a joint object that left the property at the disposal of the Jewish community. Thus, the complaint was dismissed (Trib. civ. de Colmar, 1834, pp. 395–397; Cour de Cassation (France), 1836, p. 399).

The judgment of the Royal Court (Court of Appeal) of Limoges of 22 August 1838 (at that time, the courts of appeal in France were called *Cour royale*), is also important for determining the legal status of a place in a church in French law. This judgment states that neither the church, as a building, nor the pew are subject to prescription.⁵ Thus, as mentioned earlier, the laws of 1789–1791 that were adopted in France abolished privileges for various representatives of the nobility of the *Ancien Régime* era, and they, *inter alia*, abolished privileges regarding places in a church. In 1834, the ecclesiastical enterprise of Sainte-Feyre filed a lawsuit against the defendant, demanding that she relinquish her exclusive ownership of the two chapels of the church, as well as a church pew which had previously belonged to the defendant's ancestors who, at one time, had invested significant funds for the construction of the church during the *Ancien Régime* era. One of the defendant's ancestors, having the title of *sieur*, was a patron, and having invested in the construction of the church, he reserved the exclusive possession of two chapels and a church platform for himself, where the latter was later replaced by a church pew. After the *Ancien Régime* era had ended, they continued to own parts of the church on the basis of being its patrons. However, this situation did not suit the church enterprise, who believed: that patronage should not have anything to do with the right to property; that their rights were a kind of easement; that the chapels were parts of the church which were public property, and which, accordingly, could not be an object of private property; and that the rights of the founder (patron) were reduced to various privileges which were abolished by laws that terminated the privileges of representatives of the nobility of the *Ancien Régime* era. The defendant, however, argued: that her ancestors owned all of the above-mentioned property on the basis of patronage and by virtue of the right of private property; that it had nothing to do with the privileges that the founder of the church had (for example, they could appoint a priest and carry out family burials); and that the laws adopted in 1790–91 left in force the rights of patrons in terms of property rights. The Court of Bourganef decided in favour of the plaintiff, and the defendant filed an appeal. Based on a script dated 1 November 1729, the court of appeal concluded that the church was built at the expense of representatives of the nobility (they were distant ancestors of the defendant), who at that time owned estates around the house of worship, and they, as patrons, had various privileges there: in particular, they owned two chapels as well as a pew in the church (not to mention the fact that during the *Ancien Régime* era they were the owners of the city where the church was located), they provided this church with funds by paying tithes, and they carried out the funerals of deceased family members in the church. The laws adopted in 1789–1790 abolished all honorary privileges, and the Law of 4 August 1789 abolished the tithe which was used to maintain churches, and also prohibited burials in churches. Moreover, on the foundation of the Decree of 2 November 1789, representatives of the nobility lost all their property rights in chapels. As for the pew, due to the fact that the defendant's ancestors used it by virtue of their title (which was cancelled on the basis of Articles 18, 19 and 20 of the Decree of 13 April 1791), the rights to it were also lost. Accordingly, the appeal was dismissed (Cour royale de Limoges, 1838, pp. 154–156).

It should be noted that at that time there were also disputes as to where a claim for possession of a church, or one of its constituent parts, was filed on behalf of those citizens whose ancestors in the *Ancien Régime* era retained possession of these parts and buried deceased relatives in churches (which, as we remember from the commentary to the previous case, was prohibited by the Decree of 2 November 1789). In this case, the defendant was the church enterprise itself. For example, in a case in which the Court of Cassation of France ruled in the last instance

⁵ Regarding the fact that the churches and chapels in which services were held were not acquired by prescription, see also other court decisions listed in the repertoire of French lawyer Maurice Desire Garnier (1814–1896) as confirmation of this thesis (Garnier, 1891, p. 38/§§66–67).

on 18 July 1838,⁶ the plaintiffs wanted to take possession over a chapel adjacent to a parish church from the church enterprise. The chapel's side doors overlooked the courtyard of a castle which belonged to the plaintiffs, the plaintiffs had their own key to these doors, and they also owned chairs and pews in the church. They sought to take ownership without paying compensation to the church enterprise. The plaintiffs had retained titles and deeds, which confirmed that, in older times, the chapel belonged to the lord, who was their ancestor; also, there was a family crypt under the chapel. The court of first instance satisfied the claim of the plaintiffs; the appeal was won by the church enterprise (judgment of the Royal Court (Court of Appeal) of Riom of 16 April 1837). In addition, the appellate court came to a number of rather interesting conclusions, which are worth pointing out in more detail – namely, on the issue of the existence of property rights in church buildings in the *Ancien Régime* era. The appellate court permitted the closing of the door that connected to the courtyard in the plaintiffs' castle, and this judgment was based on the fact that the titles and other documents filed by the plaintiffs, which confirmed that their ancestors once owned this chapel, could not be the basis for confirming the right of ownership to it, nor could the very fact of the prescription of possession. The Court pointed out that, even under the laws in force during the *Ancien Régime* era, the patron or founder of a church did not have ownership of it; that what was due to them were certain honours which *did not* assign them property rights; and that the patron could not take away anything once donated to the church. The court pointed out that, obviously, the plaintiffs retained the title of patron of the church as a legacy from their ancestors, but this, at the time of the consideration of the case, had already lost its force by virtue of the Law of 12 July 1790 and the law adopted by the Decree of 13 April 1791 which cancelled private chapels as well as various kinds of privileges. The plaintiffs, as the court clarified, could not refer to possession from time immemorial, since churches were *res extra commercium*, and prescription did not apply to them. Then, the plaintiffs filed a complaint with the Court of Cassation of France, arguing that: the chapel was not the same building as the church, and therefore should be considered as private property; based on the facts established by the court of first instance, in the opinion of the plaintiffs, it came to be obvious that they owned property rights to the chapel; the abolition of the patronage did not cancel their rights, since this was not a question of ownership but a question of property; and §72 of the Decree of 30 December 1809 allowed the concession of the chapel in favour of its founders or benefactors, which should be considered as a property right. The Court of Cassation of France did not agree with these arguments of the plaintiffs. Firstly, the Court pointed out that, on the basis of the established factual circumstances of the case, the chapel in dispute was inherently dependent on the church itself; churches consecrated for worship were *res extra commercium* and could not be subject to property rights. Although the plaintiffs did not document that they were the patrons of this church, the Court said that, one way or another, the judgment (of the lower court) was based on the fact that the laws which were in force in France (moreover, they were in force for more than 40 years from the date of filing the claim) abolished the rights associated with the title of patron. The court also pointed out that the provision of the Decree of 30 December 1809, to which the plaintiffs referred, referred only to the future, and therefore the Court of Cassation of France decided to dismiss their complaint (Cour de Cassation (France), 1838, pp. 348–349).

The judgment of the Court of Cassation of France of 20 January 1879 discusses another difficult legal question: may a parishioner who has rented or received a church pew from another parishioner compensate for losses in the case of a violation of their right to use this pew? The plaintiff filed a possessory claim against the defendant regarding the ownership of a place in a church in the city of Bords. Moreover, the plaintiff himself did not have the exclusive right to use this pew, but rented it. The Court pointed out that in such a case, the right to file a complaint (claim) should concern the one who has the exclusive right – the right of inheritance, the right of easement, or the right of use. From the point of view of law, one who rents church property does not exclusively own the thing (i.e., as it is called in Roman law – *animus domini*). The court clarified that things that are in the public domain may be the object of the chattel right of easement, or use, but if the plaintiff is only a tenant of the thing (i.e., a church pew), then they have only a personal right to use, as a tenant. Thus, the plaintiff's complaint was dismissed (Cour de Cassation (France), 1879, pp. 465–466).

The Court of Appeal of Caen, in its judgment of 3 July 1901, made a significant point regarding the inheritance of the right to use a place in a church if such a right lasted from the *Ancien Régime* era in the family of the parishioners. As was already mentioned in this chapter above, the Decree of 13 April 1791 abolished a number of privileges for representatives of the nobility of the *Ancien Régime* era, among which (Art. XVIII) was the right to

⁶ Please note that the judgment of the Royal Court (Court of Appeal) of Limoges of 22 August 1838 is not relevant to this case, although they were heard at almost the same time.

own a place in a church. Does this norm mean that if the ancestors of parishioners who were *not* representatives of the nobility (feudal lords, seigneurs, patrons) during the *Ancien Régime* era owned a place in the church, it could then be held that their descendants would also lose this right to these places in the church? The court came to the conclusion that they would not lose their rights in such a case. The Court of Cassation of France, which considered this case, also agreed with the conclusions of the Court of Appeal of Caen, ruling on this case on 22 January 1906. The case facts were as follows. In 1614, a philanthropist, a *sieur* by title, built a chapel, leaving a place in the church for his family, for which a respective agreement was signed. The municipality of Montuchon applied to the court of Coutances for the transfer of ownership of the chapel built by the ancestor of the plaintiff, stating that he had neither the right of easement nor any other property right to the building (this demand was satisfied). The plaintiff claimed to renounce any rights to the chapel, but demanded to maintain his place in this chapel, since it belonged to him by inheritance (as evidenced by a contract dating from 1614 – its legitimacy was fully confirmed by the Court of Appeal of Caen, and then by the Court of Cassation of France). The court pointed out that the right to a place in a church is a personal right; it is not connected either with land or with any dwelling, and therefore it cannot be withdrawn. The court also explained that, indeed, the Decree of 13 April 1791 abolished the privileges of representatives of the nobility of the *Ancien Régime* era, but they did not apply to everyone – namely, only to feudal lords, seigneurs and patrons. The plaintiff's ancestor, being a *sieur*, held a title of common law, and had no connection with the *Ancien Régime*. That is, if in 1789 the chapel passed into municipal ownership, then this fact did not affect personal rights. Thus, the court decided that the plaintiff had the right to maintain their place in the church, the contract for the use of which was concluded by the plaintiff's ancestor in 1614. The municipality of Montuchon filed a complaint with the Court of Cassation of France, which affirmed the judgment of the Court of Appeal of Caen, also noting the importance of the fact that the ancestor of the plaintiff signed a contract for the use of the place in the church in 1614, and the contract did not lose its force, which meant that the plaintiff was in full right to be placed in this place in the church. It should be noted that the judgment in this case shows how important it was to obtain documents for the use of a place in a church, even in those days (Cour d'appel de Caen, 1901, pp. 211–212; Cour de Cassation, 1906, pp. 21–22).

The Court of Civil Cases of Lyon, in its judgment of 31 March 1926, concluded that the pew must be considered as real estate from the point of view of civil law, but whose estate it is, and who can own it, can only be found from the judgment. In this case, the plaintiff sued his daughter-in-law, demanding 1,000 francs in damages as well as her expulsion from the church pew which he had long enjoyed. Much earlier, on 1 January 1864, the leadership of the church enterprise of the parish of the Loire (Rhône) provided this place to his father, and the plaintiff used it all his life (although, as it becomes known from the circumstances of the case, his ex-wife had occupied two places on this pew for more than 30 years with his consent). Now, the plaintiff's daughter-in-law denied him the exclusive use of this place in the church, demanding the right to occupy two places on the pew. The Justice of the Peace rejected the plaintiff's claim, arguing that the law separated the state from the church and the Decree of 30 December 1809 does not give private rights; therefore, the plaintiff could not appeal against the actions of the daughter-in-law. The plaintiff appealed to the Court of Civil Cases of Lyon. The court pointed out that the pew, which was located in the choirs of the church, was *real estate*, and what the plaintiff called his property right was the right of use (§625 of the Civil Code and further). In France, church enterprises ceased operating in 1903 and were replaced by religious associations. The Court reiterated that the Law of 2 January 1907 established that, in the absence of a religious association, both houses of worship and the furniture inside them remained at the disposal of confessors and parishioners, while the Law of 13 April 1908 transferred church furniture to the property of municipalities. Based on all of the above, the court concluded that there was no exclusive use of the church pew, which the plaintiff claimed earlier: each parishioner had equal rights to use this furniture (i.e., church pews). In addition, the fact that the plaintiff had signed an earlier agreement with a church enterprise was technically fulfilled; then, the church enterprises had ceased to exist, and the agreement had accordingly ceased to operate. For these reasons, the appeal was rejected (Trib. civ. de Lyon, 1926, p. 48).

3. The judgment of the Court of Cassation of Belgium of 1907

History has preserved quite an interesting judicial precedent, where the Court of Cassation of Belgium dealt with the issue of the taxation of places in a church, which turned out to be taxation for an actual stay in a church during services. The Decree On Church Enterprises, adopted in France on 30 December 1809, continued to operate in independent Belgium. A number of provisions of this normative act dealt with the issues of pews in churches – for example, the rent for them and certain issues of disposing of them.

A rather curious case was considered by the Court of Cassation of Belgium in 1907. The plaintiff was a parishioner of a church in the city of Odister, where the leadership of the house of worship adopted a resolution on 1 April 1906, one of the provisions of which prescribed to collect a tax in the amount of five francs from those parishioners who came to worship, taking a place in the church but not sitting on the pews. It was also known that such a decision was made due to the fact that some parishioners who attended Mass in this church stayed in the church corridor, and were not accommodated there properly. The plaintiff had a conflict with the priest. The plaintiff refused to pay this tax twice – the priest told the plaintiff: either the plaintiff pays the fee, or he will be obliged to leave the church. Then, the confessor told the plaintiff that his unwillingness to pay the tax would be regarded by the priest as an attempt to interrupt the service, and at the end of March 1907 the priest did just what he promised. As a result, the plaintiff was not only convicted of a misdemeanour under Art. 143 of the Belgian Criminal Code for interrupting church services, but was also expelled from the church. The Prosecutor General spoke on the matter, and supported the position of the plaintiff. Regarding the situation of the conflict between the plaintiff and the priest, the Prosecutor General noted that the very fact that the plaintiff did not want to pay tax for standing in the church during the service could in no way interfere with the conduct of the divine service, and apart from the fact that the plaintiff stayed in the church, he did not undertake any action which could interfere with the church service. In addition, it would be impossible to even imagine how the norms of criminal law could be applied to the plaintiff if he did not carry out the demands of the priest by simply ignoring the decision of the leadership of the church, which, in itself, could not be considered legitimate, as it deviated from the applicable legislation. The plaintiff did not violate public order in any way, and the priest himself acted unlawfully in expelling the plaintiff from the church. According to §1 of the Decree of 18 May 1806 On Church Services and Funeral Processions (this decree was also adopted in France, and continued to operate in independent Belgium), public churches were open to the public free of charge. Because the church where the plaintiff went was public, he had the right to be there. The same was also stated in the Circular of the Belgian Ministry of Justice of 29 October 1879. Moreover, §65 of the Decree of 30 December 1809 stated that fees may be charged for the use of pews in churches, which implies that a place in a church (i.e., a pew) would be reserved for this parishioner. Thus, the decision adopted by the leadership of the church was clearly at odds with the acting legislation, since it dealt with the collection of a tax from those who *do not* use church pews, because the church ran out of places for those who were unwilling or unable to pay. That is, the church resolution violated the norms of the acting legislation. The Court of Cassation of Belgium ruled in favour of the plaintiff. The court stated that according to §65 of the Decree of 30 December 1809, it was forbidden to collect any money, except for payment for the use of church pews, and §68 of the same decree, which provides for the transfer of a place in the church for the use of other parishioners, did not provide for any taxation of the places occupied by those parishioners who did not occupy pews or chairs in the church, but listened to the church service while standing. The court also explained that §30 and 65 (2) of the Decree of 30 December 1809 gave grounds to assert that the priest was entitled to indicate the place where parishioners who were not going to pay the rent of the church pew could be located; however, neither the wardens of the church nor the management of the church enterprise had the right to receive any monetary reward, as prohibited by the Decree, for occupying a place other than that previously determined by the leadership of the church, nor to demand the payment of an illegitimately established tax on a place that was not the object of a concession. The plaintiff's refusal to comply with the (as it is becoming obvious, illegitimate) resolution adopted in the church could not be considered a manifestation of the plaintiff's violation of law and order, and based on the circumstances established by the lower court, there was also nothing to indicate that the plaintiff's refusal to pay was accompanied by any wrongdoing on his part. Accordingly, the Court of Cassation of Belgium set aside the lower court's judgment, referring the case to the Brussels Court of Appeal (Cour de Cassation (Belgique), 1907, pp. 37–39).

4. The Netherlands: theory and case law, judgments from the 19th and early 20th century

The approach to the legal status of a place in a church in Dutch law differs from that in French law. This section will try to reconstruct the situation from the point of view of civil law and other branches of law in the Netherlands, starting from the 18th century. During the time of the County of Zutphen (since 1814 this has been the province of Gelderland in the Netherlands), as the Dutch lawyer and attorney Joost Schomaker (1685–1767) pointed out in a treatise of 1754, the legal concept of the ownership of church pews had already existed. It follows from the aforementioned text that pews were considered, by default, to be the property of the church, and were legally church property; the rules of churches provided that these pews could be given to parishioners for free use. J. Schomaker also mentioned that when purchasing a house with all of its accessories, the church pew did not

belong to this group, unless there was an old custom in the city or a church order was given in this regard (Schomaker, 1754, pp. 249–251). Since the 19th century, the situation with the legal status of a place in a church, based on the provisions of the norms of the Civil Code which was enacted in the Netherlands in 1838 (*Burgerlijk Wetboek*), had gradually passed into the sphere of civil law, which is well evidenced by the judicial practice of that time. As Dutch lawyer S. Asser (1872, p. 288) pointed out in his work on judicial practice on the application of the norms of the Civil Code of the Netherlands (*Burgerlijk Wetboek*), church pews were not excluded from trade as *res extra commercium*, and they could be sold or transferred as property to other people – here, however, S. Asser indicated that this happened if the pews were attached to the church building in one way or another. Where does this statement come from? The answer to such a difficult question lies in a court case that was considered by the District Court of Tiel in 1854, an interlocutory judgment on which was delivered on 19 July 1854 (Arrondissements-Regtbank te Tiel, 1854, p. 2/pp. 403–411), and a final judgment on 8 December 1854 (Arrondissements-Regtbank te Tiel, 1854, pp. 2–3). Fortunately, both of these judgments are preserved in the collections of Dutch case law. In this case, the District Court of Tiel clarified the legal status of a pew and what rights parishioners may have, both in terms of Dutch civil law and in terms of Roman and canon law. It should be noted that there were quite a few judgments of the courts of the Netherlands in disputes over the ownership of a place in the church. Thus, for example, the Provincial Court of Drenthe in its judgment of 25 June 1853 and 4 February 1854 indicated that in a dispute between the congregation and parishioners over possession of a pew, it should be considered that the pew should belong to the church congregation until the parishioners (in that case, they were the defendants) would provide material evidence in court that the church pew belonged to them (Provinciaal Geregthof van Drenthe, 1853 and 1854, pp. 513–516).

Let us consider the judicial practice of the Netherlands in disputes over the right to a place in a church in more detail. The facts of the case of the District Court of Tiel in 1854 were as follows. Two plaintiffs, who were neighbours, and their families owned two pews in a Reformed congregation church in Zoelmond, which were located one behind the other on the south side of the altar. It is important to note that these pews were locked with keys that were kept by each of the plaintiffs – accordingly, other parishioners would not have been able to sit on the pews. However, two other parishioners (the defendants in this case) decided to take possession of these pews on New Year's Eve of 1854: the first defendant broke the lock in the pews, and then installed other locks (to fit his own keys). As a result, from that moment on, the two defendants began to use the pews. Because these parishioners also changed the locks on the pews, the plaintiffs did not have access to the pews at all, and therefore sued the two defendants. The defendants, however, prepared for these proceedings, and denied any guilt in taking possession of the plaintiffs' pews in the church. Thus, the first defendant stated that a church pew cannot be an object of civil law-based property and cannot become the subject of a possessory claim, and the second defendant argued that he was not the owner of the church pew which he took possession of. Since the legal issues raised by this lawsuit over church pews appeared to be complex, the Tiel District Court decided to consider each of the issues in order: 1) Are the pews objects that may be sold? 2) Is it possible to file a possessory claim regarding a place in a church? 3) Is the evidence of the plaintiffs sufficient to satisfy the claim in their favour? The first question and its interpretation by the court are of great importance in determining the legal status of pews in Dutch law. The Court explained that in Roman law, churches and other consecrated objects were outside the concept of trade (we may recall that in Roman law this concept was called *res extra commercium*) due to the fact that they were consecrated, and, accordingly, became not secular, but sacred objects (*Juris Divini*). However, the District Court of Tiel pointed out that pews were not included in this category, and they should be considered church goods, as follows from the orders of the Emperors of the Roman Empire Leo I (c. 401–474) and Anthemius (?–472) and according to canon law, based on the letters from Pope Alexander III (c. 1105–1181) to the Archbishop of York, Roger de Pont l'Évêque (1115–1181). Therefore, concluded the court, upon Dutch civil law, a church pew may well belong to specific people and may be transferred by its owners, and it followed that a possessory claim, the subject of which was a church pew, was quite possible, and to argue that the church pew was excluded from trade as *res extra commercium* would be wrong. It was then necessary to clarify (and, as it transpired, this moment played a significant role in the case) what kind of property a place in the church was – movable or immovable (in addition, this had to be determined and proved). The court pointed out that pews were considered immovable property in the works of earlier Dutch legal scholars, but since church pews were not mentioned in §562 and §563 of the Civil Code of the Netherlands, they were considered to be movable property unless they were in some way attached to the church building (meanwhile, this is exactly what the plaintiffs had claimed earlier). Therefore, the court indicated that the plaintiffs had to prove this fact (that the pews were attached to the building of the church) with the help of witnesses, and ordered the plaintiffs *ex officio* to prove this fact – had they

proved the fact that the pews were attached to the church building a certain way, then, accordingly, they might have won the lawsuit. Answering the third question, the court indicated that the arguments of the plaintiffs were quite sound, and the plaintiffs would then need to prove the events indicated by them with the help of witnesses. Thus began the interlocutory judgment of the Tiel District Court of 19 July 1854 (Arrondissements-Regtbank te Tiel, 1854, p. 2/pp. 403–411). After hearing the witnesses, the District Court of Tiel, in a judgment of 8 December 1854, decided to dismiss the claim. Thus, as pointed out earlier, the court indicated to the plaintiffs the significance for them of proving that the pews were attached to the church building. Based on the evidence, none of the witnesses confirmed that the pews were in any way attached to the church building – there was no evidence that the pews were attached to the floor or walls (although the plaintiffs claimed otherwise). Thus, the court points out, the pews in this case should be considered from the point of view of movable property in the sense of §611 of the Civil Code of the Netherlands. The Court pointed out that, by law, a separate tort claim relating to movable property was not allowed, although the plaintiffs' complaint in such a case would be fairly well founded if it were a claim for damages due to the actions of the defendants. Thus, the claim was dismissed (Arrondissements-Regtbank te Tiel, 1854, pp. 2–3).

The judgment of the Breda District Court of 6 September 1870 is very important from the point of view of the legal status of a pew and the right to own it. The plaintiff (and earlier her deceased father) ascertained that they had owned a pew in the Reformed Church in the town of Zevenbergen for more than 30 years. However, the leadership of the church (church board) where this pew was located decided to give the pew to other parishioners for use at the end of 1868. The plaintiff filed a lawsuit against the church board. The Court, in its judgment, pointed out that if the church (or rather, its building) should be considered as *Divini Juris* by virtue of its consecration, then it would be wrong to assert the same about certain objects that are necessary for public worship and are used only for the convenience of parishioners who are attending the church – among which are the pews. The Court also observed that it is common knowledge that although the church building itself should legally be considered a *Divini Juris*, at the same time, places in the church are often reserved by parishioners as private property; on this basis, the church pews should not be considered *res extra commercium*, and accordingly, there was no reason to believe that in this case, possession of a church pew was not acquired by prescription. However, the very fact that one or another parishioner occupies a certain place on a pew should not be considered as a manifestation of possession (*pro domino*) if this does not come from any other facts; the court also clarified that pews were most often intended for the use of all parishioners as visitors in Reformed churches, and that the purpose of the place in the church, due to the peculiarities of its nature, could not be considered as anything else (except for placing parishioners during worship). Based on the circumstances of the case, the plaintiff failed to prove the existence of real ownership of this church pew, and the court rejected her claim (Arrondissements-Regtbank te Breda, 1870, pp. 2–3).

The judgment of the District Court of Assen of 12 March 1923 shows new features of the ownership of seats in the church. The plaintiff was the owner of two pews (each containing five unnumbered seats) in the Dutch Reformed Church in the village of Koekange, in the province of Drenthe. The plaintiff claimed that he and his ancestors had owned these pews for over 600 years, or at least 30 years prior to 11 February 1923, and had always used them free of charge, and sometimes rented them out to other parishioners. For a long time, the church elders had no claims that these pews were the property of the plaintiff and his ancestors, but in 1887 the church elders offered to pay money to the plaintiff for his refusal of further use of the pews in their favour. In 1921, the plaintiff offered to cede the pews to the church elders for 5 years for rent with a respective fee payment. Nevertheless, the plaintiff did not intend to part with the pews. As a result, the church elders resolved this situation in their own way: on 11 February 1923 or around this date, they approved that from now on the pews would be used by two other parishioners who had previously rented pews from the plaintiff, and they themselves had driven nails through the doors that gave access to the pews, damaging the seats. The plaintiff demanded that the churchwardens, as the defendants in the case, restore the pews to the condition they had been in before they had damaged the pew doors; the plaintiff argued that he, as a landlord, must guarantee the parishioners who rented places in the church from him the peaceful and quiet use of them. Taking into account what happened, the court decided in favour of the plaintiff, ruling that on the day after the defendants were notified of this judgment, the pews should be brought to the state that they were in before the doors of the pews were damaged. In addition, the court instructed the defendants to pay the plaintiff 100 guilders for each church service during which the pews were not restored to their previous condition, and thus the use of them by the plaintiff and his heirs was complexified (Arrondissements-Rechtbank te Assen, 1923, pp. 6–7).

The judgment of the Court of Winschoten of 28 October 1931 shows that the possession of a pew by prescription, especially as an inheritance right, is not recognised without weighty supporting documents. The plaintiff, a member of the Protestant Reformed Church in the municipality of *Onstvedde* in the province of Groningen (since 1 January 1969, a part of this municipality has been merged with the municipality of *Veendam*, and the other part with part of the municipality of *Wilderwank*, thereby forming a new municipality – the *Staadskanal*), sued the local church community due to significant damage to a pew during the repair of the church building, where he claimed to own four seats (at the same time, the plaintiff did not claim that he owned the entire pew). From the factual part of the case, it becomes known that two of the four seats on the pew were sold, and the plaintiff took possession of the remaining two, according to him, by virtue of a testamentary disposition. While the defendant generally denied any rights of the plaintiff to these places, the plaintiff himself declared that he did not claim the entire pew, but only four separate places, because of which the dispute arose, and considered that the right given to him allowed free use of these places and allowed him to forbid other parishioners from staying there. The plaintiff also believed that these places were subject to sale and inheritance. The court of Winschoten excluded that the acquisition and succession of church pews was possible overall. Accordingly, it was necessary to establish how the right which the plaintiff had claimed was proved. No documents were able to confirm this. The plaintiff provided two receipts and proof of receipt of tokens for the purchase of seats in the church, but the court found that these documents did not have a separate probative force. The plaintiff argued that his right appeared around 1865, but the court noted that it would be wrong to speak of the emergence of this right on the foundation of presumptions, and the defendant also did not confirm his statements. The plaintiff tried to prove that he and his ancestors owned this pew for more than 30 years on the basis of the testimony of witnesses, but the court indicated that, based on the facts presented in the case, the plaintiff was unable to prove that he had the right to use the seats in the church pew on the basis of prescription. Therefore, the plaintiff's claim was dismissed (Rechtbank Winschoten, 1931, p. 8).

5. Legislation and jurisprudence of the German states of the 19th century

Until the end of the 19th century, the main source of German (or Old German) law was the code adopted in 1792, called *Allgemeines Landrecht für die Preußischen Staaten* (in court judgments, the name of the code was mainly abbreviated as A.L.R., which was published in two parts, each of which was divided into chapters; in the first part there were 22 of them, in the second there were 20). This code contained more than 18,000 provisions, and was a codification of civil, criminal, administrative, family, church and other areas of law in one act. In addition, in some German states other legal systems were also in force – for example, the French Code of Napoleon. This A.L.R. code did not directly determine the legal status of places in churches, although in Chapter 11 of the second part, several norms refer specifically to them. Thus, according to §684, church pews which were transferred to the use of a person by virtue of a rank or position could not be transferred to other parishioners. It is said in Article 685 that church pews permanently attached to the house or to the parishioner's estate pass into the property of each owner, even if the person belongs to another confession. Art. 588 also states that the patron of the church has a right to their pew in the church (*Allgemeines Landrecht für die Preußischen Staaten*, Thl. II, Tit. 11, §§588, 684, 685). Thus, a system of patronage and privileges was preserved in the manner of that which was present in the *Ancien Régime* era in France. Judicial practice of that time shows that, from the point of view of the law in force, a place in a church should be considered as an *easement* (*Preußische Obertribunal*, 1856, pp. 40–47), and it is not a thing excluded from trade (*res extra commercium*) in the sense of Part 1, Chapter 9, §581 A.L.R., according to which a thing excluded from trade cannot be acquired by prescription (*Allgemeines Landrecht für die Preußischen Staaten*, Thl. I, Tit. 9, §581). The judicial practice also points to other sources of law in relation to church pews (*Tribunal zu Celle*, 1862, pp. 44–48) which will be discussed in the comments on court cases. Karl Meidinger (1891) points out that in Old German law, church pews had never been withdrawn from civil circulation as *res extra commercium*, and, accordingly, private rights to a place in a church cannot be considered a legal chimera. Moreover, neither Catholic nor Protestant church law had considered church pews to be withdrawn from civil circulation. Speaking about the ownership of a pew (i.e., a place in a church), Meidinger points out that the pew itself belongs to the owner of the church, even if the church itself was built by a particular person. Meidinger also mentions that in older Catholic and Protestant church law there were quite different approaches to whether parishioners were supposed to have exclusive rights to use one or another place in the church. In Catholic churches, it was accepted that this issue could be decided by the church ordinary, who had the right to both allow and prohibit the provision of the right to the exclusive use of the church pew to parishioners, and decided whether

it would be paid or given for free (the fee was considered, rather, as a contribution to the maintenance of the church). At the same time, in most Protestant churches, parishioners were given the exclusive right to use certain pews (Meidinger, 1891, pp. 14–19). Meidinger also says that the acquisition of the right to use a pew could be carried out both free of charge and for a fee – under an agreement. In the first case, he notes that such a civil law deed might need to be considered a *donation* (pp. 47–49). In addition, Meidinger mentions that the practice of maintaining registers of ownership of church pews by parishioners of the church, which was called “*Kirchenstuhlordnung*”, appeared relatively long ago, but these documents, according to Meidinger, were not considered legally significant (pp. 50–51). However, the Bavarian High Land Court, in its decision of 15 February 1875, resolving a dispute over the protection of a church pew from the use of other parishioners, mentions the “*Kirchenstuhlordnung für protestantische Kirchen*” of 8 October 1813, citing it as an example in matters of the distribution of seats in a church (Oberste Landesgericht für Bayern, 1875, pp. 892–894). From this case, we can conclude that even if they were not considered as a source of law, as distinct civil law deeds, or as administrative orders, then, in any case, they could be considered as an advisory source of law. In a number of judgments of the courts of the German states of the 19th century, we may also find statements that church pews are considered to be *property of the church* (in fact, K. Meidinger later wrote about this in his doctoral thesis), even though parishioners acquired rights to use pews (Oberappellationsgericht zu Darmstadt, 1856, pp. 415–416; Oberste Landesgericht für Bayern, 1875, pp. 892–894). It should be noted that some issues of the status of pews and the possibility of their inheritance were also considered by the German lawyer Justus-Henning Böhmer in his work *Jus parochiale* (1738 edition), where he compared the right to use pews with the *usufruct* and argued that this right ends with the demise of the one who used a pew, and in such a case, the pew again became the property of the church. At the same time, he allowed the possibility of inheriting this right if the testator officially owned this right, and in this case, the right would belong only to the heir (Böhmer, 1738, pp. 272–274)

Now, let us consider how disputes relating to church pews were resolved in practice. For the purposes of this article, let us observe two judgments of the Supreme Tribunal (Preußische Obertribunal) of 1856 and 1868, and the judgment of the Tribunal of Celle (Tribunal zu Celle) of 1862.

In the judgment of the Supreme Tribunal of 1856, the issue of the legitimacy of acquiring personal easements in the form of a church pew as hereditary rights by prescription is considered. The church in which the dispute concerning the pew took place was a house of worship for the Reformed and Lutheran congregations at the same time until 1820. In 1820, these communities united. At that time, the fathers of the defendants used a church pew there (the families of both defendants were apparently well-acquainted for a long time), and they declared their right to use it, i.e., be placed on it during worship. However, the community did not want to officially provide them with this pew for use (in addition, according to the defendants, the pew was used not only by their fathers, but also by their grandfathers, and then by the defendants themselves), and in 1854, the community decided to deprive the defendants of the right to use this pew by filing a lawsuit. The defendants, however, decided not to accept this situation, and stated in court that their families had been using this pew for more than 60 years. The district court of Wesel, in a judgment of 6 March 1855, on the basis of the evidence presented, recognised the right of the defendants to use this church pew on the basis that they and their ancestors had owned this pew for 44 years. The church community, however, filed an appeal and won. The Hamm Court of Appeal, in its judgment of 20 September 1855, stated the following: the exclusive private right to use the pew, as in the case of other limited property rights (*jus in re aliena*), can be acquired in two ways – as a competent (i.e., legally capable) person, or as a competent person-owner. The defendants did not claim the latter justification. According to the court, this could not have been a case of personal easement, since in that case the defendants would have had to have owned the pew personally for the same 44 years, whereas the defendants were much younger in age than this. However, according to the Court of Appeal, if the judgment of the court of first instance was based on the fact that the defendants received the right to use the pew as an inheritance, in this case, a *personal hereditary easement* could not be acquired by prescription. If the family used a certain church pew, then the right of *personal easement* could be transferred only to individual family members, but not to the whole family at once; a personal easement may also arise from an individual natural person. The Supreme Tribunal considered the appeal in cassation of the defendants to be justified, but affirmed the judgment of the Court of Appeal on the merits of the case. The Supreme Tribunal points out that Court of Appeal had determined that personal easements, as personal rights, could not be the subject of inheritance rights. However, at the same time, the law did not explicitly state that non-property rights could not be acquired by prescription, like inheritance rights. The Court recalled that in Part 2, Chapter 21, Art. 1 A.L.R. it is indicated that the right to use other people’s property (i.e., *easement*), as

well as the right to receive fruits and benefits from it (i.e., *usufruct*) can be justified by the following: 1) will; 2) directly provided by law; and 3) prescription. If we transfer this rule to the question of whether the inheritance right can be acquired by prescription in relation to a pew in a church, then the court indicated that in the opinion of Böhmer (whose position was mentioned earlier), this is quite acceptable; on the other hand, Böhmer points out that a title should have been added to the prescription. This question was not settled directly in Part 2, Chapter 11, §§681–682 of the A.L.R. Therefore, the Court said that an answer must be sought in the rules for acquiring property based on prescription (the duration of which, as previously established, was 44 years). At the same time, the court pointed out that the judgment of the appellate court was based only on the fact that a personal hereditary easement cannot be acquired by prescription, but not on the fact that hereditary rights to use a church pew concern individual people (and not the whole family), nor the norms relating to church pews. This position, in the opinion of the Supreme Tribunal, was erroneous; in addition, there was another important point which was not considered in the judgment of the court of appeal. A place in a church should not be understood as the acquisition of a negative right in relation to the church community, or the leadership of the church, because according to Part 1, Chapter 7, §82 A.L.R., the subject's statement or circumstances must clearly indicate that they have the right to the possession of a negative right. Based on the evidence, it appeared that the families of the defendants had been using the pew for over 60 years; moreover, the fact that the exclusive right to use the pew belonged to the defendants for 44 years was not supported by evidence. Simply put, it transpired in such a way that the fathers and grandfathers of the defendants were parishioners of the Lutheran church, and for many years they used the same pew. There was no evidence that they had the right to the exclusive use of this pew. Therefore, the plaintiffs, in fact, could withdraw the pew from the use of the defendants. As a result, as mentioned earlier, the judgment of the Court of Appeal was affirmed (Preußische Obertribunal, 1856, pp. 40–47).

In the judgment of the Tribunal of Celle (Court of Appeal) of 9 April 1862 the plaintiff sued representatives of the city church in Celle for the return of two church pews to his possession. The plaintiff claimed to be the owner, or actual owner, of two pews in the city church in Celle, which his distant ancestor had taken possession of from that church in 1643. However, due to the fact that the plaintiff refused to pay for these pews, the leadership of the church decided to confiscate both pews from him, and their locks were replaced. The plaintiff could no longer use these pews himself, and could not rent them out – earlier, the plaintiff had rented them out, about which no questions were asked from the side of the defendant. The plaintiff filed a lawsuit, demanding that the defendants be found guilty, and on the basis of a possessory claim and an *interdictum quod vi aut clam* (authors' note: in ancient Rome, this was the name of a court order requiring a person who took someone's property to return it to its rightful owner in its original state) to stop the violation of property rights and compensate for the damage incurred. The representatives of the church did not contest that they had seized the pews from the plaintiff's possession, but argued that they had acted legally on the basis of Chapter XIII of the Lüneburg Church Ordinance of 1643 (*Lüneburgischen Kirchenordnung*) – it is quite remarkable that the plaintiff's ancestor received the church pews in that year. The High Court of Celle dismissed this action in a judgment of 13 July 1861, considering it unacceptable to combine the possessory action and the *interdictum quod vi aut clam* into one complaint, and also because real possession (*corporis possessio*) in relation to part of the church in general would be, according to the court, unthinkable, just as it could not be *juris quasi possessio* (i.e., personal easement). This is because, based on Chapter XIII of the Lüneburg Church Ordinance of 1643, private law in relation to church pews should not have gone further than the right to rent, and based on the essence of the lease legal relationships, the plaintiff's claim could not concern possession of the pew, but could only be a personal claim. The Tribunal of Celle set aside the judgment of the Celle High Court, indicating how, from the point of view of law, private rights in the pew should be considered. First of all, the court explained that the evangelical church was not guided by the principles of ancient Roman *res sacrae* law, and considered the structure of the church as the property of the church. There are distinct property rights to the objects that make up this structure, and since they were compatible with the purpose of the latter, then the private rights of parishioners to pews may arise. Due to the presence of such quasi-possession *in rem*, a possessory claim was therefore a quite suitable manner of legal protection in this case. The court also pointed out that, in fact, the *Lüneburg Church Ordinance* in no way contradicted said principles, because it would be wrong to consider those private rights that the parishioners of the church acquired once acquiring a pew as merely renting this pew, but rather as a property right *in rem* – quite similar to a *personal easement*. Based on these considerations, the court found the plaintiff's complaint to be fully justified. In addition, proof of the facts of the lease of the plaintiff's pews existed, which confirmed the plaintiff's ownership of them (in addition, the defendant never had objections to this lease before, as already indicated above). Thus, the Tribunal of Celle

overturned the judgment of the Celle High Court, ruling in favour of the plaintiff (Tribunal zu Celle, 1862, pp. 44–48).

In the judgment of the Supreme Tribunal of 12 June 1868, a dispute was considered regarding whether there could be hereditary possession of a church pew by a parishioner who did not belong to the religion of the church. The Court was of the opinion that it could not. In this case, the pew was owned by the parishioner's relative, despite the fact that the religion of both belonged to the Protestant confession, albeit to different denominations. The legal justification for the withdrawal of ownership was quite complex, and is considered below. The first husband of the mother of the defendant – with whom the leadership of the Evangelical Reformed church community was litigating in order to seize the pew from her – used to be an elder in this church, as well as being a merchant, and he was allocated a pew for the use of him and his descendants. After the demise of her first husband, the defendant's mother married a merchant, out of which the defendant was born. However, the defendant, by her religion, belonged to the Evangelical Lutheran congregation, which existed in the same city; she owned a locked and barred pew in an Evangelical Reformed church that the church community had decided to seize. The Court of First Instance (Herford District Court), in its judgment of 27 March 1867, ruled in favour of the defendant, holding that she was entitled to own the pew by prescription, and on the fact that the defendant belonged to another denomination, the court held that there was a union between the two aforementioned denominations, and saw no obstacle to the defendant's possession of the pew. The Padeborn Court of Appeal, in its judgment of 12 July 1867, however, decided in favour of the plaintiffs, acknowledging that the fact that the defendant belonged to the Evangelical Lutheran denomination, not the Evangelical Reformed denomination, was significant, although the court did not deny that, in principle, places in the church, as such, could be acquired by prescription. The Supreme Tribunal rejected the defendant's complaint, and gave a sufficiently detailed explanation. The court noted the peculiarity of the circumstances of the case in that the defendant did not belong to the denomination in whose church she owned a pew. The standing pews, according to the court, belonged to the parishioners of the church; the church community granted parishioners a personal right to use these pews during worship. It follows that these pews could only be given to those people who were related to the denomination of the church community. The Court pointed out that the community itself would not invite anyone other than its co-religionists (that is, those parishioners who belonged to the same denomination as the church community) to the church. At the same time, how should the norm of Part 2, Ch. 11, §677 A.L.R., according to which "A place [in the church] may be given to the use of the parishioners, and others, but the former have precedence," be interpreted? Then, what should be understood by the word "others" (the original German word is pronounced "*Fremde*", which may be translated as "strangers")? Incidentally, this issue had already been considered in the judgment of the court of appeal: there it was pointed out that the wording of this norm should be understood as "strangers in relation to the parishioners." The Supreme Tribunal considered that such an interpretation was correct, and other legal norms spoke in its favour: according to Part 2, Ch. 11, §239 A.L.R., a parish is formed where all believers are assigned to a common church; and according to Part 2, Ch. 11, §293 A.L.R., citizens who do not belong to a parish will have to choose the church of the denomination that they would like to join. Moreover, Part 2, Ch. 11, §39 A.L.R. contains a postulate regarding the parishioners of the Protestant communities of the Augsburg creed, according to which these communities should not deny their members mutual participation in their religious practices if they do not have a single church of their denomination nearby (*Allgemeines Landrecht für die Preußischen Staaten*, Thl. 2, Tit. 11, §§39, 239, 293, 677). Then, noted the Supreme Tribunal, we can conclude that it is possible to accept parishioners of other denominations *only in individual cases*. It follows from this that it would be wrong to argue that religious communities should be allowed to take part in worship for all who wish, regardless of what denomination they actually belong to. As to what is to be understood by "*Fremde*", the court said the following. In relation to a closed community (i.e., a community of parishioners of a certain church that belongs to a certain religious confession and denomination), a "stranger" is anyone who does not belong to it, and the judgment of the appellate court emphasises that the word "stranger" refers to those parishioners who live outside the geographical area where the parish is located, but not those parishioners who differ from the others in regard to religion. The court also pointed out that it did not matter in this case to determine the fact of how important the union of evangelical churches could have been earlier, since there were no remarks in the defendant's complaint on this matter. Thus, the Supreme Tribunal decided to dismiss the defendant's complaint, and affirmed the judgment of the Court of Appeal (*Preußische Obertribunal*, 1868, pp. 210–218).

6. The jurisprudence of Austria-Hungary (1867–1918)

Austrian-Hungarian law also contained a number of legal disputes over the ownership of church pews. In most cases, these were disputes between parishioners of churches and confessors. It is interesting that in the Austrian-Hungarian judicial practice the term “*Kirchenstuhlrecht*” (“the right of the church pew”) was known (K.K. Oberster Gerichts- und Cassationhof, 1884, pp. 128–131), which, seemingly, was a kind of legal neologism in those days.

In the judgment of the Royal Supreme and Cassation Court of 6 March 1884 (case No. 2627), the question of the legitimacy of the ban of a parishioner from using their pew, as well as the right of a priest to sell this place to other parishioners, was considered. The dispute arose because of a conflict between a parishioner and a representative of the church administration. Twenty years before the dispute, the parishioner, the plaintiff, bought a pew in the parish church at an annual cost of three florins; since then, he had been using this pew. However, one day the plaintiff received an angry letter from the parish provisory, who stated that he did not want the plaintiff to continue to use this pew, and that the provisory intended to complain if the plaintiff continued to use his pew in the church. The plaintiff, in response, filed a lawsuit against him, arguing that he would not allow the defendant, especially with the help of a letter, to prevent him from using his church pew. In response, the defendant argued that this dispute could not be resolved in court, since this dispute, in his opinion, was within the jurisdiction of the church administration. The plaintiff countered the defendant’s argument by saying that the pew was not a thing excluded from trade (that is, *res extra commercium*), and therefore, the owner of the pew must be protected from its loss even if there was no actual obstacle to possession of it (judging by the circumstances of the case, nothing indicated that the pew had been dismantled or that the plaintiff was in any way restricted from accessing the pew, for example, by locking it with a key, changing the locks on the doors, etc.). The court of first instance decided the case in favour of the plaintiff, having heard witnesses, indicating that the defendant violated the plaintiff’s right to own the pew (and to subsequently resell the pew), and also indicating that the resolution of such disputes was within the competence of the court, since two former pharmacists, who acted as witnesses in the case, stated that places in the church were sold or leased out in perpetuity, which means that they could not be spoken of as things excluded from trade (*res extra commercium*). The Court of Appeal left the judgment of the court of first instance unchanged, and the Royal Supreme and Cassation Court dismissed the defendant’s complaint. The Court agreed that the courts had jurisdiction to decide disputes of this nature; agreed that the right to own a particular pew was in general held by many parishioners, and did not apply to limited matters (which, apparently, could only be considered by church administration, as previously pointed out by the defendant); and noted that the plaintiff actually owned the right to use this pew, although the dispute did not raise the issue of whether the plaintiff could lose the right to own the pew if, for example, he violated the church discipline or refused to pay an increased annual fee for the pew (K.K. Oberster Gerichts- und Cassationhof, 1884, pp. 128–131).

The judgment of the Royal Supreme and Cassation Court of 26 January 1893 (case No. 861) represented a dispute between a parishioner and the pastor of a church, who removed the doors that were attached to the church pew owned by the plaintiff. The conflict between them was obviously much older. The plaintiff once owned a pew in a church pastored by the defendant. One day, the defendant removed the plaintiff’s pew, for which he sued, and as a result, the pastor had to put up a new pew for the plaintiff. In addition, doors were installed in the old church pew, which had a lock. For the first 2 years, the plaintiff’s new church pew stood without them; however, on 23 September 1892, doors were attached to the pew on both sides, in the same manner they had been in the old pew. When the defendant saw the doors the next day, he ordered the doors to be removed from the church pew and taken to the sacristy. The plaintiff sued the defendant for trespass. The Court of First Instance granted the plaintiff’s claim. However, the Court of Appeal came to a somewhat different conclusion. The dispute was not about whether the plaintiff could attach the doors to the church pew, but about whether it could be said that the defendant arbitrarily changed the conditions of the plaintiff’s actual ownership of the church pew by removing doors from it (as was known, the doors to the pew were installed without the consent of the defendant). Also, as it was known from the past conflict between the plaintiff and the defendant regarding the old pew, it was agreed that in place of the old one, which was equipped with doors (which could be closed), a new pew would be installed, but without doors. Additionally, the plaintiff used the church pew which had no doors for some time (until 23 September 1892, when they were installed). The fact that the pastor removed the doors from the plaintiff’s pew the day after they were installed should be considered the restoration of the previous state of legal relations that existed from the moment the new church pew was installed for the plaintiff (which, as the reader remembers, did

not originally have doors). Therefore, in the opinion of the court, it was impossible to reasonably argue that the plaintiff could mount the doors without the consent and without the knowledge of the pastor. Moreover, possession is acquired when a person, using the thing of another person, uses said thing with the person's consent and for their own benefit, according to §§312 and 313 of the Civil Code of 1811. The Royal Supreme and Cassation Court did not agree with this conclusion and decided to reinstate the judgment of the court of first instance. Thus, the Court pointed to an important point in the possession of church pews: if the use of the pew is exclusive, it is such that no other people can use this pew; for this, doors were installed, which, in addition, were equipped with a lock, with the help of which the exclusion of the church pew from general use became recognisable. The court explained that if the plaintiff had the right to use the pew, then he could, at his discretion, make changes to the design of this pew, especially since the old pew of the plaintiff also contained doors. If the old pew of the plaintiff was replaced by a new one (which did not have doors), this did not affect the rights of the plaintiff to own the old pew – only now, this was already in the guise of a new pew. The fact that the doors to the pew did not appear immediately, but only 2 years after the establishment of the new pew, did not limit the plaintiff's rights. Based on these conclusions, the Royal Supreme and Cassation Court decided to reinstate the judgment of the first-instance court, which had previously ruled in favour of plaintiff (K.K. Oberster Gerichts- und Cassationhof, 1893, pp. 44–46).

Conclusions

The right of parishioners to a place in a house of worship is recognised differently in different civil law countries, and has been for a long time. At the same time, having reviewed the relevant jurisprudence, the reader may observe the casuistry of disputes regarding the ownership of church pews, the inheritance of a place in a church, the removal of pews from the use of the plaintiff/defendant, the distribution of these places among all parishioners, etc. To sum up the findings of this article, the authors have come to the following conclusions:

1) Judgment of the Supreme Tribunal of the Republic of Lithuania No. 107 (1927) of 31 January 1927 has considerable significance for the law of Lithuania in regard to places in houses of worship. Firstly, the Supreme Tribunal established the legal status of a pew, the right to sit on which was found to be an *easement*, but not the property of the person who is entitled to this place; moreover, this easement may be used only by the members of the Jewish religious community. Next, the Supreme Tribunal said that the process of transferring pews in a synagogue should be regulated by the norms and customs which are in effect within the Jewish religious community (Vyriausiausis Tribunolas, Sprendimas Nr. 107, 1927, pp. 35–37). Some similarities to this judgment can be found in the judgment of the Court of Civil Cases of Colmar in 1834 (which was confirmed by the Court of Cassation of France in a judgment of 1836), although this situation concerned the taxation of the allocation of seats in a synagogue, for which a fee was paid by the congregants. Therein, the court established that the seats in the synagogue were the joint property of the Jewish community of Ribeauville, and these seats, among other things, may also be owned by members of the Jewish community who are unable to pay for their use (Trib. civ. de Colmar, 1834, pp. 395–397; Cour de Cassation (France), 1836, p. 399).

2) The authors reviewed the legal doctrine and a number of notable court judgments from several European jurisdictions, some of which were historical (i.e., German states of the 19th century and Austria-Hungary). The findings of the authors, with the analysis of the legal doctrine, legislation and case law of the afore-discussed jurisdictions, are as follows:

- The oldest legal cases discussed in the article originate from France in the *Ancien Régime* era and date back to the 16th century. In these cases, one can feel the influence of customary law, characteristic of French law in the *Ancien Régime* era. The fact is that at that time, representatives of the nobility owned a considerable number of privileges, among which was the ownership of places in the church with the right to bequeath them. Patrons who donated funds to churches could own them, own places in the church, and bury their deceased relatives in the pantheon of the church. In the laws which were adopted in France in 1789–1791, the privileges of certain categories of noblemen were abolished. Subsequently, the sources of law in judicial disputes on church pews have gradually changed, constituting laws adopted after 1789 (i.e., the laws of 1789–1791, the Decree of 30 December 1809, etc.) and the norms of the Civil Code. As such, churches were recognised as *res extra commercium*.

- In the judgment of the Court of Cassation of Belgium of 18 November 1907, the Court indicated that the church cannot decide on the payment of tax for a place in a church that was not the object of a concession (the plaintiff

did not own a place in a church, as such), since the law of such powers is nowhere established. Moreover, the plaintiff's refusal to comply with an illegitimate church decision could in no way be considered an offense (Cour de Cassation (Belgique), 1907, pp. 37–39).

- Old German law quite clearly defined the right to a place in a church as a personal easement (see descriptions of the judgments above), but pews were not recognised as *res extra commercium* in the understanding of Part 1, Chapter 9, §581 of the A.L.R., and the system of patronage in the 18th and 19th century was still preserved. The legal cases discussed in this article featured disputes on: the issue of hereditary rights to church pews (Preußische Obertribunal, 1856, pp. 40–47); possession of a pew in a church when the denomination of parishioners differed from that of the defendant (Preußische Obertribunal, 1868, pp. 210–218); and a dispute between a church patron's ancestor and the church board, which desired the removal of pews from his possession (Tribunal zu Celle, 1862, pp. 44–48).
- Dutch law, in turn, showed a slightly different approach to the legal status of the pew: judicial practice determined that parishioners may have property rights to a pew (Arrondissements-Regtbank te Tiel, 1854, p. 2/pp. 403–411; Arrondissements-Regtbank te Breda, 1870, pp. 2–3). At the same time, the courts of the Netherlands indicated in various cases that the existence of such rights must be clearly documented, and such a right is not acquired by prescription without substantial documentary evidence of it (Rechtbank Winschoten, 1931, p. 8).
- Austrian-Hungarian law also did not recognise that a church pew was a thing excluded from trade (*res extra commercium*), and in a judgment of 26 January 1893 the Royal Supreme and Cassation Court stated that if a plaintiff has an exclusive right to use a pew, then they have the right to make those changes to its design (in that case, doors) that they deem necessary (K.K. Oberster Gerichts- und Cassationhof, 1893, pp. 44–46).

Thus, the doctrine and case law which was analysed by the authors indicate that the right of parishioners to a church pew is real, although, at first glance, it is difficult to determine it from the point of view of law, and it may cause disputes between parishioners and the leadership of the church, or church communities. The authors express the hope that the material presented in this article turns out to be interesting and useful for the reader, and also suggest that this topic may be the subject of further research concerning, for example, the issue of determining the legal status of a church pew and the rights of parishioners to own and inherit a church pew in common law jurisdictions.

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